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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–388–AD; Amendment 39–12599; AD 2002–01–08]

RIN 2120–AA64

Airworthiness Directives; Israel Aircraft Industries, Ltd., Model Galaxy Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to certain Israel Aircraft Industries, Ltd., Model Galaxy airplanes. This action requires disabling the baggage compartment heating blanket system. This action is necessary to prevent a short circuit between the baggage compartment heating blankets and the electrical connectors, which could result in fire and smoke in the baggage compartment. This action is intended to address the identified unsafe condition.

DATES: Effective January 30, 2002.

Comments for inclusion in the Rules Docket must be received on or before February 14, 2002.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–388–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-iarcomment@faa.gov.* Comments sent via fax or the Internet must contain ''Docket No. 2001–NM–388–AD'' in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in this AD may be obtained from Galaxy Aerospace Corporation, One Galaxy Way, Fort Worth Alliance Airport, Fort Worth, Texas 76177. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Dan Rodina, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2125; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: The Civil Aviation Administration of Israel (CAAI), which is the airworthiness authority for Israel, recently notified the FAA that an unsafe condition may exist on certain Israel Aircraft Industries, Ltd., Model Galaxy airplanes. The CAAI advises that the excessive length of the electrical connector backshell hardware and the proximity of the connectors to the baggage compartment heating blankets could result in chafing. This condition, if not corrected, could result in short circuiting between the baggage compartment heating blankets and the electrical connectors, and consequent fire and smoke in the baggage compartment.

Explanation of Certain Service Information

The manufacturer has issued Galaxy (Israel Aircraft Industries) Alert Service Bulletin GALAXY–25A–109, dated December 18, 2001, which describes procedures for disabling the heating blankets by opening five circuit breakers and installing tie wrap around their necks, and labeling the switch ''INOP.'' The CAAI has approved this alert service bulletin and issued Israeli emergency airworthiness directive 25–01–12–17, dated December 18, 2001, as an interim action to address the continued airworthiness of these airplanes in Israel. The actions specified by the alert service bulletin parallel the requirements of the Israeli airworthiness directive.

FAA's Conclusions

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

Explanation of Requirements of Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, this AD is being issued to prevent a short circuit between the baggage compartment heating blankets and the electrical connectors, which could result in fire and smoke in the compartment. This AD requires disabling the baggage compartment heating blanket system. In addition, as recommended by the CAAI, this AD prohibits issuance of a special flight permit to operate the airplane to a location where the requirements of this AD can be accomplished.

Difference Between This AD and Israeli Airworthiness Directive/Service Bulletin

The Israeli emergency airworthiness directive mandates the immediate disabling of the heating blanket system. This AD allows operators 3 days to complete the required actions. The FAA recognizes the severity of the unsafe condition presented by this situation, but finds a 3-day compliance time appropriate in consideration of the safety implications, the average utilization rate of the affected fleet, and the practical aspects of planning and scheduling maintenance to accomplish the required actions on the fleet. The FAA has considered all these factors and determined that a 3-day compliance time is practicable and will not adversely affect the continued operational safety of the fleet.

Interim Action

This is considered to be interim action. The manufacturer has advised that it is currently developing procedures for inspecting the heating blankets and modifying the electrical connectors. These actions are intended to enable reactivation of the heating blanket system and positively address the unsafe condition addressed by this AD. Once these actions are developed, approved, and available, the FAA may consider additional rulemaking.

Determination of Rule's Effective Date

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

Comments Invited

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

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket 2001–NM–388–AD.'' The postcard will be date-stamped and returned to the commenter.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

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

2002–01–08 Israel Aircraft Industries, Ltd.: Amendment 39–12599. Docket 2001–NM–388–AD.

Applicability: Model Galaxy airplanes, certificated in any category, serial numbers 004 through 051 inclusive.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent a short circuit between the baggage compartment heating blankets and the electrical connectors, which could result in fire and smoke in the baggage compartment, accomplish the following:

Disabling the Baggage Compartment Heating Blanket System

(a) Within 3 days after the effective date of this AD, disable the baggage compartment heating blanket system by performing the actions in the remaining subparagraphs of paragraph (a) of this AD.

(1) Gain access to the left and right aft contactor boxes via access panels 151CL on the central fuselage and 162BR on the aft fuselage.

Note 2: The exact location of the access panels is identified in the GALAXY Maintenance Manual, Chapter 12–00–00.

(2) Open circuit breakers 17H and 19H (left box) and 16H, 18H, and 372H (right box). Secure the circuit breakers in the open position by installing tie wraps around their necks.

(3) Verify that the HEAT—BAGGAGE COMPRT switch on the right side of the overhead panel does not activate the blankets (ammeter check).

(4) Label the switch ''INOP.''

Note 3: Disabling the baggage compartment heating blanket system in accordance with Galaxy (Israel Aircraft Industries) Alert Service Bulletin GALAXY–25A–109, dated December 18, 2001, is acceptable for compliance with the requirements of this AD.

Alternative Methods of Compliance

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 4: Information concerning the existence of approved alternative methods of

compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permit Prohibition

(c) Special flight permits may NOT be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Note 5: The subject of this AD is addressed in Israeli emergency airworthiness directive 25–01–12–17, dated December 18, 2001.

Effective Date

(d) This amendment becomes effective on January 30, 2002.

Issued in Renton, Washington, on January 7, 2002.

Vi L. Lipski,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–799 Filed 1–14–02; 8:45 am]

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PENSION BENEFIT GUARANTY CORPORATION

29 CFR Parts 4022 and 4044

Benefits Payable in Terminated Single-Employer Plans; Allocation of Assets in Single-Employer Plans; Interest Assumptions for Valuing and Paying Benefits

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: The Pension Benefit Guaranty Corporation's regulations on Benefits Payable in Terminated Single-Employer Plans and Allocation of Assets in Single-Employer Plans prescribe interest assumptions for valuing and paying benefits under terminating single-employer plans. This final rule amends the regulations to adopt interest assumptions for plans with valuation dates in February 2002. Interest assumptions are also published on the PBGC's Web site (*http://www.pbgc.gov*).

EFFECTIVE DATE: February 1, 2002.

FOR FURTHER INFORMATION CONTACT: Harold J. Ashner, Assistant General Counsel, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005, 202–326–4024. (TTY/TDD users may call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to 202–326–4024.)

SUPPLEMENTARY INFORMATION: The PBGC's regulations prescribe actuarial assumptions—including interest assumptions—for valuing and paying plan benefits of terminating single-employer plans covered by title IV of the Employee Retirement Income Security Act of 1974. The interest assumptions are intended to reflect current conditions in the financial and annuity markets.

Three sets of interest assumptions are prescribed: (1) A set for the valuation of benefits for allocation purposes under section 4044 (found in Appendix B to part 4044), (2) a set for the PBGC to use to determine whether a benefit is payable as a lump sum and to determine lump-sum amounts to be paid by the PBGC (found in Appendix B to part 4022), and (3) a set for private-sector pension practitioners to refer to if they wish to use lump-sum interest rates determined using the PBGC's historical methodology (found in Appendix C to part 4022).

Accordingly, this amendment (1) adds to Appendix B to part 4044 the interest assumptions for valuing benefits for allocation purposes in plans with valuation dates during February 2002, (2) adds to Appendix B to part 4022 the interest assumptions for the PBGC to use for its own lump-sum payments in plans with valuation dates during February 2002, and (3) adds to Appendix C to part 4022 the interest assumptions for private-sector pension practitioners to refer to if they wish to use lump-sum interest rates determined using the PBGC's historical methodology for valuation dates during February 2002.

For valuation of benefits for allocation purposes, the interest assumptions that the PBGC will use (set forth in Appendix B to part 4044) will be 5.80 percent for the first 25 years following the valuation date and 4.25 percent thereafter. These interest assumptions are unchanged from those in effect for January 2002.

The interest assumptions that the PBGC will use for its own lump-sum payments (set forth in Appendix B to part 4022) will be 4.75 percent for the period during which a benefit is in pay status, and 4.00 percent during any years preceding the benefit's placement in pay status. These interest assumptions represent an increase (from those in effect for January 2002) of 0.25 percent for the period during which a benefit is in pay status and are otherwise unchanged.

For private-sector payments, the interest assumptions (set forth in Appendix C to part 4022) will be the same as those used by the PBGC for determining and paying lump sums (set forth in Appendix B to part 4022).

The PBGC has determined that notice and public comment on this amendment are impracticable and contrary to the public interest. This finding is based on the need to determine and issue new interest assumptions promptly so that the assumptions can reflect, as accurately as possible, current market conditions.

Because of the need to provide immediate guidance for the valuation and payment of benefits in plans with valuation dates during February 2002, the PBGC finds that good cause exists for making the assumptions set forth in this amendment effective less than 30 days after publication.

The PBGC has determined that this action is not a ''significant regulatory action'' under the criteria set forth in Executive Order 12866.

Because no general notice of proposed rulemaking is required for this amendment, the Regulatory Flexibility Act of 1980 does not apply. See 5 U.S.C. 601(2).

List of Subjects

29 CFR Part 4022

Employee benefit plans, Pension insurance, Pensions, Reporting and recordkeeping requirements.

29 CFR Part 4044

Employee benefit plans, Pension insurance, Pensions.

In consideration of the foregoing, 29 CFR parts 4022 and 4044 are amended as follows:

PART 4022—BENEFITS PAYABLE IN TERMINATED SINGLE-EMPLOYER PLANS

1. The authority citation for part 4022 continues to read as follows:

Authority: 29 U.S.C. 1302, 1322, 1322b, 1341(c)(3)(D), and 1344.

2. In appendix B to part 4022, Rate Set 100, as set forth below, is added to the table. (The introductory text of the table is omitted.)

Appendix B to Part 4022—Lump Sum Interest Rates For PBGC Payments

* * * * *

Rate set	For plans with a valuation date		Immediate annuity rate (percent)	Deferred annuities (percent)				
	On or after	Before		i_1	i_2	i_3	n_1	n_2
*	*	*	*	*	*	*	*	
100	2–1–02	3–1–02	4.75	4.00	4.00	4.00	7	8

3. In appendix C to part 4022, Rate Set 100, as set forth below, is added to the table. (The introductory text of the table is omitted.)

Appendix C to Part 4022—Lump Sum Interest Rates For Private-Sector Payments

* * * * *

Rate set	For plans with a valuation date		Immediate annuity rate (percent)	Deferred annuities (percent)				
	On or after	Before		i_1	i_2	i_3	n_1	n_2
*	*	*	*	*	*	*	*	
100	2–1–02	3–1–02	4.75	4.00	4.00	4.00	7	8

PART 4044—ALLOCATION OF ASSETS IN SINGLE-EMPLOYER PLANS

4. The authority citation for part 4044 continues to read as follows:

Authority: 29 U.S.C. 1301(a), 1302(b)(3), 1341, 1344, 1362.

5. In appendix B to part 4044, a new entry, as set forth below, is added to the table. (The introductory text of the table is omitted.)

Appendix B to Part 4044—Interest Rates Used to Value Benefits

* * * * *

For valuation dates occurring in the month—	The values of i_t are:					
	i_t	for t =	i_t	for t =	i_t	for t =
*	*	*	*	*	*	*
February 2002	.0580	1–25	.0425	>25	N/A	N/A

Issued in Washington, DC, on this 10th day of January, 2002.

Steven A. Kandarian,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 02–1136 Filed 1–14–02; 8:45 am]

BILLING CODE 7708–01–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Part 203

RIN 1010–AC71

Relief or Reduction in Royalty Rates—Deep Water Royalty Relief for OCS Oil and Gas Leases Issued After 2000

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Final rule.

SUMMARY: This rule revises regulations on royalty relief for oil and gas producers on the Outer Continental Shelf (OCS). It provides for suspension or reduction of royalty on a case-by-case basis for certain additional categories of OCS leases under part 203 of this title. Also, it identifies circumstances when we may consider royalty relief apart from our end-of-life and deepwater royalty relief (DWRR) programs.

DATES: This final rule is effective February 14, 2002.

FOR FURTHER INFORMATION CONTACT: Marshall Rose, Economics Division, at (703) 787–1536.

SUPPLEMENTARY INFORMATION: On November 16, 2000, we published a proposed rule in the **Federal Register** (65 FR 69259). For leases that lie in water 200 meters or deeper in the Gulf of Mexico (GOM) wholly west of 87 degrees, 30 minutes West longitude and issued after November 2000, it provided a process to apply for supplemental royalty relief. Also, it proposed to modify the relief qualification process. Some proposed modifications apply only to leases issued after November 2000 (newly issued leases) while others apply both to leases issued before the DWRR Act (pre-Act leases) and to newly issued leases. These proposed modifications sought to combine more opportunity, certainty, and flexibility for applicants with a royalty relief determination process more focused on future costs and benefits. We requested comments on these proposed changes.

We also finalized in the **Federal Register** on February 23, 2001 (66 FR 11512) regulations on the way we implement OCS leasing incentives on newly issued leases. The opportunity for newly issued leases to qualify for royalty relief that supplements lease-term incentives when we issued them is an important part of the change in these incentives.

Several comments on the proposed rulemaking addressed the changed leasing incentives and the modifications to the royalty relief qualification process. This final rule makes changes from the proposed rule in response to

comments we received. The most significant changes relate to sunk costs and the timing of our evaluations.

As sunk costs, which we use to determine only qualification, not the volume suspension amount, we proposed to count only the cost of the project's first discovery well. Comments convinced us that a more expansive definition was appropriate. This final rule allows the costs of the first project discovery well on each lease. We believe this provides the proper balance between the need to encourage exploration of marginal future prospects and the lack of any role sunk costs have in determining economic viability after a discovery.

With respect to timing, we proposed to retain the 180-day period for our review of royalty relief requests for projects. Comments indicated a strong desire for a shorter period. Efficiencies from evaluating expansion or development projects, instead of fields (as required for applications involving pre-Act leases), can reduce our average evaluation time by 1 month. Hence, this final rule lowers our timeframe for evaluating development or expansion projects, but not for fields, from 180 to 150 days.

Response to Comments

We received a joint comment from six oil and gas industry associations, and separate comments from one of those associations and from five oil and gas companies in response to our request for written comments on our proposed rulemaking. Also, two public workshops raised questions on the proposed rule. Copies of all the written comments we received are available on our Web site at *http://www.mms.gov/federalregister/PublicComments/rulecomm.htm.*

We analyzed all comments and workshop questions and revised the final language based on many of them. The main changes from the proposed rule involve a more expansive definition of allowable sunk cost, a shorter evaluation period, and more specificity on several subjective terms (significant expansion, most likely resource size, most efficient development system).

Two changes from the proposed version of this rule make the final version consistent with changes made in the companion rule on OCS leasing incentives. Finally, we note provisions where we adjusted the language to clarify but not change the meaning from the proposed rule.

Supplementary Relief

One general comment objected to reliance on discretionary royalty relief because of administrative burdens and increased costs to industry.

Response: We agree that the discretionary royalty relief program will become more important when leases issued after 2000 represent significant amounts of acreage and discoveries in the deep water GOM. But it will be many years before post-2000 leases play a significant role in deepwater development. As we explained in earlier **Federal Register** notices on continuing royalty relief in deep water, most of the prospective deepwater tracts now have access to the royalty suspension volumes prescribed by the DWRR Act. Some 3,400 eligible leases already have the potential to receive royalty suspension automatically. Another nearly 1,700 pre-Act leases may qualify for royalty relief under discretionary relief regulations that have been in place for several years. The currently leased acreage—eligible and pre-Act leases—represents almost half of the deep water GOM acreage. These handpicked opportunities, which industry believes have the best hydrocarbon prospects, will occupy the available exploration and delineation capability in the GOM for many years. Much of the new production in deep water over the next decade or so may be royalty-free. Hence, we anticipate that the overall royalty expenses for deepwater oil and gas production will decrease for some time completely independent of future terms and conditions on newly offered tracts.

We expect to process applications more quickly and efficiently as we become more experienced in handling them. These final discretionary relief regulations follow the directive in the DWRR Act to consider granting royalty suspension only in those circumstances when otherwise developable production would be uneconomic because of normal royalty obligations. Thus only some, not all, leases should be concerned with or have a need for the discretionary royalty relief program. Further, to encourage development, we make the uneconomic determination not after production occurs, but before, using forecasts of many variables. The determination unavoidably involves the collection, analysis, and evaluation of detailed information. Questions about possible inconsistencies or options in a specific development proposal often only become apparent during the review process. Evaluation then sometimes requires additional information. Computing and documenting forecasts tied to the circumstances of a specific project proposal may appear cumbersome at times, but a sound determination requires that we understand the key assumptions and risks in the applicant's proposed project.

The comment most relevant to our request for paperwork reduction suggestions was the acknowledgment that ''the majority of the information requested by MMS is necessary * * * for a comprehensive review of a proposed project.'' We have added language to encourage potential applicants to meet with MMS prior to filing an application to identify unusual elements in the project and for guidance on application format, content, and our evaluation perspective. *See* § 203.62(c).

Several proposed changes we finalized expedite the evaluation process by making it less burdensome. We designate the applicant's project and the reservoirs targeted by the proposed project as the application unit rather than the entire field, as in the current DWRR program. Thus the applicant no longer must involve adjacent lessees in the application, and we no longer need to speculate about additional resources that may affect field economics. Also, this change reduces the need for us to evaluate alternative field development scenarios. Other changes should reduce the burden on both pre-Act lease applicants and new lease applicants by giving them more flexibility to adjust to changing conditions. We extend the time period for successful applicants to commit to development and allow reapplication in a wider range of circumstances. Potential applicants will become more comfortable with our application and evaluation process by the time the burden for DWRR shifts more to the discretionary royalty relief program.

Sunk Costs

A number of comments expressed concerns about the limited allowance of sunk costs to evaluate the economics of a proposed project.

Response: Our proposed change in allowable sunk costs—from all costs of and after discovery to only those of the discovery well—received the most comments from industry. That reaction may indicate that limiting allowable sunk costs is perceived as the most important proposed change to the discretionary royalty relief rules. The size of sunk costs has been the main reason for royalty relief qualification in our determinations to date. We proposed no change to the treatment of sunk costs in applications from non-producing pre-Act leases to keep within the DWRR Act. Also, we proposed to add for the first time some sunk costs to our evaluation of expansion projects. Nonetheless, in light of its perceived and past importance, we expand our

definition of allowable sunk costs for applications from leases issued after 2000 and for expansion projects on pre-Act leases.

One workshop comment suggested that the definition of allowable sunk costs include the cost of the first well on each lease that discovers hydrocarbons in the reservoirs included in the application. We adopt this new definition because it includes the most important and readily identifiable delineation costs on a project.

This more expansive definition of sunk costs may encourage more development and more exploration than otherwise. Historic costs theoretically do not affect the expected profitability of a particular project, as measured from the perspective of its application date. But, their treatment can influence decisions on the timing and magnitude of pre-application exploration, drilling, and appraisal. Using sunk costs in an evaluation makes qualification for discretionary royalty relief more likely. The more likely that a prospect of a given size will qualify for relief, the larger the expected value of that prospect. And, the higher the expected payoff from drilling, the more and sooner drilling will take place.

We choose to rely on supplemental discretionary royalty relief to concentrate royalty savings on prospects that show a need for it. General lease sale incentives disperse royalty relief over all lease prospects regardless of whether they need development assistance. In a system where supplemental royalty relief plays a large role in the incentive program, it may not be appropriate to narrowly define qualification for the supplemental relief based on theoretical rather than practical considerations.

While an expansive consideration of sunk costs is in order, we believe the broad definition applicable to pre-Act leases is not appropriate for newer leases. The object of the new supplemental royalty relief program is a specific and fully identified project, rather than a whole, often incompletely identified, field. A royalty relief determination on a field with pre-Act leases requires evaluation of all resources that may ultimately be assigned to that field and of associated development options. The broad field determination provides a basis for considering all possible resources and thus the sunk costs for a wide range of appraisal activities. Project royalty relief determination, on the other hand, is confined to the reservoirs identified in the application. Relief qualification need not consider alternative development options or potential production from other reservoirs. So, fewer post-discovery expenditures are relevant to a project application. Therefore, we will count the costs of only the discovery well for the project on each lease participating in an application for other than an authorized field. To clarify the revision as well as the distinction, we separate the definition of sunk costs for authorized fields from the definition of sunk costs for development and expansion projects and move identification of the critical elements to the definitions from the cost report description in § 203.89 (a). *See* changes in §§ 203.0 and 203.68.

We continue to count allowable sunk costs on an after-tax, nominal basis. A company recoups part of exploratory drilling costs through a deduction from taxable income. Crediting all the pre-tax costs to royalty relief qualification would substantially raise the benefit accorded sunk costs. Adjusting sunk costs for inflation could reward applicants that delay applying for royalty relief.

Other Comments

The written comments and workshop questions raised a number of specific or technical issues. The following table summarizes and responds to each of those issues. We arranged the table according to the section in the rule to which the comment relates. The last part of the table addresses comments on information collection under the Paperwork Reduction Act.

CFR section	Industry comments and questions	MMS response
203.0, 203.2, and 203.4	Delete the word ''significant'' from the definitions of an expansion project and of new production because it is too subjective when left to the discretion of the application process.	Accommodating change. The DWRR Act used the word ''significant'' to direct relief to projects that add new resources, not those that simply extend recovery of reservoirs already in production. We delete ''significant'' from the definition of ''new production'' and clarify in the definition of ''expansion project,'' that it refers to one or more new wells drilled into a reservoir that has not previously produced. Also, we modify the definition of ''new production'' accordingly.
203.0 and 203.60	Don't limit development projects that can apply for deepwater royalty suspension to those on leases west of 87 degrees 30 minutes West longitude in the GOM.	No change. The DWRR Act gives authority to grant royalty relief to existing non-producing leases, but only those in this part of the GOM. We may issue new leases with a variety of terms, including royalty suspension, in other parts of the OCS.
203.0, 203.4, 203.70, and 203.81.	Eliminate from the definition of fabrication a requirement for a requirement for a letter from the fabricator certifying start of continuous construction because it is an unnecessary and redundant burden.	No change. The legitimacy of the royalty relief qualification determination depends on prompt development. We see value in having a third party witness an event that has such important to an applicant. The down payment and contract alone may not ensue that the operator has actually committed to construction that will not be interrupted after it has started. The notice could be just a copy of whatever normal notification the applicant gets from the fabricator that construction has started on its system, with the intent to continued without interruption.

CFR section	Industry comments and questions	MMS response
203.0, 203.68, and 203.89 ...	Redefine sunk costs as all of the inflation adjusted before-tax costs of, and after, discovery up until the application.	Accommodating change. We have enlarged the scope of sun costs from the proposed rule. But historic costs have questionable relevance to proceeding with development of the project in the application. Also, many such costs have already been recovered through tax deductions and subsequent savings. The expansion in the definition is limited to discovery well costs for one eligible well per lease.
203.0, 203.68, and 203.89 ...	Does MMS want to receive applications before delineation wells are drilled which help in the decision on the development approach.	We want a reliable application. The applicant is the only one in a position to balance the costs and benefits of incremental delineation. Performance conditions help encourage a proper balance—enough data in hand for the applicant to commit to a few key decisions but not to detailed development plans.
203.2 and 203.80	Delete the word ''significantly'' word from the characterization of how much production must increase as a result of royalty relief because it is too subjective.	Accommodating change. We delete the word from the end-of-life relief cell in the table in § 203.2, but as with deepwater expansion projects, we look for a minimum production increase for consideration of royalty relief apart from our formal programs. Relief generally must make production for an extra year profitable.
203.4, 203.69 and 203.76	Clarify the resource number used as a basis for determining the minimum royalty suspension volume.	Change. By ''most likely resource size'' we mean the median value of the estimated distribution of known recoverable resources from reservoirs included in the application for the project. The final rule adopts this more precise terminology.
203.4	Indicate that price thresholds will be specified in the Notice of Sale as well as in the lease document.	Change. We make clear in subsections (e) and (f) that price thresholds and minimum suspension volumes may be set in the Notice of Sale or the regulations or in the lease.
203.62	Encourage pre-application meetings between the MMS regional office and a prospective applicant.	Change. Such a meeting can save time both in preparing an application and in avoiding omissions that delay the evaluation process.
203.63	Clarify that neither a development nor expansion project must include all leases in its field.	Change. We also make the same clarification that ''project'' means development either expansion project or development project in §§ 203.64, 203.65, 203.67, 203.68, and 203.69.
203.65	Change the evaluation deadline from 180 to 120 days for a first application and from 120 to 90 for a redetermination.	Accommodating change. We reduce the evaluation period for development projects and expansion projects to no more than 150 days after certifying an application and application complete. For field evaluations involving pre-Act leases, the 180-day deadline continues because we must consider potential development of all resources on the field, whether or not they are identified in the application.
203.69	If a participating lease doesn't have or propose, a well into the reservoirs included in the application, does MMS include in the minimum suspension volume calculation the royalty suspension volume with which the lease was originally issued?	A lessee can join the application with evidence that the reservoir(s) targeted by the project occur on its lease. However, a lease without enough of the project's resources to justify a well cannot include its automatic royalty suspension volume in the minimum set for the project. Nevertheless, we will count its estimated resources in the project evaluation and in the increment to the minimum royalty suspension volume based on the median of the distribution of resources.
203.69 and 203.76	Does a lease retain the royalty suspension volume with which it was originally issued if it applies and qualifies for project relief but then violates a performance condition.	Since the application qualification included consideration of the pre-existing royalty suspension on the lease, it retains that relief if we withdraw approval of its application. We don't want to discourage early-stage applications when some development decisions have not yet been made.
203.71	If a lease is added to a project after approval of an application, does the added lease have to give up its automatic relief to be part of the project.	If the reservoir(s) targeted by the development project extend to a post-2000 lease, that lessee has an option. The lessee may file a short form to share the project's remaining royalty suspension volume or simply retain its automatic royalty suspension volume for use with this or other reservoirs on its lease. If it files the short form to share in the project relief, it gives up its automatic relief volume.
203.74	A phrase is missing in the description of the new event that enables a redetermination.	Accommodating change. We rewrote to clarify that the new technology must improve the profitability, under equivalent market conditions, of the field or specified set of reservoirs relative to the development system proposed in the prior application.

CFR section	Industry comments and questions	MMS response
203.76	Allow retention of half of the royalty suspension volume, not the smaller of that or the most likely resource size, when costs are overestimated in the application.	No change. We made the modification in the proposed rule because otherwise small fields face no disadvantage for overestimating their costs in a royalty relief application.
203.78	If the price threshold suspends relief when prices rise too much above expected levels, why not augment initial royalty suspension volume if prices fall too much below expected levels.	We provide a reasonable inducement to make a project economic under expected market conditions. This is the focus of our program. Subsequent deviations in these conditions during periods of production and potential relief from royalties may change profitability, but are not likely to affect project viability. Should prices decline once production begins, the lessee can pursue our other royalty relief programs. These programs serve as a proxy for predetermined increases in royalty suspension volume for a price decline.
203.80	Allow the costs of pre-existing facilities that help justify a royalty relief application to be off lease.	Change. Off-lease facilities tied back to the lease may help justify a relief application to the extent that preservation of these pre-existing facilities depends on continued application to be production from the lease applying for royalty relief. We will include only a logically allocable share of costs from the off-lease facilities.
Information Collection Questions.	(a) Under the current evaluation process, acknowledgement that the majority of the information requested in an application is necessary.	(a)We have not identified an alternative evaluation process suitable for use with an irrevocable determination such as royalty relief. Past applicants and industry committees have not yet identified any unnecessary information elements.
	(b) Contact past applicants to very estimates of the time it takes to fill out an application.	(b) We welcomed comments from past applicants to help develop our current estimates of the burden.
	(c) Standardize the various application reports that must be submitted or generate a set of generic example reports as guides for future applicants.	(c) We have standardized reports as much as we can, and we do invite pre-application consultation on format and content. We do not share past applications even in generalized form so as to avoid possibly exposing proprietary information. We already offer an example with the model that combines the information in these reports. That should clarify many questions about technical details such as units of measure.
	(d) MMS mail server limits make it impractical to submit the original application electronically, but subsequent information could usually be submitted by e-mail.	(d) We are implementing the Government Paperwork Elimination Act (GPEA). The Act calls for providing an electronic processing option when practical for information we collect. Royalty relief applications are under review in our GPEA implementation information program. We do currently accept extra copies and additional information by electronic or fax means.

Changes for Consistency and Clarity

We make two changes in this rule on discretionary royalty relief to make it consistent with our rule on OCS leasing incentives published on February 23, 2001 (66 FR 11512). Also, we use definitions for ''eligible,'' ''pre-Act,'' and ''royalty suspension'' leases in this rule that are identical to those in the leasing incentive rule.

The leasing incentive rule includes the option to offer royalty incentives for a value of production or for a time period as well as for a volume of production. The definition of Royalty Suspension (RS) leases in § 203.0 now indicates that the royalty suspension for an RS lease need not be in the form of a volume. So, one or more leases on a project applying for additional royalty relief may have automatic suspensions in a form other than volume. Section 203.69(b) now indicates that should this situation arise, we will use the data in your application, after any adjustments we make during our evaluation, to convert royalty relief already available to a common basis expressed in volume, and carry out the evaluation accordingly. Any approval would be expressed solely in terms of volume.

The leasing incentive rule also includes a provision in § 260.122(b)(2) for paying royalties, due as a result of the price threshold being exceeded, no later than 90 days after the end of the period for which royalty is owed. That deadline is shorter than the 120-day interval to April 30 now specified in § 203.78(a)(1) and (b)(1). To avoid confusion, we changed § 203.78 to be consistent with § 260.122. The 90-day time lag is longer than the 30-day time lag for payment of normal royalty under § 218.50 because we must calculate inflation adjustments in the case of price thresholds. The actual NYMEX price can be calculated immediately after the end of the period specified, but the final value for the implicit price deflator for the gross domestic product is not generally available for several months after the end of the period.

In several places, we modified the language in the proposed rule to make its meaning clearer to the reader.

CFR section	Clarification
203.0	We enhance definitions to: (1) State that development or expansion projects must be in water at least 200 meters deep, (2) Declare that redetermination is a procedure we conduct under certain conditions at your request, and (3) Illustrate some elements of eligible sunk costs incurred before a discovery.
203.2	We replace ''when'' with ''how'' in the title question. Unlike ''expansion project'' ''authorized field'' and ''development project,'' ''end-of-life lease'' is a term defined here but not in § 203.0. We drop reference to significant capital investment by an expansion project because that is not a separate requirement for an expansion project on a lease issued after 2000. The flexibility of royalty relief apart from our formal programs may involve changes in the form of the royalty as well as in its size or duration.
203.4	We more carefully explain how to interpret the tables summarizing our royalty relief programs. End-of-Life relief is now withdrawn only when the effective royalty rate has prevailed for 12 consecutive months. We drop reference to charging more than the original lease royalty rate after the suspension volume has been produced.
203.4 and 203.69	The various forms of royalty relief we grant are subject to certain conditions set out in regulations or approval letters. We rephrase the way one determines cumulative production.
203.60	We reversed the phrases in the lead sentence. We stipulate that pre-Act leases, but not leases issued after 2000, must have been assigned to a field as well as have a discovery prior to applying for royalty suspension.
203.63	You must, rather than may, submit data you have on leases that you believe may become part of your authorized field in the future.
203.64	Only one application may be filed on a development project designed to produce a specific set of reservoirs.
203.66	We make explicit that prescribed evaluation deadlines may be extended and rephrase the table lead-in sentence. We clarify that a penalty suspension for our late determination applies to the first production from a development project.
203.68	We do not consider sunk costs when we determine whether a project is economic should it never have to pay royalties.
203.69	We substitute the new name for the publication that gives the water depth of each lease.
203.71	Eligible leases as well as RS leases retain the royalty suspension volumes with which they start an application process, even if we reject an application that requests more relief on a field or development project. Applying leases are ones that participate in the application for royalty relief. Leases issued without a royalty suspension volume do not share the relief for a field with an automatic royalty suspension volume. We drop reference to the impossible situation of adding a lease before you submit an application from the paragraph (a) that describes the effect of adding a lease to an authorized field after we have approved royalty relief.
203.74	The discussion in the sub-elements of (c) explains a procedure for calculating prices, not determining eligibility for a reconsideration of a royalty relief determination.
203.78	Different price thresholds may apply to different leases on the same field, development project, or expansion project. Different price thresholds could occur if the leases were issued at different times. And, only the base oil and gas price thresholds for pre-Act leases are adjusted from 1994 forward. Post-2000 lease price thresholds are adjusted forward from other periods as specified in their Notice of Sale or lease documents.
203.80	We no longer formally refer to royalty relief apart from our end-of-life or deepwater programs as ''special''.
203.83	We require a well number and status as part of the Administrative Information Report.
203.89	We drop restatement of the definition of sunk costs. We stick to identifying the measurement rather than the concept of sunk costs by, for example, stating that nominal dollars mean dollars not adjusted for inflation.

Summary of Changes

The following table summarizes the changes this rule makes to the existing structure of our DWRR program.

MODIFICATIONS TO DWRR APPLICATIONS

Element	Current and continuing program (applies to pre-act leases)	Changes (applies to post-2000 deep water leases only)
Eligibility (Central, Western, and western part of Eastern Gulf of Mexico).	Leases in 200m or more water depth issued before 1996.	Leases in 200m or more water depth issued after 2000.
Royalty-free production can come from	Any production from the field until cumulative recovery volume equals the suspension volume.	Only production from resources identified in the application until cumulative production equals the suspension volume.

MODIFICATIONS TO DWRR APPLICATIONS—Continued

Element	Current and continuing program (applies to pre-act leases)	Changes (applies to post-2000 deep water leases only)
Minimum suspension volume for non-producing leases.	For fields that did not produce before the Act, matches eligible lease suspension volumes (17.5, 52.5, 87.5 MMBOE) in equivalent water depths.	For development projects, matches volumes designated in sale and lease documents for various water depths of 200m or greater plus 10 percent of the median value of the distribution of resources.
Credit for sunk costs in application	For fields with pre-Act leases that did not produce before the application, after-tax costs of and after discovery well used in qualification.	For development projects, after-tax eligible costs of the discovery well for the project on each participating lease.
Evaluation deadline for non-producing leases	180 days for first determination, 120 days for a redetermination.	150 days for first determination, 120 days for a redetermination.
Threshold oil and gas price levels for lifting relief.	Statute sets threshold price for light sweet crude oil and natural gas.	Original lease terms or Notice of Sale set threshold price for light sweet crude oil and natural gas.

Element	Current and discontinuing program (applies to pre-act leases)	Changes (applies to pre-act and post-2000 deep water leases)
Discount rate used in evaluation	Same rate used on viability and profitability tests, applicant chooses between 10% and 15%.	Use 10% on viability test, applicant chooses rate between 10% and 15% for profitability test.
Redetermination of field qualification or volume by MMS.	Available for new well or seismic data, 25% lower prices, or 20% higher cost.	Available anytime after relief relinquished or withdrawn. Otherwise, for new well or seismic data, 25% lower prices, 20% higher cost, or more efficient development system.
Deadline for starting fabrication	Within 1 year of approval, extendable for up to 1 year.	Within 18 months of approval, extendable for up to 6 months.
Correction for overestimating cost by 20% or more.	Retain only half of suspension volume granted.	Retain only half of smaller of the granted suspension volume *or* the median of the distribution of resources.
Minimum suspension volume for expansion project.	None	10 percent of median of the distribution of resources.
Evaluation deadline for expansion project	180 days for first determination, 120 days for a redetermination.	150 days for first determination, 120 days for a redetermination.
Credit for sunk costs in application for expansion project.	None	After-tax eligible costs of the discovery well for the project on each participating lease.

Procedural Matters

Regulatory Planning and Review (Executive Order 12866)

The rule is a significant regulatory action under Executive Order 12866, and subject to review by the Office of Management and Budget (OMB).

a. This rule will not have an annual economic effect of $100 million or adversely affect an economic sector, productivity, jobs, the environment, or other units of government. This action describes how new deepwater leases may qualify for royalty suspensions and the circumstances under which we might grant royalty relief. Historically, we have received only a limited number of applications for royalty relief. Based upon our experience, only a small number of leases will qualify for royalty relief in any one year. The only field that has gone into production after royalty relief approval would have avoided about $7 million in royalty payments in its first year of production, had prices not exceeded the price threshold for discontinuing royalty relief. The royalty suspension options in this proposal will encourage new production from a few marginal leases, because they will sustain profitability at lower prices than they would without the relief. Royalty suspension volumes act as an incentive to production, and likely will have a beneficial effect on the offshore oil industry, domestic oil and gas supplies, and jobs. This program should increase OCS production by making production from marginal fields more profitable.

b. This rule does not create inconsistencies with other agencies' actions because it preserves the concepts and requirements from the existing rule.

c. This rule is an administrative change that will not affect current entitlements, grants, user fees, loan programs, or their recipients. This rule has no effect on these programs or rights of the programs' recipients.

d. This rule does not raise any novel legal issues, but does raise policy issues. The rule extends and supplements the existing DWRR rule. It describes conditions under which lessees have the opportunity to apply for and acquire royalty relief on post-2000 deepwater leases. Also, it eases some conditions under which lessees of pre-Act leases may seek to obtain royalty relief. In addition, the rule describes circumstances not specified in our previous regulations under which lessees may apply for royalty relief. All of these changes are consistent with the basic philosophy in the current rule of granting relief only when applicants show it is economically necessary for development.

Regulatory Flexibility (RF) Act

The Department certifies that this document will not have a significant economic effect on a substantial number of small entities under the RF Act (5 U.S.C. 601 *et seq.*). The provisions of this rule will not have a significant adverse economic effect on offshore lessees and operators, including those that are classified as small businesses. The rule extends the benefit of

discretionary royalty relief to certain OCS leases issued after November 2000 that qualify as marginally uneconomic. In any single year, we are likely to receive only a small number of royalty relief applications, which limits the number of entities the rule may affect. Based on past experience, we expect to receive between one and two applications a year for DWRR. Also, because firms initiate applications, they have the ability to avoid any adverse effects they foresee. As suggested below, the new provisions should actually lower the cost to those who choose to take advantage of the benefit offered by this regulation. An RF analysis is not required. A Small Entity Compliance Guide is not required.

Companies that extract oil, gas, or natural gas liquids or are otherwise in oil and gas exploration and development activities acquire the vast majority of leases offered at OCS lease sales and will be most affected by this rule. The Small Business Administration (SBA) defines a small business as having:

- Annual revenues of $5 million or less for exploration service and field service companies.
- Fewer than 500 employees for drilling companies and for companies that extract oil, gas, or natural gas liquids.

Under the North American Industry Classification System Code 211111, Crude Petroleum and Natural Gas Extraction, we estimate that a total of 1,380 firms drill oil and gas wells either onshore and/or offshore. Of these, approximately 130 companies are offshore lessees/operators, based on current estimates. Publicly available data indicate that 39 companies qualify as large firms according to SBA criteria. Many or all of the other 91 companies may qualify as small firms with fewer than 500 employees. We cannot determine the exact number because the criteria data are not readily available. However, because of the extremely high cost and technical complexity involved in exploration and development in deep water, the vast majority of lessees/operators affected by this rule will be large companies. Of the 211 leases in deep water with a discovery or production by mid-2000, 19 large firms are the lessee/operator of 193, while 7 small firms are lessee/operator of the other 18. While that ratio suggests a 1-in-12 chance that a small operator may apply for relief, 4 of the 8 past applications we received have been from small operators. This rule continues the same basic application system we now use. Small operators do not appear to be at a disadvantage in our application process.

Provisions of the rule, in comparison with existing rules for discretionary DWRR for pre-Act leases, may reduce applicant costs in three areas:

- First, new applications for DWRR will be based on a fully identified project rather than a whole, often incompletely identified, field. Consequently, applicants may need to provide less extensive geological and geophysical data. For instance, we will not require them to submit data on reservoirs that may be in the field but clearly are not part of the project. There is no sound basis for estimating the size of any savings associated with this reduced data burden because only some applications would involve potential extra reservoirs. For those that do, however, this change can reduce the amount of follow-up data we typically must request from applicants and can expedite our evaluation.
- Second, applicants may no longer have to incur the cost of additional drilling or acquisition of new seismic data to request a redetermination. While significant new geologic information or price or cost changes still enable a redetermination, applicants may now also seek a redetermination upon identification of a more efficient development system. That new reason could save drilling a new deep water well at a cost of $20 million or more, or acquiring additional seismic data at a cost of about $100,000 per tract. We have received no redetermination requests. We attribute this to the fact that the DWRR program has not been active long enough to reach the redetermination stage for most of the applications we have processed.
- Third, under this rule, we give successful applicants more time to initiate development than under existing rules. This added time gives operators more time to arrange financing and to negotiate contracts with suppliers. Again, there is no sound basis for estimating the size of any savings associated with this greater applicant flexibility. It is clear, however, that this change, too, cannot be considered to impose a significant adverse economic effect on a substantial number of small business entities. If anything, all three changes lessen the existing applicant cost burden.

Small Business Regulatory Enforcement Fairness Act (SBREFA)

This rule is not a major rule under 5 U.S.C. 804(2), the SBREFA. This rule: a. Does not have an annual effect on the economy of $100 million or more. This rule modifies some procedures used under the current rule, specifies how certain new deep water leases may qualify for royalty suspensions in the future, and describes circumstances not covered in the current regulations that may cause us to grant royalty relief. In general, the effect of qualifying for a royalty suspension increases production from a few marginal fields but does not change royalty collections—since without relief, no production or royalty payments would occur or be expected, so suspending them forfeits no revenue. To the extent that royalty relief encourages new production, it benefits applicants, one-half of which in the past have been small businesses. But only one of the five fields for which we have approved relief has gone into production.

b. Will not cause a major increase in costs or prices for consumers, individual industries, Federal, state, or local government agencies, or geographic regions. Oil prices are not based on the production from any one region, but are based on worldwide production and demand at any point in time. While natural gas prices are more localized, they correlate to oil prices. The rule does not change any existing leasing policies, so it should not cause prices to increase.

c. Does not have significant adverse effects on competition, employment, investment, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises. Leasing on the United States OCS is limited to citizens or residents of the United States, their associations, states, municipalities, or companies incorporated in the United States. This rule does not change that requirement, so it does not change the ability of United States firms to compete in any way.

Paperwork Reduction Act (PRA) of 1995

We examined the information collection requirements in the final rule and determined they remain unchanged from those currently approved by OMB under OMB control number 1010–0071, with a current expiration date of September 30, 2003. An 83–I submission to OMB is not required for review and approval under § 3507(d) of the PRA. The PRA provides that an agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

The title of the collection of information is ''30 CFR part 203, Relief or Reduction in Royalty Rates.'' Respondents include approximately 130 Federal OCS oil and gas lessees. The

frequency of response is on occasion. Responses to this collection of information are required to obtain or retain a benefit. MMS will protect proprietary information under applicable law and 30 CFR 203.63(b) and 250.196.

MMS uses the information to make decisions on the economic viability of leases requesting a suspension or elimination of royalty or net profit share. These decisions have substantial monetary impacts to both the lessee and the Federal Government. Royalty relief can lead to increased production of natural gas and oil, creating profits for lessees and tax revenues for the Government that they might not otherwise receive.

We estimate the total annual paperwork burden is 8,650 burden hours and $345,600 for the application and audit fee ''non-hour'' cost burdens authorized under § 203.3. The following chart provides a breakdown of the components of the estimated paperwork burden of part 203 final regulations.

Reporting or recordkeeping requirement 30 CFR Part 203	Application/audit fees		
	Annual responses	Hours per response	Annual burden hours
OCS Lands Act Reporting			
Application—leases that generate earnings that cannot sustain continued production (end-of-life lease)	2 applications	100 hours	200
	Application 2 × $12,000 = $24,000* Audit 1 × $10,000 = $10,000		
Application—apart from formal programs for royalty relief for marginal producing lease (expect less than 1 per year—new category).	1 Application	250 hours	250
	Application 1 × $15,000 = $15,000* Audit 1 × $10,000 = $10,000		
§ 203.55 Renounce relief arrangement (seldom, if ever will be used; minimal burden to prepare letter)	1 Letter	1 hour	1
§ 203.81, 203.83 through 203.89 required reports	Burden included with applications.		
OCS Lands Act Reporting Subtotal	4 responses	N/A	451
	Processing Fees = $59,000		
DWRAA Reporting			
Application—leases in designated areas of GOM deep water acquired in lease sale before 11/28/95 or after 11/28/00 and are producing (deep water expansion project).	1 Application	2,000 hours	2,000
	Application 1 × $39,000 = $39,000 Audit		
Application—leases in designated areas of deep water GOM, acquired in lease sale before 11/28/95 or after 11/28/00, that have not produced (pre-Act or post-2000 deep water leases).	1 Application	2,000 hours	2,000
	Application 1 × $49,000 = $49,000* Audit 1 × $25,000 = $25,000		
Application—short form to add or assign pre-Act lease	1 Application	40 hours	40
	Application 1 × $1,000 = $1,000 No Audit		
Application—preview assessment (seldom if ever will be used because applicants generally opt for binding determination by MMS instead).	1 Application	900 hours	900
	Application 1 × $46,600 = $46,600 No Audit		
Application—apart from formal programs for royalty relief for marginal expansion project or marginal non-producing lease (expect less than 1 per year—new category).	Application	1,000 hours	1,000
	Application 1 × $49,000 = $49,000 Audit 1 × $20,000 = $20,000		
Redetermination.	1 Redetermination	500 hours	500
	Application 1 × $32,000 = $32,000* Audit 1 × $25,000 = $25,000		
§ 203.70, 203.81, 203.90, 203.91 Submit fabricator's confirmation report	2 Reports	20 hours	40
§ 203.70, 203.81, 203.90, 203.92 2 Submit post-production development report	2 Reports*	50 hours	100
§ 203.77 Renounce relief arrangement (seldom, if ever will be used; minimal burden to prepare letter)	1 Letter	1 hour	1

Reporting or recordkeeping requirement 30 CFR Part 203	Application/audit fees		
	Annual responses	Hours per response	Annual burden hours
§ 203.79(a) Request reconsideration of MMS field designation	4 Requests	400 hours	1,600
§ 203.79(c) Request extension of deadline to start construction	1 Request	2 hours	2
§ 203.81, 203.83 through 230.89 Required reports	Burden included with applications		0
DWRR Act Reporting Subtotal	16 Responses	N/A	8,183
	Processing Fees = $286,600		
Recordkeeping Burden			
§ 203.91 Retain supporting cost records for post-production development/fabrication reports (records retained as usual/customary business practice; minimal burden to make available at MMS request).	2 Record-keepers	8 hours	16

• In addition, under § 203.81, a report prepared by an independent CPA must accompany the application and post-production report (except expansion project, short form, and preview assessment applications are excluded). The OCS Lands Act applications will require this report only once; the DWRR Act applications will require this report at two stages—with the application and with the post-production development report for successful applicants. We estimate an average cost for a report is $45,000, and that seven CPA certifications per year will be necessary if the applications are approved. The total estimated annual ''non-hour'' cost burden for this requirement is $315,000 ($45,000 per certification × 7 CPA certifications = $315,000).

Federalism (Executive Order 13132)

Under Executive Order 13132, this rule does not have Federalism implications. The rule neither substantially nor directly affects the relationship between the Federal and State Governments. This rule affects the collection of royalty revenues from deepwater lessees in the GOM, all of which is outside State jurisdiction. States have no role in this activity with or without this rule. This rule does not impose costs on States or localities. States and local governments play no part in the administration of the DWRR program.

Takings Implications Assessment (Executive Order 12630)

Under Executive Order 12630, the rule does not have significant Takings implications. A Takings Implication Assessment is not required because the rule would not take away or restrict a bidder's right to acquire or develop OCS leases.

Energy Supply, Distribution, or Use (Executive Order 13211)

This rule is a significant rule and is subject to review by the Office of Management and Budget under Executive Order 12866. The rule does not have a significant effect on energy supply, distribution, or use because its promotes, rather than adversely affects, the production of additional oil and gas from the OCS. It promotes energy supply from marginal domestic sources by broadening applicability of the process by which we may lower costs for those producers.

Unfunded Mandates Reform Act (UMRA)

This rule does not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than $100 million per year. The rule does not have a significant or unique effect on State, local, or tribal governments. The rule modifies some procedures in the existing regulation, describes how certain new leases may qualify for royalty suspensions, and specifies circumstances that might cause us to grant royalty relief outside our formal programs. None of these changes involve state, local, or tribal mandates. A statement containing additional UMRA (2 U.S.C. 1531 *et seq.*) information is not required.

Civil Justice Reform (Executive Order 12988)

Under Executive Order 12988, the Office of the Solicitor has determined that this rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order.

National Environmental Policy Act (NEPA) of 1969

This rule does not constitute a major Federal action significantly affecting the quality of the human environment. A detailed statement under the NEPA is not required.

Government-to-Government Relationship With Tribes

Pursuant to the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951) and 512 DM 2, we have determined that there are no effects from this action on federally recognized Indian tribes.

List of Subjects in 30 CFR Part 203

Continental shelf, Government contracts, Indians-lands, Minerals royalties, Oil and gas exploration, Public lands-mineral resources, Reporting and recordkeeping requirements, Sulphur.

Dated: December 18, 2001.

James E. Cason,

Acting Deputy Secretary.

For the reasons stated in the preamble, the Minerals Management Service (MMS) amends 30 CFR part 203 as follows:

PART 203—RELIEF OR REDUCTION IN ROYALTY RATES

1. The authority citation for part 203 continues to read as follows:

Authority: 25 U.S.C. 396 *et seq.*; 25 U.S.C. 396a *et seq.*; 25 U.S.C. 2101 *et seq.*; 30 U.S.C. 181 *et seq.*; 30 U.S.C. 351 *et seq.*; 30 U.S.C. 1001 *et seq.*; 30 U.S.C. 1701 *et seq.*; 31 U.S.C.

9701 *et seq.*; 43 U.S.C. 1301 *et seq.*; 43 U.S.C. 1331 *et seq.*; and 43 U.S.C. 1801 *et seq.*

2. Section 203.0 is amended by removing the definition of ''Sunk costs,'' adding definitions for ''Development project,'' ''Royalty suspension (RS) lease,'' ''Sunk costs for an authorized field,'' and ''Sunk costs for an expansion or development project'' in alphabetical order, and revising the definitions for ''Authorized field,'' ''Eligible lease,'' ''Expansion project,'' ''Fabrication (or start of construction),'' ''New production,'' ''Pre-Act lease,'' and ''Redetermination,'' to read as follows:

§ 203.0 What definitions apply to this part?

Authorized field means a field:

(1) Located in a water depth of at least 200 meters and in the Gulf of Mexico (GOM) west of 87 degrees, 30 minutes West longitude;

(2) That includes one or more pre-Act leases; and

(3) From which no current pre-Act lease produced, other than test production, before November 28, 1995;

* * * * *

Development project means a project to develop one or more oil or gas reservoirs located on one or more contiguous leases that:

(1) Were issued in a sale held after November 28, 2000;

(2) Are located in a water depth of at least 200 meters and in the GOM wholly west of 87 degrees, 30 minutes West longitude; and

(3) Have had no production (other than test production) before the current application for royalty relief.

* * * * *

Eligible lease means a lease that:

(1) Is issued as part of an OCS lease sale held after November 28, 1995, and before November 28, 2000;

(2) Is located in the Gulf of Mexico in water depths of 200 meters or deeper;

(3) Lies wholly west of 87 degrees, 30 minutes West longitude; and

(4) Is offered subject to a royalty suspension volume.

Expansion project means a project you propose in a Development Operations Coordination Document (DOCD) or a Supplement approved by the Secretary of the Interior after November 28, 1995, that will significantly increase the ultimate recovery of resources from one or more reservoirs that have not produced on a pre-Act lease or a lease issued in a sale held after November 28, 2000. A significant increase does not simply extend recovery from reservoirs already in production. For a pre-Act lease, the expansion project must also involve a substantial capital investment (e.g., fixed-leg platform, subsea template and manifold, tension-leg platform, multiple well project, etc.). For a lease issued after November 28, 2000, the expansion project must involve a new well drilled into a reservoir that has not previously produced. In all cases, all leases in an expansion project must be wholly located in a water depth of at least 200 meters and in the GOM wholly west of 87 degrees, 30 minutes West longitude.

Fabrication (or start of construction) means evidence of an irreversible commitment to a concept and scale of development. Evidence includes copies of a binding contract between you (as applicant) and a fabrication yard, a letter from a fabricator certifying that continuous construction has begun, and a receipt for the customary down payment.

* * * * *

New production means any production from a current pre-Act lease from which no royalties are due on production, other than test production, before November 28, 1995. Also, it means any additional production resulting from new lease-development activities on a lease issued in a sale after November 28, 2000, or a current pre-Act lease under a DOCD or a Supplement approved by the Secretary of the Interior after November, 28, 1995.

* * * * *

Pre-Act lease means a lease that:

(1) Results from a sale held before November 28, 1995;

(2) Is located in the GOM in water depths of 200 meters or deeper; and

(3) Lies wholly west of 87 degrees, 30 minutes West longitude.

* * * * *

Redetermination means our reconsideration of our determination on royalty relief because you request it after:

(1) We have rejected your application;

(2) We have granted relief but you want a larger suspension volume;

(3) We withdraw approval; or

(4) You renounce royalty relief.

* * * * *

Royalty suspension (RS) lease means a lease that:

(1) Is issued as part of an OCS lease sale held after November 28, 2000;

(2) Is in locations or planning areas specified in a particular Notice of OCS Lease Sale offering that lease; and

(3) Is offered subject to a royalty suspension specified in a Notice of OCS Lease Sale published in the **Federal Register**.

Sunk costs for an authorized field means the after-tax eligible costs that you (not third parties) incur for exploration, development, and production from the spud date of the first discovery on the field to the date we receive your complete application for royalty relief. The discovery well must be qualified as producible under part 250, subpart A of this title. Sunk costs include the rig mobilization and material costs for the discovery well that you incurred before its spud date.

Sunk costs for an expansion or development project means the after-tax eligible costs that you (not third parties) incur for only the first well that encounters hydrocarbons in the reservoir(s) included in the application and that meets the producibility requirements under part 250, subpart A of this chapter on each lease participating in the application. Sunk costs include rig mobilization and material costs for the discovery wells that you incurred before their spud dates.

* * * * *

3. Section 203.2 is revised to read as follows:

§ 203.2 How can I get royalty relief?

We may reduce or suspend royalties for Outer Continental Shelf (OCS) leases or projects that meet the criteria in the following table.

If you have a lease . . .	And if you . . .	Then we may grant you . . .
(a) With earnings that cannot sustain production (i.e., *End-of-life lease*).	Would abandon otherwise potentially recoverable resources but seek to increase production by operating beyond the point at which the lease is economic under the existing royalty rate.	A reduced royalty rate on current monthly production and a higher royalty rate on additional monthly production. (See §§ 203.50 through 203.56.)

If you have a lease . . .	And if you . . .	Then we may grant you . . .
(b) Located in a designated GOM deep water area, and acquired in a lease sale before November 28, 1995, or after November 28, 2000, and you propose in a DOCD or supplement to expand production significantly.	Are producing and seek to increase ultimate resource recovery from one or more reservoirs not previously or currently producing on the field or lease, not simply extend recovery of reservoirs that already produced. (*Expansion project*).	A royalty suspension for additional production large enough to make the project economic. (See §§ 203.60 through 203.79.)
(c) Located in a designated GOM deep water area and acquired in a lease sale held before November 28, 1995 (*Pre-Act lease*).	Are on a field from which no current pre-Act lease produced (other than test production) before November 28, 1995 (*Authorized field)*.	A royalty suspension for a minimum production volume plus any additional volume needed to make the field economic. (See §§ 203.60 through 203.79.)
(d) Located in a designated GOM deep water area and acquired in a lease sale held after November 28, 2000.	Have not produced and can demonstrate that the suspension volume, if any, in your lease is not enough to make development economic (*Development project*).	A royalty suspension for a minimum production volume plus any additional volume needed to make your project economic. (See §§ 203.60 through 203.79.)
(e) Where royalty relief would recover significant additional resources or, in certain areas of the GOM, would enable development.	Are not eligible to apply for end-of-life or deep water royalty relief, but show us you meet certain elligibility conditions.	A royalty modification in size, duration, or form that makes your lease or project economic. (See § 203.80.)

4. Section 203.4 is revised to read as follows:

§ 203.4 How do the provisions in this part apply to different types of leases and projects?

The tables in this section summarize how similar provisions of this part apply in different situations.

(a) We require the information elements indicated by an X in the following table and described in §§ 203.51, 203.62, and 203.81 through 203.89 for applications for royalty relief.

Information elements	End-of-life lease	Deep water		
		Expansion project	Pre-act lease	Development project
(1) Administrative information report	X	X	X	X
(2) Net revenue and relief justification report (prescribed format)	X			
(3) Economic viability and relief justification report (Royalty Suspension Viability Program (RSVP) model inputs justified with Geological and Geophysical (G&G), Engineering, Production, & Cost reports)		X	X	X
(4) G&G report		X	X	X
(5) Engineering report		X	X	X
(6) Production report		X	X	X
(7) Deep water cost report		X	X	X

(b) We require the confirmation elements indicated by an X in the following table and described in §§ 203.70, 203.81 and 203.90 through 203.91 to retain royalty relief.

Confirmation elements	End-of-life lease	Deep water		
		Expansion project	Pre-act lease	Development project
(1) Fabricator's confirmation report		X	X	X
(2) Post-production development report approved by an independent certified public accountant (CPA)		X	X	X

(c) The following table indicates by an X, and §§ 203.50, 203.52, 203.60 and 203.67 describe, the prerequisites for our approval of your royalty relief application.

Approval conditions	End-of-life lease	Deep water		
		Expansion	Pre-act lease	Development project
(1) At least 12 of the last 15 months have the required level of production	X			
(2) Already producing	X			
(3)A producible well into a reservoir that has not produced before		X	X	X
(4) Royalties for qualifying months exceed 75% of net revenue (NR)	X			
(5) Substantial investment on a pre-Act lease (e.g., platform, subsea template)		X		

Approval conditions	End-of-life lease	Deep water		
		Expansion	Pre-act lease	Development project
(6) Determined to be economic only with relief		X	X	X

(d) The following table indicates by an X, and §§ 203.52 and 203.74 through 203.75 describe, the prerequisites for a redetermination of our royalty relief decision.

Redetermination conditions	End-of-Life lease	Deep water		
		Expansion project	Pre-act lease	Development project
(1) After 12 months under current rate, criteria same as for approval	X			
(2) For material change in geologic data, prices, costs, or available technology		X	X	X

(e) The following table indicates by an X, and §§ 203.53 and 203.69 describe, the characteristics of approved royalty relief.

Relief rate and volume, subject to certain conditions	End-of-life lease	Deep water		
		Expansion project	Pre-act lease	Development project
(1) One-half pre-application effective lease rate on the qualifying amount, 1.5 times pre-application effective lease rate on additional production up to twice the qualifying amount, and the pre-application effective lease rate for any larger volumes	X			
(2) Qualifying amount is the average monthly production for 12 qualifying months	X			
(3) Zero royalty rate on the suspension volume and the original lease rate on additional production		X	X	X
(4) Suspension volume is at least 17.5, 52.5 or 87.5 million barrels of oil equivalent (MMBOE)			X	
(5) Suspension volume is at least the minimum set in the Notice of Sale, the lease, or the regulations		X		X
(6) Amount needed to become economic		X	X	X

(f) The following table indicates by an X, and §§ 203.54 and 203.78 describe, circumstances under which we discontinue your royalty relief.

Full royalty resumes when	End-of-life lease	Deep water		
		Expansion project	Pre-act lease	Development project
(1) Average NYMEX price for last 12 months is at least 25 percent above the average for the qualifying months	X			
(2) Average NYMEX price for last calendar year exceeds $28/bbl or $3.50/mcf, escalated by the gross domestic product (GDP) deflator since 1994		X	X	
(3) Average prices for designated periods exceed levels we specify in the Notice of Sale or the lease		X		X

(g) The following table indicates by an X, and §§ 203.55 and 203.76 through 203.77 describe, circumstances under which we end or reduce royalty relief.

Relief withdrawn or reduced	End-of-life lease	Deep water		
		Expansion project	Pre-act lease	Development project
(1) If recipient requests	X	X	X	X
(2) Lease royalty rate is at the effective rate for 12 consecutive months	X			
(3) Conditions occur that we specified in the approval letter in individual cases	X			
(4) Recipient does not submit post-production report that compares expected to actual costs		X	X	X

Relief withdrawn or reduced	End-of-life lease	Deep water		
		Expansion project	Pre-act lease	Development project
(5) Recipient changes development system		X	X	X
(6) Recipient excessively delays starting fabrication		X	X	X
(7) Recipient spends less than 80 percent of proposed pre-production costs prior to start of production		X	X	X
(8) Amount of relief volume is produced		X	X	X

5. Section 203.60 is revised to read as follows:

§ 203.60 Who may apply for deep water royalty relief?

You may apply for royalty relief under §§ 203.61(b) and 203.62 if:

(a) You are a lessee of a lease in water at least 200 meters deep in the GOM and lying wholly west of 87 degrees, 30 minutes West longitude;

(b) We have assigned your pre-Act lease to a field (as defined in § 203.0); and

(c) You either:

(1) Hold a pre-Act lease on an authorized field (as defined in § 203.0) or

(2) Propose an expansion project (as defined in § 203.0) or

(3) Propose a development project (as defined in § 203.0).

6. In § 203.62, the introductory sentence and paragraph (c) are revised to read as follows:

§ 203.62 How do I apply for relief?

You must send a complete application and the required fee to the MMS Regional Director for the GOM.

* * * * *

(c) Sections 203.81, 203.83, and 203.85 through 203.89 describe what these reports must include. The MMS regional office for the GOM will guide you on the format for the required reports, and we encourage you to contact this office prior to preparing your application for this guidance.

7. In § 203.63, the following changes are made:

A. Paragraphs (a), (b), and (c) following the introductory paragraph are redesignated paragraphs (a)(1), (a)(2), and (a)(3).

B. The introductory paragraph is redesignated (a) and is revised to read as set forth below.

C. A new paragraph (b) is added as set forth below.

§ 203.63 Does my application have to include all leases in the field?

(a) For authorized fields, we will accept only one joint application for all leases that are part of the designated field on the date of application, except as provided in paragraph (a)(3) of this section and § 203.64. However, we will evaluate all acreage that may eventually become part of the authorized field. Therefore, if you have any other leases that you believe may eventually be part of the authorized field, you must submit data for these leases according to § 203.81.

* * * * *

(b) If your application seeks only relief for a development project or an expansion project, your application does not have to include all leases in the field.

8. In § 203.64, the section heading and the first sentence in the introductory paragraph are revised to read as follows:

§ 203.64 How many applications may I file on a field or a development project?

You may file one complete application for royalty relief during the life of the field or for a development project or an expansion project designed to produce a reservoir or set of reservoirs. * * *

* * * * *

9. In § 203.65, paragraph (b) is revised to read as follows:

§ 203.65 How long will MMS take to evaluate my application?

* * * * *

(b) We will evaluate your first application on a field within 180 days, evaluate your first application on a development project or an expansion project within 150 days and evaluate a redetermination under § 203.75 within 120 days after we determine that it is complete.

* * * * *

10. Section 203.66 revised to read as follows:

§ 203.66 What happens if MMS does not act in the time allowed?

If we do not act within the timeframes established under § 203.65, you get royalty relief according to the following table.

If you apply for royalty relief for	And we do not decide within the time specified	As long as you
(a) An authorized field	You get the minimum suspension volumes specified in § 203.69.	Abide by §§ 203.70 and 203.76.
(b) An expansion project	You get a royalty suspension for the first year of production.	Abide by §§ 203.70 and 203.76.
(c) A development project	You get a royalty suspension for initial production for the number of months that a decision is delayed beyond the stipulated timeframes set by § 203.65, plus all the royalty suspension volume for which you qualify.	Abide by §§ 203.70 and 203.76.

11. Section 203.67 is revised to read as follows:

§ 203.67 What economic criteria must I meet to get royalty relief on an authorized field or project?

We will not approve applications if we determine that royalty relief cannot make the field, development project, or expansion project economically viable. Your field or project must be uneconomic while you are paying royalties and must become economic with royalty relief.

12. In § 203.68, paragraph (b) is revised to read as follows:

§ 203.68 What pre-application costs will MMS consider in determining economic viability?

* * * * *

(b) We will consider sunk costs according to the following table.

We will	When determining
(1) Include sunk costs	Whether a field that includes a pre-Act lease which has not produced, other than test production, before the application or redetermination submission date needs relief to become economic.
(2) Not include sunk costs	Whether an authorized field, a development project, or an expansion project can become economic with full relief (see § 203.67).
(3) Not include sunk costs	How much suspension volume is necessary to make the field, a development project, or an expansion project economic (see § 203.69(c)).
(4) Include sunk costs for the project discovery well on each lease.	Whether a development project or an expansion project needs relief to become economic.

13. In § 203.69, the introductory paragraph and paragraphs (b) through (e) are revised, and paragraph (f) is added to read as follows:

§ 203.69 If my application is approved, what royalty relief will I receive?

If we approve your application, subject to certain conditions, we will not collect royalties on a specified suspension volume for your field, development project, or expansion project. Suspension volumes include volumes allocated to a lease under an approved unit agreement, but exclude any volumes of production that are not normally royalty-bearing under the lease or the regulations of this chapter (e.g., fuel gas).

* * * * *

(b) For development projects, any relief we grant applies only to project wells and replaces the royalty suspension volume with which we issued your lease. If your project is economic given the royalty suspension volume with which we issued your lease, we will reject the application. Otherwise, the *minimum* royalty suspension volumes are as shown in the following table:

For	The minimum royalty suspension volume is	Plus
(1) RS leases	A volume equal to the combined royalty suspension volumes (or the volume equivalent based on the data in your approved application for other forms of royalty suspension) with which we issued the leases participating in the application that have or plan a well into a reservoir identified in the application.	10 percent of the median of the distribution of known recoverable resources upon which we based approval of your application from all reservoirs included in the project.
(2) Other deep water leases issued in sales after November 28, 2000.	A volume equal to 10 percent of the median of the distribution of known recoverable resources upon which we based approval of your application from all reservoirs included in the project.	

(c) If your application includes pre-Act or eligible leases in different categories of water depth, we apply the minimum royalty suspension volume for the deepest such lease then assigned to the field. We base the water depth and makeup of a field on the water-depth delineations in the ''Lease Terms and Economic Conditions'' map and the ''Field Names Master List'' documents and updates in effect at the time your application is deemed complete. These publications are available from the MMS Regional Office for the GOM.

(d) You will get a royalty suspension volume above the minimum if we determine that you need more to make the field or development project economic.

(e) For expansion projects, the minimum royalty suspension volume equals 10 percent of the median of the distribution of known recoverable resources upon which we based approval of your application from all reservoirs included in your project plus any suspension volumes required under § 203.66. If we determine that your expansion project may be economic only with more relief, we will determine and grant you the royalty suspension volume necessary to make the project economic.

(f) The royalty suspension volume applicable to specific leases will continue through the end of the month in which cumulative production reaches that volume. You must calculate cumulative production from all the leases in the authorized field or project that are entitled to share the royalty suspension volume.

14. Section 203.70 is revised to read as follows:

§ 203.70 What information must I provide after MMS approves relief?

You must submit reports to us as indicated in the following table. Sections 203.81, 203.90, and 203.91 describe what these reports must include. The MMS regional office for the GOM will prescribe the formats.

Required report	When due to MMS	Due date extensions
(a) Fabricator's confirmation report	Within 18 months after approval of relief	MMS Director may grant you an extension under § 203.79(c) for up to 6 months.
(b) Post-production report	Within 120 days after the start of production that is subject to the approved royalty suspension volume.	With acceptable justification from you, MMS Regional Director for the GOM may extend due date up to 30 days.

15. In § 203.71, the introductory paragraph and paragraphs (a) through (c) are revised to read as follows:

§ 203.71 How does MMS allocate a field's suspension volume between my lease and other leases on my field?

The allocation depends on when production occurs, when we issued the lease, when we assigned it to the field, and whether we award the volume suspension by an approved application or establish it in the lease terms, as prescribed in this section.

(a) If your authorized field has an approved royalty suspension volume under §§ 203.67 and 203.69, we will suspend payment of royalties on production from all leases in the field that participate in the application until their cumulative production equals the approved volume. The following conditions also apply:

If . . .	Then . . .	And . . .
(1) We assign an eligible lease to your field after we approve relief.	We will not change your field's royalty suspension volume.	The assigned lease(s) may share in any remaining royalty relief.
(2) We assign a pre-Act or post-November 2000 deep water lease to your field after we approve your application.	We will not change your field's royalty suspension volume.	The assigned lease(s) may share in any remaining royalty relief by filing the short-form application specified in § 203.83 and authorized in § 203.82. An assigned RS lease also gets any portion of its royalty suspension volume remaining even after the field has produced the approved relief volume.
(3) We assign another lease(s) that you operate to your field while we are evaluating your application.	We will change your field's minimum suspension volume if the assigned lease is a pre-Act or eligible lease entitled to a larger minimum or automatic suspension volume.	(i) You toll the time period for evaluation until you modify your application to be consistent with the new field; (ii) We have an additional 60 days to review the new information; and (iii) The assigned lease(s) shares the royalty suspension we grant to the new field. If you do not agree to toll, we will have to reject your application due to incomplete information. But, an eligible lease we assigned to the field kept its automatic suspension volume.
(4) We assign another operator's lease to your field while we are evaluating your application.	We will change your field's minimum suspension volume provided the assigned lease joins the application and is entitled to a larger minimum suspension volume.	(i) You both toll the time period for evaluation until both of you modify your application to be consistent with the new field; (ii) We have an additional 60 days to review the new information; and (iii) The assigned lease(s) shares the royalty suspension we grant to the new field. If you (the original applicant) do not agree to toll, the other operator's lease retains any suspension volume it has or may share in any relief that we grant by filing the short form application specified in § 203.83 and authorized in § 203.82.
(5) We reassign a well on a pre-Act, eligible, or post-November 2000 deep water lease to another field.	The past production from the well counts toward the royalty suspension volume of the field to which we assigned the well.	The past production from that well will not count toward any royalty suspension volume granted to the field from which we reassigned it.

(b) If your authorized field has a royalty suspension volume established under § 260.111 of this title (i.e., a field with a pre-Act lease where an eligible lease starts production first), we will suspend payment of royalties on production from all eligible leases in the field until their cumulative production equals the established volume. The following conditions also apply:

If . . .	Then . . .	And . . .
(1) We assign another eligible lease to your field.	Your field's royalty suspension volume does not change.	The assigned lease may share in any remaining royalty relief.
(2) We assign an RS lease to your field	Your field's royalty suspension volume does not change.	The assigned lease gets only the volume suspension with which we issued it, and its production volume counts against the field's royalty suspension volume.
(3) We assign a pre-Act lease or a lease issued after November 2000 without royalty suspension to your field.	Your field's royalty suspension volume does not change.	We assign lease shares none of the volume suspension, and its production does not count as part of the suspension volume.
(4) A pre-Act or post-November 2000 deep water lease applies (along with the other leases in the field) and qualifies (subject to any pre-existing suspension volumes) for royalty relief under §§ 203.67 and 203.69.	Your field's royalty suspension volume may increase or stay the same, but will not diminish.	(i) All leases in the field share the royalty suspension volume if we approve the application; or (ii) The eligible or RS leases in the field keep their respective volumes if we reject the application.

(c) When a project has more than one lease, the royalty suspension volume for each lease equals that lease's actual production from the project (or production allocated under an approved unit agreement) until total production for all leases in the project equals the project's approved royalty suspension volume.

* * * * *

16. In § 203.74, the introductory paragraph is revised, paragraphs (b) and (c) are redesignated as paragraphs (c) and (d) and revised, and a new paragraph (b) is added to read as follows:

§ 203.74 When will MMS reconsider its determination?

You may request a redetermination after we withdraw approval or after you renounce royalty relief, unless we withdraw approval due to your providing false or intentionally inaccurate information. Under certain conditions you may also request a redetermination if we deny your application or if you want your approved royalty suspension volume to change. In these instances, to be eligible for a redetermination, at least one of the following four conditions must occur.

* * * * *

(b) You demonstrate in your new application that the technology that most efficiently develops this field or lease was not considered or deemed feasible in the original application. Your newly proposed technology must improve the profitability, under equivalent market conditions, of the field or lease relative to the development system proposed in the prior application.

(c) Your current reference price decreases by more than 25 percent from your base reference price as calculated under this paragraph.

(1) Your current reference price is a weighted-average of daily closing prices on the NYMEX for light sweet crude oil and natural gas over the most recent full 12 calendar months;

(2) Your base reference price is a weighted average of daily closing prices on the NYMEX for light sweet crude oil and natural gas for the full 12 calendar months preceding the date of your most recently approved application for this royalty relief; and

(3) The weighting factors are the proportions of the total production volume (in BOE) for oil and gas associated with the most likely scenario (identified in §§ 203.85 and 203.88) from your most recently approved application for this royalty relief.

(d) Before starting to build your development and production system, you have revised your estimated development costs, and they are more than 120 percent of the eligible development costs associated with the most likely scenario from your most recently approved application for this royalty relief.

17. In § 203.76, paragraphs (a), (b), and (c) are revised to read as follows:

§ 203.76 When might MMS withdraw or reduce the approved size of my relief?

* * * * *

(a) You change the type of development system proposed in your application (e.g., change from a fixed platform to floating production system, or from an independent development and production system to one with subsea wells tied back to a host production facility, etc.).

(b) You do not start building the proposed development and production system within18 months of the date we approved your application, unless the MMS Director grants you an extension under § 203.79(c). If you start building the proposed system and then suspend its construction before completion, and you do not restart continuous building of the proposed system within 18 months of our approval, we will withdraw the relief we granted.

(c) Your actual development costs are less than 80 percent of the eligible development costs estimated in your application's most likely scenario, and you do not report that fact in your post-production development report (§ 203.70). Development costs are those expenditures defined in § 203.89(b) incurred between the application submission date and start of production. If you report this fact in the post-production development report, you may retain the lesser of 50 percent of the original royalty suspension volume or 50 percent of the median of the distribution of the potentially recoverable resources anticipated in your application.

* * * * *

18. Section 203.77 is revised to read as follows:

§ 203.77 May I voluntarily give up relief if conditions change?

Yes, by sending a letter to that effect to the MMS Regional Director for the GOM.

19. In § 203.78, the introductory paragraph, and paragraphs (a)(1), (b)(1) and (f) are revised to read as follows:

§ 203.78 Do I keep relief if prices rise significantly?

If prices rise above a base price for light sweet crude oil or natural gas, set by statute for pre-Act leases, indicated in your original lease agreement or Notice of Sale for post-November 2000 deep water leases, you must pay full royalties as prescribed in this section. For post-November 2000 deepwater leases, price thresholds apply on a lease basis, so different leases on the same field, development project, or expansion

project may have different price thresholds.

(a) * * *

(1) Pay royalties on all oil production for the previous year at the lease stipulated royalty rate plus interest (under 30 U.S.C. 1721 and § 218.54 of this chapter) by March 31 of the current calendar year, and

* * * * *

(b) * * *

(1) Pay royalties on all natural gas production for the previous year at the lease stipulated royalty rate plus interest (under 30 U.S.C. 1721 and § 218.54 of this chapter) by March 31 of the current calendar year, and

* * * * *

(f) We change the prices referred to in paragraphs (a), (b), and (d) of this section periodically. For pre-Act leases, these prices change during each calendar year after 1994 by the percentage that the implicit price deflator for the gross domestic product changed during the preceding calendar year. For post-November 2000 deepwater leases, these prices change as indicated in the lease instrument or in the Notice of Sale under which we issued the lease.

20. Section 203.80 is added to read as follows:

§ 203.80 When can I get royalty relief if I am not eligible for end-of-life or deep water royalty relief?

We may grant royalty relief when it serves the statutory purposes summarized in § 203.1, and our formal relief programs provide inadequate encouragement to increase production or development. Unless your lease lies wholly west of 87 degrees, 30 minutes West longitude in the Gulf of Mexico, your lease must be producing to qualify for relief. Before you may apply for royalty relief apart from our end-of-life or deepwater programs, we must agree that your lease or project has two or more of the following characteristics:

(a) The lease has produced for a substantial period and the lessee can recover significant additional resources. Significant additional resources means enough to allow production for at least a year more than would be profitable without royalty relief.

(b) Valuable facilities (e.g., a platform or pipeline that would be removed upon lease relinquishment) exist that we do not expect a successor lessee to use. If the facilities are located off the lease, their preservation must depend on continued production from the lease applying for royalty relief. We will only consider an allocable share of costs for off-lease facilities in the relief application.

(c) A substantial risk exists that no new lessee will recover the resources.

(d) The lessee made major efforts to reduce operating costs too recently to use the formal program for royalty relief (e.g., recent significant change in operations).

(e) Circumstances beyond the lessee's control, other than water depth, preclude reliance on one of the existing royalty relief programs.

21. In § 203.81, paragraphs (a) and (c) are revised to read as follows:

§ 203.81 What supplemental reports do royalty relief applications require?

(a) You must send us the supplemental reports, indicated in the following table by an X, that apply to your field. Sections 203.83 through 203.91 describe these reports in detail.

Required reports	End-of-life lease	Deep water		
		Expansion project	Pre-act lease	Development project
(1) Administrative information Report	X	X	X	X
(2) Net revenue & relief justification report	X			
(3) Economic viability & relief justification report (RSVP model imputs justified by other required reports).		X	X	X
(4) G&G report.		X	X	X
(5) Engineering report.		X	X	X
(6) Production report.		X	X	X
(7) Deep water cost report		X	X	X
(8) Fabricator's confirmation report.		X	X	X
(9) Post-production development report.		X	X	X

* * * * *

(c) With your application and post-production development report, you must submit an additional report prepared by an independent CPA that:

(1) Assesses the accuracy of the historical financial information in your report; and

(2) Certifies that the content and presentation of the financial data and information conform to our most recent guidelines on royalty relief. This means the data and information must—

(i) Include only eligible costs that are incurred during the qualification months; and

(ii) Be shown in the proper format.

* * * * *

22. In § 203.83, paragraph (c) is revised to read as follows:

§ 203.83 What is in an administrative information report?

* * * * *

(c) Well number, API number, location, and status of each well that has been drilled on the field or lease or project (not required for non-oil and gas leases);

* * * * *

23. In § 203.86, the following changes are made:

A. The word ''and'' is removed at the end of paragraph (b)(6).

B. The ''.'' is removed and ''; and'' is added at the end of paragraph (b)(7).

C. Paragraph (b)(8) is added.

D. Paragraph (c)(4) is revised.

E. The word ''and'' is removed at the end of paragraph (d)(6).

F. The ''.'' is removed and ''; and'' is added at the end of paragraph (d)(7)

G. Paragraph (d)(8) is added.

The revisions and additions read as follows:

§ 203.86 What is in a G&G report?

* * * * *

(b) * * *

(8) A table listing the wells and completions, and indicating which sands and fault blocks will be targeted for completion or recompletion.

(c) * * *

(4) An explanation for excluding the reservoirs you are not planning to develop.

(d) * * *

(8) Reserve or resource distribution by reservoir.

* * * * *

24. In § 203.87, paragraphs (a)(1) and (d) are revised to read as follows:

§ 203.87 What is in an engineering report?

* * * * *

(a) * * *

(1) Its size along with basic design specifications and drawings; and

* * * * *

(d) A discussion of any plans for multi-phase development which includes the conceptual basis for developing in phases and goals or milestones required for starting later phases.

* * * * *

25. In § 203.89, paragraph (a) is revised to read as follows:

§ 203.89 What is in a deep water cost report?

* * * * *

(a) Sunk costs. Report sunk costs in dollars not adjusted for inflation and only if you have documentation.

* * * * *

26. In § 203.91, a new last sentence is added to read as follows:

§ 203.91 What is in a post-production development report?

* * * Also, you must have this report certified by an independent CPA according to § 203.81(c).

[FR Doc. 02–438 Filed 1–14–02; 8:45 am]

BILLING CODE 4310–MR–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–301199; FRL–6816–4]

RIN 2070–AB78

Fenbuconazole; Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation extends time-limited tolerances for the combined residues of the fungicide fenbuconazole [*alpha*-(2-(4-chlorophenyl)-ethyl)-*alpha*-phenyl-3-(1*H*-1,2,4-triazole)-1-propanenitrile] and its metabolites, *cis* and *trans*-5-(4-chlorophenyl)-dihydro-3-phenyl-3-(1*H*-1,2,4-triazole-1-ylmethyl)-2-3*H*-furanone], expressed as fenbuconazole, in or on the stone fruit (except plums and prunes) crop group at 2.0 parts per million (ppm), pecans at 0.1 ppm, and bananas at 0.3 ppm until December 31, 2004, at which time they will expire and be revoked. Dow AgroSciences LLC (then Rohm and Haas Company) requested that these temporary tolerances be made permanent under the provisions of the Federal Food, Drug, and Cosmetic Act, as amended by the Food Quality Protection Act of 1996.

DATES: This regulation is effective January 15, 2002. Objections and requests for hearings, identified by docket control number OPP–301199, must be received by EPA on or before March 18, 2002.

ADDRESSES: Written objections and hearing requests may be submitted by mail, in person, or by courier. Please follow the detailed instructions for each method as provided in Unit VI. of the **SUPPLEMENTARY INFORMATION**. To ensure proper receipt by EPA, your objections and hearing requests must identify docket control number OPP–301199 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Cynthia Giles-Parker, Product Manager 22, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 305–7740; and e-mail address: giles-parker.cynthia@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS codes	Examples of potentially affected entities
Industry	111 112 311 32532	Crop production Animal production Food manufacturing Pesticide manufacturing

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select ''Laws and Regulations,'' ''Regulations and Proposed Rules,'' and then look up the entry for this document under the ''**Federal Register**—Environmental Documents.'' You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/. A frequently updated electronic version of 40 CFR part 180 is available at http://www.access.gpo.gov/nara/cfr/cfrhtml_00/Title_40/40cfr180_00.html, a beta site currently under development.

2. *In person.* The Agency has established an official record for this action under docket control number OPP–301199. The official record consists of the documents specifically referenced in this action, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

II. Background and Statutory Findings

In the **Federal Register** of March 23, 2001 (66 FR 16226) (FRL–6767–3), EPA issued a notice pursuant to section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, as amended by the Food Quality Protection Act of 1996 (FQPA) (Public Law 104–170), announcing the filing of pesticide petitions (PP 1F3989, 1F3995, and 2F4154) to make temporary tolerances permanent by Dow AgroSciences LLC,

9330 Zionsville Road, Indianapolis, IN 46268–1054. This notice included a summary of the petitions prepared by Rohm and Haas Company, now a part of Dow AgroSciences LLC, whose name and address are provided herein. There were no comments received in response to the notice of filing. The existing time-limited tolerances will expire on December 31, 2001.

The petitions requested that 40 CFR 180.480 be amended by making time-limited tolerances for combined residues of the fungicide fenbuconazole [*alpha*-(2-(4-chlorophenyl)-ethyl)-*alpha*-phenyl-3-(1*H*-1,2,4-triazole)-1-propanenitrile] and its metabolites, *cis* and *trans*-5-(4-chlorophenyl)-dihydro-3-phenyl-3-(1*H*-1,2,4-triazole-1-ylmethyl)-2-3*H*-furanone], expressed as fenbuconazole in or on the stone fruit (except plums and prunes) crop group at 2.0 parts per million (ppm), pecans at 0.1 ppm, and bananas at 0.3 ppm permanent. However, the Agency has determined that it is more appropriate to extend them until December 31, 2004, while the Agency completes its review of data submitted to support the continued registration of fenbuconazole.

Section 408(b)(2)(A)(i) of the FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is ''safe.'' Section 408(b)(2)(A)(ii) defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. . . .''

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. For further discussion of the regulatory requirements of section 408 and a complete description of the risk assessment process, see the final rule on Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997) (FRL–5754–7).

III. Aggregate Risk Assessment and Determination of Safety

Consistent with section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure, consistent with section 408(b)(2), for extension of time-limited tolerances for combined residues of fenbuconazole [*alpha*-(2-(4-chlorophenyl)-ethyl)-*alpha*-phenyl-3-(1*H*-1,2,4-triazole)-1-propanenitrile] and its metabolites, *cis* and *trans*-5-(4-chlorophenyl)-dihydro-3-phenyl-3-(1*H*-1,2,4-triazole-1-ylmethyl)-2-3*H*-furanone], expressed as fenbuconazole in or on the stone fruit (except plums and prunes) crop group at 2.0 ppm, pecans at 0.1 ppm, and bananas at 0.3 ppm until December 31, 2004. EPA's assessment of exposures and risks associated with extending the tolerances follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. The nature of the toxic effects, and the no observed adverse effect levels (NOAEL) and the lowest observed adverse effect levels (LOAEL) from the fenbuconazole toxicity studies are discussed below.

1. The acute toxicological tests of the technical product produced the following results. In the acute oral toxicity study the lethal dose 50% (LD_{50}) was greater than 2 grams per kilogram (g/kg) body weight. The acute dermal toxicity study produced an LD_{50} of greater than 5 g/kg body weight. The acute inhalation lethal concentration 50% (LC_{50}) was greater than 2.1 milligrams per liter (mg/L). In both the primary eye irritation and primary skin irritation studies technical fenbuconazole was classified as non-irritating, and also tested negative for dermal sensitization.

2. A 13–week rat feeding study produced a NOAEL of 20 ppm (1.3 milligrams per kilogram per day (mg/kg/day) for males and 1.5 mg/kg/day for females) and a LOAEL of 80 ppm (5.1 mg/kg/day for males and 6.3 mg/kg/day for females), the endpoint effect being liver histopathology changes.

3. In a 3–month mouse feeding study there was a NOAEL of 20 ppm (3.8 mg/kg/day for males and 5.7 mg/kg/day for females) and a LOAEL of 60 ppm (11.1 mg/kg/day for males and 17.6 mg/kg/day for females), based on liver histopathology changes.

4. A 3–month dog feeding study produced a NOAEL of 100 ppm (3.3 mg/kg/day for males and 3.5 mg/kg/day for females) and a LOAEL of 400 ppm (13.3 mg/kg/day for males and 14.0 mg/kg/day for females), the end point effect being liver histopathology changes.

5. A 21–day rat dermal study produced a NOAEL of 1,000 mg/kg/day (the limit dose) and therefore a LOAEL greater than 1,000 mg/kg/day. Poor dermal absorption was indicated.

6. In a 78–week dietary carcinogenicity study in mice, the NOAEL was 10 ppm (1.43 mg/kg/day); males had a LOAEL of 200 ppm (28.6 mg/kg/day) and females had a LOAEL of 650 ppm (92.9 mg/kg/day), based on hepatocellular enlargement and a greater incidence and severity of hepatocellular vacuolation. There was also evidence of carcinogenicity based on the occurrence of an increased trend for malignant liver tumors in males and an increase in benign and malignant liver tumors in females.

7. A 24–month rat chronic feeding/carcinogenicity study with a systemic NOAEL of 80 ppm (3.03 mg/kg/day for females and 4.02 mg/kg/day for males) and a systemic LOAEL of 800 ppm (30.62 mg/kg/day for males and 43.07 mg/kg/day for females), based on decreases in body weight gains in females, hepatocellular enlargement and vacuolization in females, increases in thyroid weight in both males and females, and histopathological lesions in the thyroid glands in both sexes. There was evidence of carcinogenicity based on the increased occurrence of thyroid follicular cell benign and malignant tumors in males.

8. A 24–month male rat chronic feeding/carcinogenicity study that had a NOAEL of less than 800 ppm and a LOAEL of 800 ppm (30.41 mg/kg/day), based on decreased body weight gain and increased liver and thyroid/parathyroid weights and lesions. There was evidence of carcinogenicity based on the increased occurrence of thyroid follicular cell benign and malignant tumors in males.

9. A 1–year dog chronic feeding study with a NOAEL of 15 ppm (0.38 mg/kg/day) for females and 150 ppm (3.75 mg/kg/day) for males. The LOAEL, 150 ppm for females and 1,200 ppm (30 mg/kg/day) for males, was based on decreases in body weight gain and on adaptive changes in the liver which reflected increased metabolic activity.

10. A 2–generation rat reproduction study with a parental NOAEL of 4 mg/kg/day (80 ppm) and LOAEL of 40 mg/kg/day (800 ppm), based on decreased body weight and food consumption, increased number of dams not delivering viable or delivering nonviable offspring, and increases in adrenal and thyroid/parathyroid weights. The reproductive NOAEL was 40 mg/kg/day (800 ppm; the highest dose tested).

11. A developmental toxicity study in rabbits produced a maternal NOAEL of 10 mg/kg/day, a developmental NOAEL of 30 mg/kg/day, an undeterminable developmental LOAEL and a maternal LOAEL of 30 mg/kg/day.

12. A developmental rat toxicity study with a maternal and developmental NOAEL of 30 mg/kg/day, a maternal LOAEL of 75 mg/kg/day due to a decrease in maternal body weight compared to controls, and a developmental LOAEL of 75 mg/kg/day due to an increase in post-implantation loss and a decreased number of live fetuses per dam.

13. Mutation studies showed the following. There was no evidence of gene mutation in a test for induction of gene mutation at the HGPRT locus in Chinese hamster ovary cells, no increase in the number of cells with aberrations or observations per cell in an *in vivo* cytogenetics assay using bone marrow from treated rats, and no increase in unscheduled DNA synthesis in a rat primary hepatocyte study.

14. In a rat metabolism study radiolabeled fenbuconazole was rapidly absorbed, distributed, and excreted following oral administration in rats. Biliary excretion data indicted that systemic absorption of fenbuconazole was high for all dosing groups. The feces were the major route of excretion. Tissue distribution and bioaccumulation of fenbuconazole appeared to be minimal.

B. Toxicological Endpoints

The dose at which no adverse effects are observed (the NOAEL) from the toxicology study identified as appropriate for use in risk assessment is used to estimate the toxicological level of concern (LOC). However, the lowest dose at which adverse effects of concern are identified (the LOAEL) is sometimes used for risk assessment if no NOAEL was achieved in the toxicology study selected. An uncertainty factor (UF) is applied to reflect uncertainties inherent in the extrapolation from laboratory animal data to humans and in the variations in sensitivity among members of the human population as well as other unknowns. An UF of 100 is routinely used, 10X to account for interspecies differences and 10X for intraspecies differences.

For dietary risk assessment (other than cancer) the Agency uses the UF to calculate an acute or chronic reference dose (acute RfD or chronic RfD) where the RfD is equal to the NOAEL divided by the appropriate UF (RfD = NOAEL/UF). Where an additional safety factor is retained due to concerns unique to the FQPA, this additional factor is applied to the RfD by dividing the RfD by such additional factor. The acute or chronic Population Adjusted Dose (aPAD or cPAD) is a modification of the RfD to accommodate this type of FQPA Safety Factor.

For non-dietary risk assessments (other than cancer) the UF is used to determine the LOC. For example, when 100 is the appropriate UF (10X to account for interspecies differences multiplied by 10X to account for intraspecies differences) the LOC is 100. To estimate risk, a ratio of the NOAEL to exposures (margin of exposure (MOE) = NOAEL/exposure) is calculated and compared to the LOC.

The linear default risk methodology (Q1*) is the primary method currently used by the Agency to quantify carcinogenic risk. The Q1* approach assumes that any amount of exposure will lead to some degree of cancer risk. A Q1* is calculated and used to estimate risk, which represents a probability of occurrence of additional cancer cases (e.g., risk is expressed as 1 x 10^{-6} or one in a million). Under certain specific circumstances, MOE calculations will be used for the carcinogenic risk assessment. In this non-linear approach, a ''point of departure'' (threshold) is identified below which carcinogenic effects are not expected. The point of departure is typically a NOAEL based on an endpoint related to cancer effects though it may be a different value derived from the dose response curve. To estimate risk, a ratio of the point of departure to exposure (MOE_{cancer} = point of departure/exposures) is calculated. A summary of the toxicological endpoints for fenbuconazole used for human risk assessment follows.

1. *Acute exposure*. For acute dietary risk assessments a reference dose (acute RfD) of 0.3 mg/kg/day was established for females 13+ years old, the population subgroup of concern, based on the developmental toxicity study in the rat, which had a NOAEL of 30 mg/kg/day based on an increase in post-implantation loss and a significant decrease in the number of live fetuses per dam at the LOAEL of 75 mg/kg/day. A UF of 100 was used. No appropriate endpoint was available for analyzing the acute exposure of the overall U.S. population.

2. *Short- and Intermediate-term Exposure*. Short- and intermediate-term endpoints were not identified. Fenbuconazole also has no residential uses. Therefore, an aggregate risk assessment was not done for these endpoints.

3. *Chronic exposure*. The reference dose (chronic RfD) of 0.03 mg/kg/day was based on the chronic toxicity study in the rat, which had a NOAEL of 3.03 and 4.02 mg/kg/day in males and females, respectively, based on decreased body weight gains (females), hepatocellular enlargement and vacuolation (females), increases in thyroid weight (both sexes), and histopathological lesions in the liver and thyroid glands (both sexes) at the LOAEL of 30.62/43.04 mg/kg/day in males and females, respectively. A UF of 100 was used.

4. *Cancer*. The Agency has concluded that the available data provide limited evidence of the carcinogenicity of fenbuconazole in both mice and rats and has classified fenbuconazole as a Group C carcinogen (possible human carcinogen with limited evidence of carcinogenicity in animals) in accordance with Agency guidelines, published in the **Federal Register** (51 FR 33992, September 24, 1986), and recommended that for the purpose of risk characterization a low-dose extrapolation model applied to the experimental animal tumor data should be used for quantification of human risk (Q1*). This decision was based on the induction of thyroid follicular cell adenomas and/or combined adenomas-carcinomas in male rats in two studies, both by pair-wise comparison with controls and by trend analysis. The studies were combined for the purpose of deriving the Q1* of 3.59 x 10^{-3} $(mg/kg/day)^{-1}$ in human equivalents.

C. Exposure Assessment

1. *Dietary exposure from food and feed uses*. Tolerances have been established (40 CFR 180.480) for the combined residues of the fungicide fenbuconazole [*alpha*-(2-(4-chlorophenyl)-ethyl)-*alpha*-phenyl-3-(1*H*-1,2,4-triazole)-1-propanenitrile] and its metabolites, *cis* and *trans*-5-(4-chlorophenyl)-dihydro-3-phenyl-3-(1*H*-1,2,4-triazole-1-ylmethyl)-2-3*H*-furanone], expressed as fenbuconazole, in or on several agricultural commodities. Risk assessments were conducted by EPA to assess dietary exposures from fenbuconazole in food as follows. In addition to the agricultural commodities that are the

subjects of this final rule, the dietary risk analysis included published FIFRA section 18 temporary tolerances on blueberry; grapefruit; the fat, kidney, liver, meat, meat byproducts, and other organ meats of cattle, goats, hogs, and sheep; and horses, meat. The need for and, if so, results of these analyses follow.

i. *Acute exposure*. Acute dietary risk assessments are performed for a food-use pesticide if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1 day or single exposure. The Dietary Exposure Evaluation Model (DEEM) analysis evaluated the individual food consumption as reported by respondents in the USDA 1989–1992 nationwide Continuing Surveys of Food Intake by Individuals (CSFII) and accumulated exposure to the chemical for each commodity consumed. The following assumptions were made for the acute exposure assessments: An acute RfD of 0.3 mg/kg/day was used for the females 13+ years old, the population subgroup of concern, based on the developmental rat toxicity study. This study had a NOAEL of 30 mg/kg/day, based on a decrease in the number of live fetuses per dam at the LOAEL of 75 mg/kg/day and an uncertainty factor of 100. Neither percent crop treated (PCT) nor anticipated residue data were used in the acute exposure/risk analysis.

ii. *Short- and intermediate-term exposure*. Short- and intermediate-term endpoints were not identified. Fenbuconazole also has no residential uses. Therefore, an aggregate risk assessment was not performed for these endpoints.

iii. *Chronic exposure*. In conducting this chronic dietary risk assessment, the DEEM analysis evaluated the individual food consumption as reported by respondents in the USDA 1989–1992 nationwide CSFII and accumulated exposure to the chemical for each commodity consumed. The following assumptions were made for the chronic exposure assessments: A chronic RfD of 0.03 mg/kg/day was used and was based on the rat chronic toxicity study. This study had NOAELs of 3.03 and 4.02 mg/kg/day in males and females, respectively, based on decreased body weight gains (females), hepatocellular enlargement and vacuolation (females), increases in thyroid weight (both sexes), and histopathological lesions in the liver and thyroid glands (males) at the LOAELs of 30.62 and 43.04 mg/kg/day in males and females, respectively. An UF of 100 was again used. Anticipated residues were not used in the exposure/risk analysis; the only adjusted PCT datum used was 12.8% for the stone fruit (except plums and prunes) crop group. This percentage was derived from an annual production cap for fenbuconazole for use on the stone fruit (except plums and prunes) crop group of 38,000 lb of the Indar 75 WSP product (EPA Registration Number 62719–421; the only fenbuconazole product registered for use on stone fruits), equal to 28,500 lb of active ingredient. This amount was calculated by the Agency in 1995 as being equivalent to treating 12.8% of the total United States acreage of apricots, cherries, nectarines, and peaches with fenbuconazole and was made a condition of the registration of this product. The identical production cap is still in place and no additional fenbuconazole products have been registered for use on stone fruits.

iv. *Cancer*. The Agency has concluded that the available data provide limited evidence of the carcinogenicity of fenbuconazole in both mice and rats and has classified fenbuconazole as a Group C carcinogen (possible human carcinogen with limited evidence of carcinogenicity in animals). A low-dose extrapolation model was applied to the experimental animal tumor data used for quantification of human risk (Q1*). This decision was based on the induction of thyroid follicular cell adenomas and/or combined adenomas-carcinomas in male rats in two studies, both by pair-wise comparison with controls and by trend analysis. The studies were combined for the purpose of deriving the Q1* of 3.59×10^{-3} $(mg/kg/day)^{-1}$ in human equivalents. Anticipated residues were not used in the exposure/risk analysis; the only adjusted PCT datum used was 12.8% for the stone fruit (except plums and prunes) crop group. This percentage was derived from an annual production cap for fenbuconazole for use on the stone fruit (except plums and prunes) crop group of 38,000 lb of the Indar 75 WSP product (EPA Registration Number 62719–421; the only fenbuconazole product registered for use on stone fruits), equal to 28,500 lb of active ingredient. This amount was calculated by the Agency in 1995 as being equivalent to treating 12.8% of the total United States acreage of apricots, cherries, nectarines, and peaches with fenbuconazole and was made a condition of the registration of this product. The identical production cap is still in place and no additional fenbuconazole products have been registered for use on stone fruits.

iv. *Anticipated residue and PCT information*. Section 408(b)(2)(F) states that the Agency may use data on the actual percent of food treated for assessing chronic dietary risk only if the Agency can make the following findings: Condition 1, that the data used are reliable and provide a valid basis to show what percentage of the food derived from such crop is likely to contain such pesticide residue; Condition 2, that the exposure estimate does not underestimate exposure for any significant subpopulation group; and Condition 3, if data are available on pesticide use and food consumption in a particular area, the exposure estimate does not understate exposure for the population in such area. In addition, the Agency must provide for periodic evaluation of any estimates used. To provide for the periodic evaluation of the estimate of PCT as required by section 408(b)(2)(F), EPA may require registrants to submit data on PCT.

The Agency used PCT information as follows. For chronic toxicity and carcinogenicity a PCT value of 12.8% was used for the stone fruit (except plums and prunes) crop group. No other PCT data were used for fenbuconazole exposure/risk analysis.

When fenbuconazole was first registered, a condition of the registration of the fenbuconazole-containing product Indar 75 WSP (EPA Registration Number 62719–421), the only such product being registered for use on the stone fruit (except plums and prunes) crop group, was that only 38,000 lb of it (28,500 lb of the active ingredient) could be manufactured for this use annually. The Agency calculated, in 1995, that this was equivalent to treating 12.8% of the total United States acreage of apricots, cherries, nectarines, and peaches with fenbuconazole. That value has been directly applied to the analysis of dietary exposure and risk as the PCT for fenbuconazole on the stone fruit (except plums and prunes) crop group. Since then, this production cap has remained continuously in place at that same value, and no additional fenbuconazole products have been registered or labeled for use on this crop group.

The Agency believes that the three conditions previously discussed have been met. With respect to Condition 1, EPA finds that the PCT information described above for fenbuconazole used on the stone fruit (except plums and prunes) crop group is reliable and has a valid basis. Fenbuconazole's use on this crop group is unlikely to exceed the calculated PCT because of the rigid production cap and restriction of this use to the one product with the production cap. As to Conditions 2 and 3, regional consumption information and consumption information for significant subpopulations is taken into

account through EPA's computer-based model for evaluating the exposure of significant subpopulations including several regional groups. Use of this consumption information in EPA's risk assessment process ensures that EPA's exposure estimate does not understate exposure for any significant subpopulation group and allows the Agency to be reasonably certain that no regional population is exposed to residue levels higher than those estimated by the Agency. Other than the data available through national food consumption surveys, EPA does not have available information on the regional consumption of food to which fenbuconazole may be applied in a particular area.

2. *Dietary exposure from drinking water*. The Agency lacks sufficient monitoring exposure data to complete a comprehensive dietary exposure analysis and risk assessment for fenbuconazole in drinking water. Because the Agency does not have comprehensive monitoring data, drinking water concentration estimates are made by reliance on simulation or modeling taking into account data on the physical characteristics of fenbuconazole.

The Agency uses the Generic Estimated Environmental Concentration (GENEEC) or the Pesticide Root Zone/ Exposure Analysis Modeling System (PRZM/EXAMS) to estimate pesticide concentrations in surface water and the Screening Concentration in Ground Water (SCI-GROW) model to predict pesticide concentrations in ground water. In general, EPA will use GENEEC (a tier 1 model) before using PRZM/ EXAMS (a tier 2 model) for a screening-level assessment for surface water. The GENEEC model is a subset of the PRZM/ EXAMS model that uses a specific high-end runoff scenario for pesticides. GENEEC incorporates a farm pond scenario, while PRZM/EXAMS incorporates an index reservoir environment in place of the previous pond scenario. The PRZM/EXAMS model includes a percent crop area factor as an adjustment to account for the maximum percent crop coverage within a watershed or drainage basin.

None of these models include consideration of the impact processing (mixing, dilution, or treatment) of raw water for distribution as drinking water would likely have on the removal of pesticides from the source water. The primary use of these models by the Agency at this stage is to provide a coarse screen for sorting out pesticides for which it is highly unlikely that drinking water concentrations would ever exceed human health levels of concern.

Since the models used are considered to be screening tools in the risk assessment process, the Agency does not use estimated environmental concentrations (EECs) from these models to quantify drinking water exposure and risk as a %RfD or %PAD. Instead, drinking water levels of comparison (DWLOCs) are calculated and used as a point of comparison against the model estimates of a pesticide's concentration in water. DWLOCs are theoretical upper limits on a pesticide's concentration in drinking water in light of total aggregate exposure to a pesticide in food and from residential uses. Since DWLOCs address total aggregate exposure to fenbuconazole, they are further discussed in the aggregate risk sections below.

Based on the GENEEC model, the maximum EEC of fenbuconazole in surface water, based on aerial application of the highest labeled annual use rate of 0.75 lb of active ingredient per acre (ai/A), is 6.7 parts per billion (ppb) for acute exposures and 3.6 ppb for chronic exposures. Based on the SCI-GROW model, the maximum EEC of fenbuconazole in ground water, for both acute and chronic exposure, is 0.03 ppb. Since the ground water EECs for fenbuconazole are so much lower than the surface water EECs, only the surface water EECs were used for the purpose of comparisons with the calculated DWLOCs.

3. *From non-dietary exposure*. The term ''residential exposure'' is used in this document to refer to non-occupational, non-dietary exposure (e.g., for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets). Fenbuconazole is not registered for use on any sites that would result in residential exposure.

4. *Cumulative exposure to substances with a common mechanism of toxicity*. Section 408(b)(2)(D)(v) requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider ''available information'' concerning the cumulative effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity.''

EPA does not, at this time, have available data to determine whether fenbuconazole has a common mechanism of toxicity with other substances or to determine how to include this pesticide in a cumulative risk assessment. Unlike other pesticides for which EPA has followed a cumulative risk approach based upon common mechanism of toxicity, fenbuconazole does not appear to produce a toxic metabolite produced by other substances. For purposes of this tolerance action, EPA has not assumed that fenbuconazole has a common mechanism of toxicity with other substances. For further information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity, and to evaluate the cumulative effects of such chemicals, see the final rule for Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997).

D. Safety Factor for Infants and Children

1. *In general*. FFDCA section 408 provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the data base on toxicity and exposure unless EPA determines that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments either directly through use of a margin of exposure (MOE) analysis or through using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk to humans. The applicable studies are as follows.

2. *Prenatal and postnatal sensitivity*. A 2-generation rat reproduction study with a parental NOAEL of 4 mg/kg/day (80 ppm) and LOAEL of 40 mg/kg/day (800 ppm), based on decreased body weight and food consumption, increased number of dams not delivering viable or delivering nonviable offspring, and increases in adrenal and thyroid weights.The reproductive NOAEL was 40 mg/kg/day HDT.

A developmental toxicity study in rabbits produced a maternal NOAEL of 10 mg/kg/day, a developmental NOAEL of 30 mg/kg/day, an undeterminable developmental LOAEL of 60 mg/kg/day (due to increased resorptions), and a maternal LOAEL of 30 mg/kg/day.

A developmental rat toxicity study resulted in a maternal and developmental NOAEL of 30 mg/kg/day, a maternal LOAEL of 75 mg/kg/day due to a decrease in maternal body weight compared to controls, and a developmental LOAEL of 75 mg/kg/day due to an increase in post-implantation loss and a decreased number of live fetuses per dam.

3. *Conclusion*. Therefore, a complete toxicity data base for fenbuconazole exists and exposure data are complete or

are estimated based on data that reasonably account for potential exposures. Based on the developmental and reproductive toxicity studies there is no increased susceptibility of rats or rabbits to *in utero* and/or postnatal exposure to fenbuconazole. In the developmental toxicity studies in rats and rabbits, as well as the 2–generation reproduction study in rats, toxicity to the fetuses/offspring, when observed, occurred at equivalent or higher doses and was not judged to be more severe than in the maternal/parental animals. EPA therefore determined that the 10X safety factor to protect infants and children should be removed. The FQPA factor is removed because:

i. The toxicology data base is complete.

ii. There is no indication of increased susceptibility of rat or rabbit fetuses to *in utero* or and/or postnatal exposure in the developmental and reproductive toxicity studies.

iii. Dietary (food) exposure estimates are slightly refined (using limited PCT data for the stone fruit (except plum and prune) crop group) but likely result in overestimates of the actual dietary exposure.

iv. Models are used for ground and surface source drinking water exposure assessments, resulting in estimates that are upper-bound concentrations.

v. There are currently no registered residential uses for fenbuconazole and, as a result, this type of infant and children exposure is not expected.

E. Aggregate Risks and Determination of Safety

To estimate total aggregate exposure to a pesticide from food, drinking water, and residential uses, the Agency calculates DWLOCs which are used as points of comparison with the model estimates of a pesticide's concentration in water (EECs). DWLOC values are not regulatory standards for drinking water. DWLOCs are theoretical upper limits on a pesticide's concentration in drinking water in light of total aggregate exposure to a pesticide in food and residential uses. In calculating a DWLOC, the Agency determines how much of the acceptable exposure (i.e., the PAD) is available for exposure through drinking water (e.g., allowable chronic water exposure (mg/kg/day) = cPAD - (average food + residential exposure)). This allowable exposure through drinking water is used to calculate a DWLOC.

A DWLOC will vary depending on the toxic endpoint, drinking water consumption, and body weights. Default body weights and consumption values, as used by the USEPA Office of Water, are used to calculate DWLOCs: 2L per 70 kg body weight (adult male), 2L per 60 kg body weight (adult female), and 1L per 10 kg body weight (child). Default body weights and drinking water consumption values vary on an individual basis. This variation will be taken into account in more refined screening-level and quantitative drinking water exposure assessments. Different populations will have different DWLOCs. Generally, a DWLOC is calculated for each type of risk assessment used: acute, short-term, intermediate-term, chronic, and cancer.

When EECs for surface water and ground water are less than the calculated DWLOCs, OPP concludes with reasonable certainty that exposures to the pesticide in drinking water (when considered along with other sources of exposure for which OPP has reliable data) would not result in unacceptable levels of aggregate human health risk at this time. Because OPP considers the aggregate risk resulting from multiple exposure pathways associated with a pesticide's uses, levels of comparison in drinking water may vary as those uses change. If new uses are added in the future, OPP will reassess the potential impacts of residues of the pesticide in drinking water as a part of the aggregate risk assessment process.

1. *Acute risk*. For the population subgroup of concern, females 13 years old and older, the acute RfD is 0.3 mg/kg/day, the estimated acute food exposure is 0.015 mg/kg/day, the maximum estimated acute water exposure is 0.29 mg/kg/day, the acute DWLOC is 8.6 x 10^3 microgram/liter (µg/L), and the acute EEC is 6.7 µg/L. Therefore, the Agency concludes with reasonable certainty that residues of fenbuconazole in drinking water (when considered along with other sources of acute exposure for which reliable data exist) will not result in unacceptable levels of acute aggregate human health risk estimates for the population subgroup females 13 years old and older.

The Agency generally has no concern for exposures below 100% of the acute RfD (when the FQPA Safety Factor has been removed, as is the case for fenbuconazole) because the acute RfD represents the level at or below which a single daily exposure will not pose appreciable risks to human health. Despite the potential for exposure to fenbuconazole in drinking water, the Agency does not expect the acute aggregate exposure to exceed 100% of the acute RfD for the subpopulation of cencern (females 13 years old and older). The Agency concludes that there is a reasonable certainty that no harm will result to females 13 years old and older from chronic aggregate exposure to fenbuconazole residues.

2. *Short-term risk*. Short-term aggregate exposure takes into account residential exposure plus chronic exposure to food and water (considered to be a background exposure level). Short-term endpoints were not identified. Fenbuconazole is also not registered for use on any sites that would result in residential exposure. Therefore, the short-term aggregate risk assessment was not performed.

3. *Intermediate-term risk*. Intermediate-term aggregate exposure takes into account residential exposure plus chronic exposure to food and water (considered to be a background exposure level). Intermediate-term endpoints were not identified. Fenbuconazole is also not registered for use on any sites that would result in residential exposure. Therefore, the intermediate-term aggregate risk assessment was not performed.

4. *Chronic risk*. The following values were used or derived in calculations of chronic exposure and risk. The percentages of the chronic RfD that food exposure to fenbuconazole represented were <1.0% for the overall U.S. population, 2.5% for all infants (<1 year old), 1.1% for nursing infants (<1 year old), 3.1% for non-nursing infants (<1 year old), 1.5% for children (1-6 years old), <1.0% for non-Hispanic (other than Black or White), and 1.0% for seniors (55 years old or older). The adult population subgroup with the highest food exposure, non-Hispanic (other than black or white), was the subgroup used in the full analysis. For males the chronic RfD is 0.03, the estimated chronic food exposure is 0.00030 mg/kg/day, the maximum estimated water exposure is 0.030 mg/kg/day, DWLOC is 1.0 x 10^3 µg/L, and the chronic EEC is 3.6 µg/L. For females the chronic RfD is 0.03, the estimated chronic food exposure is 0.00030 mg/kg/day, the maximum estimated water exposure is 0.030 mg/kg/day, DWLOC is 8.9 x 10^2 µg/L, and the chronic EEC is 3.6 µg/L.

The estimated 56–day concentration of fenbuconazole in surface water (3.6 µg/L) is less than the Agency's levels of comparison for fenbuconazole in drinking water as a contribution to chronic aggregate exposure (1.0 x 10^3 µg/L and 8.9 x 10^2 µg/L for males and females respectively). Therefore, taking into account the registered uses, the Agency concludes with reasonable certainty that residues of fenbuconazole in drinking water (when considered along with other sources of chronic exposure for which the Agency has reliable data) would not result in unacceptable levels of chronic aggregate

human health risk estimates for adult population subgroups.

The Agency generally has no concern for exposures below 100% of the chronic RfD (when the FQPA Safety Factor has been removed, as is the case for fenbuconazole) because the chronic RfD represents the level at or below which average daily lifetime exposure will not pose appreciable risks to human health. Despite the potential for exposure to fenbuconazole in drinking water, the Agency does not expect the chronic aggregate exposure to exceed 100% of the chronic RfD for population subgroups which include adults. The Agency concludes that there is a reasonable certainty that no harm will result to adults from chronic aggregate exposure to fenbuconazole residues.

5. *Aggregate cancer risk for U.S. population*. Fenbuconazole has been classified as a Group C carcinogen with a Q1* of 3.59×10^{-3} $(mg/kg/day)^{-1}$. The group used in this analysis was U.S. population (48 contiguous states), the U.S. population as a whole. The cancer analysis, using all of the existing fenbuconazole tolerances (including section 18 tolerances), results in a cancer risk estimate of 8.3×10^{-7} for food consumption for the U.S. population as a whole. This analysis used 100% crop treatment values except for the stone fruit (except plum and prune) crop group, where a value of 12.8% crop treated was used. Based on the cancer dietary (food only) exposure and using default body weights and water consumption figures, a cancer DWLOC was calculated. The values used or calculated as part of the calculation of the DWLOC are the Q 1* of 3.59×10^{-3} $(mg/kg/day)^{-1}$, a food exposure of 0.00023 mg/kg/day, a maximum water exposure of 4.6×10^{-5} mg/kg/day, a DWLOC of 1.6 μg/L, and a chronic EEC of 3.6 μg/L.

Agency policy states that a factor of three will be applied to GENEEC model values when determining whether or not a level of comparison has been exceeded. If the GENEEC model value is less than or equal to three times the DWLOC, the pesticide is considered to have passed the screen and no further assessment is needed. The estimated 56–day (chronic) concentration of fenbuconazole in surface water (3.6 μg/L) is less than three times the level of comparison (3 x 1.6 = 4.8 μg/L) for fenbuconazole in drinking water as a contribution to chronic (cancer) aggregate exposure. Therefore, it is concluded with reasonable certainty that residues of fenbuconazole in drinking water, when considered along with other sources of chronic (cancer) exposure for which there is reliable data, would not result in unacceptable levels of cancer aggregate human health risk estimates for the overall U.S. population. The chronic food exposure estimate is partially refined. Further refinement would lower the food exposure estimate and result in a higher DWLOC.

The Agency generally has no concern for exposures that result in a cancer risk estimate below 1×10^{-6}. Despite the potential for exposure to fenbuconazole in drinking water, the Agency does not expect the chronic (cancer) aggregate exposure to exceed 1×10^{-6} for the U.S. population as a whole. The Agency concludes that there is a reasonable certainty that no harm will result to the overall U.S. population from chronic (cancer) aggregate exposure to fenbucanazole residues.

6. *Determination of safety*. Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population, or to infants and children from aggregate exposure to fenbuconazole residues.

IV. Other Considerations

A. Analytical Enforcement Methodology

Adequate enforcement methodology is available to enforce the tolerance expression. This method involves extraction of parent and metabolites into solvent followed by concentration, clean up, separation by gas chromatography, and detection with a nitrogen phosphorus detector. This method was submitted for inclusion in PAM II. The method may be requested from: Calvin Furlow, PIRIB, IRSD (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 305–5229; e-mail address: furlow.calvin@epa.gov.

B. International Residue Limits

There are no CODEX, Canadian, or Mexican Maximum Residue Limits for fenbuconazole in or on pecans, bananas, and the stone fruit (except plums and prunes) crop group.

C. Conditions

Discuss conditions for registration (i.e., additional residue field trials required), regional registration, etc.

The conditions of registration for fenbuconazole were submissions of the following items. Five additional studies had to be submitted: (1) Fish life cycle, (2) growth and reproduction of aquatic plants, (3) droplet size spectrum, (4) drift field evaluation, and (5) 49–month storage stability study. Several corrections to the labels were required. Mitigation measures to address chronic non-target organism toxicity concerns had to be identified and submitted. Production of the Indar 75 WSP product could not exceed 38,000 lb (28,500 lb ai) for each year of conditional registration and information on its production had to be submitted for the first federal fiscal year during which fenbuconazole was registered for use on stone fruits and pecans. Production information had to be submitted for the Enable 2F product (EPA Registration Number 62719–416) for the first federal fiscal year during which this product was registered for use on pecans. The company has subsequently submitted studies, information, and corrected labels, and participated in task forces, intended to satisfy all these condition-of-registration requirements. All such submissions that have been reviewed have been found to satisfy the appropriate registration condition.

V. Conclusion

Therefore, the tolerances are extended until December 31, 2004 for the combined residues of the fungicide fenbuconazole [*alpha*-(2-(4-chlorophenyl)-ethyl)-*alpha*-phenyl-3-(1*H*-1,2,4-triazole)-1-propanenitrile] and its metabolites, *cis* and *trans*-5-(4-chlorophenyl)-dihydro-3-phenyl-3-(1*H*-1,2,4-triazole-1-ylmethyl)-2-3*H*-furanone], expressed as fenbuconazole, in or on the stone fruit (except plums and prunes) crop group at 2.0 ppm, pecans at 0.1 ppm, and bananas at 0.3 ppm.

VI. Objections and Hearing Requests

Under section 408(g) of the FFDCA, as amended by the FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. Although the procedures in those regulations require some modification to reflect the amendments made to the FFDCA by the FQPA of 1996, EPA will continue to use those procedures, with appropriate adjustments, until the necessary modifications can be made. The new section 408(g) provides essentially the same process for persons to ''object'' to a regulation for an exemption from the requirement of a tolerance issued by EPA under new section 408(d), as was provided in the old FFDCA sections 408 and 409. However, the period for filing objections is now 60 days, rather than 30 days.

A. What Do I Need to Do to File an Objection or Request a Hearing?

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket control number OPP–301199 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before March 18, 2002.

1. *Filing the request*. Your objection must specify the specific provisions in the regulation that you object to, and the grounds for the objections (40 CFR 178.25). If a hearing is requested, the objections must include a statement of the factual issues(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). Information submitted in connection with an objection or hearing request 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 information 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.

Mail your written request to: Office of the Hearing Clerk (1900), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. You may also deliver your request to the Office of the Hearing Clerk in Rm. C400, Waterside Mall, 401 M St., SW., Washington, DC 20460. The Office of the Hearing Clerk is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Office of the Hearing Clerk is (202) 260–4865.

2. *Tolerance fee payment*. If you file an objection or request a hearing, you must also pay the fee prescribed by 40 CFR 180.33(i) or request a waiver of that fee pursuant to 40 CFR 180.33(m). You must mail the fee to: EPA Headquarters Accounting Operations Branch, Office of Pesticide Programs, P.O. Box 360277M, Pittsburgh, PA 15251. Please identify the fee submission by labeling it ''Tolerance Petition Fees.''

EPA is authorized to waive any fee requirement ''when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection.'' For additional information regarding the waiver of these fees, you may contact James Tompkins by phone at (703) 305–5697, by e-mail at tompkins.jim@epa.gov, or by mailing a request for information to Mr. Tompkins at Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

If you would like to request a waiver of the tolerance objection fees, you must mail your request for such a waiver to: James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

3. *Copies for the Docket*. In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit VI.A., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in Unit I.B.2. Mail your copies, identified by docket control number OPP–301199, to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. In person or by courier, bring a copy to the location of the PIRIB described in Unit I.B.2. You may also send an electronic copy of your request via e-mail to: opp-docket@epa.gov. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

B. When Will the Agency Grant a Request for a Hearing?

A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

VII. Regulatory Assessment Requirements

This final rule extends tolerances under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this rule has been exempted from review under Executive Order 12866 due to its lack of significance, this rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism*(64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national

government and the States, or on the distribution of power and responsibilities among the various levels of government.'' This final rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). For these same reasons, the Agency has determined that this rule does not have any ''tribal implications'' as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes.'' This rule will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

VIII. Submission to Congress and the Comptroller General

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 this final rule in the **Federal Register**. This final rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: December 26, 2001.

Peter Caulkins,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346(a) and 371.

§ 180.480 [Amended]

2. In § 180.480(a)(1) is amended by revising the ''Expiration/Revocation Date'' in the table ''12/31/01'' to read ''12/31/04.'' for the entries ''bananas (whole fruit)''; ''pecans''; and ''stone fruit crop group (except plums and prunes)''.

[FR Doc. 02–962 Filed 1–14–02; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 261

[SW–FRL–7125–1]

Hazardous Waste Management System; Identification and Listing of Hazardous Waste Final Exclusion

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The EPA (also, ''the Agency'' or ''we'' in this preamble) is granting a delisting to Heritage Environmental Services, LLC (Heritage) to exclude treated Electric Arc Furnace Dust (EAFD) produced at Nucor Steel, Division of Nucor Corporation (Nucor) located in Crawfordsville, Indiana from the lists of hazardous wastes.

After careful analysis, the EPA has concluded that the petitioned waste is not a hazardous waste when disposed of in a Subtitle D landfill. Today's action conditionally excludes the petitioned waste from the requirements of the hazardous waste regulations under the Resource Conservation and Recovery Act (RCRA) only if the waste is disposed of in a Subtitle D landfill which is permitted, licensed, or registered by a State to manage industrial solid waste.

EFFECTIVE DATE: This rule is effective on January 15, 2002.

ADDRESSES: The RCRA regulatory docket for this final rule is located at the U.S. EPA Region 5, 77 W. Jackson Blvd., Chicago, IL 60604, and is available for viewing from 8:00 a.m. to 4:00 p.m., Monday through Friday, excluding federal holidays. Call Todd Ramaly at (312) 353–9317 for appointments. The public may copy material from the regulatory docket at $0.15 per page.

FOR FURTHER INFORMATION CONTACT: For technical information concerning this document, contact Todd Ramaly at the address above or at (312) 353–9317.

SUPPLEMENTARY INFORMATION: The information in this section is organized as follows:

I. Background
  A. What Is a Delisting Petition?
  B. What Regulations Allow a Waste to Be Delisted?
II. Heritage's Delisting Petition
  A. What Waste Did Heritage Petition EPA to Delist?
  B. What Information Must the Petitioner Supply?
  C. What Information Did Heritage Submit to Support This Petition?
III. EPA's Evaluation and Final Rule
  A. What Decision Is EPA Finalizing and Why?
  B. What Are the Terms of This Exclusion?
  C. When Is the Delisting Effective?
  D. How Does This Action Affect the States?
IV. Public Comments Received on the Proposed Exclusion
  A. Comments and Responses from EPA
V. Regulatory Impact
VI. Congressional Review Act
VII. Executive Order 12875

I. Background

A. What Is a Delisting Petition?

A delisting petition is a request from to exclude waste from the list of hazardous wastes under RCRA regulations. In a delisting petition, the petitioner must show that waste generated at a particular facility does not meet any of the criteria for which EPA listed the waste as set forth in 40 CFR 261.11 and the background document for the waste. In addition, a petitioner must demonstrate that the waste does not exhibit any of the hazardous waste characteristics (that is, ignitability, reactivity, corrosivity, and toxicity) and must present sufficient information for us to decide whether factors other than those for which the waste was listed warrant retaining it as a hazardous waste.

A petitioner remains obligated under RCRA to confirm that the waste remains nonhazardous based on the hazardous waste characteristics even if EPA has ''delisted'' the waste.

B. What Regulations Allow a Waste To Be Delisted?

Under 40 CFR 260.20 and 260.22, a person may petition the EPA to remove

waste at a particular generating facility from hazardous waste control by excluding the waste from the lists of hazardous wastes contained in §§ 261.31 and 261.32. Specifically, § 260.20 allows any person to petition the EPA to modify or revoke any provision of parts 260 through 266, 268, and 273 of Title 40 of the Code of Federal Regulations. Section 260.22 provides a person the opportunity to petition the EPA to exclude a waste on a ''generator specific'' basis from the hazardous waste lists.

II. Heritage's Delisting Petition

A. What Waste Did Heritage Petition EPA to Delist?

On August 3, 1999, Heritage petitioned EPA to exclude an annual volume of 30,000 cubic yards of K061 EAFD generated at Nucor Steel Corporation located in Crawfordsville, Indiana from the list of hazardous wastes contained in 40 CFR 261.32. K061 is defined as ''emission control dust/sludge from the primary production of steel in electric arc furnaces.''

B. What Information Must the Petitionor Supply?

Petitioners must provide sufficient information to allow the EPA to determine that the waste does not meet any of the criteria for which it was listed as a hazardous waste. In addition, where there is a reasonable basis to believe that factors other than those for which the waste was listed (including additional constituents) could cause the waste to be hazardous, the EPA must determine that such factors do not warrant retaining the waste as hazardous.

C. What Information Did Heritage Submit To Support This Petition?

To support its petition, Heritage submitted descriptions and schematic diagrams of the EAFD treatment system; and detailed chemical and physical analyses of the treated EAFD.

III. EPA's Evaluation and Final Rule

A. What Decision Is EPA Finalizing and Why?

Today the EPA is finalizing an exclusion to Heritage for a 30,000 cubic yards annual volume of K061 EAFD generated at the Nucor Steel facility in Crawfordsville, Indiana and treated by Heritage from the list of hazardous wastes.

Heritage petitioned EPA to exclude, or delist, the treated EAFD because Heritage believes that the petitioned waste does not meet the RCRA criteria for which it was listed and that there are no additional constituents or factors which could cause the waste to be hazardous. Review of this petition included consideration of the original listing criteria, as well as the additional factors required by the Hazardous and Solid Waste Amendments of 1984 (HSWA). See section 222 of HSWA, 42 United States Code (U.S.C.) 6921(f), and 40 CFR 260.22 (d)(2)–(4).

On December 5, 2000, EPA proposed to exclude or delist Heritage's treated EAFD from the list of hazardous wastes in 40 CFR 261.32 and accepted public comment on the proposed rule (65 FR 75897). EPA considered all comments received, and for reasons stated in both the proposal and this document, we believe that the treated waste generated at the Nucor facility should be excluded from hazardous waste control.

B. What Are the Terms of This Exclusion?

Heritage must dispose of the treated EAFD in a Subtitle D landfill which has groundwater monitoring and which is permitted, licensed, or registered by a state to manage industrial waste. This exclusion is valid for a maximum annual rate of 30,000 cubic yards per year. Any amount exceeding this volume is not delisted under this exclusion. This exclusion is effective only if all conditions contained in today's rule are satisfied.

C. When Is the Delisting Effective?

This rule is effective January 15, 2002. The Hazardous and Solid Waste Amendments of 1984 amended section 3010 of RCRA to allow rules to become effective in less than six months when the regulated community does not need the six-month period to come into compliance. This rule reduces rather than increases the existing requirements and, therefore, is effective immediately upon publication under the Administrative Procedure Act, pursuant to 5 U.S.C. 553(d).

D. How Does This Action Affect the States?

Because EPA is issuing today's exclusion under the federal RCRA delisting program, only states subject to federal RCRA delisting provisions would be affected. This exclusion may not be effective in states having a dual system that includes federal RCRA requirements and their own requirements, or in states which have received our authorization to make their own delisting decisions.

EPA allows states to impose their own non-RCRA regulatory requirements that are more stringent than EPA's, under section 3009 of RCRA. These more stringent requirements may include a provision that prohibits a federally issued exclusion from taking effect in the state. Because a dual system (that is, both federal (RCRA) and state (non-RCRA programs) may regulate a petitioner's waste, we urge petitioners to contact the state regulatory authority to establish the status of their wastes under the state law.

EPA has also authorized some states to administer a delisting program in place of the federal program, that is, to make state delisting decisions. Therefore, this exclusion does not apply in those authorized states. If Heritage transports the petitioned waste to or manages the waste in any state with delisting authorization, Heritage must obtain a delisting from that state before it can manage the waste as nonhazardous in the state.

IV. Public Comments Received on the Proposed Exclusion

A. Comments and Responses From EPA

Comment: The DRAS is a more realistic model than any of its predecessors.

Response: EPA agrees with the comment.

Comment: EPA has stated that it believes the CML model is appropriate when evaluating whether to delist a waste, and has used the CML model as recently as the proposed delisting of August 8, 2000 and the final delisting of May 16, 2000.

Response: Region 5 believes that the delisting risk assessment software (DRAS) is a more sophisticated and more appropriate model and is now applying this model to all petitions currently under review.

Comment: The September 27, 2000 and December 5, 2000 **Federal Registers** did not indicate that the DRAS has been adopted by all EPA Regions, nor that it would be used in the future.

Response: At this time all Regions are using the DRAS model.

Comment: The model should be peer reviewed and the public should have the opportunity to provide adequate and meaningful comment.

Response: The model has been peer reviewed. The public has the opportunity to submit comments on the DRAS model during the comment period each time a delisting is proposed which is based on the DRAS model.

Comment: EPA is continuing to use the model before completing its own review of comments received. The DRAS may not be appropriate since it is currently being commented upon & revised.

Response: The Agency is continually striving to improve the tools available

for assessing risk. The Agency believes that at this time the DRAS model is the best available tool for estimating risk. Revisions and improvements to the model are always possible in the future.

Comment: The DRAS model assumes that the landfill is unlined and that leaching occurs from the beginning, which is counter to the use of liners, covers & slurry walls. The assumption of no liner is not consistent with CMTP which assumes a liner. The DRAS model should allow for the option of including a liner and should use Subtitle D landfill characteristics.

Response: There are existing solid waste landfills which have no liner. Over time, liners may fail and delistings currently have no expiration date. Therefore it is reasonable to consider scenarios for liner failure or to assume that no liner exists.

Comment: The DRAS model assumption of minimal cover increases estimates of volatilization and particulate emissions, which may not be reasonable.

Response: We must consider the worst case scenario of minimal requirements for daily cover. Regulations requiring daily cover on municipal landfills do not necessarily apply to industrial solid waste landfills.

Comment: The DRAS model is inflexible because site specific factors like hydrogeology, climate, ecology, and population density cannot be incorporated. The model should be modified to allow for the input of site and contaminant specific criteria. State or regional modeling criteria may be more stringent than the CMTP and have been ignored.

Response: At this time the Agency is not able to consider such site specific factors. The DRAS model is based on national averages of these factors and is intended to model a reasonable worst case. A State may always impose more stringent requirements based on site-specific factors.

Comment: DRAS is complex and EPA must explain the models and risk processes used in establishing regulatory limits including the assumptions, methodologies, pathways and variables used in the DRAS model.

Response: The DRAS Technical Support Document (DTSD) explains the risk algorithms used in the model including the methodologies, variables, pathways and assumptions. The DTSD is available on line at *http://www.epa.gov/earth1r6/6pd/rcra__c/pd-o/dtsd.htm.*

Comment: Several assumptions used in the DRAS model are unlikely and unreasonable: (1) A receptor lives and works at a single location 100 m downgradient and is exposed 350 days/yr; (2) individuals are exposed to the 90th percentile level for all paths; (3) all media flow toward the receptor; (4) the landfill volume and conditions from 1987 are still valid; (5) the waste is placed uniformly at great depth over the whole landfill; (6) only the most sensitive pathway for each constituent is selected which is an unlikely scenario; (7) first order decay applies although processes of oxidation, hydrolysis and biodegredation are not considered separately; (8) transformation rate may not be reasonable for biological processes; (9) fate and leaching estimates should include parameter estimates including Kow, pKa, Henry's Law and potential for biological transformation; (10) all streams are fishable and representative; and (11) nickel has a fish BCF of 307 which is unsupported by peer review publications and EPA's own documents.

Response: (1,2) The DRAS employs standard risk assessment default parameters that are accepted throughout the Agency in risk analyses (i.e., residential exposure 350 days/yr, and selection of the 90th percentile). The Agency has no way of knowing that this situation will not occur and therefore deems it prudent to protect for this condition by adding risks. (3) The Agency has no way of knowing the direction of media flow and must assume that all media flow may move toward the receptor. (4) The Agency has no data to indicate that the landfill volume data and other data from the 1987 landfill survey report are not valid. When updated data are available, they will be incorporated into the analyses. (5) To maximize the impact of the waste, the model assumes uniform placement of the waste. (6) The DRAS does employ a conservative approach to exposure assessment by assuming the receptor may be exposed to both the most sensitive groundwater pathway and the most sensitive surface exposure pathway and selects the most sensitive pathway for each constituent. (7,8) The groundwater fate and transport model used by the Agency to determine first order decay is EPA's Composite Model for Leachate Migration with Transformation Products (CMTP). The information used to develop the first order decay rate for different chemicals in CMTP is based on studies in which the separate processes of oxidation, biodegradation and hydrolysis could not be further isolated. The transformation rates cannot be easily adjusted because they are based on these empirical studies rather than on theoretical modeling in which variables can be altered at will. This model has been peer reviewed and received an excellent review from the Science Advisory Board (SAB). The Agency will continue to support the use of EPACMTP until a better assessment tool becomes available. (9) The Kow and pKa (octonal water partition coefficient and ionization constant) are not used in the development of leaching estimates because the DRAS relies on test data from leach testing to estimate the leaching potential of the waste. The Henry's law constant, although used in other aspects of the DRAS, is not used in the estimate of leaching and fate in groundwater. At this time, the CMTP does not account for volatilization of constituents from the groundwater as it moves through the subsurface.

(10) EPA assumed that all streams of sufficient size are fishable. This assumption is conservative, but not unreasonable as the final landfill location is not known. (11) The bioconcentration factor (BCF) for nickel has been revised from 307 to 78. The revised nickel BCF will be incorporated into the upcoming DRAS version 2.0.

Comment: Current science suggests that the skin and respiratory tract are targets for soluble nickel salts, yet the model literature states that the critical effects are decreased organ and/or body weights.

Response: The oral Reference Dose (RfD) is based on the assumption that thresholds exist for certain toxic effects such as cellular necrosis. It is expressed in units of mg/kg/day. Ambrose et al. (1976) reported the results of a 2-year feeding study using rats given 0, 100, 1000 or 2500 ppm nickel (estimated as 0, 5, 50 and 125 mg Ni/kg/day) in the diet. Clinical signs of toxicity, such as lethargy, ataxia, irregular breathing, cool body temperature, salivation and discolored extremities, were seen primarily in the 100 mg/kg/day group; these signs were less severe in the 35 mg/kg/day group. Based on the results obtained in this study, the 5 mg/kg/day nickel dose was a no observable adverse effects level (NOAEL), whereas 35 mg/kg/day was a lowest observable adverse effects level (LOAEL) for decreased body and organ weights. For further information, please refer to the Agency's IRIS database.

Comment: The bioconcentration factor (BCF) of 307 for nickel in fish is unsupported in EPA's own documents. Literature values are much less. BCF should not be used for predicting chronic toxicity. Some organs can regulate internal concentrations. Nickel has a low order of toxicity. Nickel does not bioaccumulate due to incomplete adsorption and rapid excretion. It is

Ni^{+2}, not the parent, that is persistent and bioavailable and determines toxicity.

Response: The BCF for nickel has been revised to 78 and will be incorporated into DRAS version 2.0. This value is based on the geometric mean of 3 laboratory values (100, 100, 47). The studies used to derive the BCF for nickel are based on soluble nickel, which is present as the Ni^{+2} ion. The nickel concentration in the waste was assumed to be present as the Ni^{+2}. The assumption is conservative, but not unreasonable since the nickel from the waste could be present as the Ni^{+2} ion at the point of exposure.

Comment: In aquatic environs, much of the nickel is present as both ionic and stable organic complexes. Hence much of the nickel is insoluble with minimal bioavailability. Also, soil which contains high organic matter will adsorb nickel and limit its mobility.

Response: The Agency agrees that some nickel may be insoluble, and have minimal bioavailability, since its mobility is dependent on the organic content of the soil. However, in delisting analyses, site specific characteristics (beyond waste constituent concentration and volume) are not incorporated into analyses. Default values are given for many parameters used in risk analyses including the organic content of fishable waters. The Agency has no way of knowing what streams may be impacted and, therefore, has established a conservative estimate of pertinent variables.

Comment: MINTEQA2 has been reported to contain outdated and inaccurate thermodynamic estimates (e.g., for complexation of metals like cadmium that are dependent on disolved oxygen content (DOC and pH). Hence the model may not reasonably estimate speciation and mobility. EPA should confirm stoichiometry, speciation charge, formula weight, equilibrium and enthalpy estimates with regard to metal and organic ligands as risks from metal ion concentrations may be overestimated.

Response: The Agency continues to review chemical-specific parameter data. Where appropriate, these data will be incorporated into the DRAS analyses.

Comment: The model may estimate fate and transport concentrations that exceed water solubility.

Response: If waste concentration exceeds soil saturation, free form conditions may occur and the assumptions of the EPACMTP may be compromised. Therefore, soil saturation values have been incorporated into DRAS and the program will notify the user if waste concentrations exceed soil saturation concentrations. Ambient water concentrations may be influenced by more than chemical solubility (e.g., organic content).

Comment: The use of the NOAEL in Rfd calculations has been challenged by the SAB. The dose response relationship and the consistency in response level are not identified. Use of the NOAEL for regulatory limits is based more on experimental exposure design than on biological relevance.

Response: The EPA still uses the NOAEL in Rfd. The SAB did not review the entire DRAS. The EPA risk assessors who peer reviewed the DRAS did not question the use of the NOAEL in Rfd. Until such time that the Agency redefines RfD methodology, the delisting program will continue to determine hazards based on RfDs recommended by EPA's IRIS database. The Agency continues to use RfDs in delisting determinations in a manner consistent with EPA risk assessment methodology. The EPA risk assessors and EPA ORD scientists who have peer reviewed the DRAS have not questioned the method in which RfDs are employed in the DRAS analyses.

Comment: Terms should be more clearly defined. Does the term Cw for waste contamination account for the total mass of contamination in the waste or only that portion that may enter the aqueous phase and be transported into the unsaturated zone and/or the leachable portion?

Response: No occurrences of Cw could be found in the DTSD or in the proposed exclusion. The term Cwaste is used twice in Chapter 4 of the DTSD to refer both to the total constituent concentration in a solid matrix in a landfill and to the total constituent concentration in a liquid in a surface impoundment.

Comment: USEPA cited various regulatory and statutory sections such as §§ 261.11(a)(3)(i) thru (xi) describing factors to consider in listing/delisting waste, but there was very little analysis of those factors. This prompts the conclusion that the USEPA is arbitrarily proposing to grant the HES petition.

Response: All criteria in 40 CFR 261.11(a)(3) were considered in accordance with § 260.22(d). The DRAS program was developed in consideration of all of the factors presented in 40 CFR 261.11(a)(3). Consitituent specific toxicology, chemical, and physical data are in the database used in the DRAS software as are appropriate models for evaluating migration and exposure. The DRAS is not currently capable of evaluating degradation products as described in 40 CFR 261.11(a)(3)(iii) through (vi) and the risk posed by degradation products would typically be evaluated independently. The petitioned waste, however, did not contain any chemicals which have known degradation products and therefore this additional analysis was not necessary. EPA considered plausible types of improper management in accordance with § 261.11(a)(3)(vii) when it assumed that contaminants will migrate from the landfill to a receptor well, uncontrolled erosion of exposed wastes will migrate into a stream, and long-term absence of daily cover will expose the waste to the atmosphere. Operating a facility in this manner is considered improper management as it violates the proper management standards and requirements promulgated for licensed Subtitle D landfills set forth in 40 CFR parts 257 and 258.

Comment: DRAS does not evaluate important ecological receptors which may significantly impact the back calculated maximum permissible waste concentrations derived from DRAS.

Response: The DRAS model does include consideration of ecological impacts. A complete description of the screening for ecological impact is in Chapter 4 of the DTSD available on the internet at <*http://www.epa.gov/earth1r6/6pd/ rcra—c/pd-o/dtsd.htm.*> The maximum observed lead and zinc in the petitioned waste exceeded the surface water screening values, indicating the need to examine the possible ecological impact more closely. The DRAS model does not account for the fact that some of the constituents in the eroded waste will not be dissolved. Since water quality criteria used for lead and zinc are based on dissolved concentrations, the total water concentration predicted by DRAS was conservative. Using conservative values published by EPA's Office of Water to convert total water concentrations to dissolved concentrations (30% for zinc and 20 % for lead), the surface water quality criteria were not exceeded.

Comment: How does the model distinguish metals that are important for some animals?

Response: If the commenter is referring to metals as micronutrients, delisting levels for metals far exceed any micronutrient levels.

Comment: What criteria determine whether the allowable leachate concentration is set by the Safe Drinking Water Act (SDWA) Maximum Contaminant Level (MCL), DRAS calculation, treatment technology or toxicity characteristic level?

Response: The allowable level is the most conservative of the DRAS

calculations, a calculation based on the SDWA MCL or the toxicity characteristic level. The exception to this is the level for arsenic which is frequently calculated based on the concentration allowed by the MCL.

Comment: Does EPA policy require that MCL or surface water criteria be met? Does this policy apply at all downgradient distances or just those corresponding to the DAF?

Response: Groundwater must meet MCL criteria but not surface water criteria. The DAF is used to calculate the concentration in the groundwater at a well a set distance downgradient. This distance was based on the results of a survey which identified the distance to the closest drinking water wells located near solid waste landfills throughout the country.

Comment: Are maximum permissible levels set below background? Background levels for nickel are approximately 3.3 ppb freshwater; 2.1 ppb groundwater; 4 to 30 mg/kg soil.

Response: The Agency does not usually consider background levels when establishing delisting levels. The maximum allowable levels of nickel in the waste and in the TCLP leachate are not less than the values mentioned in the comment.

Comment: The pH of landfill leachate is generally higher than the pH of the extraction fluid used in the TCLP which affects the leachability of the metals.

Response: The leachability of this waste was measured using three different extraction fluids with pH values of 2.88, 6.5, and 12.0 to evaluate whether the waste leachability will be affected by the pH of various environments.

Comment: The duration of leaching 18 minutes or 18 hours may over or underestimate the leachability of some constituents. TCLP does not account for variations in time to equilibrium for different species. The TCLP under predicts the maximum concentation of some anions and does not account for a variety of processes that can affect leachate quality, quantity and migration.

Response: It is impossible to determine the optimum time or other factors necessary to maximize the leaching of each constituent in every matrix in any environmental condition. A considerable amount of time and effort went into the development of the TCLP and the Agency believes that it is a reasonable laboratory test and that the TCLP results generally correlate well with environmental measurements.

Comment: Does the TCLP account for DOC? DOC in the leachate affects the mobility of metals in the aquifer.

Response: The TCLP does not account for DOC. However, in performing the TCLP procedure using alternative extraction fluids, Heritage took steps to remove dissolved oxygen from the neutral and basic extraction fluids. See proposed rule, 65 FR 75900, December 5, 2000.

Comment: It may be appropriate for the Agency to consider data from the SPLP.

Response: The Agency would consider any additional data that the petitioner chooses to submit. At this time the Agency requires leach testing for stabilized waste using the TCLP procedure at three different pHs. The Agency also evaluates data from the multiple extraction procedure. During the development of the sampling and analysis plan for a delisting petition, the Agency and petitioner discuss which analytical methods are appropriate for characterizing the waste.

Comment: For chemicals not previously modeled with the EPACMTP, what is the effect of assuming a DAF of 18?

Response: The Dilution Attenuation Factor (DAF) of 18 is a conservative value determined by the EPACMTP fate and transport model for the landfill waste management scenario. The DAF of 18 represents the class of organic chemicals with non-degrading, non-sorbing, characteristics. When creating a chemical to add to the DRAS chemical library for use in DRAS analyses, we recommend using a conservative value.

Comment: What is the effect of using one half detection level or zero for non detects?

Response: The use of one half the detection level is a compromise between the use of zero and the use of the detection limit. Using one half of the detection level protects against inappropriately high detection levels.

Comment: The model does not account for the uncertainty or sensitivity estimate. Without a sensitivity analysis it is impossible to determine if a single pathway or a small number of pathways dominate the risk estimate. If data for most sensitive parameter is uncertain or limited, confidence in the result will be poor.

Response: The DRAS provides the forward-calculated risk level and back-calculated allowable waste concentration for each exposure pathway. The user is thereby able to determine which pathway or pathways dominate the estimate of risk for each chemical. These analyses are currently provided on the Chemical-Specific Results screen.

Comment: The model determines that ground concentrations and a theoretical drinking water well that is 90th percentile of all predicted concentrations from Monte Carlo analysis. What is the sensitivity of using the 50th percentile on release and risk estimates?

Response: The DRAS assessment always defaults to high-end values from the 90th percentile. The model was not run using the 50th percentile, so it is not possible to determine the sensitivity at the 50th percentile.

Comment: Does a hazard index (HI) of greater than one mean that the waste cannot be delisted, or does it indicate that the model is overly conservative?

Response: An HI of one does not mean that the waste cannot be delisted, but a more thorough evaluation of the waste will be necessary. In cases where the HI of the waste exceeds one, the Agency will evaluate the target organ for the critical effect of those chemicals contributing to the total HI. In some cases, the hazards associated with various chemicals in the waste result from effects to the same target organ, and are indeed additive. In other cases, the hazards of different chemicals impact different target organs, and are not additive, in which case the HI is lowered accordingly. The DRAS automatically assumes the conservative approach, summing all hazards to calculate the HI.

Comment: EPA has rationalized the exceedance of its own delisting program target risk level of 1×10^{-6} by reference to the cancer risk range of 1×10^{-4} to 1×10^{-6} acceptable in other programs. Although this risk range may be appropriate in the context of corrective action, it may not be warranted in the delisting program where the waste is yet to be generated and placed into the environment.

Response: This risk is within the target risk range in the delisting program of 1×10^{-4} to 1×10^{-6}. The commentor is referred to chapter 4 of the DRAS DTSD which states that the target risk range is 1×10^{-4} to 1×10^{-6}. Attachment A of the RCRA Delisting Program Guidance Manual for the Petitioner also states that the target risk range is 1×10^{-4} to 1×10^{-6}.

Comment: Definition of the criteria used to determine de minimis risk levels and risk estimates should be provided. De minimis risk is usually considered to be a risk of less than 10^{-6} or 1 in a million.

Response: The term de minimis risk is used to refer to a risk that is sufficiently low that it need not be considered. The commentor is correct that a de minimis risk is usually considered by regulatory agencies to be a risk at or below 10^{-6} over a 70 year life time.

Comment: Long term variation, waste characterization procedures used by Heritage, and specific information used in the fate & transport model are lacking.

Response: Temporal variability and waste characterization procedures used by Heritage were evaluated. The fate and transport data used by the delisting risk assessment model is based on national averages for a reasonable worst case scenario, not on site specific information.

Comment: It may be more appropriate to set standards using statistical procedures from empirical data from TCLP analyses rather than generic risk assessment and fate and transport.

Response: Empirical data is not a reliable predictor of future risk. We believe that the DRAS model is a more appropriate tool than empirical data for determining acceptable levels based on risk.

Comment: Is 30,000 cubic yards the untreated or the treated K061? Will any amount over 30,000 cubic yards be regulated as K061? What information was provided to determine annual volume?

Response: The proposed delisting is for 30,000 cubic yards of treated waste. Any treated K061 in excess of 30,000 yds is not delisted. The Agency accepts the facility's assessment and certification of data submitted.

Comment: What is a mixing device?

Response: A mixing device is a unit in which mixing occurs.

Comment: Much of the relevant information was confidential business information, such as what treatment reagents were used or specifications of a mixing device.

Response: Heritage has claimed information which it submitted on equipment, reagents, and process as confidential. Heritage believes that such information in the public domain could be injurious.

Comment: No details were given on and what dust characteristics were evaluated.

Response: Information on dust characteristics of the treated dust is provided in section 3.0 of the petition.

Comment: Are the larger particles that are removed in the dropout chamber ever reintroduced into the EAFD for treatment? Would these larger particles meet the definition of K061? Are the silos in which EAFD is accumulated considered accumulation tanks since the exclusion is only for EAFD that has been treated.

Response: The material in the dropout box is not K061 and is not reintroduced into the EAFD for treatment. The silos are part of the production unit and not RCRA regulated tanks. Baghouse silos that are directly connected via piping to the baghouse are an integral part of the EAFD emission control system. Furthermore, the waste is accumulated in the silos for less than 90 days, and the silos are part of the treatment equipment. The point of generation does not occur until the treatment is complete and the waste exits the unit. Therefore, the silos are not accumulation tanks and are not subject to RCRA.

Comment: US EPA should re-evaluate the waste treatment process and QA criteria to assure variations in the treated EAFD are minimized.

Response: If future verification samples indicate excessive variations, the waste will be re-evaluated.

Comment: There are no details on the fingerprinting procedures or the quality control measures used to assure proper and consistent treatment of the waste.

Response: The sampling strategy addressed the waste exiting the unit. Fingerprinting would not be appropriate since the waste does not undergo further treatment after it exits. The quality control measures are set forth in the sampling and analysis plan. The required verification sampling is intended to assure that the treated waste remains within acceptable limits. Verification samples which exceed the delisting levels set forth in this rule may invalidate this delisting.

Comment: The composite sampling procedure in the initial month may not be sufficient to describe the variation of metals from different mixes of scrap steel. No comparison of the variability of the metals is given. EPA should adopt statistical sampling and analytical procedures from process and quality control engineering methodology. The limited amount of sampling does not provide for waste variability.

Response: A statistical approach based on extensive data would be welcomed in future petitions. Since the K061 dust is generated at a single facility, the Agency believes that the samples taken represent a reasonable range of both spacial and temporal varibility. Some confidential data was submitted demonstrating waste variability at this site.

Comment: The presence of VOCs, SVOCs and PCBs is considered unlikely. However, one sample is insufficient to determine the presence or absence of these compounds. Verification should require that a limited number of samples be analyzed for these constituents.

Response: Based on an understanding of the process, the Agency believes that these constituents are not likely to be present in the waste. Generator knowledge also supports the absence of these constituents in the waste. In this case, a single sample is considered sufficient to verify the absence of these compounds.

Comment: The commenter recommends that split samples should be taken by EPA.

Response: EPA does not sample wastes in support of delisting petitions. The signed certification is accepted as proof that all analyses were done properly and the results are reported correctly.

Comment: Listed waste needs to meet technology based LDRs prior to disposal. The delisting level for lead has been set at 2.4 mg/L TCLP which is above the LDR standard of .75 mg/L TCLP. Why weren't LDRs considered in setting the delisting standard?

Response: The proposed exclusion for this waste would be effective at the point of generation. Since LDRs attach at the point of generation this waste would not be considered hazardous and therefore is not subject to LDRs.

Comment: There are no criteria listed for what constitutes a significant change to the treatment process or a change in the chemicals used.

Response: A change either to the treatment process or in the chemicals used is significant if it results in a change in the composition of the waste.

Comment: In most cases where samples are required to support decision-making under RCRA, grab samples are required. Samples taken in support of this petition were composite samples. EPA should explain why results based on composite sampling were allowed and accepted and why these samples do not render the decision to grant the HES petition inappropriate due to inconsistent information.

Response: In the delisting program, composite samples are preferred, except in the case of volatile constituents. Multiple composite samples provide a better profile of the waste.

Comment: There should be recognition that a single grab sample taken by a regulating authority would be sufficient for a determination of legitimacy of the exclusion. The proposed delisting seems to indicate that only the monthly sampling done by Heritage could cause the exclusion to be suspended.

Response: The Agency always has the right to take samples to verify compliance. Such samples taken by the Agency could provide a basis for revoking a delisting.

Comment: A more rigorous initial sample was used to characterize the

variability for EAFD at USX Steel Corporation in Gary Indiana. Is it appropriate to have two different standards for USX and Heritage?

Response: All delisting decisions, including the initial sampling for delisting proposals are site specific. There will be variations.

Comment: In the ANPRM, 65 FR 37932, June 19, 2000, EPA has reservations about the effectiveness of using stabilization to immobilize metal wastes. Stabilization has not been scientifically proven to be reliable over the long term for disposal of such wastes. Allowing this waste to be placed in general purpose landfills which have fewer engineered features to prevent leaching and migration of heavy metals into groundwater ignores sound science. EPA needs to explain why disposing of a hazardous waste in this less protective manner should be allowed, absent any evidence confirming that it will work.

Response: At this time, stabilization is considered to be the best available treatment for metal bearing wastes. We have no evidence that constituents of concern have ever leached from this stabilized waste. To assure that the waste continues to meet the levels established here, we are requiring periodic testing of the waste and placement of the waste in a solid waste landfill which has ground water monitoring.

Comment: A similar process used in Ohio has caused concern because of possible leaching of substances which were supposedly stabilized. EPA cited Envirosafe Services in Ohio as having high leachate levels of various metals.

Response: Envirosafe Services in Ohio was not cited by US EPA for high levels of metals in the leachate. The facility was cited by Ohio EPA for excessive volume of leachate, although this citation may be attributed to be an error in measurement. Although the commentor did not define what constitutes high levels of metals in the leachate, the leachate must be treated as necessary to meet regulated standards before disposal. In addition, the concentrations of metals in the groundwater are monitored and regulated. While EPA may consider the experiences at other locations, petitioned wastes are evaluated on a site specific basis. The petitioned waste meets the criteria for delisting when the levels set forth in the notice are met.

Comment: EPA has concluded that over the long term, the actual leachate concentrations suggest that significant groundwater contamination may result after the eventual failure of liner and other contaminant controls.

Response: The DRAS model calculates risk assuming a worst case scenario of no liner at all. Under this scenario, the waste can be delisted.

Comment: An independent engineering expert has warned that the massive weight of stabilized K061 on the liner could produce hundreds of high pressure points which will burst and result in leakage of the liner and seepage of groundwater into and through the cell. The problem of groundwater leaching out the heavy metals in a Class C landfill cannot be ignored, but EPA did not analyze it.

Response: Currently a liner is the best available technology for landfills, regardless of whether it is a hazardous waste landfill (Subtitle C) or a solid waste landfill (Subtitle D). However, the model used to assess the risk of a delisted waste assumes that no liner is present.

Comment: It is scientifically established that lead can actively affect hydration of the concrete ingredients of the stabilization process. Lead tends to locate near the surface of cement-like materials and is easily leached into water. This is a concern in a less-secure Class C landfill which is not built to withstand the immense weight of stabilized K061.

Response: There is no evidence that lead has leached from this waste in the past and therefore we cannot assume that it will do so in the future. Since the model assumes no liner, the weight of the stabilized K061 and its possible effect on a liner is not relevant. It is assumed that the commentor is concerned about disposal in a Subtitle D landfill, since a Subtitle C landfill which the commentor referred to is more secure, not less secure as stated in the comment.

Comment: Arsenic and cadmium have been most frequently found in hazardous concentrations on both a total and dissolved constituent basis.

Response: Only very low concentrations of these constituents leach from the petitioned waste in a TCLP analysis. EPA believes that at these low concentrations, these constituents do not pose a risk.

Comment: EPA has expressed concern over migration of metals from stabilized waste to groundwater, yet EPA proposed to grant the Heritage petition without reviewing any groundwater monitoring information. In fact, Heritage submitted no groundwater monitoring information.

Response: HES has submitted groundwater monitoring data for their Subtitle C landfill where the waste is currently being disposed. The data does not indicate the presence of any constituent above health based levels.

V. Regulatory Impact

Under Executive Order 12866, EPA must conduct an ''assessment of the potential costs and benefits'' for all ''significant'' regulatory actions.

The proposal to grant an exclusion is not significant, since its effect, if promulgated, would be to reduce the overall costs and economic impact of EPA's hazardous waste management regulations. This reduction would be achieved by excluding waste generated at a specific facility from EPA's lists of hazardous wastes, thus enabling a facility to manage its waste as nonhazardous.

Because there is no additional impact from today's final rule, this proposal would not be a significant regulation, and no cost/benefit assessment is required. The Office of Management and Budget (OMB) has also exempted this rule from the requirement for OMB review under section (6) of Executive Order 12866.

VI. Congressional Review Act

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 Congress and to the Comptroller General of the United States. EPA is not required to submit a rule report regarding today's action under section 801 because this is a rule of particular applicability. Section 804 exempts from section 801 the following types of rules: rules of particular applicability; rules relating to agency management or personnel; and rules of agency organization, procedure, or practice that do not substantially affect the rights or obligations of non agency parties (5 U.S.C. 804(3)). This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2). This rule will become effective on the date of publication in the **Federal Register**.

VII. Executive Order 12875

Under Executive Order 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a state, local, or tribal government, unless the federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If the mandate is unfunded, EPA must provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected state, local, and tribal governments, the nature of

their concerns, copies of written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of state, local, and tribal governments ''to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates.'' Today's rule does not create a mandate on state, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this rule.

List of Subjects in 40 CFR Part 261

Environmental protection, Hazardous waste, Recycling, Reporting and recordkeeping requirements.

Authority: Sec. 3001(f) RCRA, 42 U.S.C. 6921(f).

Dated: December 12, 2001.

Gerald Phillips,

Acting Director, Waste, Pesticides and Toxics Division.

For the reasons set out in the preamble, 40 CFR part 261 is amended as follows:

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

1. The authority citation for part 261 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, 6922, and 6938.

2. In Table 2 of appendix IX of part 261 add the following waste stream in alphabetical order by facility to read as follows:

Appendix IX to Part 261—Wastes Excluded Under §§ 260.20 and 260.22.

* * * * *

TABLE 2.—WASTES EXCLUDED FROM SPECIFIC SOURCES

Facility	Address	Waste description
*	*	* * * * *
Heritage Environmental Services, LLC., at the Nucor Steel facility.	Crawfordsville, Indiana.	Electric arc furnace dust (EAFD) that has been generated by Nucor Steel at its Crawfordsville, Indiana facility and treated on site by Heritage Environmental Services, LLC (Heritage) at a maximum annual rate of 30,000 cubic yards per year and disposed of in a Subtitle D landfill which has groundwater monitoring, after January 15, 2002. (1) *Delisting Levels:* (A) The constituent concentrations measured in either of the extracts specified in Paragraph (2) may not exceed the following levels (mg/L): Antimony—0.206; Arsenic—0.0936; Barium—55.7; Beryllium—0.416; Cadmium—0.15; Chromium (total)—1.55; Lead—5.0; Mercury—0.149; Nickel—28.30; Selenium—0.58; Silver—3.84; Thallium—0.088; Vanadium—21.1; Zinc—280.0. (B) Total mercury may not exceed 1 mg/kg. (2) *Verification Testing:* On a monthly basis, Heritage or Nucor must analyze two samples of the waste using the TCLP method, the TCLP procedure with an extraction fluid of pH 12 ± 0.05 standard units and SW–846 Method 7470 for mercury. The constituent concentrations measured must be less than the delisting levels established in Paragraph (1). (3) *Changes in Operating Conditions:* If Nucor significantly changes the manufacturing process or chemicals used in the manufacturing process or Heritage significantly changes the treatment process or the chemicals used in the treatment process, Heritage or Nucor must notify the EPA of the changes in writing. Heritage and Nucor must handle wastes generated after the process change as hazardous until Heritage or Nucor has demonstrated that the wastes continue to meet the delisting levels set forth in Paragraph (1) and that no new hazardous constituents listed in Appendix VIII of Part 261 have been introduced and Heritage and Nucor have received written approval from EPA. (4) *Data Submittals:* Heritage must submit the data obtained through monthly verification testing or as required by other conditions of this rule to U.S. EPA Region 5, Waste Management Branch (DW–8J), 77 W. Jackson Blvd., Chicago, IL 60604 by February 1 of each calendar year for the prior calendar year. Heritage or Nucor must compile, summarize, and maintain on site for a minimum of five years records of operating conditions and analytical data. Heritage or Nucor must make these records available for inspection. All data must be accompanied by a signed copy of the certification statement in 40 CFR 260.22(i)(12). (5) *Reopener Language*—(A) If, anytime after disposal of the delisted waste, Heritage or Nucor possesses or is otherwise made aware of any data (including but not limited to leachate data or groundwater monitoring data) relevant to the delisted waste indicating that any constituent identified in Paragraph (1) is at a level in the leachate higher than the delisting level established in Paragraph (1), or is at a level in the groundwater higher than the maximum allowable point of exposure concentration predicted by the CMTP model, then Heritage or Nucor must report such data, in writing, to the Regional Administrator within 10 days of first possessing or being made aware of that data. (B) Based on the information described in paragraph (5)(A) and any other information received from any source, the Regional Administrator will make a preliminary determination as to whether the reported information requires Agency action to protect human health or the environment. Further action may include suspending, or revoking the exclusion, or other appropriate response necessary to protect human health and the environment. (C) If the Regional Administrator determines that the reported information does require Agency action, the Regional Administrator will notify Heritage and Nucor in writing of the actions the Regional Administrator believes are necessary to protect human health and the environment. The notice shall include a statement of the proposed action and a statement providing Heritage and Nucor with an opportunity to present information as to why the proposed Agency action is not necessary or to suggest an alternative action. Heritage and Nucor shall have 30 days from the date of the Regional Administrator's notice to present the information.

TABLE 2.—WASTES EXCLUDED FROM SPECIFIC SOURCES—Continued

Facility	Address	Waste description
		(D) If after 30 days Heritage or Nucor presents no further information, the Regional Administrator will issue a final written determination describing the Agency actions that are necessary to protect human health or the environment. Any required action described in the Regional Administrator's determination shall become effective immediately, unless the Regional Administrator provides otherwise.
*	*	* * * * *

[FR Doc. 02–953 Filed 1–14–02; 8:45 am]
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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 261

[SW–FRL–7124–9]

Hazardous Waste Management System; Identification and Listing of Hazardous Waste Final Exclusion

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The EPA (also, ''the Agency'' or ''we'' in this preamble) is granting a petition submitted by USG Corporation (USG), Chicago, Illinois, to exclude (or ''delist''), on a one-time basis, certain solid wastes that are interred at an on-site landfill at its American Metals Corporation (AMC) facility in Westlake, Ohio from the lists of hazardous wastes. This landfill was used exclusively by Donn Corporation, the original site owner, for disposal of its wastewater treatment plant (WWTP) sludge from 1968 to 1978.

After careful analysis, the EPA has concluded that the petitioned waste is not a hazardous waste when disposed of in a Subtitle D landfill. Today's action conditionally excludes the petitioned waste from the requirements of the hazardous waste regulations under the Resource Conservation and Recovery Act (RCRA) only if the waste is disposed of in a Subtitle D landfill which is permitted, licensed, or registered by a State to manage industrial solid waste.

EFFECTIVE DATE: This rule is effective on January 15, 2002.

ADDRESSES: The RCRA regulatory docket for this final rule is located at the U.S. EPA Region 5, 77 W. Jackson Blvd., Chicago, IL 60604, and is available for viewing from 8:00 a.m. to 4:00 p.m., Monday through Friday, excluding Federal holidays. Call Todd Ramaly at (312) 353–9317 for appointments. The public may copy material from the regulatory docket at $0.15 per page.

FOR FURTHER INFORMATION CONTACT: For technical information concerning this document, contact Todd Ramaly at the address above or at (312) 353–9317.

SUPPLEMENTARY INFORMATION: The information in this section is organized as follows:

I. Background
A. What Is a Delisting Petition?
B. What Regulations Allow a Waste to Be Delisted?
II. USG's Delisting Petition
A. What Waste Did USG Petition EPA to Delist?
B. What Information Must the Petitioner Supply?
C. What Information Did USG Submit to Support This Petition?
III. EPA's Evaluation and Final Rule
A. What Decision Is EPA Finalizing and Why?
B. What Are the Terms of This Exclusion?
C. When Is the Delisting Effective?
D. How Does This Action Affect the States?
IV. Response to Public Comments Received on the Proposed Exclusion
V. Regulatory Impact
VI. Congressional Review Act
VII. Executive Order 12875

I. Background

A. What Is a Delisting Petition?

A delisting petition is a request from a petitioner to exclude waste from the list of hazardous wastes under RCRA regulations. In a delisting petition, the petitioner must show that waste generated at a particular facility does not meet any of the criteria for which EPA listed the waste as set forth in 40 CFR 261.11 and the background document for the waste. In addition, a petitioner must demonstrate that the waste does not exhibit any of the hazardous waste characteristics (that is, ignitability, reactivity, corrosivity, and toxicity) and must present sufficient information for EPA to decide whether factors other than those for which the waste was listed warrant retaining it as a hazardous waste.

Petitioners remain obligated under RCRA to confirm that their waste remains nonhazardous based on the hazardous waste characteristics even if EPA has ''delisted'' the wastes.

B. What Regulations Allow a Waste To Be Delisted?

Under 40 CFR 260.20 and 260.22, facilities may petition the EPA to remove their wastes from hazardous waste control by excluding it from the lists of hazardous wastes contained in §§ 261.31 and 261.32. Specifically, § 260.20 allows any person to petition the Administrator to modify or revoke any provision of parts 260 through 266, 268, and 273 of Title 40 of the Code of Federal Regulations. Section 260.22 provides any person with the opportunity to petition the Administrator to exclude a waste at a particular generating facility from the hazardous waste lists.

II. USG's Delisting Petition

A. What Waste Did USG Petition EPA To Delist?

On May 22,1997, USG petitioned EPA to exclude 12,400 cubic yards of previously disposed WWTP sludge from the list of hazardous wastes contained in 40 CFR 261.31. The WWTP sludge is a mixture of EPA Hazardous Waste Number F019 wastewater treatment sludge from the conversion coating of aluminum and other nonhazardous wastes.

B. What Information Must the Petitioner Supply?

A petitioner must provide sufficient information to allow the EPA to determine that the waste does not meet any of the criteria for which it was listed as a hazardous waste. In addition, where there is a reasonable basis to believe that factors other than those for which the waste was listed (including additional constituents) could cause the waste to be hazardous, the Administrator must determine that such factors do not warrant retaining the waste as hazardous.

C. What Information Did USG Submit To Support This Petition?

To support its petition, USG submitted (1) descriptions and schematic diagrams of its manufacturing and wastewater treatment processes, including historical information on past

waste generation and management practices; (2) detailed chemical and physical analysis of the landfilled sludge; and (3) environmental monitoring data from recent studies of the facility, including groundwater data from wells located in and around the on-site landfill.

III. EPA's Evaluation and Final Rule

A. What Decision Is EPA Finalizing and Why?

Today the EPA is finalizing an exclusion to USG for 12,400 cubic yards of WWTP sludge interred at the AMC facility in Westlake, Ohio.

USG petitioned EPA to exclude, or delist, the WWTP sludge because USG believes that the petitioned waste does not meet the RCRA criteria for which it was listed it and that there are no additional constituents or factors which could cause the waste to be hazardous. Review of this petition included consideration of the original listing criteria, as well as the additional factors required by the Hazardous and Solid Waste Amendments of 1984 (HSWA). See section 222 of HSWA, 42 United States Code (U.S.C.) 6921(f), and 40 CFR 260.22 (d)(2)–(4).

On September 27, 2000, EPA proposed to exclude or delist USG's WWTP sludge from the list of hazardous wastes in 40 CFR 261.31 and accepted public comment on the proposed rule (65 FR 58015). EPA considered all comments received, and for reasons stated in both the proposal and this document, we believe that USG's waste should be excluded from hazardous waste control.

B. What Are the Terms of This Exclusion?

USG must dispose of the estimated total landfill volume of the WWTP sludge, 12,400 cubic yards, in a Subtitle D landfill which is permitted, licensed, or registered by a state to manage industrial waste. Any amount exceeding this volume is not considered delisted under this exclusion. This exclusion is effective only if all conditions contained in today's rule are satisfied. This rule does not change the regulatory status of the landfill in Westlake, Ohio where the waste currently resides.

C. When Is the Delisting Effective?

This rule is effective January 15, 2002. The Hazardous and Solid Waste Amendments of 1984 amended section 3010 of RCRA to allow rules to become effective in less than six months when the regulated community does not need the six-month period to come into compliance. This rule reduces rather than increases the existing requirements and, therefore, is effective immediately upon publication under the Administrative Procedure Act, pursuant to 5 U.S.C. 553(d).

D. How Does This Action Affect the States?

Because EPA is issuing today's exclusion under the federal RCRA delisting program, only states subject to federal RCRA delisting provisions would be affected. This exclusion may not be effective in states having a dual system that includes federal RCRA requirements and their own requirements, or in states which have received EPA authorization to make their own delisting decisions.

EPA allows states to impose their own non-RCRA regulatory requirements that are more stringent than EPA's, under section 3009 of RCRA. These more stringent requirements may include a provision that prohibits a federally issued exclusion from taking effect in the state. Because a dual system (that is, both federal (RCRA) and state (non-RCRA programs) may regulate a petitioner's waste, EPA urges the petitioner to contact the state regulatory authority to establish the status of its wastes under the state law.

EPA has also authorized some states to administer a delisting program in place of the federal program, that is, to make state delisting decisions. Therefore, this exclusion does not apply in those authorized states. If USG transports the petitioned waste to or manages the waste in any state with delisting authorization, USG must obtain a delisting from that state before it can manage the waste as nonhazardous in the state.

IV. Response to Public Comments Received on the Proposed Exclusion

Comment: The commenter stated that although the Agency reviewed and commented on the DRAS model, the public has not had the opportunity to do so.

Response: The proposed rule of September 27, 2000 discussed the DRAS model. The comment period provided an opportunity to comment on the DRAS model itself as well as its use in this proposed delisting. Each proposed delisting must explicitly reference the risk model used. Therefore, comments on the DRAS may always be submitted during the comment period for any future delisting for which the DRAS was used. Also, for comments on future delistings which used the DRAS model, the technical support document for the DRAS model may be accessed on-line at *<http://www.epa.gov/earth1r6/6pd/rcra__c/pd-o/dtsd.htm>.*

Comment: It is not clear the Agency intends to use this model and that all Regions will be using this methodology to evaluate all delisting petitions in the future.

Response: At this time the Agency anticipates that the DRAS model will become the standard tool for evaluating future delisting petitions although there is no regulation requiring the use of this model. For each petition, each Region will select the risk model it considers to be the most appropriate.

Comment: It is inappropriate for the DRAS model to incorporate elements of the not yet finalized Hazardous Waste Identification Rule (HWIR) model.

Response: The risk assessment procedure performed by the DRAS model has been reviewed by the Science Advisory Board as well as by EPA's Office of Research and Development. Finalizing HWIR will not impact the use of this model in delisting decisions.

Comment: Why were several additional exposure pathways added to the delisting evaluation?

Response: Most of the exposure pathways used in this delisting evaluation have been used in previous delisting evaluations. The expanded list of exposure pathways is consistent with the exposure pathways used by the Agency in recent listing determinations as well as in the proposed HWIR.

Comment: The detection level for 2,3,4,7,8-PeCDF in Table 1 is higher than the target risk level for this compound although detection levels in the most recent analysis are much lower.

Response: The highest detection level in any sample is displayed in the table, however EPA relied on the actual quantitative results from the more recent and more sensitive analysis in evaluating the petitioned waste.

Comment: The petitioner requested that the calculation of the risk factor for 2,3,4,7,8-PeCDF be verified because it was comparable to 2,3,7,8-TCDD which is known to be more toxic.

Response: Although, 2,3,4,7,8-PeCDF is less toxic, it is more bioaccumulative in fish tissue so that its lower toxicity is offset by increased exposure.

Comment: The petitioner requested clarification on how non-detects are treated when determining delistable levels for dioxins and furans.

Response: Non-detects are not evaluated or included if the sample was analyzed by a method sufficiently sensitive to detect the constituent at the level of concern.

Comment: The commenter expressed concern that DAF scaling factors were

not linearly related to waste volumes at annual waste volumes less than 20,000 cubic yards, while the proposed exclusion implied the relationship was linear.

Response: The commenter is correct in that the DAF scaling factors are not linearly related to annual waste volume for volumes less than 20,000 cubic yards. The relationship is approximated by EPA as an exponential function. References to linearity and DAF scaling factors in the proposed rule were misleading. The DAF scaling factors of one constituent are assumed to be directly proportional to DAF scaling factors of other constituents, not linearly related to volume.

Additional corrections to the proposed exclusion:

The delisting factors for dioxin and furan congeners in the proposed rule have been corrected to reflect the increased rate of fish ingestion attributed to high-risk subpopulations in Region 5, as intended in the proposed exclusion. The correct congener-specific factors are as follows: 2,3,7,8-TCDD -7.46×10^{-2}; 1,2,3,7,8-PeCDD -7.18×10^{-2}; 1,2,3,4,7,8-HxCDD -2.41×10^{-3}; 1,2,3,6,7,8-HxCDD -9.82×10^{-4}; 1,2,3,7,8,9-HxCDD -1.09×10^{-3}; 1,2,3,4,6,7,8-HpCDD -4.20×10^{-5}; OCDD -1.01×10^{-7}; 2,3,7,8-TCDF -5.08×10^{-3}; 1,2,3,7,8-PeCDF -8.17×10^{-4}; 2,3,4,7,8-PeCDF -5.97×10^{-2}; 1,2,3,4,7,8-HxCDF -5.97×10^{-4}; 1,2,3,6,7,8-HxCDF -1.46×10^{-3}; 2,3,4,6,7,8-HxCDF -4.90×10^{-3}; 1,2,3,7,8,9-HxCDF -5.30×10^{-3}; 1,2,3,4,6,7,8-HpCDF -8.78×10^{-6}; 1,2,3,4,7,8,9-HpCDF -3.11×10^{-4}; and OCDF -1.35×10^{-7}.

The congener specific factors multiplied by the congener concentration in the waste provide the individual risk posed by each congener. The sum of these risks must not exceed the target risk level of 1×10^{-6}.

V. Regulatory Impact

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a rule of general applicability and therefore is not a ''regulatory action'' subject to review by the Office of Management and Budget. Because this action is a rule of particular applicability relating to a facility, it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), or to sections 202, 204, and 205 of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Because the rule will affect only one facility, it will not significantly or uniquely affect small governments, as specified in section 203 of UMRA, or communities of tribal governments, as specified in Executive Order 13084 (63 FR 27655, May 10, 1998). For the same reason, this rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

This rule does not involve technical standards; thus, the requirements of section 12(c) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the ''Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings'' issued under the executive order. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

VI. Congressional Review Act

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 Congress and to the Comptroller General of the United States. EPA is not required to submit a rule report regarding today's action under section 801 because this is a rule of particular applicability. Section 804 exempts from section 801 the following types of rules: rules of particular applicability; rules relating to agency management or personnel; and rules of agency organization, procedure, or practice that do not substantially affect the rights or obligations of non agency parties (5 U.S.C. 804(3)). This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2). This rule will become effective on the date of publication in the **Federal Register**.

VII. Executive Order 12875

Under Executive Order 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a state, local, or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If the mandate is unfunded, EPA must provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected state, local, and tribal governments, the nature of their concerns, copies of written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of state, local, and tribal governments ''to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates.'' Today's rule does not create a mandate on state, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this rule.

List of Subjects in 40 CFR Part 261

Environmental protection, Hazardous waste, Recycling, Reporting and recordkeeping requirements.

Authority: Sec. 3001(f) RCRA, 42 U.S.C. 6921(f).

Dated: October 26, 2001.

Robert Springer,

Director, Waste, Pesticides and Toxics Division.

For the reasons set out in the preamble, 40 CFR part 261 is amended as follows:

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

1. The authority citation for part 261 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, 6922, and 6938.

2. In Table 1 of appendix IX of part 261 add the following waste stream in alphabetical order by facility to read as follows:

Appendix IX to Part 261—Wastes Excluded Under §§ 260.20 and 260.22.

TABLE 1.—WASTES EXCLUDED FROM NON-SPECIFIC SOURCES

Facility	Address	Waste description
*	*	* * * * *
American Metals Corporation.	Westlake, Ohio	Wastewater treatment plant (WWTP) sludges from the chemical conversion coating (phosphating) of aluminum (EPA Hazardous Waste No. F019) and other solid wastes previously disposed in an on-site landfill. This is a one-time exclusion for 12,400 cubic yards of landfilled WWTP sludge. This exclusion is effective on January 15, 2002. 1. *Delisting Levels:* (A) The constituent concentrations measured in the TCLP extract may not exceed the following levels (mg/L): antimony—1.52; arsenic—0.691; barium—100; beryllium—3.07; cadmium—1; chromium—5; cobalt—166; copper—67,300; lead—5; mercury—0.2; nickel—209; selenium—1; silver—5; thallium—0.65; tin—1,660; vanadium—156; and zinc—2,070. (B) The total constituent concentrations in any sample may not exceed the following levels (mg/kg): arsenic—9,280; mercury—94; and polychlorinated biphenyls—0.265. (C) Concentrations of dioxin and furan congeners cannot exceed values which would result in a cancer risk greater than or equal to 10^{-6} as predicted by the model. 2. *Verification Sampling*—USG shall collect six additional vertically composited samples of sludge from locations that compliment historical data and shall analyze the samples by TCLP for metals including antimony, arsenic, barium, beryllium, cadmium, chromium, lead, mercury, nickel, selenium, silver, thallium, tin, vanadium, and zinc. If the samples exceed the levels in Condition (1)(a), USG must notify EPA. The corresponding sludge and all sludge yet to be disposed remains hazardous until USG has demonstrated by additional sampling that all constituents of concern are below the levels set forth in condition 1. 3. *Reopener Language*—(a) If, anytime after disposal of the delisted waste, USG possesses or is otherwise made aware of any data (including but not limited to leachate data or groundwater monitoring data) or any other data relevant to the delisted waste indicating that any constituent identified in Condition (1) is at a level higher than the delisting level established in Condition (1), or is at a level in the groundwater exceeding maximum allowable point of exposure concentration referenced by the model, then USG must report such data, in writing, to the Regional Administrator within 10 days of first possessing or being made aware of that data. (b) Based on the information described in paragraph (a) and any other information received from any source, the Regional Administrator will make a preliminary determination as to whether the reported information requires Agency action to protect human health or the environment. Further action may include suspending, or revoking the exclusion, or other appropriate response necessary to protect human health and the environment. (c) If the Regional Administrator determines that the reported information does require Agency action, the Regional Administrator will notify USG in writing of the actions the Regional Administrator believes are necessary to protect human health and the environment. The notice shall include a statement of the proposed action and a statement providing USG with an opportunity to present information as to why the proposed Agency action is not necessary or to suggest an alternative action. USG shall have 10 days from the date of the Regional Administrator's notice to present the information. (d) If after 10 days USG presents no further information, the Regional Administrator will issue a final written determination describing the Agency actions that are necessary to protect human health or the environment. Any required action described in the Regional Administrator's determination shall become effective immediately, unless the Regional Administrator provides otherwise. 4. *Notifications*—USG must provide a one-time written notification to any State Regulatory Agency to which or through which the waste described above will be transported for disposal at least 60 days prior to the commencement of such activities. Failure to provide such a notification will result in a violation of the delisting petition and a possible revocation of the decision.
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[FR Doc. 02–955 Filed 1–14–02; 8:45 am]

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GENERAL SERVICES ADMINISTRATION

41 CFR Chapter 301

[FTR Amendment 100]

RIN 3090–AH52

Federal Travel Regulation; Maximum Per Diem Rates

AGENCY: Office of Governmentwide Policy, GSA.

ACTION: Final rule.

SUMMARY: To improve the ability of the per diem rates to meet the lodging demands of Federal travelers to high cost travel locations, the General Services Administration (GSA) has integrated the contracting mechanism of the new Federal Premier Lodging Program (FPLP) into the per diem rate-setting process.

An analysis of FPLP contracting actions and the lodging rate survey data reveals that the maximum per diem rate for the State of New York, city (borough) of Manhattan, should be increased and the maximum per diem rate for the State of New York, city (boroughs) of The Bronx, Brooklyn, and Queens, should be decreased to provide for the

reimbursement of Federal employees' lodging expenses covered by per diem rates. This final rule adjusts the maximum lodging amounts in the prescribed areas.

EFFECTIVE DATE: January 1, 2002.

FOR FURTHER INFORMATION CONTACT: Joddy P. Garner, Office of Governmentwide Policy, Travel Management Policy, at 202–501–4857.

SUPPLEMENTARY INFORMATION:

A. Background

In the past, properties in high cost travel areas have been under no obligation to provide lodging to Federal travelers at the prescribed per diem rate. Thus, GSA established the FPLP to contract directly with properties in high cost travel markets to make available a set number of rooms to Federal travelers at contract rates. FPLP contract results along with the lodging survey data are integrated together to determine reasonable per diem rates that more accurately reflect lodging costs in these areas. In addition, the FPLP will enhance the Government's ability to better meet its overall room night demand, and allow travelers to find lodging close to where they need to conduct business. After an analysis of this additional data, the maximum lodging amounts are being changed in the State of New York, cities (boroughs) of Manhattan, The Bronx, Brooklyn, and Queens.

B. Executive Order 12866

GSA has determined that this final rule is not a significant regulatory action for the purposes of Executive Order 12866 of September 30, 1993.

C. Regulatory Flexibility Act

This final rule is not required to be published in the **Federal Register** for notice and comment; therefore, the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, does not apply.

D. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because this final rule does not impose recordkeeping or information collection requirements, or the collection of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget under 44 U.S.C. 501 *et seq.*

E. Small Business Regulatory Enforcement Fairness Act

This final rule is also exempt from congressional review prescribed under 5 U.S.C. 801 since it relates solely to agency management and personnel.

List of Subjects 41 CFR Chapter 301

Government employees, Travel and transportation expenses.

For the reasons set forth in the preamble, under 5 U.S.C. 5701–5709, 41 CFR chapter 301 is amended as follows:

CHAPTER 301—TEMPORARY DUTY (TDY) TRAVEL ALLOWANCES

1. Appendix A to chapter 301 is amended as follows:

a. On the page that includes entries for the State of New York, under the State of New York, city of The Bronx/Brooklyn/Queens, column three (maximum lodging amount) is revised to read ''168''.

b. On the page that includes entries for the State of New York, under the State of New York, city of Manhattan, column three (maximum lodging amount) is revised to read ''208''.

The revised page containing the amendments to the table set forth above reads as follows:

Appendix A to Chapter 301—Prescribed Maximum Per Diem Rates for CONUS

* * * * *

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Per diem locality: Key city[1]	County and/or other defined location [2], [3]	Maximum lodging amount **(room rate only—no taxes)** (a)	+	M&IE rate (b)	=	Maximum per diem rate [4] (c)
Princeton/Trenton	Mercer	139		42		181
Tom's River	Ocean					
(May 15-September 15)		89		38		127
(September 16-May 14)		79		38		117
Union County	Union	107		38		145
NEW MEXICO						
Albuquerque	Bernalillo	65		38		103
Cloudcroft	Otero					
(June 1-October 31)		74		30		104
(November 1-May 31)		65		30		95
Los Alamos	Los Alamos	71		34		105
Santa Fe	Santa Fe	99		46		145
Taos	Taos	75		34		109
NEW YORK						
Albany	Albany	96		42		138
The Bronx/Brooklyn/Queens	The boroughs of The Bronx, Brooklyn and Queens	168		46		214
Buffalo	Erie	78		42		120
Glens Falls	Warren					
(June 1-September 30)		74		34		108
(October 1-May 31)		55		34		89
Ithaca	Tompkins	69		34		103
Kingston	Ulster	79		38		117
Lake Placid	Essex					
(June 15-October 15)		86		38		124
(October 16-June 14)		59		38		97
Manhattan	The borough of Manhattan	208		46		254
Nassau County/Great Neck	Nassau	190		42		232
Niagara Falls	Niagara					
(May 1-October 31)		89		34		123
(November 1-April 30)		55		34		89
Nyack/Palisades	Rockland					
(April 1-September 30)		67		38		105
(October 1-March 31)		57		38		95
Owego	Tioga	73		30		103
Poughkeepsie	Dutchess	74		38		112
Rochester	Monroe	83		42		125
Saratoga Springs	Saratoga					
(July 1-October 31)		95		38		133
(November 1-June 30)		75		38		113
Staten Island	Richmond	120		42		162
Suffolk County	Suffolk	149		38		187
Syracuse	Onondaga	70		34		104
Tarrytown	Westchester (except White Plains)	114		42		156
Waterloo/Romulus	Seneca					
(June 15-September 15)		89		34		123
(September 16-June 14)		69		34		103
Watkins Glen	Schuyler	59		34		93
West Point	Orange	121		34		155

Dated: December 27, 2001.

Stephen A. Perry,

Administrator of General Services.

[FR Doc. 02–926 Filed 1–14–02; 8:45 am]

BILLING CODE 6820–14–C

GENERAL SERVICES ADMINISTRATION

41 CFR Part 301–10

[FTR Amendment 101]

RIN 3090–AH54

Federal Travel Regulation; Privately Owned Vehicle Mileage Reimbursement

AGENCY: Office of Governmentwide Policy, GSA.

ACTION: Final rule.

SUMMARY: This final rule increases the mileage reimbursement rate for use of a privately owned vehicle (POV) on official travel to reflect current costs of operation as determined in cost studies conducted by the General Services Administration (GSA). The governing regulation is revised to increase the mileage allowance for advantageous use of a privately owned airplane from 96.5 to 97.5 cents per mile, the cost of operating a privately owned automobile from 34.5 to 36.5 cents per mile, and the cost of operating a privately owned motorcycle from 27.5 to 28.0 cents per mile.

EFFECTIVE DATE: This final rule is effective January 21, 2002.

FOR FURTHER INFORMATION CONTACT: Devoanna R. Reels, Program Analyst, telephone 202–501–3781.

SUPPLEMENTARY INFORMATION:

A. Background

Pursuant to 5 U.S.C. 5707(b), the Administrator of General Services has the responsibility to establish the privately owned vehicle (POV) mileage reimbursement rates. Separate rates are set for airplanes, automobiles (including trucks), and motorcycles. In order to set these rates, GSA is required to conduct periodic investigations, in consultation with the Secretaries of Defense and Transportation, and representatives of Government employee organizations, of the cost of travel and the operation of POVs to employees while engaged on official business. As required, GSA conducted an investigation of the costs of operating a POV and is reporting the cost per mile determination. The results of the investigation have been reported to Congress and a copy of the report appears as an attachment to this document. GSA's cost studies show the Administrator of General Services has determined the per-mile operating costs of a POV to be 97.5 cents for airplanes, 36.5 cents for automobiles, and 28.0 cents for motorcycles. As provided in 5 U.S.C. 5704(a)(1), the automobile reimbursement rate cannot exceed the single standard mileage rate established by the Internal Revenue Service (IRS). The IRS has announced a new single standard mileage rate for automobiles of 36.5 cents effective January 1, 2002.

B. Regulatory Flexibility Act

This final rule is not required to be published in the **Federal Register** for notice and comment; therefore, the Regulatory Flexibility Act does not apply.

C. Executive Order 12866

GSA has determined that this final rule is not a significant regulatory action for the purposes of Executive Order 12866 of September 30, 1993.

D. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because this final rule does not impose recordkeeping or information collection requirements, or the collection of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget (OMB) under 44 U.S.C. 3501, *et seq.*

E. Small Business Regulatory Enforcement Fairness Act

This final rule is also exempt from congressional review prescribed under 5 U.S.C. 801 since it relates solely to agency management and personnel.

List of Subjects in 41 CFR Part 301–10

Government employees, Travel and transportation expenses.

For the reasons set forth in the preamble, 41 CFR part 301–10 is amended to read as follows:

PART 301–10—TRANSPORTATION EXPENSES

1. The authority citation for 41 CFR part 301–10 continues to read as follows:

Authority: 5 U.S.C. 5707; 40 U.S.C. 486(c); 49 U.S.C. 40118.

2. Section 301–10.303 is amended by revising the entries Privately owned airplane, Privately owned automobile, and Privately owned motorcycle in the table to read as follows:

§ 301–10.303 What am I reimbursed when use of a POV is determined by my agency to be advantageous to the Government?

For use of a	Your reimbursement is
* * * * *	
Privately owned airplane	[1] 97.5
Privately owned automobile	[1] 36.5
Privately owned motorcycle	[1] 28.0

[1] Cents per mile.

Dated: January 8, 2002.

Stephen A. Perry,

Administrator of General Services.

Attachment to Preamble—Report to Congress on the Costs of Operating Privately Owned Vehicles

Subparagraph (b)(1)(A) of section 5707 of Title 5, United States Code, requires the Administrator of General Services, in consultation with the Secretaries of Defense and Transportation, and representatives of Government employee organizations, to periodically investigate the cost of travel and the operation of privately owned vehicles (airplanes, automobiles, and motorcycles) to Government employees while on official business, to report the results of the investigations to Congress, and to publish the report in the **Federal Register**. This report is being published to comply with the requirements of the law.

Dated: January 8, 2002.

Stephen A. Perry,

Administrator of General Services.

Report to Congress

Subparagraph (b)(1)(A) of section 5707 of Title 5, United States Code, requires that the Administrator of General Services, in consultation with the Secretaries of Defense and Transportation, and representatives of Government employee organizations, conduct periodic investigations of the cost of travel and the operation of privately owned vehicles (POVs) (airplanes, automobiles, and motorcycles) to Government employees while on official business and report the results to Congress at least once a year. Subparagraph (b)(2)(B) of section 5707 of Title 5, United States Code, further requires that the Administrator of General Services determine the average, actual cost per mile for the use of each type of POV based on the results of the cost investigation. Such figures must be reported to Congress within 5 working days after the cost determination has been made in accordance with 5 U.S.C. 5707(b)(2)(C).

Pursuant to the requirements of subparagraph (b)(1)(A) of section 5707 of Title 5, United States Code, the General Services Administration (GSA), in consultation with the Secretaries of Defense and Transportation, and representatives of Government employee organizations, conducted an investigation of the cost of operating a privately owned automobile (POA). As provided in 5 U.S.C. 5704(a)(1),

the automobile reimbursement rate cannot exceed the single standard mileage rate established by the Internal Revenue Service (IRS). The IRS has announced a new single standard mileage rate for automobiles of 36.5 cents effective January 1, 2002.

As required, GSA is reporting the results of the investigation and the cost per mile determination. Based on cost studies conducted by GSA, I have determined the per-mile operating costs of a POV to be 97.5 cents for airplanes, 36.5 cents for automobiles, and 28.0 cents for motorcycles.

I will issue a regulation to increase the current 96.5 to 97.5 cents for privately owned airplanes, 34.5 to 36.5 cents for privately owned automobiles, and 27.5 to 28.0 cents for privately owned motorcycles. This report to Congress on the cost of operating POVs will be published in the **Federal Register**.

Stephen A. Perry,
Administrator of General Services.

[FR Doc. 02–927 Filed 1–14–02; 8:45 am]

BILLING CODE 6820–34–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 20

[CC Docket No. 94–102; DA 01–2885]

Petitions for Reconsideration Concerning PSAP Requests for Phase II Enhanced 911, Comments Invited

AGENCY: Federal Communications Commission.

ACTION: Final rule, petitions for reconsideration.

SUMMARY: The Commission seeks comment on petitions for reconsideration of its recent decision in this proceeding regarding universal Enhanced 911(E911) service. In that decision, the Commission amended its rules to clarify what constitutes a valid Public Safety Answering Point (PSAP) request for E911 service so as to trigger a wireless carrier's obligation to implement E911 within the six-month period following the date of the request. The current action is taken to establish a record from which the Commission can evaluate the merits of the petitions for reconsideration.

DATES: Comments are due on or before January 18, 2002, and reply comments are due on or before January 28, 2002.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Jane Phillips, 202–418–1310.

SUPPLEMENTARY INFORMATION: This is a summary of Commission's document in CC Docket No. 94–102, DA 01–2885, released on December 12, 2001. The complete text of this document is available for inspection and copying during normal business hours in the FCC Reference Information Center, Courtyard Level, 445 12th Street, SW., Washington, DC, and also may be purchased from the Commission's copy contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554. Copies of the full text of this decision may also be found at the Commission's Internet site at *www.fcc.gov.*

Synopsis of the Commission's Decision

1. The Commission solicits comment on petitions for reconsideration of its decision in this proceeding (66 FR 55618, November 2, 2001, and 66 FR 63093, December 4, 2001) filed by Sprint PCS (Sprint) on November 30, 2001, and by Cingular Wireless LLC (Cingular) on December 3, 2001. In that decision, the Commission amended its rules to clarify what constitutes a valid Public Safety Answering Point (PSAP) request for enhanced 911 (E911) service so as to trigger a wireless carrier's obligation to implement E911 within the six-month period following the date of the request. If challenged by the wireless carrier, the request will be deemed valid if the PSAP making the request demonstrates E911 readiness as provided in the amended rule, 47 CFR 20.18(j).

2. Sprint requests several amendments to the Commission's documentation requirements, and Cingular contends that the language of amended § 20.18(j) is internally inconsistent and contradicts previous Commission's statements and that the decision violates the notice and comment requirement of the Administrative Procedure Act and is arbitrary and capricious.

3. The petitions are available for public inspection during regular business hours in the FCC Public Reference Room, Room CY–A257, 445 12th Street, NW., Washington, DC 20554. Petitions and comments may also be viewed electronically by accessing the Commission Internet site at *www.fcc.gov* or purchased from the Commission's copy contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554.

4. Pursuant to 47 CFR 1.1200(a), this proceeding is designated as a ''permit but disclose'' proceeding and subject to § 1.1206 of the Commission's rules. Presentations to or from Commission decision-making personnel are permissible, provided that *ex parte* presentations are disclosed pursuant to 47 CFR 1.1206.

5. Interested parties may file comments or oppositions responding to the petitions on or before January 18, 2002, and reply comments on or before January 28, 2002. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. Comments filed through the ECFS can be sent via the Internet to *http://www.fcc/e-file/ecfs.html.* Only one copy of an electronic submission must be filed. In completing the transmittal screen, commenters should include their full name, postal service mailing address, and the applicable docket or rulemaking number.

6. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail message to *ecfs@fcc.gov*, and should include the following words in the body of the message, ''get form<your e-mail address>. A sample form and directions will be sent.

Parties who choose to file by paper must file an original and four copies of each filing. All filings must be sent to the Commission's Secretary, Magalie Roman Salas, Office of the Secretary, Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554. A copy should also be sent to Jane Phillips, Room 3A–200.

Federal Communications Commission.

Kris Anne Monteith,

Chief, Policy Division, Wireless Telecommunications Bureau.

[FR Doc. 02–1165 Filed 1–14–02; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Part 214

[Docket No. FRA–2001–10426]

RIN 2130–AA48

Railroad Workplace Safety

AGENCY: Federal Railroad Administration (FRA),(DOT).

ACTION: Interim final rule.

SUMMARY: FRA is amending regulations on Railroad Workplace Safety to eliminate a provision which could present undue hazards to persons, and to eliminate possible confusion regarding the use of various terms in the rule text. In particular, FRA is prohibiting the use of body belts as permissible components of personal fall arrest systems, and is revising references to railroad bridge workers as

''employees'' to eliminate potential confusion in determining the group of people to which the Bridge Worker Safety Standards apply.

DATES: *Effective Date:* This rule becomes effective on March 18, 2002. Written comments must be received no later than March 1, 2002. Comments received after that date will be considered to the extent possible without incurring additional expense or delay. Requests for formal extension of the comment period must be made by February 14, 2002.

ADDRESSES: Comments should be sent to the Docket Clerk, Docket Management System, U.S. Department of Transportation Room PL 401, 400 Seventh Street, SW., Washington, DC 20590–0001. Comments should identify the docket number and this proceeding (Docket No. FRA–2001). If you wish to receive confirmation of receipt of your written comments, please include a self-addressed, stamped postcard.

The docket management system is located on the Plaza level of the Nassif Building at the Department of Transportation at the above address. You can review public dockets there between the hours of 9 a.m. and 5 p.m., Monday through Friday, except federal holidays. You can also review comments on-line at the DOT Docket Management System web site at *http://dms.dot.gov.*

You may submit comments electronically by accessing the Docket Management System web site at *http://dms.dot.gov* and following the instructions for submitting a document electronically.

FOR FURTHER INFORMATION CONTACT: Gordon A. Davids, Bridge Engineer, Office of Safety, FRA, 1120 Vermont Avenue NW., Washington, DC 20590, Telephone: (202) 493–6320; or Cynthia Walters, Trial Attorney, Office of Chief Counsel, FRA, 1120 Vermont Avenue NW., Washington, DC 20590, Telephone: (202) 493–6027.

SUPPLEMENTARY INFORMATION:

Background

On June 24, 1992, at 57 FR 28127, FRA issued the first of two parts of the Railroad Workplace Safety Regulations, 49 CFR part 214. That rulemaking included the original Subpart A, General, with the first definitions, and Subpart B, Bridge Worker Safety Standards. Those standards were based upon the best information available at that time on personal fall protection systems. Since that time, knowledge of the interaction between persons and fall arrest equipment has advanced, and it is now obvious that a formerly permitted use of body belts in fall arrest systems presents an undue hazard to the user.

FRA substantially amended part 214 on December 16, 1996, by adding Subpart C, Roadway Worker Protection Standards, and by adding and amending definitions to accommodate the new Subpart C. In particular, the definition of ''employee'' was expanded to include all railroad employees affected by Part 214 in its entirety, where before the term had applied only to railroad bridge workers. Although a definition of ''railroad bridge worker'' was added, the term ''employee'' remained in the rule text of Subpart B. Of course, Subpart B specifically stated that it applied to railroad employees ''performing work on railroad bridges'' (see original § 214.101(b)), so its intended scope was clear. Nevertheless, to avoid any mistaken conclusion that the use of ''employee'' in Subpart B was intended to somehow expand the coverage of the Subpart, we have decided to simply make use of the existing definition of ''railroad bridge worker'' where appropriate in Subpart B.

Public Participation

The Administrative Procedure Act (5 U.S.C. 551–559) permits an agency to dispense with notice of rulemaking when the agency ''for good cause finds that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.'' 5 U.S.C. 553(b)(B). FRA finds that notice and public procedure are, in this case, unnecessary and contrary to the public interest for the reasons set forth below.

FRA received a petition for this rulemaking from the Brotherhood of Maintenance of Way Employes (BMWE). Also, the Brotherhood of Railroad Signalmen (BRS), the Association of American Railroads (AAR), and the American Short Line and Regional Railroad Association (ASLRRA) submitted letters of support and agreement with BMWE's position on eliminating the use of body belts in fall arrest systems. These four organizations represent an overwhelming majority of both the railroad employees (BMWE and BRS) and railroad employers (AAR and ASLRRA) who would be affected by this rulemaking. FRA is not aware of any opposition to BMWE's petition regarding the use of body belts. In addition, the U.S. Occupational Safety and Health Administration now prohibits the use of safety belts in the workplaces it regulates. Further, the remaining provisions of this rulemaking involve minor technical amendments to achieve clear and consistent terminology throughout part 214. These amendments do not expand the scope of the rule, nor do they impose additional burdens on those covered by the rule. Finally, FRA finds that any further delay in issuance of this rule could expose bridge workers to unnecessary hazard from the use of body belts in fall arrest systems.

FRA believes that safety and the non-controversial nature of these changes justify the issuance of an interim final rule. FRA will consider, however, any comments received during the post-publication comment period before it issues a final rule in this proceeding.

Section-by-Section Analysis

1. Editorial Corrections to the Regulation.

With the amendment of December 16, 1996, the term ''employee'' continued in use in Subpart B, despite having added the definition of ''railroad bridge worker'' or ''bridge worker'' to Subpart A. Although the purpose and scope provision of Section 214.101 limits applicability of the Subpart, the rule provisions using the term ''employee'' are themselves potentially confusing. In addition, there are other provisions where the term ''employee'' is used when the employment relationship is not relevant to the intent of the rule. In those instances, the term employee has been changed to the word ''person.'' For example, a reference to anchorages capable of supporting 5,000 pounds ''per employee'' has been revised to 5,000 pounds ''per person,'' as the employment relationship is not truly relevant to the intent of that particular provision. The affected provisions of the rule are Section 214.7, ''Definitions''; Section 214.103, ''Fall protection generally''; Section 214.105, ''Fall protection system standards and practices''; Section 214.107, ''Working over or adjacent to water''; Section 214.111, ''Personal protective equipment, generally''; Section 214.113, ''Head protection''; Section 214.115, ''Foot protection''; and Section 214.117, ''Eye and face protection''. Changes in the definition section involve changing the word ''employee'' to the word ''person'' in five definitions. These definitions are body harness, deceleration device, free fall distance, lanyard, and personal fall arrest system. Changes in the other cited sections involve changing the word ''employee'' to the term ''bridge worker'' to avoid any possible confusion as to the appropriate group to which these standards apply. As previously noted, these revisions are for clarification only. The changes do not expand the scope of the rule to include railroad or contractor employees previously not covered, nor

do they impose new or additional burdens on those covered by the rule. An additional minor correction involves correcting a reference to ''Information and collection'' in Section 214.302, to read ''Information collection.''

2. Use of Body Belt as a Component of Personal Fall Arrest System

The section analysis of the final rule of June 24, 1992, for section 214.7, ''Definitions,'' included the following language related to body belts:

> Many commenters urged FRA to update this definition to reflect current terminology, including the addition of a deceleration device following lanyard and lifeline. Also, most commenters stated that use of body harnesses, rather than body belts, is now preferred practice. The body belt does not absorb stress forces in a fall as well as a harness can, and therefore, may cause serious internal injury to the wearer. According to commenters, many companies no longer manufacture belts because of this risk, and the construction industry will phase out their use in the near future. However, there are limited situations, climbing poles for instance, in which belts can be utilized safely. 57 FR 28116 at 28118

In this Interim Final Rule, FRA adopts the definition used by OSHA that reflects current trade language. Although the final rule permitted the use of safety belts, use of harnesses was obviously preferred even then.

FRA has monitored the development and use of fall arrest systems in the railroad industry since this regulation was published, and has determined that body belts are seldom, if ever, used for fall protection in the railroad industry. Full body harnesses have become the universally accepted device for attaching persons to fall arrest systems. They are no more costly than are body belts, and there are no known disadvantages to their use as compared to body belts.

FRA's concern over the use of body belts for fall arrest has been strengthened over the past several years. That concern is shared by railroad management, railroad employees, contractors, and suppliers of fall protection equipment. Testing and demonstrations have shown that a person who is suspended by a body belt for only a minute or two will suffer extreme discomfort, and for any longer period, will begin to suffer disarrangement of internal organs. Add to that the 900-pound impact of an arrested fall, and severe injury is almost inevitable. The effect of impact load on a live person using a body belt has not been tested due to the lack of willing subjects for the test, but the probability of injury can still be predicted with confidence.

Owing to this shared concern, as explained above, the BMWE has petitioned FRA to prohibit the use of body belts for this purpose, and FRA agrees. The BRS has written in support of the BMWE petition, together with the ASLRRA and the AAR.

3. Use of Ring Buoys for Protection of Persons Working Over Water

BMWE also petitioned FRA to amend the regulation to provide either 110 feet of line on life buoys, or to prescribe a spacing closer than 200 feet between them. The current Section 214.107 states:

§ 214.107 Working over or adjacent to water.

> (a) Employees working over or adjacent to water with a depth of four feet or more, or where the danger of drowning exists, shall be provided and shall use life vests or buoyant work vests in compliance with U.S. Coast Guard requirements in 46 CFR sections 160.047, 160.052, and 160.053. Life preservers in compliance with U.S. Coast Guard requirements in 46 CFR 160.055 shall also be within ready access. This section shall not apply to employees using personal fall arrest systems or safety nets that comply with this subpart.
>
> * * * * *
>
> (d) Where life vests are required by paragraph (a) of this section, ring buoys with at least 90 feet of line shall be provided and readily available for emergency rescue operations. Distance between ring buoys shall not exceed 200 feet.

The apparent discrepancy which BMWE wishes to see addressed is the difference between twice the length of 90 feet of line, or 180 feet, and the 200-foot spacing of the ring buoys. There would appear to be a 20-foot gap in coverage in the middle of the space between two ring buoys, where the lines would not reach. This concern also prevailed among FRA staff, BRS, and several railroad officials who were involved in the discussions on this matter over the past several years.

Upon further investigation, however, it was found that in actual practice, free ends of the buoy lines are seldom attached to fixed objects on the bridge. In practice, the line is normally coiled with the buoy, so that the entire buoy and line can be lifted from their hanger and carried to the location from which the buoy is to be thrown to a person in the water. The person throwing the buoy either secures the free end of the buoy line at that point, or holds it in the free hand. Most people are not capable of throwing a buoy 90 feet, so there is little chance of the buoy line being jerked from the user's hand. The spacing of the ring buoys, therefore, is not related to their length. The maximum of 200 feet between the buoys is simply intended to make sure that people can get to them quickly and get them where they are needed.

Leaving the free end of the buoy line unattached while the buoy is in its holder is preferred because the buoy might be needed several hundred feet away, as would be the case if several persons were in the water. That being the case, several buoys could be quickly obtained and thrown by several persons, without having to first untie the buoy lines. FRA has therefore decided not to amend § 214.107 concerning the positioning and use of ring buoys.

Regulatory Impact

E.O. 12866 and DOT Regulatory Policies and Procedures

This correction and amendment of the final rule has been evaluated in accordance with existing policies and procedures and is not considered significant under Executive Order 12866 or under DOT policies and procedures. The minor technical changes made in this amendment will not increase the costs or alter the benefits associated with this regulation to any measurable degree.

Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) requires a review of rules to assess their impact on small entities. This amendment to the final rule clarifies existing requirements. The changes will have no new direct or indirect economic impact on small units of government, businesses, or other organizations. Therefore, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the provisions of the Regulatory Flexibility Act.

Paperwork Reduction Act

There are no paperwork requirements associated with this amendment of the final rule.

Environmental Impact

FRA has evaluated this amendment in accordance with its procedures for ensuring full consideration of the environmental impact of FRA actions, as required by the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*), other environmental statutes, Executive Orders, and DOT Order 5610.1c. The amendment meets the criteria establishing this as a nonmajor action for environmental purposes.

Federalism Implications

This amendment will not have a substantial effect on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Thus, in accordance with Executive Order 13132, preparation of a Federalism Assessment is not warranted.

List of Subjects in 49 CFR Part 214

Bridges, Fall arrest equipment, Incorporation by reference, Occupational safety and health, Personal protective equipment, Railroad employees, Railroad safety.

The Interim Final Rule

In consideration of the foregoing, Part 214, Title 49, Code of Federal Regulations is amended as follows:

PART 214—[AMENDED]

1. The authority for part 214 continues to read as follows:

Authority: 49 U.S.C. 20103, 20107; and 49 CFR 1.49.

2. By revising the following definitions in § 214.7 to read as follows:

§ 214.7 Definitions.

* * * * *

Body harness means a device with straps that is secured about the person in a manner so as to distribute the fall arrest forces over (at least) the thighs, shoulders, pelvis, waist, and chest and that can be attached to a lanyard, lifeline, or deceleration device.

* * * * *

Deceleration device means any mechanism, including, but not limited to, rope grabs, ripstitch lanyards, specially woven lanyards, tearing or deforming lanyards, and automatic self-retracting lifelines/lanyards that serve to dissipate a substantial amount of energy during a fall arrest, or otherwise limit the energy on a person during fall arrest.

* * * * *

Free fall distance means the vertical displacement of the fall arrest attachment point on a person's body harness between onset of the fall and the point at which the system begins to apply force to arrest the fall. This distance excludes deceleration distance and lifeline and lanyard elongation, but includes any deceleration device slide distance or self-retracting lifeline/lanyard extension before they operate and fall arrest forces occur.

* * * * *

Lanyard means a flexible line of rope, wire rope, or strap that is used to secure a body harness to a deceleration device, lifeline, or anchorage.

* * * * *

Personal fall arrest system means a system used to arrest the fall of a person from a working level. It consists of an anchorage, connectors, body harness, lanyard, deceleration device, lifeline, or combination of these.

* * * * *

3. By revising § 214.103 to read as follows:

§ 214.103 Fall protection, generally.

(a) Except as provided in paragraphs (b) through (d) of this section, when bridge workers work twelve feet or more above the ground or water surface, they shall be provided and shall use a personal fall arrest system or safety net system. All fall protection systems required by this section shall conform to the standards set forth in § 214.105 of this subpart.

(b)(1) This section shall not apply if the installation of the fall arrest system poses a greater risk than the work to be performed. In any action brought by FRA to enforce the fall protection requirements, the railroad or railroad contractor shall have the burden of proving that the installation of such device poses greater exposure to risk than performance of the work itself.

(2) This section shall not apply to bridge workers engaged in inspection of railroad bridges conducted in full compliance with the following conditions:

(i) The railroad or railroad contractor has a written program in place that requires training in, adherence to, and use of safe procedures associated with climbing techniques and procedures to be used;

(ii) The bridge worker to whom this exception applies has been trained and qualified according to that program to perform bridge inspections, has been previously and voluntarily designated to perform inspections under the provision of that program, and has accepted the designation;

(iii) The bridge worker to whom this exception applies is familiar with the appropriate climbing techniques associated with all bridge structures the bridge worker is responsible for inspecting;

(iv) The bridge worker to whom this exception applies is engaged solely in moving on or about the bridge or observing, measuring and recording the dimensions and condition of the bridge and its components; and

(v) The bridge worker to whom this section applies is provided all equipment necessary to meet the needs of safety, including any specialized alternative systems required.

(c) This section shall not apply where bridge workers are working on a railroad bridge equipped with walkways and railings of sufficient height, width, and strength to prevent a fall, so long as bridge workers do not work beyond the railings, over the side of the bridge, on ladders or other elevation devices, or where gaps or holes exist through which a body could fall. Where used in place of fall protection as provided for in § 214.105, this paragraph (c) is satisfied by:

(1) Walkways and railings meeting standards set forth in the American Railway Engineering Association's Manual for Railway Engineering; and

(2) Roadways attached to railroad bridges, provided that bridge workers on the roadway deck work or move at a distance six feet or more from the edge of the roadway deck, or from an opening through which a person could fall.

(d) This section shall not apply where bridge workers are performing repairs or inspections of a minor nature that are completed by working exclusively between the outside rails, including but not limited to, routine welding, spiking, anchoring, spot surfacing, and joint bolt replacement.

4. By revising § 214.105 to read as follows:

§ 214.105 Fall protection systems standards and practices.

(a) *General requirements.* All fall protection systems required by this subpart shall conform to the following:

(1) Fall protection systems shall be used only for personal fall protection.

(2) Any fall protection system subjected to impact loading shall be immediately and permanently removed from service unless fully inspected and determined by a competent person to be undamaged and suitable for reuse.

(3) All fall protection system components shall be protected from abrasions, corrosion, or any other form of deterioration.

(4) All fall protection system components shall be inspected prior to each use for wear, damage, corrosion, mildew, and other deterioration. Defective components shall be permanently removed from service.

(5) Prior to use and after any component or system is changed, bridge workers shall be trained in the application limits of the equipment, proper hook-up, anchoring and tie-off techniques, methods of use, and proper methods of equipment inspection and storage.

(6) The railroad or railroad contractor shall provide for prompt rescue of bridge workers in the event of a fall.

(7) Connectors shall have a corrosion-resistant finish, and all surfaces and edges shall be smooth to prevent damage to interfacing parts of the system.

(8) Connectors shall be drop forged, pressed or formed steel, or made of equivalent-strength materials.

(9) Anchorages, including single- and double-head anchors, shall be capable of supporting at least 5,000 pounds per bridge worker attached, or shall be designed, installed, and used under supervision of a qualified person as part of a complete personal fall protection system that maintains a safety factor of at least two.

(b) *Personal fall arrest systems.* All components of a personal fall arrest system shall conform to the following standards:

(1) Lanyards and vertical lifelines that tie off one bridge worker shall have a minimum breaking strength of 5,000 pounds.

(2) Self-retracting lifelines and lanyards that automatically limit free fall distance to two feet or less shall have components capable of sustaining a minimum static tensile load of 3,000 pounds applied to the device with the lifeline or lanyard in the fully extended position.

(3) Self-retracting lifelines and lanyards that do not limit free fall distance to two feet or less, ripstitch, and tearing and deformed lanyards shall be capable of withstanding 5,000 pounds applied to the device with the lifeline or lanyard in the fully extended position.

(4) Horizontal lifelines shall be designed, installed, and used under the supervision of a competent person, as part of a complete personal fall arrest system that maintains a safety factor of at least two.

(5) Lifelines shall not be made of natural fiber rope.

(6) Body belts shall not be used as components of personal fall arrest systems.

(7) The personal fall arrest system shall limit the maximum arresting force on a bridge worker to 1,800 pounds when used with a body harness.

(8) The personal fall arrest system shall bring a bridge worker to a complete stop and limit maximum deceleration distance a bridge worker travels to 3.5 feet.

(9) The personal fall arrest system shall have sufficient strength to withstand twice the potential impact energy of a bridge worker free falling a distance of six feet, or the free fall distance permitted by the system, whichever is less.

(10) The personal fall arrest system shall be arranged so that a bridge worker cannot free fall more than six feet and cannot contact the ground or any lower horizontal surface of the bridge.

(11) Personal fall arrest systems shall be worn with the attachment point of the body harness located in the center of the wearer's back near shoulder level, or above the wearer's head.

(12) When vertical lifelines are used, each bridge worker shall be provided with a separate lifeline.

(13) Devices used to connect to a horizontal lifeline that may become a vertical lifeline shall be capable of locking in either direction.

(14) Dee-rings and snap-hooks shall be capable of sustaining a minimum tensile load of 3,699 pounds without cracking, breaking, or taking permanent deformation.

(15) Dee-rings and snap-hooks shall be capable of sustaining a minimum tensile load of 5,000 pounds.

(16) Snap-hooks shall not be connected to each other.

(17) Snap-hooks shall be dimensionally compatible with the member to which they are connected to prevent unintentional disengagement, or shall be a locking snap-hook designed to prevent unintentional disengagement.

(18) Unless of a locking type, snap-hooks shall not be engaged:

(i) Directly, next to a webbing, rope, or wire rope;

(ii) To each other;

(iii) To a dee-ring to which another snap-hook or other connector is attached;

(iv) To a horizontal lifeline; or

(v) To any object that is incompatibly shaped or dimensioned in relation to the snap-hook so that unintentional disengagement could occur.

(c) *Safety net systems.* Use of safety net systems shall conform to the following standards and practices:

(1) Safety nets shall be installed as close as practicable under the walking/working surface on which bridge workers are working, but shall not be installed more than 30 feet below such surface.

(2) If the distance from the working surface to the net exceeds 30 feet, bridge workers shall be protected by personal fall arrest systems.

(3) The safety net shall be installed such that any fall from the working surface to the net is unobstructed.

(4) Except as provided in this section, safety nets and net installations shall be drop-tested at the jobsite after initial installation and before being used as a fall protection system, whenever relocated, after major repair, and at six-month intervals if left in one place. The drop-test shall consist of a 400-pound bag of sand 30 inches, plus or minus two inches, in diameter dropped into the net from the highest (but not less than 3½ feet) working surface on which bridge workers are to be protected.

(i) When the railroad or railroad contractor demonstrates that a drop-test is not feasible and, as a result, the test is not performed, the railroad or railroad contractor, or designated competent person, shall certify that the net and its installation are in compliance with the provisions of this section by preparing a certification record prior to use of the net.

(ii) The certification shall include an identification of the net, the date it was determined that the net was in compliance with this section, and the signature of the person making this determination. Such person's signature shall certify that the net and its installation are in compliance with this section. The most recent certification for each net installation shall be available at the jobsite where the subject net is located.

(5) Safety nets and their installations shall be capable of absorbing an impact force equal to that produced by the drop test specified in this section.

(6) The safety net shall be installed such that there is no contact with surfaces or structures below the net when subjected to an impact force equal to the drop test specified in this section.

(7) Safety nets shall extend outward from the outermost projection of the work surface as follows:

(i) When the vertical distance from the working level to the horizontal plane of the net is 5 feet or less, the minimum required horizontal distance of the outer edge of the net beyond the edge of the working surface is 8 feet.

(ii) When the vertical distance from the working level to the horizontal plane of the net is 5 feet, but less than 10 feet, the minimum required horizontal distance of the outer edge of the net beyond the edge of the working surface is 10 feet.

(iii) When the vertical distance from the working level to the horizontal plane of the net is more than 10 feet, the minimum required horizontal distance of the outer edge of the net beyond the edge of the working surface is 13 feet.

(8) Defective nets shall not be used. Safety nets shall be inspected at least once a week for mildew, wear, damage, and other deterioration. Defective components shall be removed permanently from service.

(9) Safety nets shall be inspected after any occurrence that could affect the integrity of the safety net system.

(10) Tools, scraps, or other materials that have fallen into the safety net shall be removed as soon as possible, and at least before the next work shift.

(11) Each safety net shall have a border rope for webbing with a minimum breaking strength of 5,000 pounds.

(12) The maximum size of each safety net mesh opening shall not exceed 36 square inches and shall not be longer than 6 inches on any side measured center-to-center of mesh ropes or webbing. All mesh crossing shall be secured to prevent enlargement of the mesh opening.

(13) Connections between safety net panels shall be as strong as integral net components and shall be spaced not more than 6 inches apart.

5. By revising § 214.107 paragraphs (a) and (b) to read as follows:

§ 214.107 Working over or adjacent to water.

(a) Bridge workers working over or adjacent to water with a depth of four feet or more, or where the danger of drowning exists, shall be provided and shall use life vests or buoyant work vests in compliance with U.S. Coast Guard requirements in 46 CFR 160.047, 160.052, and 160.053. Life preservers in compliance with U.S. Coast Guard requirements in 46 CFR 160.055 shall also be within ready access. This section shall not apply to bridge workers using personal fall arrest systems or safety nets that comply with this subpart.

(b) Life vests or buoyant work vests shall not be required when bridge workers are conducting inspections that involve climbing structures above or below the bridge deck.

* * * * *

6. By revising §§ 214.111, 214.113, 214.115 and 214.117 to read as follows:

§ 214.111 Personal protective equipment, generally.

With the exception of foot protection, the railroad or railroad contractor shall provide and the bridge worker shall use appropriate personal protective equipment described in this subpart in all operations where there is exposure to hazardous conditions, or where this subpart indicates the need for using such equipment to reduce the hazards to railroad bridge workers. The railroad or railroad contractor shall require the use of foot protection when the potential for foot injury exists.

§ 214.113 Head protection.

(a) Railroad bridge workers working in areas where there is a possible danger of head injury from impact, or from falling or flying objects, or from electrical shock and burns, shall be provided and shall wear protective helmets.

(b) Helmets for the protection of railroad bridge workers against impact and penetration of falling and flying objects, or from high voltage electrical shock and burns shall conform to the national consensus standards for industrial head protection (American National Standards Institute, Z89.1–1986, Protective Headwear for Industrial Workers). This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from the American National Standards Institute, 25 West 43rd Street, New York, NY 10036. Copies may be inspected at the Federal Railroad Administration, Docket Clerk, 1120 Vermont Avenue NW., Washington, DC, or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

§ 214.115 Foot protection.

(a) The railroad or railroad contractor shall require railroad bridge workers to wear foot protection equipment when potential foot injury may result from impact, falling or flying objects, electrical shock or burns, or other hazardous condition.

(b) Safety-toe footwear for railroad bridge workers shall conform to the national consensus standards for safety-toe footwear (American National Standards Institute, American National Standard Z41–1991, Standard for Personal Protection-Protective Footwear). This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from American National Standards Institute, 25 West 43rd Street, New York, NY 10036. Copies may be inspected at the Federal Railroad Administration, Docket Clerk, 1120 Vermont Avenue, Washington, DC, or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington DC.

§ 214.117 Eye and face protection.

(a) Railroad Bridge workers shall wear eye and face protection equipment when potential eye or face injury may result from physical, chemical, or radiant agents.

(b) Eye and face protection equipment required by this section shall conform to the national consensus standards for occupational and educational eye and face protection (American National Standards Institute, Z87.1–1989, Practice for Occupational and Educational Eye and Face Protection). This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from the American National Standards Institute, 25 West 43rd Street, New York, NY 10036. Copies may be inspected at the Federal Railroad Administration, Docket Clerk, 1120 Vermont Avenue, Washington, DC, or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(c) Face and eye protection equipment required by this section shall be kept clean and in good repair. Use of equipment with structural or optical defects is prohibited.

(d) Railroad bridge workers whose vision requires the use of corrective lenses, when required by this section to wear eye protection, shall be protected by goggles or spectacles of one of the following types:

(i) Spectacles whose protective lenses provide optical correction the, frame of which includes shielding against objects reaching the wearer's eyes around the lenses;

(ii) Goggles that can be worn over corrective lenses without disturbing the adjustment of the lenses; or

(iii) Goggles that incorporate corrective lenses mounted behind the protective lenses.

7. By correcting the heading of § 214.302 to read as follows:

§ 214.302 Information collection requirements.

Issued in Washington, DC on January 7, 2002.

Allan Rutter,

Federal Railroad Administrator.

[FR Doc. 02–723 Filed 1–14–02; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 010413094–1094–01; I.D. 010902A]

Magnuson-Stevens Fishery Conservation and Management Act Provisions; Fisheries of the Northeastern United States; Atlantic Deep-Sea Red Crab Fishery; Closure

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

ACTION: Closure.

SUMMARY: NMFS announces that, effective 0001 hours (l.t.), January 18, 2002, through May 14, 2002, notwithstanding any other regulations implemented for the Atlantic deep-sea red crab fishery, vessels may not fish for, possess, or land red crab in or from the U.S. exclusive economic zone (EEZ) in waters of the western Atlantic Ocean from 35°15.3′ N. lat., the latitude of Cape Hatteras Light, NC, northward to the U.S.-Canada border, in excess of 100 lb (45.4 kg) per trip. This action is based on a determination that the red crab total allowable catch (TAC) is projected to be reached as of January 18, 2002, and is necessary to prevent the fishery from exceeding the TAC established by the emergency rule that was published November 13, 2001.

DATES: Effective 0001 hours (l.t.), January 18, 2002, through 2400 hours, May 14, 2002.

FOR FURTHER INFORMATION CONTACT: E. Martin Jaffe, Fishery Policy Analyst, 978–281–9272, fax 978–281–9135, e-mail *martin.jaffe@noaa.gov* .

SUPPLEMENTARY INFORMATION: On May 8, 2001, NMFS published a red crab emergency interim rule (66 FR 23182) to address concerns that overfishing of the red crab resource may be occurring within the EEZ from Cape Hatteras Light, NC, northward to the U.S.-Canada border. This action contained measures that included a TAC of 2.5 million lb (1,134 mt) of red crab for the 180-day period of effectiveness for the rule. To help ensure that the TAC was not exceeded, this rule also contained regulations that required the closure of the directed red crab fishery as of the date NMFS determined that the total landings of red crab would reach or exceed the TAC. NMFS subsequently determined that the TAC was projected to be harvested prior to completion of the 180–day emergency action (through November 14, 2001) and on August 8, 2001, NMFS published notification of closure of the fishery effective August 17, 2001, through November 14, 2001, in the **Federal Register** (66 FR 41454).

On November 13, 2001, NMFS extended the expiration date of the emergency rule for an additional 180 days (through May 14, 2002) to continue protection of red crab while permanent measures are being developed by the New England Fishery Management Council (Council) (66 FR 56781). The extension adjusted the TAC for its 180–day duration to 2.16 million lb (979.8 mt). This TAC is based on one-half of an annual TAC of 5.0 million lb (2,268 mt), reduced by the overage caught during the initial emergency period (which was approximately 340,000 lb (154.22 mt)). The extension also contained regulations that require the closure of the directed red crab fishery as of the date NMFS determines that the total landings of red crab will reach or exceed the TAC.

NMFS has determined, based on landings and other available information, that 100 percent of the TAC for red crab will be harvested by January 18, 2002. Therefore, effective 0001 hours (l.t.), January 18, 2002, through May 14, 2002, notwithstanding any other regulations of subpart M of 50 CFR part 648, vessels may not fish for, possess, or land red crab from the U.S. EEZ in waters of the western Atlantic Ocean from 35°15.3′ N. lat., the latitude of Cape Hatteras Light, NC, northward to the U.S.-Canada border, in excess of 100 lb (45.4 kg) per trip.

Classification

This action is required by 50 CFR part 648 and is exempt from review under Executive Order 12866.

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

Dated: January 9, 2002.

Jonathan Kurland,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 02–866 Filed 1–9–02; 4:35 pm]

BILLING CODE 3510–22–S

Rules and Regulations

Federal Register
Vol. 67, No. 10
Tuesday, January 15, 2002

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 TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–388–AD; Amendment 39–12599; AD 2002–01–08]

RIN 2120–AA64

Airworthiness Directives; Israel Aircraft Industries, Ltd., Model Galaxy Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to certain Israel Aircraft Industries, Ltd., Model Galaxy airplanes. This action requires disabling the baggage compartment heating blanket system. This action is necessary to prevent a short circuit between the baggage compartment heating blankets and the electrical connectors, which could result in fire and smoke in the baggage compartment. This action is intended to address the identified unsafe condition.

DATES: Effective January 30, 2002.

Comments for inclusion in the Rules Docket must be received on or before February 14, 2002.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–388–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-iarcomment@faa.gov.* Comments sent via fax or the Internet must contain ''Docket No. 2001–NM–388–AD'' in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in this AD may be obtained from Galaxy Aerospace Corporation, One Galaxy Way, Fort Worth Alliance Airport, Fort Worth, Texas 76177. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Dan Rodina, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2125; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: The Civil Aviation Administration of Israel (CAAI), which is the airworthiness authority for Israel, recently notified the FAA that an unsafe condition may exist on certain Israel Aircraft Industries, Ltd., Model Galaxy airplanes. The CAAI advises that the excessive length of the electrical connector backshell hardware and the proximity of the connectors to the baggage compartment heating blankets could result in chafing. This condition, if not corrected, could result in short circuiting between the baggage compartment heating blankets and the electrical connectors, and consequent fire and smoke in the baggage compartment.

Explanation of Certain Service Information

The manufacturer has issued Galaxy (Israel Aircraft Industries) Alert Service Bulletin GALAXY–25A–109, dated December 18, 2001, which describes procedures for disabling the heating blankets by opening five circuit breakers and installing tie wrap around their necks, and labeling the switch ''INOP.'' The CAAI has approved this alert service bulletin and issued Israeli emergency airworthiness directive 25–01–12–17, dated December 18, 2001, as an interim action to address the continued airworthiness of these airplanes in Israel. The actions specified by the alert service bulletin parallel the requirements of the Israeli airworthiness directive.

FAA's Conclusions

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

Explanation of Requirements of Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, this AD is being issued to prevent a short circuit between the baggage compartment heating blankets and the electrical connectors, which could result in fire and smoke in the compartment. This AD requires disabling the baggage compartment heating blanket system. In addition, as recommended by the CAAI, this AD prohibits issuance of a special flight permit to operate the airplane to a location where the requirements of this AD can be accomplished.

Difference Between This AD and Israeli Airworthiness Directive/Service Bulletin

The Israeli emergency airworthiness directive mandates the immediate disabling of the heating blanket system. This AD allows operators 3 days to complete the required actions. The FAA recognizes the severity of the unsafe condition presented by this situation, but finds a 3-day compliance time appropriate in consideration of the safety implications, the average utilization rate of the affected fleet, and the practical aspects of planning and scheduling maintenance to accomplish the required actions on the fleet. The FAA has considered all these factors and determined that a 3-day compliance time is practicable and will not adversely affect the continued operational safety of the fleet.

Interim Action

This is considered to be interim action. The manufacturer has advised that it is currently developing procedures for inspecting the heating blankets and modifying the electrical connectors. These actions are intended to enable reactivation of the heating blanket system and positively address the unsafe condition addressed by this AD. Once these actions are developed, approved, and available, the FAA may consider additional rulemaking.

Determination of Rule's Effective Date

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

Comments Invited

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

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket 2001–NM–388–AD.'' The postcard will be date-stamped and returned to the commenter.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

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

2002–01–08 Israel Aircraft Industries, Ltd.: Amendment 39–12599. Docket 2001–NM–388–AD.

Applicability: Model Galaxy airplanes, certificated in any category, serial numbers 004 through 051 inclusive.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent a short circuit between the baggage compartment heating blankets and the electrical connectors, which could result in fire and smoke in the baggage compartment, accomplish the following:

Disabling the Baggage Compartment Heating Blanket System

(a) Within 3 days after the effective date of this AD, disable the baggage compartment heating blanket system by performing the actions in the remaining subparagraphs of paragraph (a) of this AD.

(1) Gain access to the left and right aft contactor boxes via access panels 151CL on the central fuselage and 162BR on the aft fuselage.

Note 2: The exact location of the access panels is identified in the GALAXY Maintenance Manual, Chapter 12–00–00.

(2) Open circuit breakers 17H and 19H (left box) and 16H, 18H, and 372H (right box). Secure the circuit breakers in the open position by installing tie wraps around their necks.

(3) Verify that the HEAT—BAGGAGE COMPRT switch on the right side of the overhead panel does not activate the blankets (ammeter check).

(4) Label the switch ''INOP.''

Note 3: Disabling the baggage compartment heating blanket system in accordance with Galaxy (Israel Aircraft Industries) Alert Service Bulletin GALAXY–25A–109, dated December 18, 2001, is acceptable for compliance with the requirements of this AD.

Alternative Methods of Compliance

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 4: Information concerning the existence of approved alternative methods of

compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permit Prohibition

(c) Special flight permits may NOT be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Note 5: The subject of this AD is addressed in Israeli emergency airworthiness directive 25–01–12–17, dated December 18, 2001.

Effective Date

(d) This amendment becomes effective on January 30, 2002.

Issued in Renton, Washington, on January 7, 2002.

Vi L. Lipski,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–799 Filed 1–14–02; 8:45 am]

BILLING CODE 4910–13–U

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Parts 4022 and 4044

Benefits Payable in Terminated Single-Employer Plans; Allocation of Assets in Single-Employer Plans; Interest Assumptions for Valuing and Paying Benefits

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: The Pension Benefit Guaranty Corporation's regulations on Benefits Payable in Terminated Single-Employer Plans and Allocation of Assets in Single-Employer Plans prescribe interest assumptions for valuing and paying benefits under terminating single-employer plans. This final rule amends the regulations to adopt interest assumptions for plans with valuation dates in February 2002. Interest assumptions are also published on the PBGC's Web site (*http://www.pbgc.gov*).

EFFECTIVE DATE: February 1, 2002.

FOR FURTHER INFORMATION CONTACT: Harold J. Ashner, Assistant General Counsel, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005, 202–326–4024. (TTY/TDD users may call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to 202–326–4024.)

SUPPLEMENTARY INFORMATION: The PBGC's regulations prescribe actuarial assumptions—including interest assumptions—for valuing and paying plan benefits of terminating single-employer plans covered by title IV of the Employee Retirement Income Security Act of 1974. The interest assumptions are intended to reflect current conditions in the financial and annuity markets.

Three sets of interest assumptions are prescribed: (1) A set for the valuation of benefits for allocation purposes under section 4044 (found in Appendix B to part 4044), (2) a set for the PBGC to use to determine whether a benefit is payable as a lump sum and to determine lump-sum amounts to be paid by the PBGC (found in Appendix B to part 4022), and (3) a set for private-sector pension practitioners to refer to if they wish to use lump-sum interest rates determined using the PBGC's historical methodology (found in Appendix C to part 4022).

Accordingly, this amendment (1) adds to Appendix B to part 4044 the interest assumptions for valuing benefits for allocation purposes in plans with valuation dates during February 2002, (2) adds to Appendix B to part 4022 the interest assumptions for the PBGC to use for its own lump-sum payments in plans with valuation dates during February 2002, and (3) adds to Appendix C to part 4022 the interest assumptions for private-sector pension practitioners to refer to if they wish to use lump-sum interest rates determined using the PBGC's historical methodology for valuation dates during February 2002.

For valuation of benefits for allocation purposes, the interest assumptions that the PBGC will use (set forth in Appendix B to part 4044) will be 5.80 percent for the first 25 years following the valuation date and 4.25 percent thereafter. These interest assumptions are unchanged from those in effect for January 2002.

The interest assumptions that the PBGC will use for its own lump-sum payments (set forth in Appendix B to part 4022) will be 4.75 percent for the period during which a benefit is in pay status, and 4.00 percent during any years preceding the benefit's placement in pay status. These interest assumptions represent an increase (from those in effect for January 2002) of 0.25 percent for the period during which a benefit is in pay status and are otherwise unchanged.

For private-sector payments, the interest assumptions (set forth in Appendix C to part 4022) will be the same as those used by the PBGC for determining and paying lump sums (set forth in Appendix B to part 4022).

The PBGC has determined that notice and public comment on this amendment are impracticable and contrary to the public interest. This finding is based on the need to determine and issue new interest assumptions promptly so that the assumptions can reflect, as accurately as possible, current market conditions.

Because of the need to provide immediate guidance for the valuation and payment of benefits in plans with valuation dates during February 2002, the PBGC finds that good cause exists for making the assumptions set forth in this amendment effective less than 30 days after publication.

The PBGC has determined that this action is not a ''significant regulatory action'' under the criteria set forth in Executive Order 12866.

Because no general notice of proposed rulemaking is required for this amendment, the Regulatory Flexibility Act of 1980 does not apply. See 5 U.S.C. 601(2).

List of Subjects

29 CFR Part 4022

Employee benefit plans, Pension insurance, Pensions, Reporting and recordkeeping requirements.

29 CFR Part 4044

Employee benefit plans, Pension insurance, Pensions.

In consideration of the foregoing, 29 CFR parts 4022 and 4044 are amended as follows:

PART 4022—BENEFITS PAYABLE IN TERMINATED SINGLE-EMPLOYER PLANS

1. The authority citation for part 4022 continues to read as follows:

Authority: 29 U.S.C. 1302, 1322, 1322b, 1341(c)(3)(D), and 1344.

2. In appendix B to part 4022, Rate Set 100, as set forth below, is added to the table. (The introductory text of the table is omitted.)

Appendix B to Part 4022—Lump Sum Interest Rates For PBGC Payments

* * * * *

Rate set	For plans with a valuation date		Immediate annuity rate (percent)	Deferred annuities (percent)				
	On or after	Before		i_1	i_2	i_3	n_1	n_2
*	*	*	*	*	*	*	*	
100	2–1–02	3–1–02	4.75	4.00	4.00	4.00	7	8

3. In appendix C to part 4022, Rate Set 100, as set forth below, is added to the table. (The introductory text of the table is omitted.)

Appendix C to Part 4022—Lump Sum Interest Rates For Private-Sector Payments

* * * * *

Rate set	For plans with a valuation date		Immediate annuity rate (percent)	Deferred annuities (percent)				
	On or after	Before		i_1	i_2	i_3	n_1	n_2
*	*	*	*	*	*	*	*	
100	2–1–02	3–1–02	4.75	4.00	4.00	4.00	7	8

PART 4044—ALLOCATION OF ASSETS IN SINGLE-EMPLOYER PLANS

4. The authority citation for part 4044 continues to read as follows:

Authority: 29 U.S.C. 1301(a), 1302(b)(3), 1341, 1344, 1362.

5. In appendix B to part 4044, a new entry, as set forth below, is added to the table. (The introductory text of the table is omitted.)

Appendix B to Part 4044—Interest Rates Used to Value Benefits

* * * * *

For valuation dates occurring in the month—	The values of i_t are:					
	i_t	for t =	i_t	for t =	i_t	for t =
*	*	*	*	*	*	*
February 2002	.0580	1–25	.0425	>25	N/A	N/A

Issued in Washington, DC, on this 10th day of January, 2002.

Steven A. Kandarian,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 02–1136 Filed 1–14–02; 8:45 am]

BILLING CODE 7708–01–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Part 203

RIN 1010–AC71

Relief or Reduction in Royalty Rates—Deep Water Royalty Relief for OCS Oil and Gas Leases Issued After 2000

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Final rule.

SUMMARY: This rule revises regulations on royalty relief for oil and gas producers on the Outer Continental Shelf (OCS). It provides for suspension or reduction of royalty on a case-by-case basis for certain additional categories of OCS leases under part 203 of this title. Also, it identifies circumstances when we may consider royalty relief apart from our end-of-life and deepwater royalty relief (DWRR) programs.

DATES: This final rule is effective February 14, 2002.

FOR FURTHER INFORMATION CONTACT: Marshall Rose, Economics Division, at (703) 787–1536.

SUPPLEMENTARY INFORMATION: On November 16, 2000, we published a proposed rule in the **Federal Register** (65 FR 69259). For leases that lie in water 200 meters or deeper in the Gulf of Mexico (GOM) wholly west of 87 degrees, 30 minutes West longitude and issued after November 2000, it provided a process to apply for supplemental royalty relief. Also, it proposed to modify the relief qualification process. Some proposed modifications apply only to leases issued after November 2000 (newly issued leases) while others apply both to leases issued before the DWRR Act (pre-Act leases) and to newly issued leases. These proposed modifications sought to combine more opportunity, certainty, and flexibility for applicants with a royalty relief determination process more focused on future costs and benefits. We requested comments on these proposed changes.

We also finalized in the **Federal Register** on February 23, 2001 (66 FR 11512) regulations on the way we implement OCS leasing incentives on newly issued leases. The opportunity for newly issued leases to qualify for royalty relief that supplements lease-term incentives when we issued them is an important part of the change in these incentives.

Several comments on the proposed rulemaking addressed the changed leasing incentives and the modifications to the royalty relief qualification process. This final rule makes changes from the proposed rule in response to

comments we received. The most significant changes relate to sunk costs and the timing of our evaluations.

As sunk costs, which we use to determine only qualification, not the volume suspension amount, we proposed to count only the cost of the project's first discovery well. Comments convinced us that a more expansive definition was appropriate. This final rule allows the costs of the first project discovery well on each lease. We believe this provides the proper balance between the need to encourage exploration of marginal future prospects and the lack of any role sunk costs have in determining economic viability after a discovery.

With respect to timing, we proposed to retain the 180-day period for our review of royalty relief requests for projects. Comments indicated a strong desire for a shorter period. Efficiencies from evaluating expansion or development projects, instead of fields (as required for applications involving pre-Act leases), can reduce our average evaluation time by 1 month. Hence, this final rule lowers our timeframe for evaluating development or expansion projects, but not for fields, from 180 to 150 days.

Response to Comments

We received a joint comment from six oil and gas industry associations, and separate comments from one of those associations and from five oil and gas companies in response to our request for written comments on our proposed rulemaking. Also, two public workshops raised questions on the proposed rule. Copies of all the written comments we received are available on our Web site at *http://www.mms.gov/federalregister/PublicComments/rulecomm.htm.*

We analyzed all comments and workshop questions and revised the final language based on many of them. The main changes from the proposed rule involve a more expansive definition of allowable sunk cost, a shorter evaluation period, and more specificity on several subjective terms (significant expansion, most likely resource size, most efficient development system).

Two changes from the proposed version of this rule make the final version consistent with changes made in the companion rule on OCS leasing incentives. Finally, we note provisions where we adjusted the language to clarify but not change the meaning from the proposed rule.

Supplementary Relief

One general comment objected to reliance on discretionary royalty relief because of administrative burdens and increased costs to industry.

Response: We agree that the discretionary royalty relief program will become more important when leases issued after 2000 represent significant amounts of acreage and discoveries in the deep water GOM. But it will be many years before post-2000 leases play a significant role in deepwater development. As we explained in earlier **Federal Register** notices on continuing royalty relief in deep water, most of the prospective deepwater tracts now have access to the royalty suspension volumes prescribed by the DWRR Act. Some 3,400 eligible leases already have the potential to receive royalty suspension automatically. Another nearly 1,700 pre-Act leases may qualify for royalty relief under discretionary relief regulations that have been in place for several years. The currently leased acreage—eligible and pre-Act leases—represents almost half of the deep water GOM acreage. These handpicked opportunities, which industry believes have the best hydrocarbon prospects, will occupy the available exploration and delineation capability in the GOM for many years. Much of the new production in deep water over the next decade or so may be royalty-free. Hence, we anticipate that the overall royalty expenses for deepwater oil and gas production will decrease for some time completely independent of future terms and conditions on newly offered tracts.

We expect to process applications more quickly and efficiently as we become more experienced in handling them. These final discretionary relief regulations follow the directive in the DWRR Act to consider granting royalty suspension only in those circumstances when otherwise developable production would be uneconomic because of normal royalty obligations. Thus only some, not all, leases should be concerned with or have a need for the discretionary royalty relief program. Further, to encourage development, we make the uneconomic determination not after production occurs, but before, using forecasts of many variables. The determination unavoidably involves the collection, analysis, and evaluation of detailed information. Questions about possible inconsistencies or options in a specific development proposal often only become apparent during the review process. Evaluation then sometimes requires additional information. Computing and documenting forecasts tied to the circumstances of a specific project proposal may appear cumbersome at times, but a sound determination requires that we understand the key assumptions and risks in the applicant's proposed project.

The comment most relevant to our request for paperwork reduction suggestions was the acknowledgment that ''the majority of the information requested by MMS is necessary * * * for a comprehensive review of a proposed project.'' We have added language to encourage potential applicants to meet with MMS prior to filing an application to identify unusual elements in the project and for guidance on application format, content, and our evaluation perspective. *See* § 203.62(c).

Several proposed changes we finalized expedite the evaluation process by making it less burdensome. We designate the applicant's project and the reservoirs targeted by the proposed project as the application unit rather than the entire field, as in the current DWRR program. Thus the applicant no longer must involve adjacent lessees in the application, and we no longer need to speculate about additional resources that may affect field economics. Also, this change reduces the need for us to evaluate alternative field development scenarios. Other changes should reduce the burden on both pre-Act lease applicants and new lease applicants by giving them more flexibility to adjust to changing conditions. We extend the time period for successful applicants to commit to development and allow reapplication in a wider range of circumstances. Potential applicants will become more comfortable with our application and evaluation process by the time the burden for DWRR shifts more to the discretionary royalty relief program.

Sunk Costs

A number of comments expressed concerns about the limited allowance of sunk costs to evaluate the economics of a proposed project.

Response: Our proposed change in allowable sunk costs—from all costs of and after discovery to only those of the discovery well—received the most comments from industry. That reaction may indicate that limiting allowable sunk costs is perceived as the most important proposed change to the discretionary royalty relief rules. The size of sunk costs has been the main reason for royalty relief qualification in our determinations to date. We proposed no change to the treatment of sunk costs in applications from non-producing pre-Act leases to keep within the DWRR Act. Also, we proposed to add for the first time some sunk costs to our evaluation of expansion projects. Nonetheless, in light of its perceived and past importance, we expand our

definition of allowable sunk costs for applications from leases issued after 2000 and for expansion projects on pre-Act leases.

One workshop comment suggested that the definition of allowable sunk costs include the cost of the first well on each lease that discovers hydrocarbons in the reservoirs included in the application. We adopt this new definition because it includes the most important and readily identifiable delineation costs on a project.

This more expansive definition of sunk costs may encourage more development and more exploration than otherwise. Historic costs theoretically do not affect the expected profitability of a particular project, as measured from the perspective of its application date. But, their treatment can influence decisions on the timing and magnitude of pre-application exploration, drilling, and appraisal. Using sunk costs in an evaluation makes qualification for discretionary royalty relief more likely. The more likely that a prospect of a given size will qualify for relief, the larger the expected value of that prospect. And, the higher the expected payoff from drilling, the more and sooner drilling will take place.

We choose to rely on supplemental discretionary royalty relief to concentrate royalty savings on prospects that show a need for it. General lease sale incentives disperse royalty relief over all lease prospects regardless of whether they need development assistance. In a system where supplemental royalty relief plays a large role in the incentive program, it may not be appropriate to narrowly define qualification for the supplemental relief based on theoretical rather than practical considerations.

While an expansive consideration of sunk costs is in order, we believe the broad definition applicable to pre-Act leases is not appropriate for newer leases. The object of the new supplemental royalty relief program is a specific and fully identified project, rather than a whole, often incompletely identified, field. A royalty relief determination on a field with pre-Act leases requires evaluation of all resources that may ultimately be assigned to that field and of associated development options. The broad field determination provides a basis for considering all possible resources and thus the sunk costs for a wide range of appraisal activities. Project royalty relief determination, on the other hand, is confined to the reservoirs identified in the application. Relief qualification need not consider alternative development options or potential production from other reservoirs. So, fewer post-discovery expenditures are relevant to a project application. Therefore, we will count the costs of only the discovery well for the project on each lease participating in an application for other than an authorized field. To clarify the revision as well as the distinction, we separate the definition of sunk costs for authorized fields from the definition of sunk costs for development and expansion projects and move identification of the critical elements to the definitions from the cost report description in § 203.89 (a). *See* changes in §§ 203.0 and 203.68.

We continue to count allowable sunk costs on an after-tax, nominal basis. A company recoups part of exploratory drilling costs through a deduction from taxable income. Crediting all the pre-tax costs to royalty relief qualification would substantially raise the benefit accorded sunk costs. Adjusting sunk costs for inflation could reward applicants that delay applying for royalty relief.

Other Comments

The written comments and workshop questions raised a number of specific or technical issues. The following table summarizes and responds to each of those issues. We arranged the table according to the section in the rule to which the comment relates. The last part of the table addresses comments on information collection under the Paperwork Reduction Act.

CFR section	Industry comments and questions	MMS response
203.0, 203.2, and 203.4	Delete the word ''significant'' from the definitions of an expansion project and of new production because it is too subjective when left to the discretion of the application process.	Accommodating change. The DWRR Act used the word ''significant'' to direct relief to projects that add new resources, not those that simply extend recovery of reservoirs already in production. We delete ''significant'' from the definition of ''new production'' and clarify in the definition of ''expansion project,'' that it refers to one or more new wells drilled into a reservoir that has not previously produced. Also, we modify the definition of ''new production'' accordingly.
203.0 and 203.60	Don't limit development projects that can apply for deepwater royalty suspension to those on leases west of 87 degrees 30 minutes West longitude in the GOM.	No change. The DWRR Act gives authority to grant royalty relief to existing non-producing leases, but only those in this part of the GOM. We may issue new leases with a variety of terms, including royalty suspension, in other parts of the OCS.
203.0, 203.4, 203.70, and 203.81.	Eliminate from the definition of fabrication a requirement for a requirement for a letter from the fabricator certifying start of continuous construction because it is an unnecessary and redundant burden.	No change. The legitimacy of the royalty relief qualification determination depends on prompt development. We see value in having a third party witness an event that has such important to an applicant. The down payment and contract alone may not ensue that the operator has actually committed to construction that will not be interrupted after it has started. The notice could be just a copy of whatever normal notification the applicant gets from the fabricator that construction has started on its system, with the intent to continued without interruption.

CFR section	Industry comments and questions	MMS response
203.0, 203.68, and 203.89 ...	Redefine sunk costs as all of the inflation adjusted before-tax costs of, and after, discovery up until the application.	Accommodating change. We have enlarged the scope of sun costs from the proposed rule. But historic costs have questionable relevance to proceeding with development of the project in the application. Also, many such costs have already been recovered through tax deductions and subsequent savings. The expansion in the definition is limited to discovery well costs for one eligible well per lease.
203.0, 203.68, and 203.89 ...	Does MMS want to receive applications before delineation wells are drilled which help in the decision on the development approach.	We want a reliable application. The applicant is the only one in a position to balance the costs and benefits of incremental delineation. Performance conditions help encourage a proper balance—enough data in hand for the applicant to commit to a few key decisions but not to detailed development plans.
203.2 and 203.80	Delete the word ''significantly'' word from the characterization of how much production must increase as a result of royalty relief because it is too subjective.	Accommodating change. We delete the word from the end-of-life relief cell in the table in § 203.2, but as with deepwater expansion projects, we look for a minimum production increase for consideration of royalty relief apart from our formal programs. Relief generally must make production for an extra year profitable.
203.4, 203.69 and 203.76	Clarify the resource number used as a basis for determining the minimum royalty suspension volume.	Change. By ''most likely resource size'' we mean the median value of the estimated distribution of known recoverable resources from reservoirs included in the application for the project. The final rule adopts this more precise terminology.
203.4	Indicate that price thresholds will be specified in the Notice of Sale as well as in the lease document.	Change. We make clear in subsections (e) and (f) that price thresholds and minimum suspension volumes may be set in the Notice of Sale or the regulations or in the lease.
203.62	Encourage pre-application meetings between the MMS regional office and a prospective applicant.	Change. Such a meeting can save time both in preparing an application and in avoiding omissions that delay the evaluation process.
203.63	Clarify that neither a development nor expansion project must include all leases in its field.	Change. We also make the same clarification that ''project'' means development either expansion project or development project in §§ 203.64, 203.65, 203.67, 203.68, and 203.69.
203.65	Change the evaluation deadline from 180 to 120 days for a first application and from 120 to 90 for a redetermination.	Accommodating change. We reduce the evaluation period for development projects and expansion projects to no more than 150 days after certifying an application and application complete. For field evaluations involving pre-Act leases, the 180-day deadline continues because we must consider potential development of all resources on the field, whether or not they are identified in the application.
203.69	If a participating lease doesn't have or propose, a well into the reservoirs included in the application, does MMS include in the minimum suspension volume calculation the royalty suspension volume with which the lease was originally issued?	A lessee can join the application with evidence that the reservoir(s) targeted by the project occur on its lease. However, a lease without enough of the project's resources to justify a well cannot include its automatic royalty suspension volume in the minimum set for the project. Nevertheless, we will count its estimated resources in the project evaluation and in the increment to the minimum royalty suspension volume based on the median of the distribution of resources.
203.69 and 203.76	Does a lease retain the royalty suspension volume with which it was originally issued if it applies and qualifies for project relief but then violates a performance condition.	Since the application qualification included consideration of the pre-existing royalty suspension on the lease, it retains that relief if we withdraw approval of its application. We don't want to discourage early-stage applications when some development decisions have not yet been made.
203.71	If a lease is added to a project after approval of an application, does the added lease have to give up its automatic relief to be part of the project.	If the reservoir(s) targeted by the development project extend to a post-2000 lease, that lessee has an option. The lessee may file a short form to share the project's remaining royalty suspension volume or simply retain its automatic royalty suspension volume for use with this or other reservoirs on its lease. If it files the short form to share in the project relief, it gives up its automatic relief volume.
203.74	A phrase is missing in the description of the new event that enables a redetermination.	Accommodating change. We rewrote to clarify that the new technology must improve the profitability, under equivalent market conditions, of the field or specified set of reservoirs relative to the development system proposed in the prior application.

CFR section	Industry comments and questions	MMS response
203.76	Allow retention of half of the royalty suspension volume, not the smaller of that or the most likely resource size, when costs are overestimated in the application.	No change. We made the modification in the proposed rule because otherwise small fields face no disadvantage for overestimating their costs in a royalty relief application.
203.78	If the price threshold suspends relief when prices rise too much above expected levels, why not augment initial royalty suspension volume if prices fall too much below expected levels.	We provide a reasonable inducement to make a project economic under expected market conditions. This is the focus of our program. Subsequent deviations in these conditions during periods of production and potential relief from royalties may change profitability, but are not likely to affect project viability. Should prices decline once production begins, the lessee can pursue our other royalty relief programs. These programs serve as a proxy for predetermined increases in royalty suspension volume for a price decline.
203.80	Allow the costs of pre-existing facilities that help justify a royalty relief application to be off lease.	Change. Off-lease facilities tied back to the lease may help justify a relief application to the extent that preservation of these pre-existing facilities depends on continued application to be production from the lease applying for royalty relief. We will include only a logically allocable share of costs from the off-lease facilities.
Information Collection Questions.	(a) Under the current evaluation process, acknowledgement that the majority of the information requested in an application is necessary.	(a)We have not identified an alternative evaluation process suitable for use with an irrevocable determination such as royalty relief. Past applicants and industry committees have not yet identified any unnecessary information elements.
	(b) Contact past applicants to very estimates of the time it takes to fill out an application.	(b) We welcomed comments from past applicants to help develop our current estimates of the burden.
	(c) Standardize the various application reports that must be submitted or generate a set of generic example reports as guides for future applicants.	(c) We have standardized reports as much as we can, and we do invite pre-application consultation on format and content. We do not share past applications even in generalized form so as to avoid possibly exposing proprietary information. We already offer an example with the model that combines the information in these reports. That should clarify many questions about technical details such as units of measure.
	(d) MMS mail server limits make it impractical to submit the original application electronically, but subsequent information could usually be submitted by e-mail.	(d) We are implementing the Government Paperwork Elimination Act (GPEA). The Act calls for providing an electronic processing option when practical for information we collect. Royalty relief applications are under review in our GPEA implementation information program. We do currently accept extra copies and additional information by electronic or fax means.

Changes for Consistency and Clarity

We make two changes in this rule on discretionary royalty relief to make it consistent with our rule on OCS leasing incentives published on February 23, 2001 (66 FR 11512). Also, we use definitions for ''eligible,'' ''pre-Act,'' and ''royalty suspension'' leases in this rule that are identical to those in the leasing incentive rule.

The leasing incentive rule includes the option to offer royalty incentives for a value of production or for a time period as well as for a volume of production. The definition of Royalty Suspension (RS) leases in § 203.0 now indicates that the royalty suspension for an RS lease need not be in the form of a volume. So, one or more leases on a project applying for additional royalty relief may have automatic suspensions in a form other than volume. Section 203.69(b) now indicates that should this situation arise, we will use the data in your application, after any adjustments we make during our evaluation, to convert royalty relief already available to a common basis expressed in volume, and carry out the evaluation accordingly. Any approval would be expressed solely in terms of volume.

The leasing incentive rule also includes a provision in § 260.122(b)(2) for paying royalties, due as a result of the price threshold being exceeded, no later than 90 days after the end of the period for which royalty is owed. That deadline is shorter than the 120-day interval to April 30 now specified in § 203.78(a)(1) and (b)(1). To avoid confusion, we changed § 203.78 to be consistent with § 260.122. The 90-day time lag is longer than the 30-day time lag for payment of normal royalty under § 218.50 because we must calculate inflation adjustments in the case of price thresholds. The actual NYMEX price can be calculated immediately after the end of the period specified, but the final value for the implicit price deflator for the gross domestic product is not generally available for several months after the end of the period.

In several places, we modified the language in the proposed rule to make its meaning clearer to the reader.

CFR section	Clarification
203.0	We enhance definitions to: (1) State that development or expansion projects must be in water at least 200 meters deep, (2) Declare that redetermination is a procedure we conduct under certain conditions at your request, and (3) Illustrate some elements of eligible sunk costs incurred before a discovery.
203.2	We replace ''when'' with ''how'' in the title question. Unlike ''expansion project'' ''authorized field'' and ''development project,'' ''end-of-life lease'' is a term defined here but not in § 203.0. We drop reference to significant capital investment by an expansion project because that is not a separate requirement for an expansion project on a lease issued after 2000. The flexibility of royalty relief apart from our formal programs may involve changes in the form of the royalty as well as in its size or duration.
203.4	We more carefully explain how to interpret the tables summarizing our royalty relief programs. End-of-Life relief is now withdrawn only when the effective royalty rate has prevailed for 12 consecutive months. We drop reference to charging more than the original lease royalty rate after the suspension volume has been produced.
203.4 and 203.69	The various forms of royalty relief we grant are subject to certain conditions set out in regulations or approval letters. We rephrase the way one determines cumulative production.
203.60	We reversed the phrases in the lead sentence. We stipulate that pre-Act leases, but not leases issued after 2000, must have been assigned to a field as well as have a discovery prior to applying for royalty suspension.
203.63	You must, rather than may, submit data you have on leases that you believe may become part of your authorized field in the future.
203.64	Only one application may be filed on a development project designed to produce a specific set of reservoirs.
203.66	We make explicit that prescribed evaluation deadlines may be extended and rephrase the table lead-in sentence. We clarify that a penalty suspension for our late determination applies to the first production from a development project.
203.68	We do not consider sunk costs when we determine whether a project is economic should it never have to pay royalties.
203.69	We substitute the new name for the publication that gives the water depth of each lease.
203.71	Eligible leases as well as RS leases retain the royalty suspension volumes with which they start an application process, even if we reject an application that requests more relief on a field or development project. Applying leases are ones that participate in the application for royalty relief. Leases issued without a royalty suspension volume do not share the relief for a field with an automatic royalty suspension volume. We drop reference to the impossible situation of adding a lease before you submit an application from the paragraph (a) that describes the effect of adding a lease to an authorized field after we have approved royalty relief.
203.74	The discussion in the sub-elements of (c) explains a procedure for calculating prices, not determining eligibility for a reconsideration of a royalty relief determination.
203.78	Different price thresholds may apply to different leases on the same field, development project, or expansion project. Different price thresholds could occur if the leases were issued at different times. And, only the base oil and gas price thresholds for pre-Act leases are adjusted from 1994 forward. Post-2000 lease price thresholds are adjusted forward from other periods as specified in their Notice of Sale or lease documents.
203.80	We no longer formally refer to royalty relief apart from our end-of-life or deepwater programs as ''special''.
203.83	We require a well number and status as part of the Administrative Information Report.
203.89	We drop restatement of the definition of sunk costs. We stick to identifying the measurement rather than the concept of sunk costs by, for example, stating that nominal dollars mean dollars not adjusted for inflation.

Summary of Changes

The following table summarizes the changes this rule makes to the existing structure of our DWRR program.

MODIFICATIONS TO DWRR APPLICATIONS

Element	Current and continuing program (applies to pre-act leases)	Changes (applies to post-2000 deep water leases only)
Eligibility (Central, Western, and western part of Eastern Gulf of Mexico).	Leases in 200m or more water depth issued before 1996.	Leases in 200m or more water depth issued after 2000.
Royalty-free production can come from	Any production from the field until cumulative recovery volume equals the suspension volume.	Only production from resources identified in the application until cumulative production equals the suspension volume.

MODIFICATIONS TO DWRR APPLICATIONS—Continued

Element	Current and continuing program (applies to pre-act leases)	Changes (applies to post-2000 deep water leases only)
Minimum suspension volume for non-producing leases.	For fields that did not produce before the Act, matches eligible lease suspension volumes (17.5, 52.5, 87.5 MMBOE) in equivalent water depths.	For development projects, matches volumes designated in sale and lease documents for various water depths of 200m or greater plus 10 percent of the median value of the distribution of resources.
Credit for sunk costs in application	For fields with pre-Act leases that did not produce before the application, after-tax costs of and after discovery well used in qualification.	For development projects, after-tax eligible costs of the discovery well for the project on each participating lease.
Evaluation deadline for non-producing leases	180 days for first determination, 120 days for a redetermination.	150 days for first determination, 120 days for a redetermination.
Threshold oil and gas price levels for lifting relief.	Statute sets threshold price for light sweet crude oil and natural gas.	Original lease terms or Notice of Sale set threshold price for light sweet crude oil and natural gas.

Element	Current and discontinuing program (applies to pre-act leases)	Changes (applies to pre-act and post-2000 deep water leases)
Discount rate used in evaluation	Same rate used on viability and profitability tests, applicant chooses between 10% and 15%.	Use 10% on viability test, applicant chooses rate between 10% and 15% for profitability test.
Redetermination of field qualification or volume by MMS.	Available for new well or seismic data, 25% lower prices, or 20% higher cost.	Available anytime after relief relinquished or withdrawn. Otherwise, for new well or seismic data, 25% lower prices, 20% higher cost, or more efficient development system.
Deadline for starting fabrication	Within 1 year of approval, extendable for up to 1 year.	Within 18 months of approval, extendable for up to 6 months.
Correction for overestimating cost by 20% or more.	Retain only half of suspension volume granted.	Retain only half of smaller of the granted suspension volume *or* the median of the distribution of resources.
Minimum suspension volume for expansion project.	None	10 percent of median of the distribution of resources.
Evaluation deadline for expansion project	180 days for first determination, 120 days for a redetermination.	150 days for first determination, 120 days for a redetermination.
Credit for sunk costs in application for expansion project.	None	After-tax eligible costs of the discovery well for the project on each participating lease.

Procedural Matters

Regulatory Planning and Review (Executive Order 12866)

The rule is a significant regulatory action under Executive Order 12866, and subject to review by the Office of Management and Budget (OMB).

a. This rule will not have an annual economic effect of $100 million or adversely affect an economic sector, productivity, jobs, the environment, or other units of government. This action describes how new deepwater leases may qualify for royalty suspensions and the circumstances under which we might grant royalty relief. Historically, we have received only a limited number of applications for royalty relief. Based upon our experience, only a small number of leases will qualify for royalty relief in any one year. The only field that has gone into production after royalty relief approval would have avoided about $7 million in royalty payments in its first year of production, had prices not exceeded the price threshold for discontinuing royalty relief. The royalty suspension options in this proposal will encourage new production from a few marginal leases, because they will sustain profitability at lower prices than they would without the relief. Royalty suspension volumes act as an incentive to production, and likely will have a beneficial effect on the offshore oil industry, domestic oil and gas supplies, and jobs. This program should increase OCS production by making production from marginal fields more profitable.

b. This rule does not create inconsistencies with other agencies' actions because it preserves the concepts and requirements from the existing rule.

c. This rule is an administrative change that will not affect current entitlements, grants, user fees, loan programs, or their recipients. This rule has no effect on these programs or rights of the programs' recipients.

d. This rule does not raise any novel legal issues, but does raise policy issues. The rule extends and supplements the existing DWRR rule. It describes conditions under which lessees have the opportunity to apply for and acquire royalty relief on post-2000 deepwater leases. Also, it eases some conditions under which lessees of pre-Act leases may seek to obtain royalty relief. In addition, the rule describes circumstances not specified in our previous regulations under which lessees may apply for royalty relief. All of these changes are consistent with the basic philosophy in the current rule of granting relief only when applicants show it is economically necessary for development.

Regulatory Flexibility (RF) Act

The Department certifies that this document will not have a significant economic effect on a substantial number of small entities under the RF Act (5 U.S.C. 601 *et seq.*). The provisions of this rule will not have a significant adverse economic effect on offshore lessees and operators, including those that are classified as small businesses. The rule extends the benefit of

discretionary royalty relief to certain OCS leases issued after November 2000 that qualify as marginally uneconomic. In any single year, we are likely to receive only a small number of royalty relief applications, which limits the number of entities the rule may affect. Based on past experience, we expect to receive between one and two applications a year for DWRR. Also, because firms initiate applications, they have the ability to avoid any adverse effects they foresee. As suggested below, the new provisions should actually lower the cost to those who choose to take advantage of the benefit offered by this regulation. An RF analysis is not required. A Small Entity Compliance Guide is not required.

Companies that extract oil, gas, or natural gas liquids or are otherwise in oil and gas exploration and development activities acquire the vast majority of leases offered at OCS lease sales and will be most affected by this rule. The Small Business Administration (SBA) defines a small business as having:

- Annual revenues of $5 million or less for exploration service and field service companies.
- Fewer than 500 employees for drilling companies and for companies that extract oil, gas, or natural gas liquids.

Under the North American Industry Classification System Code 211111, Crude Petroleum and Natural Gas Extraction, we estimate that a total of 1,380 firms drill oil and gas wells either onshore and/or offshore. Of these, approximately 130 companies are offshore lessees/operators, based on current estimates. Publicly available data indicate that 39 companies qualify as large firms according to SBA criteria. Many or all of the other 91 companies may qualify as small firms with fewer than 500 employees. We cannot determine the exact number because the criteria data are not readily available. However, because of the extremely high cost and technical complexity involved in exploration and development in deep water, the vast majority of lessees/operators affected by this rule will be large companies. Of the 211 leases in deep water with a discovery or production by mid-2000, 19 large firms are the lessee/operator of 193, while 7 small firms are lessee/operator of the other 18. While that ratio suggests a 1-in-12 chance that a small operator may apply for relief, 4 of the 8 past applications we received have been from small operators. This rule continues the same basic application system we now use. Small operators do not appear to be at a disadvantage in our application process.

Provisions of the rule, in comparison with existing rules for discretionary DWRR for pre-Act leases, may reduce applicant costs in three areas:

- First, new applications for DWRR will be based on a fully identified project rather than a whole, often incompletely identified, field. Consequently, applicants may need to provide less extensive geological and geophysical data. For instance, we will not require them to submit data on reservoirs that may be in the field but clearly are not part of the project. There is no sound basis for estimating the size of any savings associated with this reduced data burden because only some applications would involve potential extra reservoirs. For those that do, however, this change can reduce the amount of follow-up data we typically must request from applicants and can expedite our evaluation.
- Second, applicants may no longer have to incur the cost of additional drilling or acquisition of new seismic data to request a redetermination. While significant new geologic information or price or cost changes still enable a redetermination, applicants may now also seek a redetermination upon identification of a more efficient development system. That new reason could save drilling a new deep water well at a cost of $20 million or more, or acquiring additional seismic data at a cost of about $100,000 per tract. We have received no redetermination requests. We attribute this to the fact that the DWRR program has not been active long enough to reach the redetermination stage for most of the applications we have processed.
- Third, under this rule, we give successful applicants more time to initiate development than under existing rules. This added time gives operators more time to arrange financing and to negotiate contracts with suppliers. Again, there is no sound basis for estimating the size of any savings associated with this greater applicant flexibility. It is clear, however, that this change, too, cannot be considered to impose a significant adverse economic effect on a substantial number of small business entities. If anything, all three changes lessen the existing applicant cost burden.

Small Business Regulatory Enforcement Fairness Act (SBREFA)

This rule is not a major rule under 5 U.S.C. 804(2), the SBREFA. This rule: a. Does not have an annual effect on the economy of $100 million or more. This rule modifies some procedures used under the current rule, specifies how certain new deep water leases may qualify for royalty suspensions in the future, and describes circumstances not covered in the current regulations that may cause us to grant royalty relief. In general, the effect of qualifying for a royalty suspension increases production from a few marginal fields but does not change royalty collections—since without relief, no production or royalty payments would occur or be expected, so suspending them forfeits no revenue. To the extent that royalty relief encourages new production, it benefits applicants, one-half of which in the past have been small businesses. But only one of the five fields for which we have approved relief has gone into production.

b. Will not cause a major increase in costs or prices for consumers, individual industries, Federal, state, or local government agencies, or geographic regions. Oil prices are not based on the production from any one region, but are based on worldwide production and demand at any point in time. While natural gas prices are more localized, they correlate to oil prices. The rule does not change any existing leasing policies, so it should not cause prices to increase.

c. Does not have significant adverse effects on competition, employment, investment, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises. Leasing on the United States OCS is limited to citizens or residents of the United States, their associations, states, municipalities, or companies incorporated in the United States. This rule does not change that requirement, so it does not change the ability of United States firms to compete in any way.

Paperwork Reduction Act (PRA) of 1995

We examined the information collection requirements in the final rule and determined they remain unchanged from those currently approved by OMB under OMB control number 1010–0071, with a current expiration date of September 30, 2003. An 83–I submission to OMB is not required for review and approval under § 3507(d) of the PRA. The PRA provides that an agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

The title of the collection of information is ''30 CFR part 203, Relief or Reduction in Royalty Rates.'' Respondents include approximately 130 Federal OCS oil and gas lessees. The

frequency of response is on occasion. Responses to this collection of information are required to obtain or retain a benefit. MMS will protect proprietary information under applicable law and 30 CFR 203.63(b) and 250.196.

MMS uses the information to make decisions on the economic viability of leases requesting a suspension or elimination of royalty or net profit share. These decisions have substantial monetary impacts to both the lessee and the Federal Government. Royalty relief can lead to increased production of natural gas and oil, creating profits for lessees and tax revenues for the Government that they might not otherwise receive.

We estimate the total annual paperwork burden is 8,650 burden hours and $345,600 for the application and audit fee ''non-hour'' cost burdens authorized under § 203.3. The following chart provides a breakdown of the components of the estimated paperwork burden of part 203 final regulations.

Reporting or recordkeeping requirement 30 CFR Part 203	Application/audit fees		
	Annual responses	Hours per response	Annual burden hours
OCS Lands Act Reporting			
Application—leases that generate earnings that cannot sustain continued production (end-of-life lease)	2 applications	100 hours	200
	Application 2 × $12,000 = $24,000* Audit 1 × $10,000 = $10,000		
Application—apart from formal programs for royalty relief for marginal producing lease (expect less than 1 per year—new category).	1 Application	250 hours	250
	Application 1 × $15,000 = $15,000* Audit 1 × $10,000 = $10,000		
§ 203.55 Renounce relief arrangement (seldom, if ever will be used; minimal burden to prepare letter)	1 Letter	1 hour	1
§ 203.81, 203.83 through 203.89 required reports	Burden included with applications.		
OCS Lands Act Reporting Subtotal	4 responses	N/A	451
	Processing Fees = $59,000		
DWRAA Reporting			
Application—leases in designated areas of GOM deep water acquired in lease sale before 11/28/95 or after 11/28/00 and are producing (deep water expansion project).	1 Application	2,000 hours	2,000
	Application 1 × $39,000 = $39,000 Audit		
Application—leases in designated areas of deep water GOM, acquired in lease sale before 11/28/95 or after 11/28/00, that have not produced (pre-Act or post-2000 deep water leases).	1 Application	2,000 hours	2,000
	Application 1 × $49,000 = $49,000* Audit 1 × $25,000 = $25,000		
Application—short form to add or assign pre-Act lease	1 Application	40 hours	40
	Application 1 × $1,000 = $1,000 No Audit		
Application—preview assessment (seldom if ever will be used because applicants generally opt for binding determination by MMS instead).	1 Application	900 hours	900
	Application 1 × $46,600 = $46,600 No Audit		
Application—apart from formal programs for royalty relief for marginal expansion project or marginal non-producing lease (expect less than 1 per year—new category).	Application	1,000 hours	1,000
	Application 1 × $49,000 = $49,000 Audit 1 × $20,000 = $20,000		
Redetermination.	1 Redetermination	500 hours	500
	Application 1 × $32,000 = $32,000* Audit 1 × $25,000 = $25,000		
§ 203.70, 203.81, 203.90, 203.91 Submit fabricator's confirmation report	2 Reports	20 hours	40
§ 203.70, 203.81, 203.90, 203.92 2 Submit post-production development report	2 Reports*	50 hours	100
§ 203.77 Renounce relief arrangement (seldom, if ever will be used; minimal burden to prepare letter)	1 Letter	1 hour	1

Reporting or recordkeeping requirement 30 CFR Part 203	Application/audit fees		
	Annual responses	Hours per response	Annual burden hours
§ 203.79(a) Request reconsideration of MMS field designation	4 Requests	400 hours	1,600
§ 203.79(c) Request extension of deadline to start construction	1 Request	2 hours	2
§ 203.81, 203.83 through 230.89 Required reports	Burden included with applications		0
DWRR Act Reporting Subtotal	16 Responses	N/A	8,183
	Processing Fees = $286,600		
Recordkeeping Burden			
§ 203.91 Retain supporting cost records for post-production development/fabrication reports (records retained as usual/customary business practice; minimal burden to make available at MMS request).	2 Record-keepers	8 hours	16

• In addition, under § 203.81, a report prepared by an independent CPA must accompany the application and post-production report (except expansion project, short form, and preview assessment applications are excluded). The OCS Lands Act applications will require this report only once; the DWRR Act applications will require this report at two stages—with the application and with the post-production development report for successful applicants. We estimate an average cost for a report is $45,000, and that seven CPA certifications per year will be necessary if the applications are approved. The total estimated annual ''non-hour'' cost burden for this requirement is $315,000 ($45,000 per certification × 7 CPA certifications = $315,000).

Federalism (Executive Order 13132)

Under Executive Order 13132, this rule does not have Federalism implications. The rule neither substantially nor directly affects the relationship between the Federal and State Governments. This rule affects the collection of royalty revenues from deepwater lessees in the GOM, all of which is outside State jurisdiction. States have no role in this activity with or without this rule. This rule does not impose costs on States or localities. States and local governments play no part in the administration of the DWRR program.

Takings Implications Assessment (Executive Order 12630)

Under Executive Order 12630, the rule does not have significant Takings implications. A Takings Implication Assessment is not required because the rule would not take away or restrict a bidder's right to acquire or develop OCS leases.

Energy Supply, Distribution, or Use (Executive Order 13211)

This rule is a significant rule and is subject to review by the Office of Management and Budget under Executive Order 12866. The rule does not have a significant effect on energy supply, distribution, or use because its promotes, rather than adversely affects, the production of additional oil and gas from the OCS. It promotes energy supply from marginal domestic sources by broadening applicability of the process by which we may lower costs for those producers.

Unfunded Mandates Reform Act (UMRA)

This rule does not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than $100 million per year. The rule does not have a significant or unique effect on State, local, or tribal governments. The rule modifies some procedures in the existing regulation, describes how certain new leases may qualify for royalty suspensions, and specifies circumstances that might cause us to grant royalty relief outside our formal programs. None of these changes involve state, local, or tribal mandates. A statement containing additional UMRA (2 U.S.C. 1531 *et seq.*) information is not required.

Civil Justice Reform (Executive Order 12988)

Under Executive Order 12988, the Office of the Solicitor has determined that this rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order.

National Environmental Policy Act (NEPA) of 1969

This rule does not constitute a major Federal action significantly affecting the quality of the human environment. A detailed statement under the NEPA is not required.

Government-to-Government Relationship With Tribes

Pursuant to the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951) and 512 DM 2, we have determined that there are no effects from this action on federally recognized Indian tribes.

List of Subjects in 30 CFR Part 203

Continental shelf, Government contracts, Indians-lands, Minerals royalties, Oil and gas exploration, Public lands-mineral resources, Reporting and recordkeeping requirements, Sulphur.

Dated: December 18, 2001.

James E. Cason,

Acting Deputy Secretary.

For the reasons stated in the preamble, the Minerals Management Service (MMS) amends 30 CFR part 203 as follows:

PART 203—RELIEF OR REDUCTION IN ROYALTY RATES

1. The authority citation for part 203 continues to read as follows:

Authority: 25 U.S.C. 396 *et seq.*; 25 U.S.C. 396a *et seq.*; 25 U.S.C. 2101 *et seq.*; 30 U.S.C. 181 *et seq.*; 30 U.S.C. 351 *et seq.*; 30 U.S.C. 1001 *et seq.*; 30 U.S.C. 1701 *et seq.*; 31 U.S.C.

9701 *et seq.*; 43 U.S.C. 1301 *et seq.*; 43 U.S.C. 1331 *et seq.*; and 43 U.S.C. 1801 *et seq.*

2. Section 203.0 is amended by removing the definition of ''Sunk costs,'' adding definitions for ''Development project,'' ''Royalty suspension (RS) lease,'' ''Sunk costs for an authorized field,'' and ''Sunk costs for an expansion or development project'' in alphabetical order, and revising the definitions for ''Authorized field,'' ''Eligible lease,'' ''Expansion project,'' ''Fabrication (or start of construction),'' ''New production,'' ''Pre-Act lease,'' and ''Redetermination,'' to read as follows:

§ 203.0 What definitions apply to this part?

Authorized field means a field:

(1) Located in a water depth of at least 200 meters and in the Gulf of Mexico (GOM) west of 87 degrees, 30 minutes West longitude;

(2) That includes one or more pre-Act leases; and

(3) From which no current pre-Act lease produced, other than test production, before November 28, 1995;

* * * * *

Development project means a project to develop one or more oil or gas reservoirs located on one or more contiguous leases that:

(1) Were issued in a sale held after November 28, 2000;

(2) Are located in a water depth of at least 200 meters and in the GOM wholly west of 87 degrees, 30 minutes West longitude; and

(3) Have had no production (other than test production) before the current application for royalty relief.

* * * * *

Eligible lease means a lease that:

(1) Is issued as part of an OCS lease sale held after November 28, 1995, and before November 28, 2000;

(2) Is located in the Gulf of Mexico in water depths of 200 meters or deeper;

(3) Lies wholly west of 87 degrees, 30 minutes West longitude; and

(4) Is offered subject to a royalty suspension volume.

Expansion project means a project you propose in a Development Operations Coordination Document (DOCD) or a Supplement approved by the Secretary of the Interior after November 28, 1995, that will significantly increase the ultimate recovery of resources from one or more reservoirs that have not produced on a pre-Act lease or a lease issued in a sale held after November 28, 2000. A significant increase does not simply extend recovery from reservoirs already in production. For a pre-Act lease, the expansion project must also involve a substantial capital investment (e.g., fixed-leg platform, subsea template and manifold, tension-leg platform, multiple well project, etc.). For a lease issued after November 28, 2000, the expansion project must involve a new well drilled into a reservoir that has not previously produced. In all cases, all leases in an expansion project must be wholly located in a water depth of at least 200 meters and in the GOM wholly west of 87 degrees, 30 minutes West longitude.

Fabrication (or start of construction) means evidence of an irreversible commitment to a concept and scale of development. Evidence includes copies of a binding contract between you (as applicant) and a fabrication yard, a letter from a fabricator certifying that continuous construction has begun, and a receipt for the customary down payment.

* * * * *

New production means any production from a current pre-Act lease from which no royalties are due on production, other than test production, before November 28, 1995. Also, it means any additional production resulting from new lease-development activities on a lease issued in a sale after November 28, 2000, or a current pre-Act lease under a DOCD or a Supplement approved by the Secretary of the Interior after November, 28, 1995.

* * * * *

Pre-Act lease means a lease that:

(1) Results from a sale held before November 28, 1995;

(2) Is located in the GOM in water depths of 200 meters or deeper; and

(3) Lies wholly west of 87 degrees, 30 minutes West longitude.

* * * * *

Redetermination means our reconsideration of our determination on royalty relief because you request it after:

(1) We have rejected your application;

(2) We have granted relief but you want a larger suspension volume;

(3) We withdraw approval; or

(4) You renounce royalty relief.

* * * * *

Royalty suspension (RS) lease means a lease that:

(1) Is issued as part of an OCS lease sale held after November 28, 2000;

(2) Is in locations or planning areas specified in a particular Notice of OCS Lease Sale offering that lease; and

(3) Is offered subject to a royalty suspension specified in a Notice of OCS Lease Sale published in the **Federal Register**.

Sunk costs for an authorized field means the after-tax eligible costs that you (not third parties) incur for exploration, development, and production from the spud date of the first discovery on the field to the date we receive your complete application for royalty relief. The discovery well must be qualified as producible under part 250, subpart A of this title. Sunk costs include the rig mobilization and material costs for the discovery well that you incurred before its spud date.

Sunk costs for an expansion or development project means the after-tax eligible costs that you (not third parties) incur for only the first well that encounters hydrocarbons in the reservoir(s) included in the application and that meets the producibility requirements under part 250, subpart A of this chapter on each lease participating in the application. Sunk costs include rig mobilization and material costs for the discovery wells that you incurred before their spud dates.

* * * * *

3. Section 203.2 is revised to read as follows:

§ 203.2 How can I get royalty relief?

We may reduce or suspend royalties for Outer Continental Shelf (OCS) leases or projects that meet the criteria in the following table.

If you have a lease . . .	And if you . . .	Then we may grant you . . .
(a) With earnings that cannot sustain production (i.e., *End-of-life lease*).	Would abandon otherwise potentially recoverable resources but seek to increase production by operating beyond the point at which the lease is economic under the existing royalty rate.	A reduced royalty rate on current monthly production and a higher royalty rate on additional monthly production. (See §§ 203.50 through 203.56.)

If you have a lease . . .	And if you . . .	Then we may grant you . . .
(b) Located in a designated GOM deep water area, and acquired in a lease sale before November 28, 1995, or after November 28, 2000, and you propose in a DOCD or supplement to expand production significantly.	Are producing and seek to increase ultimate resource recovery from one or more reservoirs not previously or currently producing on the field or lease, not simply extend recovery of reservoirs that already produced. (*Expansion project*).	A royalty suspension for additional production large enough to make the project economic. (See §§ 203.60 through 203.79.)
(c) Located in a designated GOM deep water area and acquired in a lease sale held before November 28, 1995 (*Pre-Act lease*).	Are on a field from which no current pre-Act lease produced (other than test production) before November 28, 1995 (*Authorized field)*.	A royalty suspension for a minimum production volume plus any additional volume needed to make the field economic. (See §§ 203.60 through 203.79.)
(d) Located in a designated GOM deep water area and acquired in a lease sale held after November 28, 2000.	Have not produced and can demonstrate that the suspension volume, if any, in your lease is not enough to make development economic (*Development project*).	A royalty suspension for a minimum production volume plus any additional volume needed to make your project economic. (See §§ 203.60 through 203.79.)
(e) Where royalty relief would recover significant additional resources or, in certain areas of the GOM, would enable development.	Are not eligible to apply for end-of-life or deep water royalty relief, but show us you meet certain elligibility conditions.	A royalty modification in size, duration, or form that makes your lease or project economic. (See § 203.80.)

4. Section 203.4 is revised to read as follows:

§ 203.4 How do the provisions in this part apply to different types of leases and projects?

The tables in this section summarize how similar provisions of this part apply in different situations.

(a) We require the information elements indicated by an X in the following table and described in §§ 203.51, 203.62, and 203.81 through 203.89 for applications for royalty relief.

Information elements	End-of-life lease	Deep water		
		Expansion project	Pre-act lease	Development project
(1) Administrative information report	X	X	X	X
(2) Net revenue and relief justification report (prescribed format)	X			
(3) Economic viability and relief justification report (Royalty Suspension Viability Program (RSVP) model inputs justified with Geological and Geophysical (G&G), Engineering, Production, & Cost reports)		X	X	X
(4) G&G report		X	X	X
(5) Engineering report		X	X	X
(6) Production report		X	X	X
(7) Deep water cost report		X	X	X

(b) We require the confirmation elements indicated by an X in the following table and described in §§ 203.70, 203.81 and 203.90 through 203.91 to retain royalty relief.

Confirmation elements	End-of-life lease	Deep water		
		Expansion project	Pre-act lease	Development project
(1) Fabricator's confirmation report		X	X	X
(2) Post-production development report approved by an independent certified public accountant (CPA)		X	X	X

(c) The following table indicates by an X, and §§ 203.50, 203.52, 203.60 and 203.67 describe, the prerequisites for our approval of your royalty relief application.

Approval conditions	End-of-life lease	Deep water		
		Expansion	Pre-act lease	Development project
(1) At least 12 of the last 15 months have the required level of production	X			
(2) Already producing	X			
(3)A producible well into a reservoir that has not produced before		X	X	X
(4) Royalties for qualifying months exceed 75% of net revenue (NR)	X			
(5) Substantial investment on a pre-Act lease (e.g., platform, subsea template)		X		

Approval conditions	End-of-life lease	Deep water		
		Expansion	Pre-act lease	Development project
(6) Determined to be economic only with relief		X	X	X

(d) The following table indicates by an X, and §§ 203.52 and 203.74 through 203.75 describe, the prerequisites for a redetermination of our royalty relief decision.

Redetermination conditions	End-of-Life lease	Deep water		
		Expansion project	Pre-act lease	Development project
(1) After 12 months under current rate, criteria same as for approval	X			
(2) For material change in geologic data, prices, costs, or available technology		X	X	X

(e) The following table indicates by an X, and §§ 203.53 and 203.69 describe, the characteristics of approved royalty relief.

Relief rate and volume, subject to certain conditions	End-of-life lease	Deep water		
		Expansion project	Pre-act lease	Development project
(1) One-half pre-application effective lease rate on the qualifying amount, 1.5 times pre-application effective lease rate on additional production up to twice the qualifying amount, and the pre-application effective lease rate for any larger volumes	X			
(2) Qualifying amount is the average monthly production for 12 qualifying months	X			
(3) Zero royalty rate on the suspension volume and the original lease rate on additional production		X	X	X
(4) Suspension volume is at least 17.5, 52.5 or 87.5 million barrels of oil equivalent (MMBOE)			X	
(5) Suspension volume is at least the minimum set in the Notice of Sale, the lease, or the regulations		X		X
(6) Amount needed to become economic		X	X	X

(f) The following table indicates by an X, and §§ 203.54 and 203.78 describe, circumstances under which we discontinue your royalty relief.

Full royalty resumes when	End-of-life lease	Deep water		
		Expansion project	Pre-act lease	Development project
(1) Average NYMEX price for last 12 months is at least 25 percent above the average for the qualifying months	X			
(2) Average NYMEX price for last calendar year exceeds $28/bbl or $3.50/mcf, escalated by the gross domestic product (GDP) deflator since 1994		X	X	
(3) Average prices for designated periods exceed levels we specify in the Notice of Sale or the lease		X		X

(g) The following table indicates by an X, and §§ 203.55 and 203.76 through 203.77 describe, circumstances under which we end or reduce royalty relief.

Relief withdrawn or reduced	End-of-life lease	Deep water		
		Expansion project	Pre-act lease	Development project
(1) If recipient requests	X	X	X	X
(2) Lease royalty rate is at the effective rate for 12 consecutive months	X			
(3) Conditions occur that we specified in the approval letter in individual cases	X			
(4) Recipient does not submit post-production report that compares expected to actual costs		X	X	X

Relief withdrawn or reduced	End-of-life lease	Deep water		
		Expansion project	Pre-act lease	Development project
(5) Recipient changes development system		X	X	X
(6) Recipient excessively delays starting fabrication		X	X	X
(7) Recipient spends less than 80 percent of proposed pre-production costs prior to start of production		X	X	X
(8) Amount of relief volume is produced		X	X	X

5. Section 203.60 is revised to read as follows:

§ 203.60 Who may apply for deep water royalty relief?

You may apply for royalty relief under §§ 203.61(b) and 203.62 if:

(a) You are a lessee of a lease in water at least 200 meters deep in the GOM and lying wholly west of 87 degrees, 30 minutes West longitude;

(b) We have assigned your pre-Act lease to a field (as defined in § 203.0); and

(c) You either:

(1) Hold a pre-Act lease on an authorized field (as defined in § 203.0) or

(2) Propose an expansion project (as defined in § 203.0) or

(3) Propose a development project (as defined in § 203.0).

6. In § 203.62, the introductory sentence and paragraph (c) are revised to read as follows:

§ 203.62 How do I apply for relief?

You must send a complete application and the required fee to the MMS Regional Director for the GOM.

* * * * *

(c) Sections 203.81, 203.83, and 203.85 through 203.89 describe what these reports must include. The MMS regional office for the GOM will guide you on the format for the required reports, and we encourage you to contact this office prior to preparing your application for this guidance.

7. In § 203.63, the following changes are made:

A. Paragraphs (a), (b), and (c) following the introductory paragraph are redesignated paragraphs (a)(1), (a)(2), and (a)(3).

B. The introductory paragraph is redesignated (a) and is revised to read as set forth below.

C. A new paragraph (b) is added as set forth below.

§ 203.63 Does my application have to include all leases in the field?

(a) For authorized fields, we will accept only one joint application for all leases that are part of the designated field on the date of application, except as provided in paragraph (a)(3) of this section and § 203.64. However, we will evaluate all acreage that may eventually become part of the authorized field. Therefore, if you have any other leases that you believe may eventually be part of the authorized field, you must submit data for these leases according to § 203.81.

* * * * *

(b) If your application seeks only relief for a development project or an expansion project, your application does not have to include all leases in the field.

8. In § 203.64, the section heading and the first sentence in the introductory paragraph are revised to read as follows:

§ 203.64 How many applications may I file on a field or a development project?

You may file one complete application for royalty relief during the life of the field or for a development project or an expansion project designed to produce a reservoir or set of reservoirs. * * *

* * * * *

9. In § 203.65, paragraph (b) is revised to read as follows:

§ 203.65 How long will MMS take to evaluate my application?

* * * * *

(b) We will evaluate your first application on a field within 180 days, evaluate your first application on a development project or an expansion project within 150 days and evaluate a redetermination under § 203.75 within 120 days after we determine that it is complete.

* * * * *

10. Section 203.66 revised to read as follows:

§ 203.66 What happens if MMS does not act in the time allowed?

If we do not act within the timeframes established under § 203.65, you get royalty relief according to the following table.

If you apply for royalty relief for	And we do not decide within the time specified	As long as you
(a) An authorized field	You get the minimum suspension volumes specified in § 203.69.	Abide by §§ 203.70 and 203.76.
(b) An expansion project	You get a royalty suspension for the first year of production.	Abide by §§ 203.70 and 203.76.
(c) A development project	You get a royalty suspension for initial production for the number of months that a decision is delayed beyond the stipulated timeframes set by § 203.65, plus all the royalty suspension volume for which you qualify.	Abide by §§ 203.70 and 203.76.

11. Section 203.67 is revised to read as follows:

§ 203.67 What economic criteria must I meet to get royalty relief on an authorized field or project?

We will not approve applications if we determine that royalty relief cannot make the field, development project, or expansion project economically viable. Your field or project must be uneconomic while you are paying royalties and must become economic with royalty relief.

12. In § 203.68, paragraph (b) is revised to read as follows:

§ 203.68 What pre-application costs will MMS consider in determining economic viability?

* * * * *

(b) We will consider sunk costs according to the following table.

We will	When determining
(1) Include sunk costs	Whether a field that includes a pre-Act lease which has not produced, other than test production, before the application or redetermination submission date needs relief to become economic.
(2) Not include sunk costs	Whether an authorized field, a development project, or an expansion project can become economic with full relief (see § 203.67).
(3) Not include sunk costs	How much suspension volume is necessary to make the field, a development project, or an expansion project economic (see § 203.69(c)).
(4) Include sunk costs for the project discovery well on each lease.	Whether a development project or an expansion project needs relief to become economic.

13. In § 203.69, the introductory paragraph and paragraphs (b) through (e) are revised, and paragraph (f) is added to read as follows:

§ 203.69 If my application is approved, what royalty relief will I receive?

If we approve your application, subject to certain conditions, we will not collect royalties on a specified suspension volume for your field, development project, or expansion project. Suspension volumes include volumes allocated to a lease under an approved unit agreement, but exclude any volumes of production that are not normally royalty-bearing under the lease or the regulations of this chapter (e.g., fuel gas).

* * * * *

(b) For development projects, any relief we grant applies only to project wells and replaces the royalty suspension volume with which we issued your lease. If your project is economic given the royalty suspension volume with which we issued your lease, we will reject the application. Otherwise, the *minimum* royalty suspension volumes are as shown in the following table:

For	The minimum royalty suspension volume is	Plus
(1) RS leases	A volume equal to the combined royalty suspension volumes (or the volume equivalent based on the data in your approved application for other forms of royalty suspension) with which we issued the leases participating in the application that have or plan a well into a reservoir identified in the application.	10 percent of the median of the distribution of known recoverable resources upon which we based approval of your application from all reservoirs included in the project.
(2) Other deep water leases issued in sales after November 28, 2000.	A volume equal to 10 percent of the median of the distribution of known recoverable resources upon which we based approval of your application from all reservoirs included in the project.	

(c) If your application includes pre-Act or eligible leases in different categories of water depth, we apply the minimum royalty suspension volume for the deepest such lease then assigned to the field. We base the water depth and makeup of a field on the water-depth delineations in the ''Lease Terms and Economic Conditions'' map and the ''Field Names Master List'' documents and updates in effect at the time your application is deemed complete. These publications are available from the MMS Regional Office for the GOM.

(d) You will get a royalty suspension volume above the minimum if we determine that you need more to make the field or development project economic.

(e) For expansion projects, the minimum royalty suspension volume equals 10 percent of the median of the distribution of known recoverable resources upon which we based approval of your application from all reservoirs included in your project plus any suspension volumes required under § 203.66. If we determine that your expansion project may be economic only with more relief, we will determine and grant you the royalty suspension volume necessary to make the project economic.

(f) The royalty suspension volume applicable to specific leases will continue through the end of the month in which cumulative production reaches that volume. You must calculate cumulative production from all the leases in the authorized field or project that are entitled to share the royalty suspension volume.

14. Section 203.70 is revised to read as follows:

§ 203.70 What information must I provide after MMS approves relief?

You must submit reports to us as indicated in the following table. Sections 203.81, 203.90, and 203.91 describe what these reports must include. The MMS regional office for the GOM will prescribe the formats.

Required report	When due to MMS	Due date extensions
(a) Fabricator's confirmation report	Within 18 months after approval of relief	MMS Director may grant you an extension under § 203.79(c) for up to 6 months.
(b) Post-production report	Within 120 days after the start of production that is subject to the approved royalty suspension volume.	With acceptable justification from you, MMS Regional Director for the GOM may extend due date up to 30 days.

15. In § 203.71, the introductory paragraph and paragraphs (a) through (c) are revised to read as follows:

§ 203.71 How does MMS allocate a field's suspension volume between my lease and other leases on my field?

The allocation depends on when production occurs, when we issued the lease, when we assigned it to the field, and whether we award the volume suspension by an approved application or establish it in the lease terms, as prescribed in this section.

(a) If your authorized field has an approved royalty suspension volume under §§ 203.67 and 203.69, we will suspend payment of royalties on production from all leases in the field that participate in the application until their cumulative production equals the approved volume. The following conditions also apply:

If . . .	Then . . .	And . . .
(1) We assign an eligible lease to your field after we approve relief.	We will not change your field's royalty suspension volume.	The assigned lease(s) may share in any remaining royalty relief.
(2) We assign a pre-Act or post-November 2000 deep water lease to your field after we approve your application.	We will not change your field's royalty suspension volume.	The assigned lease(s) may share in any remaining royalty relief by filing the short-form application specified in § 203.83 and authorized in § 203.82. An assigned RS lease also gets any portion of its royalty suspension volume remaining even after the field has produced the approved relief volume.
(3) We assign another lease(s) that you operate to your field while we are evaluating your application.	We will change your field's minimum suspension volume if the assigned lease is a pre-Act or eligible lease entitled to a larger minimum or automatic suspension volume.	(i) You toll the time period for evaluation until you modify your application to be consistent with the new field; (ii) We have an additional 60 days to review the new information; and (iii) The assigned lease(s) shares the royalty suspension we grant to the new field. If you do not agree to toll, we will have to reject your application due to incomplete information. But, an eligible lease we assigned to the field kept its automatic suspension volume.
(4) We assign another operator's lease to your field while we are evaluating your application.	We will change your field's minimum suspension volume provided the assigned lease joins the application and is entitled to a larger minimum suspension volume.	(i) You both toll the time period for evaluation until both of you modify your application to be consistent with the new field; (ii) We have an additional 60 days to review the new information; and (iii) The assigned lease(s) shares the royalty suspension we grant to the new field. If you (the original applicant) do not agree to toll, the other operator's lease retains any suspension volume it has or may share in any relief that we grant by filing the short form application specified in § 203.83 and authorized in § 203.82.
(5) We reassign a well on a pre-Act, eligible, or post-November 2000 deep water lease to another field.	The past production from the well counts toward the royalty suspension volume of the field to which we assigned the well.	The past production from that well will not count toward any royalty suspension volume granted to the field from which we reassigned it.

(b) If your authorized field has a royalty suspension volume established under § 260.111 of this title (i.e., a field with a pre-Act lease where an eligible lease starts production first), we will suspend payment of royalties on production from all eligible leases in the field until their cumulative production equals the established volume. The following conditions also apply:

If . . .	Then . . .	And . . .
(1) We assign another eligible lease to your field.	Your field's royalty suspension volume does not change.	The assigned lease may share in any remaining royalty relief.
(2) We assign an RS lease to your field	Your field's royalty suspension volume does not change.	The assigned lease gets only the volume suspension with which we issued it, and its production volume counts against the field's royalty suspension volume.
(3) We assign a pre-Act lease or a lease issued after November 2000 without royalty suspension to your field.	Your field's royalty suspension volume does not change.	We assign lease shares none of the volume suspension, and its production does not count as part of the suspension volume.
(4) A pre-Act or post-November 2000 deep water lease applies (along with the other leases in the field) and qualifies (subject to any pre-existing suspension volumes) for royalty relief under §§ 203.67 and 203.69.	Your field's royalty suspension volume may increase or stay the same, but will not diminish.	(i) All leases in the field share the royalty suspension volume if we approve the application; or (ii) The eligible or RS leases in the field keep their respective volumes if we reject the application.

(c) When a project has more than one lease, the royalty suspension volume for each lease equals that lease's actual production from the project (or production allocated under an approved unit agreement) until total production for all leases in the project equals the project's approved royalty suspension volume.

* * * * *

16. In § 203.74, the introductory paragraph is revised, paragraphs (b) and (c) are redesignated as paragraphs (c) and (d) and revised, and a new paragraph (b) is added to read as follows:

§ 203.74 When will MMS reconsider its determination?

You may request a redetermination after we withdraw approval or after you renounce royalty relief, unless we withdraw approval due to your providing false or intentionally inaccurate information. Under certain conditions you may also request a redetermination if we deny your application or if you want your approved royalty suspension volume to change. In these instances, to be eligible for a redetermination, at least one of the following four conditions must occur.

* * * * *

(b) You demonstrate in your new application that the technology that most efficiently develops this field or lease was not considered or deemed feasible in the original application. Your newly proposed technology must improve the profitability, under equivalent market conditions, of the field or lease relative to the development system proposed in the prior application.

(c) Your current reference price decreases by more than 25 percent from your base reference price as calculated under this paragraph.

(1) Your current reference price is a weighted-average of daily closing prices on the NYMEX for light sweet crude oil and natural gas over the most recent full 12 calendar months;

(2) Your base reference price is a weighted average of daily closing prices on the NYMEX for light sweet crude oil and natural gas for the full 12 calendar months preceding the date of your most recently approved application for this royalty relief; and

(3) The weighting factors are the proportions of the total production volume (in BOE) for oil and gas associated with the most likely scenario (identified in §§ 203.85 and 203.88) from your most recently approved application for this royalty relief.

(d) Before starting to build your development and production system, you have revised your estimated development costs, and they are more than 120 percent of the eligible development costs associated with the most likely scenario from your most recently approved application for this royalty relief.

17. In § 203.76, paragraphs (a), (b), and (c) are revised to read as follows:

§ 203.76 When might MMS withdraw or reduce the approved size of my relief?

* * * * *

(a) You change the type of development system proposed in your application (e.g., change from a fixed platform to floating production system, or from an independent development and production system to one with subsea wells tied back to a host production facility, etc.).

(b) You do not start building the proposed development and production system within18 months of the date we approved your application, unless the MMS Director grants you an extension under § 203.79(c). If you start building the proposed system and then suspend its construction before completion, and you do not restart continuous building of the proposed system within 18 months of our approval, we will withdraw the relief we granted.

(c) Your actual development costs are less than 80 percent of the eligible development costs estimated in your application's most likely scenario, and you do not report that fact in your post-production development report (§ 203.70). Development costs are those expenditures defined in § 203.89(b) incurred between the application submission date and start of production. If you report this fact in the post-production development report, you may retain the lesser of 50 percent of the original royalty suspension volume or 50 percent of the median of the distribution of the potentially recoverable resources anticipated in your application.

* * * * *

18. Section 203.77 is revised to read as follows:

§ 203.77 May I voluntarily give up relief if conditions change?

Yes, by sending a letter to that effect to the MMS Regional Director for the GOM.

19. In § 203.78, the introductory paragraph, and paragraphs (a)(1), (b)(1) and (f) are revised to read as follows:

§ 203.78 Do I keep relief if prices rise significantly?

If prices rise above a base price for light sweet crude oil or natural gas, set by statute for pre-Act leases, indicated in your original lease agreement or Notice of Sale for post-November 2000 deep water leases, you must pay full royalties as prescribed in this section. For post-November 2000 deepwater leases, price thresholds apply on a lease basis, so different leases on the same field, development project, or expansion

project may have different price thresholds.

(a) * * *

(1) Pay royalties on all oil production for the previous year at the lease stipulated royalty rate plus interest (under 30 U.S.C. 1721 and § 218.54 of this chapter) by March 31 of the current calendar year, and

* * * * *

(b) * * *

(1) Pay royalties on all natural gas production for the previous year at the lease stipulated royalty rate plus interest (under 30 U.S.C. 1721 and § 218.54 of this chapter) by March 31 of the current calendar year, and

* * * * *

(f) We change the prices referred to in paragraphs (a), (b), and (d) of this section periodically. For pre-Act leases, these prices change during each calendar year after 1994 by the percentage that the implicit price deflator for the gross domestic product changed during the preceding calendar year. For post-November 2000 deepwater leases, these prices change as indicated in the lease instrument or in the Notice of Sale under which we issued the lease.

20. Section 203.80 is added to read as follows:

§ 203.80 When can I get royalty relief if I am not eligible for end-of-life or deep water royalty relief?

We may grant royalty relief when it serves the statutory purposes summarized in § 203.1, and our formal relief programs provide inadequate encouragement to increase production or development. Unless your lease lies wholly west of 87 degrees, 30 minutes West longitude in the Gulf of Mexico, your lease must be producing to qualify for relief. Before you may apply for royalty relief apart from our end-of-life or deepwater programs, we must agree that your lease or project has two or more of the following characteristics:

(a) The lease has produced for a substantial period and the lessee can recover significant additional resources. Significant additional resources means enough to allow production for at least a year more than would be profitable without royalty relief.

(b) Valuable facilities (e.g., a platform or pipeline that would be removed upon lease relinquishment) exist that we do not expect a successor lessee to use. If the facilities are located off the lease, their preservation must depend on continued production from the lease applying for royalty relief. We will only consider an allocable share of costs for off-lease facilities in the relief application.

(c) A substantial risk exists that no new lessee will recover the resources.

(d) The lessee made major efforts to reduce operating costs too recently to use the formal program for royalty relief (e.g., recent significant change in operations).

(e) Circumstances beyond the lessee's control, other than water depth, preclude reliance on one of the existing royalty relief programs.

21. In § 203.81, paragraphs (a) and (c) are revised to read as follows:

§ 203.81 What supplemental reports do royalty relief applications require?

(a) You must send us the supplemental reports, indicated in the following table by an X, that apply to your field. Sections 203.83 through 203.91 describe these reports in detail.

Required reports	End-of-life lease	Deep water		
		Expansion project	Pre-act lease	Development project
(1) Administrative information Report	X	X	X	X
(2) Net revenue & relief justification report	X			
(3) Economic viability & relief justification report (RSVP model imputs justified by other required reports).		X	X	X
(4) G&G report.		X	X	X
(5) Engineering report.		X	X	X
(6) Production report.		X	X	X
(7) Deep water cost report		X	X	X
(8) Fabricator's confirmation report.		X	X	X
(9) Post-production development report.		X	X	X

* * * * *

(c) With your application and post-production development report, you must submit an additional report prepared by an independent CPA that:

(1) Assesses the accuracy of the historical financial information in your report; and

(2) Certifies that the content and presentation of the financial data and information conform to our most recent guidelines on royalty relief. This means the data and information must—

(i) Include only eligible costs that are incurred during the qualification months; and

(ii) Be shown in the proper format.

* * * * *

22. In § 203.83, paragraph (c) is revised to read as follows:

§ 203.83 What is in an administrative information report?

* * * * *

(c) Well number, API number, location, and status of each well that has been drilled on the field or lease or project (not required for non-oil and gas leases);

* * * * *

23. In § 203.86, the following changes are made:

A. The word ''and'' is removed at the end of paragraph (b)(6).

B. The ''.'' is removed and ''; and'' is added at the end of paragraph (b)(7).

C. Paragraph (b)(8) is added.

D. Paragraph (c)(4) is revised.

E. The word ''and'' is removed at the end of paragraph (d)(6).

F. The ''.'' is removed and ''; and'' is added at the end of paragraph (d)(7)

G. Paragraph (d)(8) is added.

The revisions and additions read as follows:

§ 203.86 What is in a G&G report?

* * * * *

(b) * * *

(8) A table listing the wells and completions, and indicating which sands and fault blocks will be targeted for completion or recompletion.

(c) * * *

(4) An explanation for excluding the reservoirs you are not planning to develop.

(d) * * *

(8) Reserve or resource distribution by reservoir.

* * * * *

24. In § 203.87, paragraphs (a)(1) and (d) are revised to read as follows:

§ 203.87 What is in an engineering report?

* * * * *

(a) * * *

(1) Its size along with basic design specifications and drawings; and

* * * * *

(d) A discussion of any plans for multi-phase development which includes the conceptual basis for developing in phases and goals or milestones required for starting later phases.

* * * * *

25. In § 203.89, paragraph (a) is revised to read as follows:

§ 203.89 What is in a deep water cost report?

* * * * *

(a) Sunk costs. Report sunk costs in dollars not adjusted for inflation and only if you have documentation.

* * * * *

26. In § 203.91, a new last sentence is added to read as follows:

§ 203.91 What is in a post-production development report?

* * * Also, you must have this report certified by an independent CPA according to § 203.81(c).

[FR Doc. 02–438 Filed 1–14–02; 8:45 am]

BILLING CODE 4310–MR–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–301199; FRL–6816–4]

RIN 2070–AB78

Fenbuconazole; Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation extends time-limited tolerances for the combined residues of the fungicide fenbuconazole [*alpha*-(2-(4-chlorophenyl)-ethyl)-*alpha*-phenyl-3-(1*H*-1,2,4-triazole)-1-propanenitrile] and its metabolites, *cis* and *trans*-5-(4-chlorophenyl)-dihydro-3-phenyl-3-(1*H*-1,2,4-triazole-1-ylmethyl)-2-3*H*-furanone], expressed as fenbuconazole, in or on the stone fruit (except plums and prunes) crop group at 2.0 parts per million (ppm), pecans at 0.1 ppm, and bananas at 0.3 ppm until December 31, 2004, at which time they will expire and be revoked. Dow AgroSciences LLC (then Rohm and Haas Company) requested that these temporary tolerances be made permanent under the provisions of the Federal Food, Drug, and Cosmetic Act, as amended by the Food Quality Protection Act of 1996.

DATES: This regulation is effective January 15, 2002. Objections and requests for hearings, identified by docket control number OPP–301199, must be received by EPA on or before March 18, 2002.

ADDRESSES: Written objections and hearing requests may be submitted by mail, in person, or by courier. Please follow the detailed instructions for each method as provided in Unit VI. of the **SUPPLEMENTARY INFORMATION**. To ensure proper receipt by EPA, your objections and hearing requests must identify docket control number OPP–301199 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Cynthia Giles-Parker, Product Manager 22, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 305–7740; and e-mail address: giles-parker.cynthia@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS codes	Examples of potentially affected entities
Industry	111 112 311 32532	Crop production Animal production Food manufacturing Pesticide manufacturing

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select ''Laws and Regulations,'' ''Regulations and Proposed Rules,'' and then look up the entry for this document under the ''**Federal Register**—Environmental Documents.'' You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/. A frequently updated electronic version of 40 CFR part 180 is available at http://www.access.gpo.gov/nara/cfr/cfrhtml_00/Title_40/40cfr180_00.html, a beta site currently under development.

2. *In person.* The Agency has established an official record for this action under docket control number OPP–301199. The official record consists of the documents specifically referenced in this action, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

II. Background and Statutory Findings

In the **Federal Register** of March 23, 2001 (66 FR 16226) (FRL–6767–3), EPA issued a notice pursuant to section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, as amended by the Food Quality Protection Act of 1996 (FQPA) (Public Law 104–170), announcing the filing of pesticide petitions (PP 1F3989, 1F3995, and 2F4154) to make temporary tolerances permanent by Dow AgroSciences LLC,

9330 Zionsville Road, Indianapolis, IN 46268–1054. This notice included a summary of the petitions prepared by Rohm and Haas Company, now a part of Dow AgroSciences LLC, whose name and address are provided herein. There were no comments received in response to the notice of filing. The existing time-limited tolerances will expire on December 31, 2001.

The petitions requested that 40 CFR 180.480 be amended by making time-limited tolerances for combined residues of the fungicide fenbuconazole [*alpha*-(2-(4-chlorophenyl)-ethyl)-*alpha*-phenyl-3-(1*H*-1,2,4-triazole)-1-propanenitrile] and its metabolites, *cis* and *trans*-5-(4-chlorophenyl)-dihydro-3-phenyl-3-(1*H*-1,2,4-triazole-1-ylmethyl)-2-3*H*-furanone], expressed as fenbuconazole in or on the stone fruit (except plums and prunes) crop group at 2.0 parts per million (ppm), pecans at 0.1 ppm, and bananas at 0.3 ppm permanent. However, the Agency has determined that it is more appropriate to extend them until December 31, 2004, while the Agency completes its review of data submitted to support the continued registration of fenbuconazole.

Section 408(b)(2)(A)(i) of the FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is ''safe.'' Section 408(b)(2)(A)(ii) defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. . . .''

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. For further discussion of the regulatory requirements of section 408 and a complete description of the risk assessment process, see the final rule on Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997) (FRL–5754–7).

III. Aggregate Risk Assessment and Determination of Safety

Consistent with section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure, consistent with section 408(b)(2), for extension of time-limited tolerances for combined residues of fenbuconazole [*alpha*-(2-(4-chlorophenyl)-ethyl)-*alpha*-phenyl-3-(1*H*-1,2,4-triazole)-1-propanenitrile] and its metabolites, *cis* and *trans*-5-(4-chlorophenyl)-dihydro-3-phenyl-3-(1*H*-1,2,4-triazole-1-ylmethyl)-2-3*H*-furanone], expressed as fenbuconazole in or on the stone fruit (except plums and prunes) crop group at 2.0 ppm, pecans at 0.1 ppm, and bananas at 0.3 ppm until December 31, 2004. EPA's assessment of exposures and risks associated with extending the tolerances follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. The nature of the toxic effects, and the no observed adverse effect levels (NOAEL) and the lowest observed adverse effect levels (LOAEL) from the fenbuconazole toxicity studies are discussed below.

1. The acute toxicological tests of the technical product produced the following results. In the acute oral toxicity study the lethal dose 50% (LD_{50}) was greater than 2 grams per kilogram (g/kg) body weight. The acute dermal toxicity study produced an LD_{50} of greater than 5 g/kg body weight. The acute inhalation lethal concentration 50% (LC_{50}) was greater than 2.1 milligrams per liter (mg/L). In both the primary eye irritation and primary skin irritation studies technical fenbuconazole was classified as non-irritating, and also tested negative for dermal sensitization.

2. A 13–week rat feeding study produced a NOAEL of 20 ppm (1.3 milligrams per kilogram per day (mg/kg/day) for males and 1.5 mg/kg/day for females) and a LOAEL of 80 ppm (5.1 mg/kg/day for males and 6.3 mg/kg/day for females), the endpoint effect being liver histopathology changes.

3. In a 3–month mouse feeding study there was a NOAEL of 20 ppm (3.8 mg/kg/day for males and 5.7 mg/kg/day for females) and a LOAEL of 60 ppm (11.1 mg/kg/day for males and 17.6 mg/kg/day for females), based on liver histopathology changes.

4. A 3–month dog feeding study produced a NOAEL of 100 ppm (3.3 mg/kg/day for males and 3.5 mg/kg/day for females) and a LOAEL of 400 ppm (13.3 mg/kg/day for males and 14.0 mg/kg/day for females), the end point effect being liver histopathology changes.

5. A 21–day rat dermal study produced a NOAEL of 1,000 mg/kg/day (the limit dose) and therefore a LOAEL greater than 1,000 mg/kg/day. Poor dermal absorption was indicated.

6. In a 78–week dietary carcinogenicity study in mice, the NOAEL was 10 ppm (1.43 mg/kg/day); males had a LOAEL of 200 ppm (28.6 mg/kg/day) and females had a LOAEL of 650 ppm (92.9 mg/kg/day), based on hepatocellular enlargement and a greater incidence and severity of hepatocellular vacuolation. There was also evidence of carcinogenicity based on the occurrence of an increased trend for malignant liver tumors in males and an increase in benign and malignant liver tumors in females.

7. A 24–month rat chronic feeding/carcinogenicity study with a systemic NOAEL of 80 ppm (3.03 mg/kg/day for females and 4.02 mg/kg/day for males) and a systemic LOAEL of 800 ppm (30.62 mg/kg/day for males and 43.07 mg/kg/day for females), based on decreases in body weight gains in females, hepatocellular enlargement and vacuolization in females, increases in thyroid weight in both males and females, and histopathological lesions in the thyroid glands in both sexes. There was evidence of carcinogenicity based on the increased occurrence of thyroid follicular cell benign and malignant tumors in males.

8. A 24–month male rat chronic feeding/carcinogenicity study that had a NOAEL of less than 800 ppm and a LOAEL of 800 ppm (30.41 mg/kg/day), based on decreased body weight gain and increased liver and thyroid/parathyroid weights and lesions. There was evidence of carcinogenicity based on the increased occurrence of thyroid follicular cell benign and malignant tumors in males.

9. A 1–year dog chronic feeding study with a NOAEL of 15 ppm (0.38 mg/kg/day) for females and 150 ppm (3.75 mg/kg/day) for males. The LOAEL, 150 ppm for females and 1,200 ppm (30 mg/kg/day) for males, was based on decreases in body weight gain and on adaptive changes in the liver which reflected increased metabolic activity.

10. A 2–generation rat reproduction study with a parental NOAEL of 4 mg/kg/day (80 ppm) and LOAEL of 40 mg/kg/day (800 ppm), based on decreased body weight and food consumption, increased number of dams not delivering viable or delivering nonviable offspring, and increases in adrenal and thyroid/parathyroid weights. The reproductive NOAEL was 40 mg/kg/day (800 ppm; the highest dose tested).

11. A developmental toxicity study in rabbits produced a maternal NOAEL of 10 mg/kg/day, a developmental NOAEL of 30 mg/kg/day, an undeterminable developmental LOAEL and a maternal LOAEL of 30 mg/kg/day.

12. A developmental rat toxicity study with a maternal and developmental NOAEL of 30 mg/kg/day, a maternal LOAEL of 75 mg/kg/day due to a decrease in maternal body weight compared to controls, and a developmental LOAEL of 75 mg/kg/day due to an increase in post-implantation loss and a decreased number of live fetuses per dam.

13. Mutation studies showed the following. There was no evidence of gene mutation in a test for induction of gene mutation at the HGPRT locus in Chinese hamster ovary cells, no increase in the number of cells with aberrations or observations per cell in an *in vivo* cytogenetics assay using bone marrow from treated rats, and no increase in unscheduled DNA synthesis in a rat primary hepatocyte study.

14. In a rat metabolism study radiolabeled fenbuconazole was rapidly absorbed, distributed, and excreted following oral administration in rats. Biliary excretion data indicted that systemic absorption of fenbuconazole was high for all dosing groups. The feces were the major route of excretion. Tissue distribution and bioaccumulation of fenbuconazole appeared to be minimal.

B. Toxicological Endpoints

The dose at which no adverse effects are observed (the NOAEL) from the toxicology study identified as appropriate for use in risk assessment is used to estimate the toxicological level of concern (LOC). However, the lowest dose at which adverse effects of concern are identified (the LOAEL) is sometimes used for risk assessment if no NOAEL was achieved in the toxicology study selected. An uncertainty factor (UF) is applied to reflect uncertainties inherent in the extrapolation from laboratory animal data to humans and in the variations in sensitivity among members of the human population as well as other unknowns. An UF of 100 is routinely used, 10X to account for interspecies differences and 10X for intraspecies differences.

For dietary risk assessment (other than cancer) the Agency uses the UF to calculate an acute or chronic reference dose (acute RfD or chronic RfD) where the RfD is equal to the NOAEL divided by the appropriate UF (RfD = NOAEL/UF). Where an additional safety factor is retained due to concerns unique to the FQPA, this additional factor is applied to the RfD by dividing the RfD by such additional factor. The acute or chronic Population Adjusted Dose (aPAD or cPAD) is a modification of the RfD to accommodate this type of FQPA Safety Factor.

For non-dietary risk assessments (other than cancer) the UF is used to determine the LOC. For example, when 100 is the appropriate UF (10X to account for interspecies differences multiplied by 10X to account for intraspecies differences) the LOC is 100. To estimate risk, a ratio of the NOAEL to exposures (margin of exposure (MOE) = NOAEL/exposure) is calculated and compared to the LOC.

The linear default risk methodology (Q1*) is the primary method currently used by the Agency to quantify carcinogenic risk. The Q1* approach assumes that any amount of exposure will lead to some degree of cancer risk. A Q1* is calculated and used to estimate risk, which represents a probability of occurrence of additional cancer cases (e.g., risk is expressed as 1 x 10^{-6} or one in a million). Under certain specific circumstances, MOE calculations will be used for the carcinogenic risk assessment. In this non-linear approach, a ''point of departure'' (threshold) is identified below which carcinogenic effects are not expected. The point of departure is typically a NOAEL based on an endpoint related to cancer effects though it may be a different value derived from the dose response curve. To estimate risk, a ratio of the point of departure to exposure (MOE_{cancer} = point of departure/exposures) is calculated. A summary of the toxicological endpoints for fenbuconazole used for human risk assessment follows.

1. *Acute exposure*. For acute dietary risk assessments a reference dose (acute RfD) of 0.3 mg/kg/day was established for females 13+ years old, the population subgroup of concern, based on the developmental toxicity study in the rat, which had a NOAEL of 30 mg/kg/day based on an increase in post-implantation loss and a significant decrease in the number of live fetuses per dam at the LOAEL of 75 mg/kg/day. A UF of 100 was used. No appropriate endpoint was available for analyzing the acute exposure of the overall U.S. population.

2. *Short- and Intermediate-term Exposure*. Short- and intermediate-term endpoints were not identified. Fenbuconazole also has no residential uses. Therefore, an aggregate risk assessment was not done for these endpoints.

3. *Chronic exposure*. The reference dose (chronic RfD) of 0.03 mg/kg/day was based on the chronic toxicity study in the rat, which had a NOAEL of 3.03 and 4.02 mg/kg/day in males and females, respectively, based on decreased body weight gains (females), hepatocellular enlargement and vacuolation (females), increases in thyroid weight (both sexes), and histopathological lesions in the liver and thyroid glands (both sexes) at the LOAEL of 30.62/43.04 mg/kg/day in males and females, respectively. A UF of 100 was used.

4. *Cancer*. The Agency has concluded that the available data provide limited evidence of the carcinogenicity of fenbuconazole in both mice and rats and has classified fenbuconazole as a Group C carcinogen (possible human carcinogen with limited evidence of carcinogenicity in animals) in accordance with Agency guidelines, published in the **Federal Register** (51 FR 33992, September 24, 1986), and recommended that for the purpose of risk characterization a low-dose extrapolation model applied to the experimental animal tumor data should be used for quantification of human risk (Q1*). This decision was based on the induction of thyroid follicular cell adenomas and/or combined adenomas-carcinomas in male rats in two studies, both by pair-wise comparison with controls and by trend analysis. The studies were combined for the purpose of deriving the Q1* of 3.59 x 10^{-3} $(mg/kg/day)^{-1}$ in human equivalents.

C. Exposure Assessment

1. *Dietary exposure from food and feed uses*. Tolerances have been established (40 CFR 180.480) for the combined residues of the fungicide fenbuconazole [*alpha*-(2-(4-chlorophenyl)-ethyl)-*alpha*-phenyl-3-(1*H*-1,2,4-triazole)-1-propanenitrile] and its metabolites, *cis* and *trans*-5-(4-chlorophenyl)-dihydro-3-phenyl-3-(1*H*-1,2,4-triazole-1-ylmethyl)-2-3*H*-furanone], expressed as fenbuconazole, in or on several agricultural commodities. Risk assessments were conducted by EPA to assess dietary exposures from fenbuconazole in food as follows. In addition to the agricultural commodities that are the

subjects of this final rule, the dietary risk analysis included published FIFRA section 18 temporary tolerances on blueberry; grapefruit; the fat, kidney, liver, meat, meat byproducts, and other organ meats of cattle, goats, hogs, and sheep; and horses, meat. The need for and, if so, results of these analyses follow.

i. *Acute exposure*. Acute dietary risk assessments are performed for a food-use pesticide if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1 day or single exposure. The Dietary Exposure Evaluation Model (DEEM) analysis evaluated the individual food consumption as reported by respondents in the USDA 1989–1992 nationwide Continuing Surveys of Food Intake by Individuals (CSFII) and accumulated exposure to the chemical for each commodity consumed. The following assumptions were made for the acute exposure assessments: An acute RfD of 0.3 mg/kg/day was used for the females 13+ years old, the population subgroup of concern, based on the developmental rat toxicity study. This study had a NOAEL of 30 mg/kg/day, based on a decrease in the number of live fetuses per dam at the LOAEL of 75 mg/kg/day and an uncertainty factor of 100. Neither percent crop treated (PCT) nor anticipated residue data were used in the acute exposure/risk analysis.

ii. *Short- and intermediate-term exposure*. Short- and intermediate-term endpoints were not identified. Fenbuconazole also has no residential uses. Therefore, an aggregate risk assessment was not performed for these endpoints.

iii. *Chronic exposure*. In conducting this chronic dietary risk assessment, the DEEM analysis evaluated the individual food consumption as reported by respondents in the USDA 1989–1992 nationwide CSFII and accumulated exposure to the chemical for each commodity consumed. The following assumptions were made for the chronic exposure assessments: A chronic RfD of 0.03 mg/kg/day was used and was based on the rat chronic toxicity study. This study had NOAELs of 3.03 and 4.02 mg/kg/day in males and females, respectively, based on decreased body weight gains (females), hepatocellular enlargement and vacuolation (females), increases in thyroid weight (both sexes), and histopathological lesions in the liver and thyroid glands (males) at the LOAELs of 30.62 and 43.04 mg/kg/day in males and females, respectively. An UF of 100 was again used. Anticipated residues were not used in the exposure/risk analysis; the only adjusted PCT datum used was 12.8% for the stone fruit (except plums and prunes) crop group. This percentage was derived from an annual production cap for fenbuconazole for use on the stone fruit (except plums and prunes) crop group of 38,000 lb of the Indar 75 WSP product (EPA Registration Number 62719–421; the only fenbuconazole product registered for use on stone fruits), equal to 28,500 lb of active ingredient. This amount was calculated by the Agency in 1995 as being equivalent to treating 12.8% of the total United States acreage of apricots, cherries, nectarines, and peaches with fenbuconazole and was made a condition of the registration of this product. The identical production cap is still in place and no additional fenbuconazole products have been registered for use on stone fruits.

iv. *Cancer*. The Agency has concluded that the available data provide limited evidence of the carcinogenicity of fenbuconazole in both mice and rats and has classified fenbuconazole as a Group C carcinogen (possible human carcinogen with limited evidence of carcinogenicity in animals). A low-dose extrapolation model was applied to the experimental animal tumor data used for quantification of human risk (Q1*). This decision was based on the induction of thyroid follicular cell adenomas and/or combined adenomas-carcinomas in male rats in two studies, both by pair-wise comparison with controls and by trend analysis. The studies were combined for the purpose of deriving the Q1* of 3.59×10^{-3} $(mg/kg/day)^{-1}$ in human equivalents. Anticipated residues were not used in the exposure/risk analysis; the only adjusted PCT datum used was 12.8% for the stone fruit (except plums and prunes) crop group. This percentage was derived from an annual production cap for fenbuconazole for use on the stone fruit (except plums and prunes) crop group of 38,000 lb of the Indar 75 WSP product (EPA Registration Number 62719–421; the only fenbuconazole product registered for use on stone fruits), equal to 28,500 lb of active ingredient. This amount was calculated by the Agency in 1995 as being equivalent to treating 12.8% of the total United States acreage of apricots, cherries, nectarines, and peaches with fenbuconazole and was made a condition of the registration of this product. The identical production cap is still in place and no additional fenbuconazole products have been registered for use on stone fruits.

iv. *Anticipated residue and PCT information*. Section 408(b)(2)(F) states that the Agency may use data on the actual percent of food treated for assessing chronic dietary risk only if the Agency can make the following findings: Condition 1, that the data used are reliable and provide a valid basis to show what percentage of the food derived from such crop is likely to contain such pesticide residue; Condition 2, that the exposure estimate does not underestimate exposure for any significant subpopulation group; and Condition 3, if data are available on pesticide use and food consumption in a particular area, the exposure estimate does not understate exposure for the population in such area. In addition, the Agency must provide for periodic evaluation of any estimates used. To provide for the periodic evaluation of the estimate of PCT as required by section 408(b)(2)(F), EPA may require registrants to submit data on PCT.

The Agency used PCT information as follows. For chronic toxicity and carcinogenicity a PCT value of 12.8% was used for the stone fruit (except plums and prunes) crop group. No other PCT data were used for fenbuconazole exposure/risk analysis.

When fenbuconazole was first registered, a condition of the registration of the fenbuconazole-containing product Indar 75 WSP (EPA Registration Number 62719–421), the only such product being registered for use on the stone fruit (except plums and prunes) crop group, was that only 38,000 lb of it (28,500 lb of the active ingredient) could be manufactured for this use annually. The Agency calculated, in 1995, that this was equivalent to treating 12.8% of the total United States acreage of apricots, cherries, nectarines, and peaches with fenbuconazole. That value has been directly applied to the analysis of dietary exposure and risk as the PCT for fenbuconazole on the stone fruit (except plums and prunes) crop group. Since then, this production cap has remained continuously in place at that same value, and no additional fenbuconazole products have been registered or labeled for use on this crop group.

The Agency believes that the three conditions previously discussed have been met. With respect to Condition 1, EPA finds that the PCT information described above for fenbuconazole used on the stone fruit (except plums and prunes) crop group is reliable and has a valid basis. Fenbuconazole's use on this crop group is unlikely to exceed the calculated PCT because of the rigid production cap and restriction of this use to the one product with the production cap. As to Conditions 2 and 3, regional consumption information and consumption information for significant subpopulations is taken into

account through EPA's computer-based model for evaluating the exposure of significant subpopulations including several regional groups. Use of this consumption information in EPA's risk assessment process ensures that EPA's exposure estimate does not understate exposure for any significant subpopulation group and allows the Agency to be reasonably certain that no regional population is exposed to residue levels higher than those estimated by the Agency. Other than the data available through national food consumption surveys, EPA does not have available information on the regional consumption of food to which fenbuconazole may be applied in a particular area.

2. *Dietary exposure from drinking water*. The Agency lacks sufficient monitoring exposure data to complete a comprehensive dietary exposure analysis and risk assessment for fenbuconazole in drinking water. Because the Agency does not have comprehensive monitoring data, drinking water concentration estimates are made by reliance on simulation or modeling taking into account data on the physical characteristics of fenbuconazole.

The Agency uses the Generic Estimated Environmental Concentration (GENEEC) or the Pesticide Root Zone/ Exposure Analysis Modeling System (PRZM/EXAMS) to estimate pesticide concentrations in surface water and the Screening Concentration in Ground Water (SCI-GROW) model to predict pesticide concentrations in ground water. In general, EPA will use GENEEC (a tier 1 model) before using PRZM/ EXAMS (a tier 2 model) for a screening-level assessment for surface water. The GENEEC model is a subset of the PRZM/ EXAMS model that uses a specific high-end runoff scenario for pesticides. GENEEC incorporates a farm pond scenario, while PRZM/EXAMS incorporates an index reservoir environment in place of the previous pond scenario. The PRZM/EXAMS model includes a percent crop area factor as an adjustment to account for the maximum percent crop coverage within a watershed or drainage basin.

None of these models include consideration of the impact processing (mixing, dilution, or treatment) of raw water for distribution as drinking water would likely have on the removal of pesticides from the source water. The primary use of these models by the Agency at this stage is to provide a coarse screen for sorting out pesticides for which it is highly unlikely that drinking water concentrations would ever exceed human health levels of concern.

Since the models used are considered to be screening tools in the risk assessment process, the Agency does not use estimated environmental concentrations (EECs) from these models to quantify drinking water exposure and risk as a %RfD or %PAD. Instead, drinking water levels of comparison (DWLOCs) are calculated and used as a point of comparison against the model estimates of a pesticide's concentration in water. DWLOCs are theoretical upper limits on a pesticide's concentration in drinking water in light of total aggregate exposure to a pesticide in food and from residential uses. Since DWLOCs address total aggregate exposure to fenbuconazole, they are further discussed in the aggregate risk sections below.

Based on the GENEEC model, the maximum EEC of fenbuconazole in surface water, based on aerial application of the highest labeled annual use rate of 0.75 lb of active ingredient per acre (ai/A), is 6.7 parts per billion (ppb) for acute exposures and 3.6 ppb for chronic exposures. Based on the SCI-GROW model, the maximum EEC of fenbuconazole in ground water, for both acute and chronic exposure, is 0.03 ppb. Since the ground water EECs for fenbuconazole are so much lower than the surface water EECs, only the surface water EECs were used for the purpose of comparisons with the calculated DWLOCs.

3. *From non-dietary exposure*. The term ''residential exposure'' is used in this document to refer to non-occupational, non-dietary exposure (e.g., for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets). Fenbuconazole is not registered for use on any sites that would result in residential exposure.

4. *Cumulative exposure to substances with a common mechanism of toxicity*. Section 408(b)(2)(D)(v) requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider ''available information'' concerning the cumulative effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity.''

EPA does not, at this time, have available data to determine whether fenbuconazole has a common mechanism of toxicity with other substances or to determine how to include this pesticide in a cumulative risk assessment. Unlike other pesticides for which EPA has followed a cumulative risk approach based upon common mechanism of toxicity, fenbuconazole does not appear to produce a toxic metabolite produced by other substances. For purposes of this tolerance action, EPA has not assumed that fenbuconazole has a common mechanism of toxicity with other substances. For further information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity, and to evaluate the cumulative effects of such chemicals, see the final rule for Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997).

D. Safety Factor for Infants and Children

1. *In general*. FFDCA section 408 provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the data base on toxicity and exposure unless EPA determines that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments either directly through use of a margin of exposure (MOE) analysis or through using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk to humans. The applicable studies are as follows.

2. *Prenatal and postnatal sensitivity*. A 2-generation rat reproduction study with a parental NOAEL of 4 mg/kg/day (80 ppm) and LOAEL of 40 mg/kg/day (800 ppm), based on decreased body weight and food consumption, increased number of dams not delivering viable or delivering nonviable offspring, and increases in adrenal and thyroid weights.The reproductive NOAEL was 40 mg/kg/day HDT.

A developmental toxicity study in rabbits produced a maternal NOAEL of 10 mg/kg/day, a developmental NOAEL of 30 mg/kg/day, an undeterminable developmental LOAEL of 60 mg/kg/day (due to increased resorptions), and a maternal LOAEL of 30 mg/kg/day.

A developmental rat toxicity study resulted in a maternal and developmental NOAEL of 30 mg/kg/day, a maternal LOAEL of 75 mg/kg/day due to a decrease in maternal body weight compared to controls, and a developmental LOAEL of 75 mg/kg/day due to an increase in post-implantation loss and a decreased number of live fetuses per dam.

3. *Conclusion*. Therefore, a complete toxicity data base for fenbuconazole exists and exposure data are complete or

are estimated based on data that reasonably account for potential exposures. Based on the developmental and reproductive toxicity studies there is no increased susceptibility of rats or rabbits to *in utero* and/or postnatal exposure to fenbuconazole. In the developmental toxicity studies in rats and rabbits, as well as the 2–generation reproduction study in rats, toxicity to the fetuses/offspring, when observed, occurred at equivalent or higher doses and was not judged to be more severe than in the maternal/parental animals. EPA therefore determined that the 10X safety factor to protect infants and children should be removed. The FQPA factor is removed because:

i. The toxicology data base is complete.

ii. There is no indication of increased susceptibility of rat or rabbit fetuses to *in utero* or and/or postnatal exposure in the developmental and reproductive toxicity studies.

iii. Dietary (food) exposure estimates are slightly refined (using limited PCT data for the stone fruit (except plum and prune) crop group) but likely result in overestimates of the actual dietary exposure.

iv. Models are used for ground and surface source drinking water exposure assessments, resulting in estimates that are upper-bound concentrations.

v. There are currently no registered residential uses for fenbuconazole and, as a result, this type of infant and children exposure is not expected.

E. Aggregate Risks and Determination of Safety

To estimate total aggregate exposure to a pesticide from food, drinking water, and residential uses, the Agency calculates DWLOCs which are used as points of comparison with the model estimates of a pesticide's concentration in water (EECs). DWLOC values are not regulatory standards for drinking water. DWLOCs are theoretical upper limits on a pesticide's concentration in drinking water in light of total aggregate exposure to a pesticide in food and residential uses. In calculating a DWLOC, the Agency determines how much of the acceptable exposure (i.e., the PAD) is available for exposure through drinking water (e.g., allowable chronic water exposure (mg/kg/day) = cPAD - (average food + residential exposure)). This allowable exposure through drinking water is used to calculate a DWLOC.

A DWLOC will vary depending on the toxic endpoint, drinking water consumption, and body weights. Default body weights and consumption values, as used by the USEPA Office of Water, are used to calculate DWLOCs: 2L per 70 kg body weight (adult male), 2L per 60 kg body weight (adult female), and 1L per 10 kg body weight (child). Default body weights and drinking water consumption values vary on an individual basis. This variation will be taken into account in more refined screening-level and quantitative drinking water exposure assessments. Different populations will have different DWLOCs. Generally, a DWLOC is calculated for each type of risk assessment used: acute, short-term, intermediate-term, chronic, and cancer.

When EECs for surface water and ground water are less than the calculated DWLOCs, OPP concludes with reasonable certainty that exposures to the pesticide in drinking water (when considered along with other sources of exposure for which OPP has reliable data) would not result in unacceptable levels of aggregate human health risk at this time. Because OPP considers the aggregate risk resulting from multiple exposure pathways associated with a pesticide's uses, levels of comparison in drinking water may vary as those uses change. If new uses are added in the future, OPP will reassess the potential impacts of residues of the pesticide in drinking water as a part of the aggregate risk assessment process.

1. *Acute risk*. For the population subgroup of concern, females 13 years old and older, the acute RfD is 0.3 mg/kg/day, the estimated acute food exposure is 0.015 mg/kg/day, the maximum estimated acute water exposure is 0.29 mg/kg/day, the acute DWLOC is 8.6 x 10^3 microgram/liter (µg/L), and the acute EEC is 6.7 µg/L. Therefore, the Agency concludes with reasonable certainty that residues of fenbuconazole in drinking water (when considered along with other sources of acute exposure for which reliable data exist) will not result in unacceptable levels of acute aggregate human health risk estimates for the population subgroup females 13 years old and older.

The Agency generally has no concern for exposures below 100% of the acute RfD (when the FQPA Safety Factor has been removed, as is the case for fenbuconazole) because the acute RfD represents the level at or below which a single daily exposure will not pose appreciable risks to human health. Despite the potential for exposure to fenbuconazole in drinking water, the Agency does not expect the acute aggregate exposure to exceed 100% of the acute RfD for the subpopulation of cencern (females 13 years old and older). The Agency concludes that there is a reasonable certainty that no harm will result to females 13 years old and older from chronic aggregate exposure to fenbuconazole residues.

2. *Short-term risk*. Short-term aggregate exposure takes into account residential exposure plus chronic exposure to food and water (considered to be a background exposure level). Short-term endpoints were not identified. Fenbuconazole is also not registered for use on any sites that would result in residential exposure. Therefore, the short-term aggregate risk assessment was not performed.

3. *Intermediate-term risk*. Intermediate-term aggregate exposure takes into account residential exposure plus chronic exposure to food and water (considered to be a background exposure level). Intermediate-term endpoints were not identified. Fenbuconazole is also not registered for use on any sites that would result in residential exposure. Therefore, the intermediate-term aggregate risk assessment was not performed.

4. *Chronic risk*. The following values were used or derived in calculations of chronic exposure and risk. The percentages of the chronic RfD that food exposure to fenbuconazole represented were <1.0% for the overall U.S. population, 2.5% for all infants (<1 year old), 1.1% for nursing infants (<1 year old), 3.1% for non-nursing infants (<1 year old), 1.5% for children (1-6 years old), <1.0% for non-Hispanic (other than Black or White), and 1.0% for seniors (55 years old or older). The adult population subgroup with the highest food exposure, non-Hispanic (other than black or white), was the subgroup used in the full analysis. For males the chronic RfD is 0.03, the estimated chronic food exposure is 0.00030 mg/kg/day, the maximum estimated water exposure is 0.030 mg/kg/day, DWLOC is 1.0 x 10^3 µg/L, and the chronic EEC is 3.6 µg/L. For females the chronic RfD is 0.03, the estimated chronic food exposure is 0.00030 mg/kg/day, the maximum estimated water exposure is 0.030 mg/kg/day, DWLOC is 8.9 x 10^2 µg/L, and the chronic EEC is 3.6 µg/L.

The estimated 56–day concentration of fenbuconazole in surface water (3.6 µg/L) is less than the Agency's levels of comparison for fenbuconazole in drinking water as a contribution to chronic aggregate exposure (1.0 x 10^3 µg/L and 8.9 x 10^2 µg/L for males and females respectively). Therefore, taking into account the registered uses, the Agency concludes with reasonable certainty that residues of fenbuconazole in drinking water (when considered along with other sources of chronic exposure for which the Agency has reliable data) would not result in unacceptable levels of chronic aggregate

human health risk estimates for adult population subgroups.

The Agency generally has no concern for exposures below 100% of the chronic RfD (when the FQPA Safety Factor has been removed, as is the case for fenbuconazole) because the chronic RfD represents the level at or below which average daily lifetime exposure will not pose appreciable risks to human health. Despite the potential for exposure to fenbuconazole in drinking water, the Agency does not expect the chronic aggregate exposure to exceed 100% of the chronic RfD for population subgroups which include adults. The Agency concludes that there is a reasonable certainty that no harm will result to adults from chronic aggregate exposure to fenbuconazole residues.

5. *Aggregate cancer risk for U.S. population*. Fenbuconazole has been classified as a Group C carcinogen with a Q1* of 3.59×10^{-3} $(mg/kg/day)^{-1}$. The group used in this analysis was U.S. population (48 contiguous states), the U.S. population as a whole. The cancer analysis, using all of the existing fenbuconazole tolerances (including section 18 tolerances), results in a cancer risk estimate of 8.3×10^{-7} for food consumption for the U.S. population as a whole. This analysis used 100% crop treatment values except for the stone fruit (except plum and prune) crop group, where a value of 12.8% crop treated was used. Based on the cancer dietary (food only) exposure and using default body weights and water consumption figures, a cancer DWLOC was calculated. The values used or calculated as part of the calculation of the DWLOC are the Q 1* of 3.59×10^{-3} $(mg/kg/day)^{-1}$, a food exposure of 0.00023 mg/kg/day, a maximum water exposure of 4.6×10^{-5} mg/kg/day, a DWLOC of 1.6 μg/L, and a chronic EEC of 3.6 μg/L.

Agency policy states that a factor of three will be applied to GENEEC model values when determining whether or not a level of comparison has been exceeded. If the GENEEC model value is less than or equal to three times the DWLOC, the pesticide is considered to have passed the screen and no further assessment is needed. The estimated 56–day (chronic) concentration of fenbuconazole in surface water (3.6 μg/L) is less than three times the level of comparison (3 x 1.6 = 4.8 μg/L) for fenbuconazole in drinking water as a contribution to chronic (cancer) aggregate exposure. Therefore, it is concluded with reasonable certainty that residues of fenbuconazole in drinking water, when considered along with other sources of chronic (cancer) exposure for which there is reliable data, would not result in unacceptable levels of cancer aggregate human health risk estimates for the overall U.S. population. The chronic food exposure estimate is partially refined. Further refinement would lower the food exposure estimate and result in a higher DWLOC.

The Agency generally has no concern for exposures that result in a cancer risk estimate below 1×10^{-6}. Despite the potential for exposure to fenbuconazole in drinking water, the Agency does not expect the chronic (cancer) aggregate exposure to exceed 1×10^{-6} for the U.S. population as a whole. The Agency concludes that there is a reasonable certainty that no harm will result to the overall U.S. population from chronic (cancer) aggregate exposure to fenbucanazole residues.

6. *Determination of safety*. Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population, or to infants and children from aggregate exposure to fenbuconazole residues.

IV. Other Considerations

A. Analytical Enforcement Methodology

Adequate enforcement methodology is available to enforce the tolerance expression. This method involves extraction of parent and metabolites into solvent followed by concentration, clean up, separation by gas chromatography, and detection with a nitrogen phosphorus detector. This method was submitted for inclusion in PAM II. The method may be requested from: Calvin Furlow, PIRIB, IRSD (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 305–5229; e-mail address: furlow.calvin@epa.gov.

B. International Residue Limits

There are no CODEX, Canadian, or Mexican Maximum Residue Limits for fenbuconazole in or on pecans, bananas, and the stone fruit (except plums and prunes) crop group.

C. Conditions

Discuss conditions for registration (i.e., additional residue field trials required), regional registration, etc.

The conditions of registration for fenbuconazole were submissions of the following items. Five additional studies had to be submitted: (1) Fish life cycle, (2) growth and reproduction of aquatic plants, (3) droplet size spectrum, (4) drift field evaluation, and (5) 49–month storage stability study. Several corrections to the labels were required. Mitigation measures to address chronic non-target organism toxicity concerns had to be identified and submitted. Production of the Indar 75 WSP product could not exceed 38,000 lb (28,500 lb ai) for each year of conditional registration and information on its production had to be submitted for the first federal fiscal year during which fenbuconazole was registered for use on stone fruits and pecans. Production information had to be submitted for the Enable 2F product (EPA Registration Number 62719–416) for the first federal fiscal year during which this product was registered for use on pecans. The company has subsequently submitted studies, information, and corrected labels, and participated in task forces, intended to satisfy all these condition-of-registration requirements. All such submissions that have been reviewed have been found to satisfy the appropriate registration condition.

V. Conclusion

Therefore, the tolerances are extended until December 31, 2004 for the combined residues of the fungicide fenbuconazole [*alpha*-(2-(4-chlorophenyl)-ethyl)-*alpha*-phenyl-3-(1*H*-1,2,4-triazole)-1-propanenitrile] and its metabolites, *cis* and *trans*-5-(4-chlorophenyl)-dihydro-3-phenyl-3-(1*H*-1,2,4-triazole-1-ylmethyl)-2-3*H*-furanone], expressed as fenbuconazole, in or on the stone fruit (except plums and prunes) crop group at 2.0 ppm, pecans at 0.1 ppm, and bananas at 0.3 ppm.

VI. Objections and Hearing Requests

Under section 408(g) of the FFDCA, as amended by the FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. Although the procedures in those regulations require some modification to reflect the amendments made to the FFDCA by the FQPA of 1996, EPA will continue to use those procedures, with appropriate adjustments, until the necessary modifications can be made. The new section 408(g) provides essentially the same process for persons to ''object'' to a regulation for an exemption from the requirement of a tolerance issued by EPA under new section 408(d), as was provided in the old FFDCA sections 408 and 409. However, the period for filing objections is now 60 days, rather than 30 days.

A. What Do I Need to Do to File an Objection or Request a Hearing?

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket control number OPP–301199 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before March 18, 2002.

1. *Filing the request*. Your objection must specify the specific provisions in the regulation that you object to, and the grounds for the objections (40 CFR 178.25). If a hearing is requested, the objections must include a statement of the factual issues(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). Information submitted in connection with an objection or hearing request 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 information 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.

Mail your written request to: Office of the Hearing Clerk (1900), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. You may also deliver your request to the Office of the Hearing Clerk in Rm. C400, Waterside Mall, 401 M St., SW., Washington, DC 20460. The Office of the Hearing Clerk is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Office of the Hearing Clerk is (202) 260–4865.

2. *Tolerance fee payment*. If you file an objection or request a hearing, you must also pay the fee prescribed by 40 CFR 180.33(i) or request a waiver of that fee pursuant to 40 CFR 180.33(m). You must mail the fee to: EPA Headquarters Accounting Operations Branch, Office of Pesticide Programs, P.O. Box 360277M, Pittsburgh, PA 15251. Please identify the fee submission by labeling it ''Tolerance Petition Fees.''

EPA is authorized to waive any fee requirement ''when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection.'' For additional information regarding the waiver of these fees, you may contact James Tompkins by phone at (703) 305–5697, by e-mail at tompkins.jim@epa.gov, or by mailing a request for information to Mr. Tompkins at Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

If you would like to request a waiver of the tolerance objection fees, you must mail your request for such a waiver to: James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

3. *Copies for the Docket*. In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit VI.A., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in Unit I.B.2. Mail your copies, identified by docket control number OPP–301199, to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. In person or by courier, bring a copy to the location of the PIRIB described in Unit I.B.2. You may also send an electronic copy of your request via e-mail to: opp-docket@epa.gov. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

B. When Will the Agency Grant a Request for a Hearing?

A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

VII. Regulatory Assessment Requirements

This final rule extends tolerances under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this rule has been exempted from review under Executive Order 12866 due to its lack of significance, this rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism*(64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national

government and the States, or on the distribution of power and responsibilities among the various levels of government.'' This final rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). For these same reasons, the Agency has determined that this rule does not have any ''tribal implications'' as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes.'' This rule will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

VIII. Submission to Congress and the Comptroller General

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 this final rule in the **Federal Register**. This final rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: December 26, 2001.

Peter Caulkins,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346(a) and 371.

§ 180.480 [Amended]

2. In § 180.480(a)(1) is amended by revising the ''Expiration/Revocation Date'' in the table ''12/31/01'' to read ''12/31/04.'' for the entries ''bananas (whole fruit)''; ''pecans''; and ''stone fruit crop group (except plums and prunes)''.

[FR Doc. 02–962 Filed 1–14–02; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 261

[SW–FRL–7125–1]

Hazardous Waste Management System; Identification and Listing of Hazardous Waste Final Exclusion

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The EPA (also, ''the Agency'' or ''we'' in this preamble) is granting a delisting to Heritage Environmental Services, LLC (Heritage) to exclude treated Electric Arc Furnace Dust (EAFD) produced at Nucor Steel, Division of Nucor Corporation (Nucor) located in Crawfordsville, Indiana from the lists of hazardous wastes.

After careful analysis, the EPA has concluded that the petitioned waste is not a hazardous waste when disposed of in a Subtitle D landfill. Today's action conditionally excludes the petitioned waste from the requirements of the hazardous waste regulations under the Resource Conservation and Recovery Act (RCRA) only if the waste is disposed of in a Subtitle D landfill which is permitted, licensed, or registered by a State to manage industrial solid waste.

EFFECTIVE DATE: This rule is effective on January 15, 2002.

ADDRESSES: The RCRA regulatory docket for this final rule is located at the U.S. EPA Region 5, 77 W. Jackson Blvd., Chicago, IL 60604, and is available for viewing from 8:00 a.m. to 4:00 p.m., Monday through Friday, excluding federal holidays. Call Todd Ramaly at (312) 353–9317 for appointments. The public may copy material from the regulatory docket at $0.15 per page.

FOR FURTHER INFORMATION CONTACT: For technical information concerning this document, contact Todd Ramaly at the address above or at (312) 353–9317.

SUPPLEMENTARY INFORMATION: The information in this section is organized as follows:

I. Background
  A. What Is a Delisting Petition?
  B. What Regulations Allow a Waste to Be Delisted?
II. Heritage's Delisting Petition
  A. What Waste Did Heritage Petition EPA to Delist?
  B. What Information Must the Petitioner Supply?
  C. What Information Did Heritage Submit to Support This Petition?
III. EPA's Evaluation and Final Rule
  A. What Decision Is EPA Finalizing and Why?
  B. What Are the Terms of This Exclusion?
  C. When Is the Delisting Effective?
  D. How Does This Action Affect the States?
IV. Public Comments Received on the Proposed Exclusion
  A. Comments and Responses from EPA
V. Regulatory Impact
VI. Congressional Review Act
VII. Executive Order 12875

I. Background

A. What Is a Delisting Petition?

A delisting petition is a request from to exclude waste from the list of hazardous wastes under RCRA regulations. In a delisting petition, the petitioner must show that waste generated at a particular facility does not meet any of the criteria for which EPA listed the waste as set forth in 40 CFR 261.11 and the background document for the waste. In addition, a petitioner must demonstrate that the waste does not exhibit any of the hazardous waste characteristics (that is, ignitability, reactivity, corrosivity, and toxicity) and must present sufficient information for us to decide whether factors other than those for which the waste was listed warrant retaining it as a hazardous waste.

A petitioner remains obligated under RCRA to confirm that the waste remains nonhazardous based on the hazardous waste characteristics even if EPA has ''delisted'' the waste.

B. What Regulations Allow a Waste To Be Delisted?

Under 40 CFR 260.20 and 260.22, a person may petition the EPA to remove

waste at a particular generating facility from hazardous waste control by excluding the waste from the lists of hazardous wastes contained in §§ 261.31 and 261.32. Specifically, § 260.20 allows any person to petition the EPA to modify or revoke any provision of parts 260 through 266, 268, and 273 of Title 40 of the Code of Federal Regulations. Section 260.22 provides a person the opportunity to petition the EPA to exclude a waste on a ''generator specific'' basis from the hazardous waste lists.

II. Heritage's Delisting Petition

A. What Waste Did Heritage Petition EPA to Delist?

On August 3, 1999, Heritage petitioned EPA to exclude an annual volume of 30,000 cubic yards of K061 EAFD generated at Nucor Steel Corporation located in Crawfordsville, Indiana from the list of hazardous wastes contained in 40 CFR 261.32. K061 is defined as ''emission control dust/sludge from the primary production of steel in electric arc furnaces.''

B. What Information Must the Petitionor Supply?

Petitioners must provide sufficient information to allow the EPA to determine that the waste does not meet any of the criteria for which it was listed as a hazardous waste. In addition, where there is a reasonable basis to believe that factors other than those for which the waste was listed (including additional constituents) could cause the waste to be hazardous, the EPA must determine that such factors do not warrant retaining the waste as hazardous.

C. What Information Did Heritage Submit To Support This Petition?

To support its petition, Heritage submitted descriptions and schematic diagrams of the EAFD treatment system; and detailed chemical and physical analyses of the treated EAFD.

III. EPA's Evaluation and Final Rule

A. What Decision Is EPA Finalizing and Why?

Today the EPA is finalizing an exclusion to Heritage for a 30,000 cubic yards annual volume of K061 EAFD generated at the Nucor Steel facility in Crawfordsville, Indiana and treated by Heritage from the list of hazardous wastes.

Heritage petitioned EPA to exclude, or delist, the treated EAFD because Heritage believes that the petitioned waste does not meet the RCRA criteria for which it was listed and that there are no additional constituents or factors which could cause the waste to be hazardous. Review of this petition included consideration of the original listing criteria, as well as the additional factors required by the Hazardous and Solid Waste Amendments of 1984 (HSWA). See section 222 of HSWA, 42 United States Code (U.S.C.) 6921(f), and 40 CFR 260.22 (d)(2)–(4).

On December 5, 2000, EPA proposed to exclude or delist Heritage's treated EAFD from the list of hazardous wastes in 40 CFR 261.32 and accepted public comment on the proposed rule (65 FR 75897). EPA considered all comments received, and for reasons stated in both the proposal and this document, we believe that the treated waste generated at the Nucor facility should be excluded from hazardous waste control.

B. What Are the Terms of This Exclusion?

Heritage must dispose of the treated EAFD in a Subtitle D landfill which has groundwater monitoring and which is permitted, licensed, or registered by a state to manage industrial waste. This exclusion is valid for a maximum annual rate of 30,000 cubic yards per year. Any amount exceeding this volume is not delisted under this exclusion. This exclusion is effective only if all conditions contained in today's rule are satisfied.

C. When Is the Delisting Effective?

This rule is effective January 15, 2002. The Hazardous and Solid Waste Amendments of 1984 amended section 3010 of RCRA to allow rules to become effective in less than six months when the regulated community does not need the six-month period to come into compliance. This rule reduces rather than increases the existing requirements and, therefore, is effective immediately upon publication under the Administrative Procedure Act, pursuant to 5 U.S.C. 553(d).

D. How Does This Action Affect the States?

Because EPA is issuing today's exclusion under the federal RCRA delisting program, only states subject to federal RCRA delisting provisions would be affected. This exclusion may not be effective in states having a dual system that includes federal RCRA requirements and their own requirements, or in states which have received our authorization to make their own delisting decisions.

EPA allows states to impose their own non-RCRA regulatory requirements that are more stringent than EPA's, under section 3009 of RCRA. These more stringent requirements may include a provision that prohibits a federally issued exclusion from taking effect in the state. Because a dual system (that is, both federal (RCRA) and state (non-RCRA programs) may regulate a petitioner's waste, we urge petitioners to contact the state regulatory authority to establish the status of their wastes under the state law.

EPA has also authorized some states to administer a delisting program in place of the federal program, that is, to make state delisting decisions. Therefore, this exclusion does not apply in those authorized states. If Heritage transports the petitioned waste to or manages the waste in any state with delisting authorization, Heritage must obtain a delisting from that state before it can manage the waste as nonhazardous in the state.

IV. Public Comments Received on the Proposed Exclusion

A. Comments and Responses From EPA

Comment: The DRAS is a more realistic model than any of its predecessors.

Response: EPA agrees with the comment.

Comment: EPA has stated that it believes the CML model is appropriate when evaluating whether to delist a waste, and has used the CML model as recently as the proposed delisting of August 8, 2000 and the final delisting of May 16, 2000.

Response: Region 5 believes that the delisting risk assessment software (DRAS) is a more sophisticated and more appropriate model and is now applying this model to all petitions currently under review.

Comment: The September 27, 2000 and December 5, 2000 **Federal Registers** did not indicate that the DRAS has been adopted by all EPA Regions, nor that it would be used in the future.

Response: At this time all Regions are using the DRAS model.

Comment: The model should be peer reviewed and the public should have the opportunity to provide adequate and meaningful comment.

Response: The model has been peer reviewed. The public has the opportunity to submit comments on the DRAS model during the comment period each time a delisting is proposed which is based on the DRAS model.

Comment: EPA is continuing to use the model before completing its own review of comments received. The DRAS may not be appropriate since it is currently being commented upon & revised.

Response: The Agency is continually striving to improve the tools available

for assessing risk. The Agency believes that at this time the DRAS model is the best available tool for estimating risk. Revisions and improvements to the model are always possible in the future.

Comment: The DRAS model assumes that the landfill is unlined and that leaching occurs from the beginning, which is counter to the use of liners, covers & slurry walls. The assumption of no liner is not consistent with CMTP which assumes a liner. The DRAS model should allow for the option of including a liner and should use Subtitle D landfill characteristics.

Response: There are existing solid waste landfills which have no liner. Over time, liners may fail and delistings currently have no expiration date. Therefore it is reasonable to consider scenarios for liner failure or to assume that no liner exists.

Comment: The DRAS model assumption of minimal cover increases estimates of volatilization and particulate emissions, which may not be reasonable.

Response: We must consider the worst case scenario of minimal requirements for daily cover. Regulations requiring daily cover on municipal landfills do not necessarily apply to industrial solid waste landfills.

Comment: The DRAS model is inflexible because site specific factors like hydrogeology, climate, ecology, and population density cannot be incorporated. The model should be modified to allow for the input of site and contaminant specific criteria. State or regional modeling criteria may be more stringent than the CMTP and have been ignored.

Response: At this time the Agency is not able to consider such site specific factors. The DRAS model is based on national averages of these factors and is intended to model a reasonable worst case. A State may always impose more stringent requirements based on site-specific factors.

Comment: DRAS is complex and EPA must explain the models and risk processes used in establishing regulatory limits including the assumptions, methodologies, pathways and variables used in the DRAS model.

Response: The DRAS Technical Support Document (DTSD) explains the risk algorithms used in the model including the methodologies, variables, pathways and assumptions. The DTSD is available on line at *http://www.epa.gov/earth1r6/6pd/rcra__c/pd-o/dtsd.htm.*

Comment: Several assumptions used in the DRAS model are unlikely and unreasonable: (1) A receptor lives and works at a single location 100 m downgradient and is exposed 350 days/yr; (2) individuals are exposed to the 90th percentile level for all paths; (3) all media flow toward the receptor; (4) the landfill volume and conditions from 1987 are still valid; (5) the waste is placed uniformly at great depth over the whole landfill; (6) only the most sensitive pathway for each constituent is selected which is an unlikely scenario; (7) first order decay applies although processes of oxidation, hydrolysis and biodegredation are not considered separately; (8) transformation rate may not be reasonable for biological processes; (9) fate and leaching estimates should include parameter estimates including Kow, pKa, Henry's Law and potential for biological transformation; (10) all streams are fishable and representative; and (11) nickel has a fish BCF of 307 which is unsupported by peer review publications and EPA's own documents.

Response: (1,2) The DRAS employs standard risk assessment default parameters that are accepted throughout the Agency in risk analyses (i.e., residential exposure 350 days/yr, and selection of the 90th percentile). The Agency has no way of knowing that this situation will not occur and therefore deems it prudent to protect for this condition by adding risks. (3) The Agency has no way of knowing the direction of media flow and must assume that all media flow may move toward the receptor. (4) The Agency has no data to indicate that the landfill volume data and other data from the 1987 landfill survey report are not valid. When updated data are available, they will be incorporated into the analyses. (5) To maximize the impact of the waste, the model assumes uniform placement of the waste. (6) The DRAS does employ a conservative approach to exposure assessment by assuming the receptor may be exposed to both the most sensitive groundwater pathway and the most sensitive surface exposure pathway and selects the most sensitive pathway for each constituent. (7,8) The groundwater fate and transport model used by the Agency to determine first order decay is EPA's Composite Model for Leachate Migration with Transformation Products (CMTP). The information used to develop the first order decay rate for different chemicals in CMTP is based on studies in which the separate processes of oxidation, biodegradation and hydrolysis could not be further isolated. The transformation rates cannot be easily adjusted because they are based on these empirical studies rather than on theoretical modeling in which variables can be altered at will. This model has been peer reviewed and received an excellent review from the Science Advisory Board (SAB). The Agency will continue to support the use of EPACMTP until a better assessment tool becomes available. (9) The Kow and pKa (octonal water partition coefficient and ionization constant) are not used in the development of leaching estimates because the DRAS relies on test data from leach testing to estimate the leaching potential of the waste. The Henry's law constant, although used in other aspects of the DRAS, is not used in the estimate of leaching and fate in groundwater. At this time, the CMTP does not account for volatilization of constituents from the groundwater as it moves through the subsurface.

(10) EPA assumed that all streams of sufficient size are fishable. This assumption is conservative, but not unreasonable as the final landfill location is not known. (11) The bioconcentration factor (BCF) for nickel has been revised from 307 to 78. The revised nickel BCF will be incorporated into the upcoming DRAS version 2.0.

Comment: Current science suggests that the skin and respiratory tract are targets for soluble nickel salts, yet the model literature states that the critical effects are decreased organ and/or body weights.

Response: The oral Reference Dose (RfD) is based on the assumption that thresholds exist for certain toxic effects such as cellular necrosis. It is expressed in units of mg/kg/day. Ambrose et al. (1976) reported the results of a 2-year feeding study using rats given 0, 100, 1000 or 2500 ppm nickel (estimated as 0, 5, 50 and 125 mg Ni/kg/day) in the diet. Clinical signs of toxicity, such as lethargy, ataxia, irregular breathing, cool body temperature, salivation and discolored extremities, were seen primarily in the 100 mg/kg/day group; these signs were less severe in the 35 mg/kg/day group. Based on the results obtained in this study, the 5 mg/kg/day nickel dose was a no observable adverse effects level (NOAEL), whereas 35 mg/kg/day was a lowest observable adverse effects level (LOAEL) for decreased body and organ weights. For further information, please refer to the Agency's IRIS database.

Comment: The bioconcentration factor (BCF) of 307 for nickel in fish is unsupported in EPA's own documents. Literature values are much less. BCF should not be used for predicting chronic toxicity. Some organs can regulate internal concentrations. Nickel has a low order of toxicity. Nickel does not bioaccumulate due to incomplete adsorption and rapid excretion. It is

Ni^{+2}, not the parent, that is persistent and bioavailable and determines toxicity.

Response: The BCF for nickel has been revised to 78 and will be incorporated into DRAS version 2.0. This value is based on the geometric mean of 3 laboratory values (100, 100, 47). The studies used to derive the BCF for nickel are based on soluble nickel, which is present as the Ni^{+2} ion. The nickel concentration in the waste was assumed to be present as the Ni^{+2}. The assumption is conservative, but not unreasonable since the nickel from the waste could be present as the Ni^{+2} ion at the point of exposure.

Comment: In aquatic environs, much of the nickel is present as both ionic and stable organic complexes. Hence much of the nickel is insoluble with minimal bioavailability. Also, soil which contains high organic matter will adsorb nickel and limit its mobility.

Response: The Agency agrees that some nickel may be insoluble, and have minimal bioavailability, since its mobility is dependent on the organic content of the soil. However, in delisting analyses, site specific characteristics (beyond waste constituent concentration and volume) are not incorporated into analyses. Default values are given for many parameters used in risk analyses including the organic content of fishable waters. The Agency has no way of knowing what streams may be impacted and, therefore, has established a conservative estimate of pertinent variables.

Comment: MINTEQA2 has been reported to contain outdated and inaccurate thermodynamic estimates (e.g., for complexation of metals like cadmium that are dependent on disolved oxygen content (DOC and pH). Hence the model may not reasonably estimate speciation and mobility. EPA should confirm stoichiometry, speciation charge, formula weight, equilibrium and enthalpy estimates with regard to metal and organic ligands as risks from metal ion concentrations may be overestimated.

Response: The Agency continues to review chemical-specific parameter data. Where appropriate, these data will be incorporated into the DRAS analyses.

Comment: The model may estimate fate and transport concentrations that exceed water solubility.

Response: If waste concentration exceeds soil saturation, free form conditions may occur and the assumptions of the EPACMTP may be compromised. Therefore, soil saturation values have been incorporated into DRAS and the program will notify the user if waste concentrations exceed soil saturation concentrations. Ambient water concentrations may be influenced by more than chemical solubility (e.g., organic content).

Comment: The use of the NOAEL in Rfd calculations has been challenged by the SAB. The dose response relationship and the consistency in response level are not identified. Use of the NOAEL for regulatory limits is based more on experimental exposure design than on biological relevance.

Response: The EPA still uses the NOAEL in Rfd. The SAB did not review the entire DRAS. The EPA risk assessors who peer reviewed the DRAS did not question the use of the NOAEL in Rfd. Until such time that the Agency redefines RfD methodology, the delisting program will continue to determine hazards based on RfDs recommended by EPA's IRIS database. The Agency continues to use RfDs in delisting determinations in a manner consistent with EPA risk assessment methodology. The EPA risk assessors and EPA ORD scientists who have peer reviewed the DRAS have not questioned the method in which RfDs are employed in the DRAS analyses.

Comment: Terms should be more clearly defined. Does the term Cw for waste contamination account for the total mass of contamination in the waste or only that portion that may enter the aqueous phase and be transported into the unsaturated zone and/or the leachable portion?

Response: No occurrences of Cw could be found in the DTSD or in the proposed exclusion. The term Cwaste is used twice in Chapter 4 of the DTSD to refer both to the total constituent concentration in a solid matrix in a landfill and to the total constituent concentration in a liquid in a surface impoundment.

Comment: USEPA cited various regulatory and statutory sections such as §§ 261.11(a)(3)(i) thru (xi) describing factors to consider in listing/delisting waste, but there was very little analysis of those factors. This prompts the conclusion that the USEPA is arbitrarily proposing to grant the HES petition.

Response: All criteria in 40 CFR 261.11(a)(3) were considered in accordance with § 260.22(d). The DRAS program was developed in consideration of all of the factors presented in 40 CFR 261.11(a)(3). Consitituent specific toxicology, chemical, and physical data are in the database used in the DRAS software as are appropriate models for evaluating migration and exposure. The DRAS is not currently capable of evaluating degradation products as described in 40 CFR 261.11(a)(3)(iii) through (vi) and the risk posed by degradation products would typically be evaluated independently. The petitioned waste, however, did not contain any chemicals which have known degradation products and therefore this additional analysis was not necessary. EPA considered plausible types of improper management in accordance with § 261.11(a)(3)(vii) when it assumed that contaminants will migrate from the landfill to a receptor well, uncontrolled erosion of exposed wastes will migrate into a stream, and long-term absence of daily cover will expose the waste to the atmosphere. Operating a facility in this manner is considered improper management as it violates the proper management standards and requirements promulgated for licensed Subtitle D landfills set forth in 40 CFR parts 257 and 258.

Comment: DRAS does not evaluate important ecological receptors which may significantly impact the back calculated maximum permissible waste concentrations derived from DRAS.

Response: The DRAS model does include consideration of ecological impacts. A complete description of the screening for ecological impact is in Chapter 4 of the DTSD available on the internet at <*http://www.epa.gov/earth1r6/6pd/ rcra—c/pd-o/dtsd.htm.*> The maximum observed lead and zinc in the petitioned waste exceeded the surface water screening values, indicating the need to examine the possible ecological impact more closely. The DRAS model does not account for the fact that some of the constituents in the eroded waste will not be dissolved. Since water quality criteria used for lead and zinc are based on dissolved concentrations, the total water concentration predicted by DRAS was conservative. Using conservative values published by EPA's Office of Water to convert total water concentrations to dissolved concentrations (30% for zinc and 20 % for lead), the surface water quality criteria were not exceeded.

Comment: How does the model distinguish metals that are important for some animals?

Response: If the commenter is referring to metals as micronutrients, delisting levels for metals far exceed any micronutrient levels.

Comment: What criteria determine whether the allowable leachate concentration is set by the Safe Drinking Water Act (SDWA) Maximum Contaminant Level (MCL), DRAS calculation, treatment technology or toxicity characteristic level?

Response: The allowable level is the most conservative of the DRAS

calculations, a calculation based on the SDWA MCL or the toxicity characteristic level. The exception to this is the level for arsenic which is frequently calculated based on the concentration allowed by the MCL.

Comment: Does EPA policy require that MCL or surface water criteria be met? Does this policy apply at all downgradient distances or just those corresponding to the DAF?

Response: Groundwater must meet MCL criteria but not surface water criteria. The DAF is used to calculate the concentration in the groundwater at a well a set distance downgradient. This distance was based on the results of a survey which identified the distance to the closest drinking water wells located near solid waste landfills throughout the country.

Comment: Are maximum permissible levels set below background? Background levels for nickel are approximately 3.3 ppb freshwater; 2.1 ppb groundwater; 4 to 30 mg/kg soil.

Response: The Agency does not usually consider background levels when establishing delisting levels. The maximum allowable levels of nickel in the waste and in the TCLP leachate are not less than the values mentioned in the comment.

Comment: The pH of landfill leachate is generally higher than the pH of the extraction fluid used in the TCLP which affects the leachability of the metals.

Response: The leachability of this waste was measured using three different extraction fluids with pH values of 2.88, 6.5, and 12.0 to evaluate whether the waste leachability will be affected by the pH of various environments.

Comment: The duration of leaching 18 minutes or 18 hours may over or underestimate the leachability of some constituents. TCLP does not account for variations in time to equilibrium for different species. The TCLP under predicts the maximum concentation of some anions and does not account for a variety of processes that can affect leachate quality, quantity and migration.

Response: It is impossible to determine the optimum time or other factors necessary to maximize the leaching of each constituent in every matrix in any environmental condition. A considerable amount of time and effort went into the development of the TCLP and the Agency believes that it is a reasonable laboratory test and that the TCLP results generally correlate well with environmental measurements.

Comment: Does the TCLP account for DOC? DOC in the leachate affects the mobility of metals in the aquifer.

Response: The TCLP does not account for DOC. However, in performing the TCLP procedure using alternative extraction fluids, Heritage took steps to remove dissolved oxygen from the neutral and basic extraction fluids. See proposed rule, 65 FR 75900, December 5, 2000.

Comment: It may be appropriate for the Agency to consider data from the SPLP.

Response: The Agency would consider any additional data that the petitioner chooses to submit. At this time the Agency requires leach testing for stabilized waste using the TCLP procedure at three different pHs. The Agency also evaluates data from the multiple extraction procedure. During the development of the sampling and analysis plan for a delisting petition, the Agency and petitioner discuss which analytical methods are appropriate for characterizing the waste.

Comment: For chemicals not previously modeled with the EPACMTP, what is the effect of assuming a DAF of 18?

Response: The Dilution Attenuation Factor (DAF) of 18 is a conservative value determined by the EPACMTP fate and transport model for the landfill waste management scenario. The DAF of 18 represents the class of organic chemicals with non-degrading, non-sorbing, characteristics. When creating a chemical to add to the DRAS chemical library for use in DRAS analyses, we recommend using a conservative value.

Comment: What is the effect of using one half detection level or zero for non detects?

Response: The use of one half the detection level is a compromise between the use of zero and the use of the detection limit. Using one half of the detection level protects against inappropriately high detection levels.

Comment: The model does not account for the uncertainty or sensitivity estimate. Without a sensitivity analysis it is impossible to determine if a single pathway or a small number of pathways dominate the risk estimate. If data for most sensitive parameter is uncertain or limited, confidence in the result will be poor.

Response: The DRAS provides the forward-calculated risk level and back-calculated allowable waste concentration for each exposure pathway. The user is thereby able to determine which pathway or pathways dominate the estimate of risk for each chemical. These analyses are currently provided on the Chemical-Specific Results screen.

Comment: The model determines that ground concentrations and a theoretical drinking water well that is 90th percentile of all predicted concentrations from Monte Carlo analysis. What is the sensitivity of using the 50th percentile on release and risk estimates?

Response: The DRAS assessment always defaults to high-end values from the 90th percentile. The model was not run using the 50th percentile, so it is not possible to determine the sensitivity at the 50th percentile.

Comment: Does a hazard index (HI) of greater than one mean that the waste cannot be delisted, or does it indicate that the model is overly conservative?

Response: An HI of one does not mean that the waste cannot be delisted, but a more thorough evaluation of the waste will be necessary. In cases where the HI of the waste exceeds one, the Agency will evaluate the target organ for the critical effect of those chemicals contributing to the total HI. In some cases, the hazards associated with various chemicals in the waste result from effects to the same target organ, and are indeed additive. In other cases, the hazards of different chemicals impact different target organs, and are not additive, in which case the HI is lowered accordingly. The DRAS automatically assumes the conservative approach, summing all hazards to calculate the HI.

Comment: EPA has rationalized the exceedance of its own delisting program target risk level of 1×10^{-6} by reference to the cancer risk range of 1×10^{-4} to 1×10^{-6} acceptable in other programs. Although this risk range may be appropriate in the context of corrective action, it may not be warranted in the delisting program where the waste is yet to be generated and placed into the environment.

Response: This risk is within the target risk range in the delisting program of 1×10^{-4} to 1×10^{-6}. The commentor is referred to chapter 4 of the DRAS DTSD which states that the target risk range is 1×10^{-4} to 1×10^{-6}. Attachment A of the RCRA Delisting Program Guidance Manual for the Petitioner also states that the target risk range is 1×10^{-4} to 1×10^{-6}.

Comment: Definition of the criteria used to determine de minimis risk levels and risk estimates should be provided. De minimis risk is usually considered to be a risk of less than 10^{-6} or 1 in a million.

Response: The term de minimis risk is used to refer to a risk that is sufficiently low that it need not be considered. The commentor is correct that a de minimis risk is usually considered by regulatory agencies to be a risk at or below 10^{-6} over a 70 year life time.

Comment: Long term variation, waste characterization procedures used by Heritage, and specific information used in the fate & transport model are lacking.

Response: Temporal variability and waste characterization procedures used by Heritage were evaluated. The fate and transport data used by the delisting risk assessment model is based on national averages for a reasonable worst case scenario, not on site specific information.

Comment: It may be more appropriate to set standards using statistical procedures from empirical data from TCLP analyses rather than generic risk assessment and fate and transport.

Response: Empirical data is not a reliable predictor of future risk. We believe that the DRAS model is a more appropriate tool than empirical data for determining acceptable levels based on risk.

Comment: Is 30,000 cubic yards the untreated or the treated K061? Will any amount over 30,000 cubic yards be regulated as K061? What information was provided to determine annual volume?

Response: The proposed delisting is for 30,000 cubic yards of treated waste. Any treated K061 in excess of 30,000 yds is not delisted. The Agency accepts the facility's assessment and certification of data submitted.

Comment: What is a mixing device?

Response: A mixing device is a unit in which mixing occurs.

Comment: Much of the relevant information was confidential business information, such as what treatment reagents were used or specifications of a mixing device.

Response: Heritage has claimed information which it submitted on equipment, reagents, and process as confidential. Heritage believes that such information in the public domain could be injurious.

Comment: No details were given on and what dust characteristics were evaluated.

Response: Information on dust characteristics of the treated dust is provided in section 3.0 of the petition.

Comment: Are the larger particles that are removed in the dropout chamber ever reintroduced into the EAFD for treatment? Would these larger particles meet the definition of K061? Are the silos in which EAFD is accumulated considered accumulation tanks since the exclusion is only for EAFD that has been treated.

Response: The material in the dropout box is not K061 and is not reintroduced into the EAFD for treatment. The silos are part of the production unit and not RCRA regulated tanks. Baghouse silos that are directly connected via piping to the baghouse are an integral part of the EAFD emission control system. Furthermore, the waste is accumulated in the silos for less than 90 days, and the silos are part of the treatment equipment. The point of generation does not occur until the treatment is complete and the waste exits the unit. Therefore, the silos are not accumulation tanks and are not subject to RCRA.

Comment: US EPA should re-evaluate the waste treatment process and QA criteria to assure variations in the treated EAFD are minimized.

Response: If future verification samples indicate excessive variations, the waste will be re-evaluated.

Comment: There are no details on the fingerprinting procedures or the quality control measures used to assure proper and consistent treatment of the waste.

Response: The sampling strategy addressed the waste exiting the unit. Fingerprinting would not be appropriate since the waste does not undergo further treatment after it exits. The quality control measures are set forth in the sampling and analysis plan. The required verification sampling is intended to assure that the treated waste remains within acceptable limits. Verification samples which exceed the delisting levels set forth in this rule may invalidate this delisting.

Comment: The composite sampling procedure in the initial month may not be sufficient to describe the variation of metals from different mixes of scrap steel. No comparison of the variability of the metals is given. EPA should adopt statistical sampling and analytical procedures from process and quality control engineering methodology. The limited amount of sampling does not provide for waste variability.

Response: A statistical approach based on extensive data would be welcomed in future petitions. Since the K061 dust is generated at a single facility, the Agency believes that the samples taken represent a reasonable range of both spacial and temporal varibility. Some confidential data was submitted demonstrating waste variability at this site.

Comment: The presence of VOCs, SVOCs and PCBs is considered unlikely. However, one sample is insufficient to determine the presence or absence of these compounds. Verification should require that a limited number of samples be analyzed for these constituents.

Response: Based on an understanding of the process, the Agency believes that these constituents are not likely to be present in the waste. Generator knowledge also supports the absence of these constituents in the waste. In this case, a single sample is considered sufficient to verify the absence of these compounds.

Comment: The commenter recommends that split samples should be taken by EPA.

Response: EPA does not sample wastes in support of delisting petitions. The signed certification is accepted as proof that all analyses were done properly and the results are reported correctly.

Comment: Listed waste needs to meet technology based LDRs prior to disposal. The delisting level for lead has been set at 2.4 mg/L TCLP which is above the LDR standard of .75 mg/L TCLP. Why weren't LDRs considered in setting the delisting standard?

Response: The proposed exclusion for this waste would be effective at the point of generation. Since LDRs attach at the point of generation this waste would not be considered hazardous and therefore is not subject to LDRs.

Comment: There are no criteria listed for what constitutes a significant change to the treatment process or a change in the chemicals used.

Response: A change either to the treatment process or in the chemicals used is significant if it results in a change in the composition of the waste.

Comment: In most cases where samples are required to support decision-making under RCRA, grab samples are required. Samples taken in support of this petition were composite samples. EPA should explain why results based on composite sampling were allowed and accepted and why these samples do not render the decision to grant the HES petition inappropriate due to inconsistent information.

Response: In the delisting program, composite samples are preferred, except in the case of volatile constituents. Multiple composite samples provide a better profile of the waste.

Comment: There should be recognition that a single grab sample taken by a regulating authority would be sufficient for a determination of legitimacy of the exclusion. The proposed delisting seems to indicate that only the monthly sampling done by Heritage could cause the exclusion to be suspended.

Response: The Agency always has the right to take samples to verify compliance. Such samples taken by the Agency could provide a basis for revoking a delisting.

Comment: A more rigorous initial sample was used to characterize the

variability for EAFD at USX Steel Corporation in Gary Indiana. Is it appropriate to have two different standards for USX and Heritage?

Response: All delisting decisions, including the initial sampling for delisting proposals are site specific. There will be variations.

Comment: In the ANPRM, 65 FR 37932, June 19, 2000, EPA has reservations about the effectiveness of using stabilization to immobilize metal wastes. Stabilization has not been scientifically proven to be reliable over the long term for disposal of such wastes. Allowing this waste to be placed in general purpose landfills which have fewer engineered features to prevent leaching and migration of heavy metals into groundwater ignores sound science. EPA needs to explain why disposing of a hazardous waste in this less protective manner should be allowed, absent any evidence confirming that it will work.

Response: At this time, stabilization is considered to be the best available treatment for metal bearing wastes. We have no evidence that constituents of concern have ever leached from this stabilized waste. To assure that the waste continues to meet the levels established here, we are requiring periodic testing of the waste and placement of the waste in a solid waste landfill which has ground water monitoring.

Comment: A similar process used in Ohio has caused concern because of possible leaching of substances which were supposedly stabilized. EPA cited Envirosafe Services in Ohio as having high leachate levels of various metals.

Response: Envirosafe Services in Ohio was not cited by US EPA for high levels of metals in the leachate. The facility was cited by Ohio EPA for excessive volume of leachate, although this citation may be attributed to be an error in measurement. Although the commentor did not define what constitutes high levels of metals in the leachate, the leachate must be treated as necessary to meet regulated standards before disposal. In addition, the concentrations of metals in the groundwater are monitored and regulated. While EPA may consider the experiences at other locations, petitioned wastes are evaluated on a site specific basis. The petitioned waste meets the criteria for delisting when the levels set forth in the notice are met.

Comment: EPA has concluded that over the long term, the actual leachate concentrations suggest that significant groundwater contamination may result after the eventual failure of liner and other contaminant controls.

Response: The DRAS model calculates risk assuming a worst case scenario of no liner at all. Under this scenario, the waste can be delisted.

Comment: An independent engineering expert has warned that the massive weight of stabilized K061 on the liner could produce hundreds of high pressure points which will burst and result in leakage of the liner and seepage of groundwater into and through the cell. The problem of groundwater leaching out the heavy metals in a Class C landfill cannot be ignored, but EPA did not analyze it.

Response: Currently a liner is the best available technology for landfills, regardless of whether it is a hazardous waste landfill (Subtitle C) or a solid waste landfill (Subtitle D). However, the model used to assess the risk of a delisted waste assumes that no liner is present.

Comment: It is scientifically established that lead can actively affect hydration of the concrete ingredients of the stabilization process. Lead tends to locate near the surface of cement-like materials and is easily leached into water. This is a concern in a less-secure Class C landfill which is not built to withstand the immense weight of stabilized K061.

Response: There is no evidence that lead has leached from this waste in the past and therefore we cannot assume that it will do so in the future. Since the model assumes no liner, the weight of the stabilized K061 and its possible effect on a liner is not relevant. It is assumed that the commentor is concerned about disposal in a Subtitle D landfill, since a Subtitle C landfill which the commentor referred to is more secure, not less secure as stated in the comment.

Comment: Arsenic and cadmium have been most frequently found in hazardous concentrations on both a total and dissolved constituent basis.

Response: Only very low concentrations of these constituents leach from the petitioned waste in a TCLP analysis. EPA believes that at these low concentrations, these constituents do not pose a risk.

Comment: EPA has expressed concern over migration of metals from stabilized waste to groundwater, yet EPA proposed to grant the Heritage petition without reviewing any groundwater monitoring information. In fact, Heritage submitted no groundwater monitoring information.

Response: HES has submitted groundwater monitoring data for their Subtitle C landfill where the waste is currently being disposed. The data does not indicate the presence of any constituent above health based levels.

V. Regulatory Impact

Under Executive Order 12866, EPA must conduct an ''assessment of the potential costs and benefits'' for all ''significant'' regulatory actions.

The proposal to grant an exclusion is not significant, since its effect, if promulgated, would be to reduce the overall costs and economic impact of EPA's hazardous waste management regulations. This reduction would be achieved by excluding waste generated at a specific facility from EPA's lists of hazardous wastes, thus enabling a facility to manage its waste as nonhazardous.

Because there is no additional impact from today's final rule, this proposal would not be a significant regulation, and no cost/benefit assessment is required. The Office of Management and Budget (OMB) has also exempted this rule from the requirement for OMB review under section (6) of Executive Order 12866.

VI. Congressional Review Act

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 Congress and to the Comptroller General of the United States. EPA is not required to submit a rule report regarding today's action under section 801 because this is a rule of particular applicability. Section 804 exempts from section 801 the following types of rules: rules of particular applicability; rules relating to agency management or personnel; and rules of agency organization, procedure, or practice that do not substantially affect the rights or obligations of non agency parties (5 U.S.C. 804(3)). This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2). This rule will become effective on the date of publication in the **Federal Register**.

VII. Executive Order 12875

Under Executive Order 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a state, local, or tribal government, unless the federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If the mandate is unfunded, EPA must provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected state, local, and tribal governments, the nature of

their concerns, copies of written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of state, local, and tribal governments ''to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates.'' Today's rule does not create a mandate on state, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this rule.

List of Subjects in 40 CFR Part 261

Environmental protection, Hazardous waste, Recycling, Reporting and recordkeeping requirements.

Authority: Sec. 3001(f) RCRA, 42 U.S.C. 6921(f).

Dated: December 12, 2001.

Gerald Phillips,

Acting Director, Waste, Pesticides and Toxics Division.

For the reasons set out in the preamble, 40 CFR part 261 is amended as follows:

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

1. The authority citation for part 261 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, 6922, and 6938.

2. In Table 2 of appendix IX of part 261 add the following waste stream in alphabetical order by facility to read as follows:

Appendix IX to Part 261—Wastes Excluded Under §§ 260.20 and 260.22.

* * * * *

TABLE 2.—WASTES EXCLUDED FROM SPECIFIC SOURCES

Facility	Address	Waste description
*	*	* * * * *
Heritage Environmental Services, LLC., at the Nucor Steel facility.	Crawfordsville, Indiana.	Electric arc furnace dust (EAFD) that has been generated by Nucor Steel at its Crawfordsville, Indiana facility and treated on site by Heritage Environmental Services, LLC (Heritage) at a maximum annual rate of 30,000 cubic yards per year and disposed of in a Subtitle D landfill which has groundwater monitoring, after January 15, 2002. (1) *Delisting Levels:* (A) The constituent concentrations measured in either of the extracts specified in Paragraph (2) may not exceed the following levels (mg/L): Antimony—0.206; Arsenic—0.0936; Barium—55.7; Beryllium—0.416; Cadmium—0.15; Chromium (total)—1.55; Lead—5.0; Mercury—0.149; Nickel—28.30; Selenium—0.58; Silver—3.84; Thallium—0.088; Vanadium—21.1; Zinc—280.0. (B) Total mercury may not exceed 1 mg/kg. (2) *Verification Testing:* On a monthly basis, Heritage or Nucor must analyze two samples of the waste using the TCLP method, the TCLP procedure with an extraction fluid of pH 12 ± 0.05 standard units and SW–846 Method 7470 for mercury. The constituent concentrations measured must be less than the delisting levels established in Paragraph (1). (3) *Changes in Operating Conditions:* If Nucor significantly changes the manufacturing process or chemicals used in the manufacturing process or Heritage significantly changes the treatment process or the chemicals used in the treatment process, Heritage or Nucor must notify the EPA of the changes in writing. Heritage and Nucor must handle wastes generated after the process change as hazardous until Heritage or Nucor has demonstrated that the wastes continue to meet the delisting levels set forth in Paragraph (1) and that no new hazardous constituents listed in Appendix VIII of Part 261 have been introduced and Heritage and Nucor have received written approval from EPA. (4) *Data Submittals:* Heritage must submit the data obtained through monthly verification testing or as required by other conditions of this rule to U.S. EPA Region 5, Waste Management Branch (DW–8J), 77 W. Jackson Blvd., Chicago, IL 60604 by February 1 of each calendar year for the prior calendar year. Heritage or Nucor must compile, summarize, and maintain on site for a minimum of five years records of operating conditions and analytical data. Heritage or Nucor must make these records available for inspection. All data must be accompanied by a signed copy of the certification statement in 40 CFR 260.22(i)(12). (5) *Reopener Language*—(A) If, anytime after disposal of the delisted waste, Heritage or Nucor possesses or is otherwise made aware of any data (including but not limited to leachate data or groundwater monitoring data) relevant to the delisted waste indicating that any constituent identified in Paragraph (1) is at a level in the leachate higher than the delisting level established in Paragraph (1), or is at a level in the groundwater higher than the maximum allowable point of exposure concentration predicted by the CMTP model, then Heritage or Nucor must report such data, in writing, to the Regional Administrator within 10 days of first possessing or being made aware of that data. (B) Based on the information described in paragraph (5)(A) and any other information received from any source, the Regional Administrator will make a preliminary determination as to whether the reported information requires Agency action to protect human health or the environment. Further action may include suspending, or revoking the exclusion, or other appropriate response necessary to protect human health and the environment. (C) If the Regional Administrator determines that the reported information does require Agency action, the Regional Administrator will notify Heritage and Nucor in writing of the actions the Regional Administrator believes are necessary to protect human health and the environment. The notice shall include a statement of the proposed action and a statement providing Heritage and Nucor with an opportunity to present information as to why the proposed Agency action is not necessary or to suggest an alternative action. Heritage and Nucor shall have 30 days from the date of the Regional Administrator's notice to present the information.

TABLE 2.—WASTES EXCLUDED FROM SPECIFIC SOURCES—Continued

Facility	Address	Waste description
		(D) If after 30 days Heritage or Nucor presents no further information, the Regional Administrator will issue a final written determination describing the Agency actions that are necessary to protect human health or the environment. Any required action described in the Regional Administrator's determination shall become effective immediately, unless the Regional Administrator provides otherwise.
*	*	* * * * *

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 261

[SW–FRL–7124–9]

Hazardous Waste Management System; Identification and Listing of Hazardous Waste Final Exclusion

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The EPA (also, ''the Agency'' or ''we'' in this preamble) is granting a petition submitted by USG Corporation (USG), Chicago, Illinois, to exclude (or ''delist''), on a one-time basis, certain solid wastes that are interred at an on-site landfill at its American Metals Corporation (AMC) facility in Westlake, Ohio from the lists of hazardous wastes. This landfill was used exclusively by Donn Corporation, the original site owner, for disposal of its wastewater treatment plant (WWTP) sludge from 1968 to 1978.

After careful analysis, the EPA has concluded that the petitioned waste is not a hazardous waste when disposed of in a Subtitle D landfill. Today's action conditionally excludes the petitioned waste from the requirements of the hazardous waste regulations under the Resource Conservation and Recovery Act (RCRA) only if the waste is disposed of in a Subtitle D landfill which is permitted, licensed, or registered by a State to manage industrial solid waste.

EFFECTIVE DATE: This rule is effective on January 15, 2002.

ADDRESSES: The RCRA regulatory docket for this final rule is located at the U.S. EPA Region 5, 77 W. Jackson Blvd., Chicago, IL 60604, and is available for viewing from 8:00 a.m. to 4:00 p.m., Monday through Friday, excluding Federal holidays. Call Todd Ramaly at (312) 353–9317 for appointments. The public may copy material from the regulatory docket at $0.15 per page.

FOR FURTHER INFORMATION CONTACT: For technical information concerning this document, contact Todd Ramaly at the address above or at (312) 353–9317.

SUPPLEMENTARY INFORMATION: The information in this section is organized as follows:

I. Background
A. What Is a Delisting Petition?
B. What Regulations Allow a Waste to Be Delisted?
II. USG's Delisting Petition
A. What Waste Did USG Petition EPA to Delist?
B. What Information Must the Petitioner Supply?
C. What Information Did USG Submit to Support This Petition?
III. EPA's Evaluation and Final Rule
A. What Decision Is EPA Finalizing and Why?
B. What Are the Terms of This Exclusion?
C. When Is the Delisting Effective?
D. How Does This Action Affect the States?
IV. Response to Public Comments Received on the Proposed Exclusion
V. Regulatory Impact
VI. Congressional Review Act
VII. Executive Order 12875

I. Background

A. What Is a Delisting Petition?

A delisting petition is a request from a petitioner to exclude waste from the list of hazardous wastes under RCRA regulations. In a delisting petition, the petitioner must show that waste generated at a particular facility does not meet any of the criteria for which EPA listed the waste as set forth in 40 CFR 261.11 and the background document for the waste. In addition, a petitioner must demonstrate that the waste does not exhibit any of the hazardous waste characteristics (that is, ignitability, reactivity, corrosivity, and toxicity) and must present sufficient information for EPA to decide whether factors other than those for which the waste was listed warrant retaining it as a hazardous waste.

Petitioners remain obligated under RCRA to confirm that their waste remains nonhazardous based on the hazardous waste characteristics even if EPA has ''delisted'' the wastes.

B. What Regulations Allow a Waste To Be Delisted?

Under 40 CFR 260.20 and 260.22, facilities may petition the EPA to remove their wastes from hazardous waste control by excluding it from the lists of hazardous wastes contained in §§ 261.31 and 261.32. Specifically, § 260.20 allows any person to petition the Administrator to modify or revoke any provision of parts 260 through 266, 268, and 273 of Title 40 of the Code of Federal Regulations. Section 260.22 provides any person with the opportunity to petition the Administrator to exclude a waste at a particular generating facility from the hazardous waste lists.

II. USG's Delisting Petition

A. What Waste Did USG Petition EPA To Delist?

On May 22,1997, USG petitioned EPA to exclude 12,400 cubic yards of previously disposed WWTP sludge from the list of hazardous wastes contained in 40 CFR 261.31. The WWTP sludge is a mixture of EPA Hazardous Waste Number F019 wastewater treatment sludge from the conversion coating of aluminum and other nonhazardous wastes.

B. What Information Must the Petitioner Supply?

A petitioner must provide sufficient information to allow the EPA to determine that the waste does not meet any of the criteria for which it was listed as a hazardous waste. In addition, where there is a reasonable basis to believe that factors other than those for which the waste was listed (including additional constituents) could cause the waste to be hazardous, the Administrator must determine that such factors do not warrant retaining the waste as hazardous.

C. What Information Did USG Submit To Support This Petition?

To support its petition, USG submitted (1) descriptions and schematic diagrams of its manufacturing and wastewater treatment processes, including historical information on past

waste generation and management practices; (2) detailed chemical and physical analysis of the landfilled sludge; and (3) environmental monitoring data from recent studies of the facility, including groundwater data from wells located in and around the on-site landfill.

III. EPA's Evaluation and Final Rule

A. What Decision Is EPA Finalizing and Why?

Today the EPA is finalizing an exclusion to USG for 12,400 cubic yards of WWTP sludge interred at the AMC facility in Westlake, Ohio.

USG petitioned EPA to exclude, or delist, the WWTP sludge because USG believes that the petitioned waste does not meet the RCRA criteria for which it was listed it and that there are no additional constituents or factors which could cause the waste to be hazardous. Review of this petition included consideration of the original listing criteria, as well as the additional factors required by the Hazardous and Solid Waste Amendments of 1984 (HSWA). See section 222 of HSWA, 42 United States Code (U.S.C.) 6921(f), and 40 CFR 260.22 (d)(2)–(4).

On September 27, 2000, EPA proposed to exclude or delist USG's WWTP sludge from the list of hazardous wastes in 40 CFR 261.31 and accepted public comment on the proposed rule (65 FR 58015). EPA considered all comments received, and for reasons stated in both the proposal and this document, we believe that USG's waste should be excluded from hazardous waste control.

B. What Are the Terms of This Exclusion?

USG must dispose of the estimated total landfill volume of the WWTP sludge, 12,400 cubic yards, in a Subtitle D landfill which is permitted, licensed, or registered by a state to manage industrial waste. Any amount exceeding this volume is not considered delisted under this exclusion. This exclusion is effective only if all conditions contained in today's rule are satisfied. This rule does not change the regulatory status of the landfill in Westlake, Ohio where the waste currently resides.

C. When Is the Delisting Effective?

This rule is effective January 15, 2002. The Hazardous and Solid Waste Amendments of 1984 amended section 3010 of RCRA to allow rules to become effective in less than six months when the regulated community does not need the six-month period to come into compliance. This rule reduces rather than increases the existing requirements and, therefore, is effective immediately upon publication under the Administrative Procedure Act, pursuant to 5 U.S.C. 553(d).

D. How Does This Action Affect the States?

Because EPA is issuing today's exclusion under the federal RCRA delisting program, only states subject to federal RCRA delisting provisions would be affected. This exclusion may not be effective in states having a dual system that includes federal RCRA requirements and their own requirements, or in states which have received EPA authorization to make their own delisting decisions.

EPA allows states to impose their own non-RCRA regulatory requirements that are more stringent than EPA's, under section 3009 of RCRA. These more stringent requirements may include a provision that prohibits a federally issued exclusion from taking effect in the state. Because a dual system (that is, both federal (RCRA) and state (non-RCRA programs) may regulate a petitioner's waste, EPA urges the petitioner to contact the state regulatory authority to establish the status of its wastes under the state law.

EPA has also authorized some states to administer a delisting program in place of the federal program, that is, to make state delisting decisions. Therefore, this exclusion does not apply in those authorized states. If USG transports the petitioned waste to or manages the waste in any state with delisting authorization, USG must obtain a delisting from that state before it can manage the waste as nonhazardous in the state.

IV. Response to Public Comments Received on the Proposed Exclusion

Comment: The commenter stated that although the Agency reviewed and commented on the DRAS model, the public has not had the opportunity to do so.

Response: The proposed rule of September 27, 2000 discussed the DRAS model. The comment period provided an opportunity to comment on the DRAS model itself as well as its use in this proposed delisting. Each proposed delisting must explicitly reference the risk model used. Therefore, comments on the DRAS may always be submitted during the comment period for any future delisting for which the DRAS was used. Also, for comments on future delistings which used the DRAS model, the technical support document for the DRAS model may be accessed on-line at *<http://www.epa.gov/earth1r6/6pd/rcra__c/pd-o/dtsd.htm>.*

Comment: It is not clear the Agency intends to use this model and that all Regions will be using this methodology to evaluate all delisting petitions in the future.

Response: At this time the Agency anticipates that the DRAS model will become the standard tool for evaluating future delisting petitions although there is no regulation requiring the use of this model. For each petition, each Region will select the risk model it considers to be the most appropriate.

Comment: It is inappropriate for the DRAS model to incorporate elements of the not yet finalized Hazardous Waste Identification Rule (HWIR) model.

Response: The risk assessment procedure performed by the DRAS model has been reviewed by the Science Advisory Board as well as by EPA's Office of Research and Development. Finalizing HWIR will not impact the use of this model in delisting decisions.

Comment: Why were several additional exposure pathways added to the delisting evaluation?

Response: Most of the exposure pathways used in this delisting evaluation have been used in previous delisting evaluations. The expanded list of exposure pathways is consistent with the exposure pathways used by the Agency in recent listing determinations as well as in the proposed HWIR.

Comment: The detection level for 2,3,4,7,8-PeCDF in Table 1 is higher than the target risk level for this compound although detection levels in the most recent analysis are much lower.

Response: The highest detection level in any sample is displayed in the table, however EPA relied on the actual quantitative results from the more recent and more sensitive analysis in evaluating the petitioned waste.

Comment: The petitioner requested that the calculation of the risk factor for 2,3,4,7,8-PeCDF be verified because it was comparable to 2,3,7,8-TCDD which is known to be more toxic.

Response: Although, 2,3,4,7,8-PeCDF is less toxic, it is more bioaccumulative in fish tissue so that its lower toxicity is offset by increased exposure.

Comment: The petitioner requested clarification on how non-detects are treated when determining delistable levels for dioxins and furans.

Response: Non-detects are not evaluated or included if the sample was analyzed by a method sufficiently sensitive to detect the constituent at the level of concern.

Comment: The commenter expressed concern that DAF scaling factors were

not linearly related to waste volumes at annual waste volumes less than 20,000 cubic yards, while the proposed exclusion implied the relationship was linear.

Response: The commenter is correct in that the DAF scaling factors are not linearly related to annual waste volume for volumes less than 20,000 cubic yards. The relationship is approximated by EPA as an exponential function. References to linearity and DAF scaling factors in the proposed rule were misleading. The DAF scaling factors of one constituent are assumed to be directly proportional to DAF scaling factors of other constituents, not linearly related to volume.

Additional corrections to the proposed exclusion:

The delisting factors for dioxin and furan congeners in the proposed rule have been corrected to reflect the increased rate of fish ingestion attributed to high-risk subpopulations in Region 5, as intended in the proposed exclusion. The correct congener-specific factors are as follows: 2,3,7,8-TCDD -7.46×10^{-2}; 1,2,3,7,8-PeCDD -7.18×10^{-2}; 1,2,3,4,7,8-HxCDD -2.41×10^{-3}; 1,2,3,6,7,8-HxCDD -9.82×10^{-4}; 1,2,3,7,8,9-HxCDD -1.09×10^{-3}; 1,2,3,4,6,7,8-HpCDD -4.20×10^{-5}; OCDD -1.01×10^{-7}; 2,3,7,8-TCDF -5.08×10^{-3}; 1,2,3,7,8-PeCDF -8.17×10^{-4}; 2,3,4,7,8-PeCDF -5.97×10^{-2}; 1,2,3,4,7,8-HxCDF -5.97×10^{-4}; 1,2,3,6,7,8-HxCDF -1.46×10^{-3}; 2,3,4,6,7,8-HxCDF -4.90×10^{-3}; 1,2,3,7,8,9-HxCDF -5.30×10^{-3}; 1,2,3,4,6,7,8-HpCDF -8.78×10^{-6}; 1,2,3,4,7,8,9-HpCDF -3.11×10^{-4}; and OCDF -1.35×10^{-7}.

The congener specific factors multiplied by the congener concentration in the waste provide the individual risk posed by each congener. The sum of these risks must not exceed the target risk level of 1×10^{-6}.

V. Regulatory Impact

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a rule of general applicability and therefore is not a ''regulatory action'' subject to review by the Office of Management and Budget. Because this action is a rule of particular applicability relating to a facility, it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), or to sections 202, 204, and 205 of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Because the rule will affect only one facility, it will not significantly or uniquely affect small governments, as specified in section 203 of UMRA, or communities of tribal governments, as specified in Executive Order 13084 (63 FR 27655, May 10, 1998). For the same reason, this rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

This rule does not involve technical standards; thus, the requirements of section 12(c) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the ''Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings'' issued under the executive order. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

VI. Congressional Review Act

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 Congress and to the Comptroller General of the United States. EPA is not required to submit a rule report regarding today's action under section 801 because this is a rule of particular applicability. Section 804 exempts from section 801 the following types of rules: rules of particular applicability; rules relating to agency management or personnel; and rules of agency organization, procedure, or practice that do not substantially affect the rights or obligations of non agency parties (5 U.S.C. 804(3)). This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2). This rule will become effective on the date of publication in the **Federal Register**.

VII. Executive Order 12875

Under Executive Order 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a state, local, or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If the mandate is unfunded, EPA must provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected state, local, and tribal governments, the nature of their concerns, copies of written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of state, local, and tribal governments ''to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates.'' Today's rule does not create a mandate on state, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this rule.

List of Subjects in 40 CFR Part 261

Environmental protection, Hazardous waste, Recycling, Reporting and recordkeeping requirements.

Authority: Sec. 3001(f) RCRA, 42 U.S.C. 6921(f).

Dated: October 26, 2001.

Robert Springer,

Director, Waste, Pesticides and Toxics Division.

For the reasons set out in the preamble, 40 CFR part 261 is amended as follows:

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

1. The authority citation for part 261 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, 6922, and 6938.

2. In Table 1 of appendix IX of part 261 add the following waste stream in alphabetical order by facility to read as follows:

Appendix IX to Part 261—Wastes Excluded Under §§ 260.20 and 260.22.

TABLE 1.—WASTES EXCLUDED FROM NON-SPECIFIC SOURCES

Facility	Address	Waste description
*	*	* * * * *
American Metals Corporation.	Westlake, Ohio	Wastewater treatment plant (WWTP) sludges from the chemical conversion coating (phosphating) of aluminum (EPA Hazardous Waste No. F019) and other solid wastes previously disposed in an on-site landfill. This is a one-time exclusion for 12,400 cubic yards of landfilled WWTP sludge. This exclusion is effective on January 15, 2002. 1. *Delisting Levels:* (A) The constituent concentrations measured in the TCLP extract may not exceed the following levels (mg/L): antimony—1.52; arsenic—0.691; barium—100; beryllium—3.07; cadmium—1; chromium—5; cobalt—166; copper—67,300; lead—5; mercury—0.2; nickel—209; selenium—1; silver—5; thallium—0.65; tin—1,660; vanadium—156; and zinc—2,070. (B) The total constituent concentrations in any sample may not exceed the following levels (mg/kg): arsenic—9,280; mercury—94; and polychlorinated biphenyls—0.265. (C) Concentrations of dioxin and furan congeners cannot exceed values which would result in a cancer risk greater than or equal to 10^{-6} as predicted by the model. 2. *Verification Sampling*—USG shall collect six additional vertically composited samples of sludge from locations that compliment historical data and shall analyze the samples by TCLP for metals including antimony, arsenic, barium, beryllium, cadmium, chromium, lead, mercury, nickel, selenium, silver, thallium, tin, vanadium, and zinc. If the samples exceed the levels in Condition (1)(a), USG must notify EPA. The corresponding sludge and all sludge yet to be disposed remains hazardous until USG has demonstrated by additional sampling that all constituents of concern are below the levels set forth in condition 1. 3. *Reopener Language*—(a) If, anytime after disposal of the delisted waste, USG possesses or is otherwise made aware of any data (including but not limited to leachate data or groundwater monitoring data) or any other data relevant to the delisted waste indicating that any constituent identified in Condition (1) is at a level higher than the delisting level established in Condition (1), or is at a level in the groundwater exceeding maximum allowable point of exposure concentration referenced by the model, then USG must report such data, in writing, to the Regional Administrator within 10 days of first possessing or being made aware of that data. (b) Based on the information described in paragraph (a) and any other information received from any source, the Regional Administrator will make a preliminary determination as to whether the reported information requires Agency action to protect human health or the environment. Further action may include suspending, or revoking the exclusion, or other appropriate response necessary to protect human health and the environment. (c) If the Regional Administrator determines that the reported information does require Agency action, the Regional Administrator will notify USG in writing of the actions the Regional Administrator believes are necessary to protect human health and the environment. The notice shall include a statement of the proposed action and a statement providing USG with an opportunity to present information as to why the proposed Agency action is not necessary or to suggest an alternative action. USG shall have 10 days from the date of the Regional Administrator's notice to present the information. (d) If after 10 days USG presents no further information, the Regional Administrator will issue a final written determination describing the Agency actions that are necessary to protect human health or the environment. Any required action described in the Regional Administrator's determination shall become effective immediately, unless the Regional Administrator provides otherwise. 4. *Notifications*—USG must provide a one-time written notification to any State Regulatory Agency to which or through which the waste described above will be transported for disposal at least 60 days prior to the commencement of such activities. Failure to provide such a notification will result in a violation of the delisting petition and a possible revocation of the decision.
*	*	* * * * *

* * * * *

[FR Doc. 02–955 Filed 1–14–02; 8:45 am]

BILLING CODE 6560–50–P

GENERAL SERVICES ADMINISTRATION

41 CFR Chapter 301

[FTR Amendment 100]

RIN 3090–AH52

Federal Travel Regulation; Maximum Per Diem Rates

AGENCY: Office of Governmentwide Policy, GSA.

ACTION: Final rule.

SUMMARY: To improve the ability of the per diem rates to meet the lodging demands of Federal travelers to high cost travel locations, the General Services Administration (GSA) has integrated the contracting mechanism of the new Federal Premier Lodging Program (FPLP) into the per diem rate-setting process.

An analysis of FPLP contracting actions and the lodging rate survey data reveals that the maximum per diem rate for the State of New York, city (borough) of Manhattan, should be increased and the maximum per diem rate for the State of New York, city (boroughs) of The Bronx, Brooklyn, and Queens, should be decreased to provide for the

reimbursement of Federal employees' lodging expenses covered by per diem rates. This final rule adjusts the maximum lodging amounts in the prescribed areas.

EFFECTIVE DATE: January 1, 2002.

FOR FURTHER INFORMATION CONTACT: Joddy P. Garner, Office of Governmentwide Policy, Travel Management Policy, at 202–501–4857.

SUPPLEMENTARY INFORMATION:

A. Background

In the past, properties in high cost travel areas have been under no obligation to provide lodging to Federal travelers at the prescribed per diem rate. Thus, GSA established the FPLP to contract directly with properties in high cost travel markets to make available a set number of rooms to Federal travelers at contract rates. FPLP contract results along with the lodging survey data are integrated together to determine reasonable per diem rates that more accurately reflect lodging costs in these areas. In addition, the FPLP will enhance the Government's ability to better meet its overall room night demand, and allow travelers to find lodging close to where they need to conduct business. After an analysis of this additional data, the maximum lodging amounts are being changed in the State of New York, cities (boroughs) of Manhattan, The Bronx, Brooklyn, and Queens.

B. Executive Order 12866

GSA has determined that this final rule is not a significant regulatory action for the purposes of Executive Order 12866 of September 30, 1993.

C. Regulatory Flexibility Act

This final rule is not required to be published in the **Federal Register** for notice and comment; therefore, the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, does not apply.

D. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because this final rule does not impose recordkeeping or information collection requirements, or the collection of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget under 44 U.S.C. 501 *et seq.*

E. Small Business Regulatory Enforcement Fairness Act

This final rule is also exempt from congressional review prescribed under 5 U.S.C. 801 since it relates solely to agency management and personnel.

List of Subjects 41 CFR Chapter 301

Government employees, Travel and transportation expenses.

For the reasons set forth in the preamble, under 5 U.S.C. 5701–5709, 41 CFR chapter 301 is amended as follows:

CHAPTER 301—TEMPORARY DUTY (TDY) TRAVEL ALLOWANCES

1. Appendix A to chapter 301 is amended as follows:

a. On the page that includes entries for the State of New York, under the State of New York, city of The Bronx/Brooklyn/Queens, column three (maximum lodging amount) is revised to read ''168''.

b. On the page that includes entries for the State of New York, under the State of New York, city of Manhattan, column three (maximum lodging amount) is revised to read ''208''.

The revised page containing the amendments to the table set forth above reads as follows:

Appendix A to Chapter 301—Prescribed Maximum Per Diem Rates for CONUS

* * * * *

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Per diem locality: Key city[1]	County and/or other defined location [2], [3]	Maximum lodging amount **(room rate only—no taxes)** (a)	+	M&IE rate (b)	=	Maximum per diem rate [4] (c)
Princeton/Trenton	Mercer	139		42		181
Tom's River	Ocean					
(May 15-September 15)		89		38		127
(September 16-May 14)		79		38		117
Union County	Union	107		38		145
NEW MEXICO						
Albuquerque	Bernalillo	65		38		103
Cloudcroft	Otero					
(June 1-October 31)		74		30		104
(November 1-May 31)		65		30		95
Los Alamos	Los Alamos	71		34		105
Santa Fe	Santa Fe	99		46		145
Taos	Taos	75		34		109
NEW YORK						
Albany	Albany	96		42		138
The Bronx/Brooklyn/Queens	The boroughs of The Bronx, Brooklyn and Queens	168		46		214
Buffalo	Erie	78		42		120
Glens Falls	Warren					
(June 1-September 30)		74		34		108
(October 1-May 31)		55		34		89
Ithaca	Tompkins	69		34		103
Kingston	Ulster	79		38		117
Lake Placid	Essex					
(June 15-October 15)		86		38		124
(October 16-June 14)		59		38		97
Manhattan	The borough of Manhattan	208		46		254
Nassau County/Great Neck	Nassau	190		42		232
Niagara Falls	Niagara					
(May 1-October 31)		89		34		123
(November 1-April 30)		55		34		89
Nyack/Palisades	Rockland					
(April 1-September 30)		67		38		105
(October 1-March 31)		57		38		95
Owego	Tioga	73		30		103
Poughkeepsie	Dutchess	74		38		112
Rochester	Monroe	83		42		125
Saratoga Springs	Saratoga					
(July 1-October 31)		95		38		133
(November 1-June 30)		75		38		113
Staten Island	Richmond	120		42		162
Suffolk County	Suffolk	149		38		187
Syracuse	Onondaga	70		34		104
Tarrytown	Westchester (except White Plains)	114		42		156
Waterloo/Romulus	Seneca					
(June 15-September 15)		89		34		123
(September 16-June 14)		69		34		103
Watkins Glen	Schuyler	59		34		93
West Point	Orange	121		34		155

Dated: December 27, 2001.

Stephen A. Perry,

Administrator of General Services.

[FR Doc. 02–926 Filed 1–14–02; 8:45 am]

BILLING CODE 6820–14–C

GENERAL SERVICES ADMINISTRATION

41 CFR Part 301–10

[FTR Amendment 101]

RIN 3090–AH54

Federal Travel Regulation; Privately Owned Vehicle Mileage Reimbursement

AGENCY: Office of Governmentwide Policy, GSA.

ACTION: Final rule.

SUMMARY: This final rule increases the mileage reimbursement rate for use of a privately owned vehicle (POV) on official travel to reflect current costs of operation as determined in cost studies conducted by the General Services Administration (GSA). The governing regulation is revised to increase the mileage allowance for advantageous use of a privately owned airplane from 96.5 to 97.5 cents per mile, the cost of operating a privately owned automobile from 34.5 to 36.5 cents per mile, and the cost of operating a privately owned motorcycle from 27.5 to 28.0 cents per mile.

EFFECTIVE DATE: This final rule is effective January 21, 2002.

FOR FURTHER INFORMATION CONTACT: Devoanna R. Reels, Program Analyst, telephone 202–501–3781.

SUPPLEMENTARY INFORMATION:

A. Background

Pursuant to 5 U.S.C. 5707(b), the Administrator of General Services has the responsibility to establish the privately owned vehicle (POV) mileage reimbursement rates. Separate rates are set for airplanes, automobiles (including trucks), and motorcycles. In order to set these rates, GSA is required to conduct periodic investigations, in consultation with the Secretaries of Defense and Transportation, and representatives of Government employee organizations, of the cost of travel and the operation of POVs to employees while engaged on official business. As required, GSA conducted an investigation of the costs of operating a POV and is reporting the cost per mile determination. The results of the investigation have been reported to Congress and a copy of the report appears as an attachment to this document. GSA's cost studies show the Administrator of General Services has determined the per-mile operating costs of a POV to be 97.5 cents for airplanes, 36.5 cents for automobiles, and 28.0 cents for motorcycles. As provided in 5 U.S.C. 5704(a)(1), the automobile reimbursement rate cannot exceed the single standard mileage rate established by the Internal Revenue Service (IRS). The IRS has announced a new single standard mileage rate for automobiles of 36.5 cents effective January 1, 2002.

B. Regulatory Flexibility Act

This final rule is not required to be published in the **Federal Register** for notice and comment; therefore, the Regulatory Flexibility Act does not apply.

C. Executive Order 12866

GSA has determined that this final rule is not a significant regulatory action for the purposes of Executive Order 12866 of September 30, 1993.

D. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because this final rule does not impose recordkeeping or information collection requirements, or the collection of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget (OMB) under 44 U.S.C. 3501, *et seq.*

E. Small Business Regulatory Enforcement Fairness Act

This final rule is also exempt from congressional review prescribed under 5 U.S.C. 801 since it relates solely to agency management and personnel.

List of Subjects in 41 CFR Part 301–10

Government employees, Travel and transportation expenses.

For the reasons set forth in the preamble, 41 CFR part 301–10 is amended to read as follows:

PART 301–10—TRANSPORTATION EXPENSES

1. The authority citation for 41 CFR part 301–10 continues to read as follows:

Authority: 5 U.S.C. 5707; 40 U.S.C. 486(c); 49 U.S.C. 40118.

2. Section 301–10.303 is amended by revising the entries Privately owned airplane, Privately owned automobile, and Privately owned motorcycle in the table to read as follows:

§ 301–10.303 What am I reimbursed when use of a POV is determined by my agency to be advantageous to the Government?

For use of a	Your reimbursement is
* * * * *	
Privately owned airplane	[1] 97.5
Privately owned automobile	[1] 36.5
Privately owned motorcycle	[1] 28.0

[1] Cents per mile.

Dated: January 8, 2002.

Stephen A. Perry,

Administrator of General Services.

Attachment to Preamble—Report to Congress on the Costs of Operating Privately Owned Vehicles

Subparagraph (b)(1)(A) of section 5707 of Title 5, United States Code, requires the Administrator of General Services, in consultation with the Secretaries of Defense and Transportation, and representatives of Government employee organizations, to periodically investigate the cost of travel and the operation of privately owned vehicles (airplanes, automobiles, and motorcycles) to Government employees while on official business, to report the results of the investigations to Congress, and to publish the report in the **Federal Register**. This report is being published to comply with the requirements of the law.

Dated: January 8, 2002.

Stephen A. Perry,

Administrator of General Services.

Report to Congress

Subparagraph (b)(1)(A) of section 5707 of Title 5, United States Code, requires that the Administrator of General Services, in consultation with the Secretaries of Defense and Transportation, and representatives of Government employee organizations, conduct periodic investigations of the cost of travel and the operation of privately owned vehicles (POVs) (airplanes, automobiles, and motorcycles) to Government employees while on official business and report the results to Congress at least once a year. Subparagraph (b)(2)(B) of section 5707 of Title 5, United States Code, further requires that the Administrator of General Services determine the average, actual cost per mile for the use of each type of POV based on the results of the cost investigation. Such figures must be reported to Congress within 5 working days after the cost determination has been made in accordance with 5 U.S.C. 5707(b)(2)(C).

Pursuant to the requirements of subparagraph (b)(1)(A) of section 5707 of Title 5, United States Code, the General Services Administration (GSA), in consultation with the Secretaries of Defense and Transportation, and representatives of Government employee organizations, conducted an investigation of the cost of operating a privately owned automobile (POA). As provided in 5 U.S.C. 5704(a)(1),

the automobile reimbursement rate cannot exceed the single standard mileage rate established by the Internal Revenue Service (IRS). The IRS has announced a new single standard mileage rate for automobiles of 36.5 cents effective January 1, 2002.

As required, GSA is reporting the results of the investigation and the cost per mile determination. Based on cost studies conducted by GSA, I have determined the per-mile operating costs of a POV to be 97.5 cents for airplanes, 36.5 cents for automobiles, and 28.0 cents for motorcycles.

I will issue a regulation to increase the current 96.5 to 97.5 cents for privately owned airplanes, 34.5 to 36.5 cents for privately owned automobiles, and 27.5 to 28.0 cents for privately owned motorcycles. This report to Congress on the cost of operating POVs will be published in the **Federal Register**.

Stephen A. Perry,
Administrator of General Services.

[FR Doc. 02–927 Filed 1–14–02; 8:45 am]

BILLING CODE 6820–34–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 20

[CC Docket No. 94–102; DA 01–2885]

Petitions for Reconsideration Concerning PSAP Requests for Phase II Enhanced 911, Comments Invited

AGENCY: Federal Communications Commission.

ACTION: Final rule, petitions for reconsideration.

SUMMARY: The Commission seeks comment on petitions for reconsideration of its recent decision in this proceeding regarding universal Enhanced 911(E911) service. In that decision, the Commission amended its rules to clarify what constitutes a valid Public Safety Answering Point (PSAP) request for E911 service so as to trigger a wireless carrier's obligation to implement E911 within the six-month period following the date of the request. The current action is taken to establish a record from which the Commission can evaluate the merits of the petitions for reconsideration.

DATES: Comments are due on or before January 18, 2002, and reply comments are due on or before January 28, 2002.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Jane Phillips, 202–418–1310.

SUPPLEMENTARY INFORMATION: This is a summary of Commission's document in CC Docket No. 94–102, DA 01–2885, released on December 12, 2001. The complete text of this document is available for inspection and copying during normal business hours in the FCC Reference Information Center, Courtyard Level, 445 12th Street, SW., Washington, DC, and also may be purchased from the Commission's copy contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554. Copies of the full text of this decision may also be found at the Commission's Internet site at *www.fcc.gov.*

Synopsis of the Commission's Decision

1. The Commission solicits comment on petitions for reconsideration of its decision in this proceeding (66 FR 55618, November 2, 2001, and 66 FR 63093, December 4, 2001) filed by Sprint PCS (Sprint) on November 30, 2001, and by Cingular Wireless LLC (Cingular) on December 3, 2001. In that decision, the Commission amended its rules to clarify what constitutes a valid Public Safety Answering Point (PSAP) request for enhanced 911 (E911) service so as to trigger a wireless carrier's obligation to implement E911 within the six-month period following the date of the request. If challenged by the wireless carrier, the request will be deemed valid if the PSAP making the request demonstrates E911 readiness as provided in the amended rule, 47 CFR 20.18(j).

2. Sprint requests several amendments to the Commission's documentation requirements, and Cingular contends that the language of amended § 20.18(j) is internally inconsistent and contradicts previous Commission's statements and that the decision violates the notice and comment requirement of the Administrative Procedure Act and is arbitrary and capricious.

3. The petitions are available for public inspection during regular business hours in the FCC Public Reference Room, Room CY–A257, 445 12th Street, NW., Washington, DC 20554. Petitions and comments may also be viewed electronically by accessing the Commission Internet site at *www.fcc.gov* or purchased from the Commission's copy contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554.

4. Pursuant to 47 CFR 1.1200(a), this proceeding is designated as a ''permit but disclose'' proceeding and subject to § 1.1206 of the Commission's rules. Presentations to or from Commission decision-making personnel are permissible, provided that *ex parte* presentations are disclosed pursuant to 47 CFR 1.1206.

5. Interested parties may file comments or oppositions responding to the petitions on or before January 18, 2002, and reply comments on or before January 28, 2002. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. Comments filed through the ECFS can be sent via the Internet to *http://www.fcc/e-file/ecfs.html.* Only one copy of an electronic submission must be filed. In completing the transmittal screen, commenters should include their full name, postal service mailing address, and the applicable docket or rulemaking number.

6. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail message to *ecfs@fcc.gov*, and should include the following words in the body of the message, ''get form<your e-mail address>. A sample form and directions will be sent.

Parties who choose to file by paper must file an original and four copies of each filing. All filings must be sent to the Commission's Secretary, Magalie Roman Salas, Office of the Secretary, Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554. A copy should also be sent to Jane Phillips, Room 3A–200.

Federal Communications Commission.

Kris Anne Monteith,

Chief, Policy Division, Wireless Telecommunications Bureau.

[FR Doc. 02–1165 Filed 1–14–02; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Part 214

[Docket No. FRA–2001–10426]

RIN 2130–AA48

Railroad Workplace Safety

AGENCY: Federal Railroad Administration (FRA),(DOT).

ACTION: Interim final rule.

SUMMARY: FRA is amending regulations on Railroad Workplace Safety to eliminate a provision which could present undue hazards to persons, and to eliminate possible confusion regarding the use of various terms in the rule text. In particular, FRA is prohibiting the use of body belts as permissible components of personal fall arrest systems, and is revising references to railroad bridge workers as

''employees'' to eliminate potential confusion in determining the group of people to which the Bridge Worker Safety Standards apply.

DATES: *Effective Date:* This rule becomes effective on March 18, 2002. Written comments must be received no later than March 1, 2002. Comments received after that date will be considered to the extent possible without incurring additional expense or delay. Requests for formal extension of the comment period must be made by February 14, 2002.

ADDRESSES: Comments should be sent to the Docket Clerk, Docket Management System, U.S. Department of Transportation Room PL 401, 400 Seventh Street, SW., Washington, DC 20590–0001. Comments should identify the docket number and this proceeding (Docket No. FRA–2001). If you wish to receive confirmation of receipt of your written comments, please include a self-addressed, stamped postcard.

The docket management system is located on the Plaza level of the Nassif Building at the Department of Transportation at the above address. You can review public dockets there between the hours of 9 a.m. and 5 p.m., Monday through Friday, except federal holidays. You can also review comments on-line at the DOT Docket Management System web site at *http://dms.dot.gov.*

You may submit comments electronically by accessing the Docket Management System web site at *http://dms.dot.gov* and following the instructions for submitting a document electronically.

FOR FURTHER INFORMATION CONTACT: Gordon A. Davids, Bridge Engineer, Office of Safety, FRA, 1120 Vermont Avenue NW., Washington, DC 20590, Telephone: (202) 493–6320; or Cynthia Walters, Trial Attorney, Office of Chief Counsel, FRA, 1120 Vermont Avenue NW., Washington, DC 20590, Telephone: (202) 493–6027.

SUPPLEMENTARY INFORMATION:

Background

On June 24, 1992, at 57 FR 28127, FRA issued the first of two parts of the Railroad Workplace Safety Regulations, 49 CFR part 214. That rulemaking included the original Subpart A, General, with the first definitions, and Subpart B, Bridge Worker Safety Standards. Those standards were based upon the best information available at that time on personal fall protection systems. Since that time, knowledge of the interaction between persons and fall arrest equipment has advanced, and it is now obvious that a formerly permitted use of body belts in fall arrest systems presents an undue hazard to the user.

FRA substantially amended part 214 on December 16, 1996, by adding Subpart C, Roadway Worker Protection Standards, and by adding and amending definitions to accommodate the new Subpart C. In particular, the definition of ''employee'' was expanded to include all railroad employees affected by Part 214 in its entirety, where before the term had applied only to railroad bridge workers. Although a definition of ''railroad bridge worker'' was added, the term ''employee'' remained in the rule text of Subpart B. Of course, Subpart B specifically stated that it applied to railroad employees ''performing work on railroad bridges'' (see original § 214.101(b)), so its intended scope was clear. Nevertheless, to avoid any mistaken conclusion that the use of ''employee'' in Subpart B was intended to somehow expand the coverage of the Subpart, we have decided to simply make use of the existing definition of ''railroad bridge worker'' where appropriate in Subpart B.

Public Participation

The Administrative Procedure Act (5 U.S.C. 551–559) permits an agency to dispense with notice of rulemaking when the agency ''for good cause finds that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.'' 5 U.S.C. 553(b)(B). FRA finds that notice and public procedure are, in this case, unnecessary and contrary to the public interest for the reasons set forth below.

FRA received a petition for this rulemaking from the Brotherhood of Maintenance of Way Employes (BMWE). Also, the Brotherhood of Railroad Signalmen (BRS), the Association of American Railroads (AAR), and the American Short Line and Regional Railroad Association (ASLRRA) submitted letters of support and agreement with BMWE's position on eliminating the use of body belts in fall arrest systems. These four organizations represent an overwhelming majority of both the railroad employees (BMWE and BRS) and railroad employers (AAR and ASLRRA) who would be affected by this rulemaking. FRA is not aware of any opposition to BMWE's petition regarding the use of body belts. In addition, the U.S. Occupational Safety and Health Administration now prohibits the use of safety belts in the workplaces it regulates. Further, the remaining provisions of this rulemaking involve minor technical amendments to achieve clear and consistent terminology throughout part 214. These amendments do not expand the scope of the rule, nor do they impose additional burdens on those covered by the rule. Finally, FRA finds that any further delay in issuance of this rule could expose bridge workers to unnecessary hazard from the use of body belts in fall arrest systems.

FRA believes that safety and the non-controversial nature of these changes justify the issuance of an interim final rule. FRA will consider, however, any comments received during the post-publication comment period before it issues a final rule in this proceeding.

Section-by-Section Analysis

1. Editorial Corrections to the Regulation.

With the amendment of December 16, 1996, the term ''employee'' continued in use in Subpart B, despite having added the definition of ''railroad bridge worker'' or ''bridge worker'' to Subpart A. Although the purpose and scope provision of Section 214.101 limits applicability of the Subpart, the rule provisions using the term ''employee'' are themselves potentially confusing. In addition, there are other provisions where the term ''employee'' is used when the employment relationship is not relevant to the intent of the rule. In those instances, the term employee has been changed to the word ''person.'' For example, a reference to anchorages capable of supporting 5,000 pounds ''per employee'' has been revised to 5,000 pounds ''per person,'' as the employment relationship is not truly relevant to the intent of that particular provision. The affected provisions of the rule are Section 214.7, ''Definitions''; Section 214.103, ''Fall protection generally''; Section 214.105, ''Fall protection system standards and practices''; Section 214.107, ''Working over or adjacent to water''; Section 214.111, ''Personal protective equipment, generally''; Section 214.113, ''Head protection''; Section 214.115, ''Foot protection''; and Section 214.117, ''Eye and face protection''. Changes in the definition section involve changing the word ''employee'' to the word ''person'' in five definitions. These definitions are body harness, deceleration device, free fall distance, lanyard, and personal fall arrest system. Changes in the other cited sections involve changing the word ''employee'' to the term ''bridge worker'' to avoid any possible confusion as to the appropriate group to which these standards apply. As previously noted, these revisions are for clarification only. The changes do not expand the scope of the rule to include railroad or contractor employees previously not covered, nor

do they impose new or additional burdens on those covered by the rule. An additional minor correction involves correcting a reference to ''Information and collection'' in Section 214.302, to read ''Information collection.''

2. Use of Body Belt as a Component of Personal Fall Arrest System

The section analysis of the final rule of June 24, 1992, for section 214.7, ''Definitions,'' included the following language related to body belts:

> Many commenters urged FRA to update this definition to reflect current terminology, including the addition of a deceleration device following lanyard and lifeline. Also, most commenters stated that use of body harnesses, rather than body belts, is now preferred practice. The body belt does not absorb stress forces in a fall as well as a harness can, and therefore, may cause serious internal injury to the wearer. According to commenters, many companies no longer manufacture belts because of this risk, and the construction industry will phase out their use in the near future. However, there are limited situations, climbing poles for instance, in which belts can be utilized safely. 57 FR 28116 at 28118

In this Interim Final Rule, FRA adopts the definition used by OSHA that reflects current trade language. Although the final rule permitted the use of safety belts, use of harnesses was obviously preferred even then.

FRA has monitored the development and use of fall arrest systems in the railroad industry since this regulation was published, and has determined that body belts are seldom, if ever, used for fall protection in the railroad industry. Full body harnesses have become the universally accepted device for attaching persons to fall arrest systems. They are no more costly than are body belts, and there are no known disadvantages to their use as compared to body belts.

FRA's concern over the use of body belts for fall arrest has been strengthened over the past several years. That concern is shared by railroad management, railroad employees, contractors, and suppliers of fall protection equipment. Testing and demonstrations have shown that a person who is suspended by a body belt for only a minute or two will suffer extreme discomfort, and for any longer period, will begin to suffer disarrangement of internal organs. Add to that the 900-pound impact of an arrested fall, and severe injury is almost inevitable. The effect of impact load on a live person using a body belt has not been tested due to the lack of willing subjects for the test, but the probability of injury can still be predicted with confidence.

Owing to this shared concern, as explained above, the BMWE has petitioned FRA to prohibit the use of body belts for this purpose, and FRA agrees. The BRS has written in support of the BMWE petition, together with the ASLRRA and the AAR.

3. Use of Ring Buoys for Protection of Persons Working Over Water

BMWE also petitioned FRA to amend the regulation to provide either 110 feet of line on life buoys, or to prescribe a spacing closer than 200 feet between them. The current Section 214.107 states:

§ 214.107 Working over or adjacent to water.

> (a) Employees working over or adjacent to water with a depth of four feet or more, or where the danger of drowning exists, shall be provided and shall use life vests or buoyant work vests in compliance with U.S. Coast Guard requirements in 46 CFR sections 160.047, 160.052, and 160.053. Life preservers in compliance with U.S. Coast Guard requirements in 46 CFR 160.055 shall also be within ready access. This section shall not apply to employees using personal fall arrest systems or safety nets that comply with this subpart.
>
> * * * * *
>
> (d) Where life vests are required by paragraph (a) of this section, ring buoys with at least 90 feet of line shall be provided and readily available for emergency rescue operations. Distance between ring buoys shall not exceed 200 feet.

The apparent discrepancy which BMWE wishes to see addressed is the difference between twice the length of 90 feet of line, or 180 feet, and the 200-foot spacing of the ring buoys. There would appear to be a 20-foot gap in coverage in the middle of the space between two ring buoys, where the lines would not reach. This concern also prevailed among FRA staff, BRS, and several railroad officials who were involved in the discussions on this matter over the past several years.

Upon further investigation, however, it was found that in actual practice, free ends of the buoy lines are seldom attached to fixed objects on the bridge. In practice, the line is normally coiled with the buoy, so that the entire buoy and line can be lifted from their hanger and carried to the location from which the buoy is to be thrown to a person in the water. The person throwing the buoy either secures the free end of the buoy line at that point, or holds it in the free hand. Most people are not capable of throwing a buoy 90 feet, so there is little chance of the buoy line being jerked from the user's hand. The spacing of the ring buoys, therefore, is not related to their length. The maximum of 200 feet between the buoys is simply intended to make sure that people can get to them quickly and get them where they are needed.

Leaving the free end of the buoy line unattached while the buoy is in its holder is preferred because the buoy might be needed several hundred feet away, as would be the case if several persons were in the water. That being the case, several buoys could be quickly obtained and thrown by several persons, without having to first untie the buoy lines. FRA has therefore decided not to amend § 214.107 concerning the positioning and use of ring buoys.

Regulatory Impact

E.O. 12866 and DOT Regulatory Policies and Procedures

This correction and amendment of the final rule has been evaluated in accordance with existing policies and procedures and is not considered significant under Executive Order 12866 or under DOT policies and procedures. The minor technical changes made in this amendment will not increase the costs or alter the benefits associated with this regulation to any measurable degree.

Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) requires a review of rules to assess their impact on small entities. This amendment to the final rule clarifies existing requirements. The changes will have no new direct or indirect economic impact on small units of government, businesses, or other organizations. Therefore, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the provisions of the Regulatory Flexibility Act.

Paperwork Reduction Act

There are no paperwork requirements associated with this amendment of the final rule.

Environmental Impact

FRA has evaluated this amendment in accordance with its procedures for ensuring full consideration of the environmental impact of FRA actions, as required by the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*), other environmental statutes, Executive Orders, and DOT Order 5610.1c. The amendment meets the criteria establishing this as a nonmajor action for environmental purposes.

Federalism Implications

This amendment will not have a substantial effect on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Thus, in accordance with Executive Order 13132, preparation of a Federalism Assessment is not warranted.

List of Subjects in 49 CFR Part 214

Bridges, Fall arrest equipment, Incorporation by reference, Occupational safety and health, Personal protective equipment, Railroad employees, Railroad safety.

The Interim Final Rule

In consideration of the foregoing, Part 214, Title 49, Code of Federal Regulations is amended as follows:

PART 214—[AMENDED]

1. The authority for part 214 continues to read as follows:

Authority: 49 U.S.C. 20103, 20107; and 49 CFR 1.49.

2. By revising the following definitions in § 214.7 to read as follows:

§ 214.7 Definitions.

* * * * *

Body harness means a device with straps that is secured about the person in a manner so as to distribute the fall arrest forces over (at least) the thighs, shoulders, pelvis, waist, and chest and that can be attached to a lanyard, lifeline, or deceleration device.

* * * * *

Deceleration device means any mechanism, including, but not limited to, rope grabs, ripstitch lanyards, specially woven lanyards, tearing or deforming lanyards, and automatic self-retracting lifelines/lanyards that serve to dissipate a substantial amount of energy during a fall arrest, or otherwise limit the energy on a person during fall arrest.

* * * * *

Free fall distance means the vertical displacement of the fall arrest attachment point on a person's body harness between onset of the fall and the point at which the system begins to apply force to arrest the fall. This distance excludes deceleration distance and lifeline and lanyard elongation, but includes any deceleration device slide distance or self-retracting lifeline/lanyard extension before they operate and fall arrest forces occur.

* * * * *

Lanyard means a flexible line of rope, wire rope, or strap that is used to secure a body harness to a deceleration device, lifeline, or anchorage.

* * * * *

Personal fall arrest system means a system used to arrest the fall of a person from a working level. It consists of an anchorage, connectors, body harness, lanyard, deceleration device, lifeline, or combination of these.

* * * * *

3. By revising § 214.103 to read as follows:

§ 214.103 Fall protection, generally.

(a) Except as provided in paragraphs (b) through (d) of this section, when bridge workers work twelve feet or more above the ground or water surface, they shall be provided and shall use a personal fall arrest system or safety net system. All fall protection systems required by this section shall conform to the standards set forth in § 214.105 of this subpart.

(b)(1) This section shall not apply if the installation of the fall arrest system poses a greater risk than the work to be performed. In any action brought by FRA to enforce the fall protection requirements, the railroad or railroad contractor shall have the burden of proving that the installation of such device poses greater exposure to risk than performance of the work itself.

(2) This section shall not apply to bridge workers engaged in inspection of railroad bridges conducted in full compliance with the following conditions:

(i) The railroad or railroad contractor has a written program in place that requires training in, adherence to, and use of safe procedures associated with climbing techniques and procedures to be used;

(ii) The bridge worker to whom this exception applies has been trained and qualified according to that program to perform bridge inspections, has been previously and voluntarily designated to perform inspections under the provision of that program, and has accepted the designation;

(iii) The bridge worker to whom this exception applies is familiar with the appropriate climbing techniques associated with all bridge structures the bridge worker is responsible for inspecting;

(iv) The bridge worker to whom this exception applies is engaged solely in moving on or about the bridge or observing, measuring and recording the dimensions and condition of the bridge and its components; and

(v) The bridge worker to whom this section applies is provided all equipment necessary to meet the needs of safety, including any specialized alternative systems required.

(c) This section shall not apply where bridge workers are working on a railroad bridge equipped with walkways and railings of sufficient height, width, and strength to prevent a fall, so long as bridge workers do not work beyond the railings, over the side of the bridge, on ladders or other elevation devices, or where gaps or holes exist through which a body could fall. Where used in place of fall protection as provided for in § 214.105, this paragraph (c) is satisfied by:

(1) Walkways and railings meeting standards set forth in the American Railway Engineering Association's Manual for Railway Engineering; and

(2) Roadways attached to railroad bridges, provided that bridge workers on the roadway deck work or move at a distance six feet or more from the edge of the roadway deck, or from an opening through which a person could fall.

(d) This section shall not apply where bridge workers are performing repairs or inspections of a minor nature that are completed by working exclusively between the outside rails, including but not limited to, routine welding, spiking, anchoring, spot surfacing, and joint bolt replacement.

4. By revising § 214.105 to read as follows:

§ 214.105 Fall protection systems standards and practices.

(a) *General requirements.* All fall protection systems required by this subpart shall conform to the following:

(1) Fall protection systems shall be used only for personal fall protection.

(2) Any fall protection system subjected to impact loading shall be immediately and permanently removed from service unless fully inspected and determined by a competent person to be undamaged and suitable for reuse.

(3) All fall protection system components shall be protected from abrasions, corrosion, or any other form of deterioration.

(4) All fall protection system components shall be inspected prior to each use for wear, damage, corrosion, mildew, and other deterioration. Defective components shall be permanently removed from service.

(5) Prior to use and after any component or system is changed, bridge workers shall be trained in the application limits of the equipment, proper hook-up, anchoring and tie-off techniques, methods of use, and proper methods of equipment inspection and storage.

(6) The railroad or railroad contractor shall provide for prompt rescue of bridge workers in the event of a fall.

(7) Connectors shall have a corrosion-resistant finish, and all surfaces and edges shall be smooth to prevent damage to interfacing parts of the system.

(8) Connectors shall be drop forged, pressed or formed steel, or made of equivalent-strength materials.

(9) Anchorages, including single- and double-head anchors, shall be capable of supporting at least 5,000 pounds per bridge worker attached, or shall be designed, installed, and used under supervision of a qualified person as part of a complete personal fall protection system that maintains a safety factor of at least two.

(b) *Personal fall arrest systems.* All components of a personal fall arrest system shall conform to the following standards:

(1) Lanyards and vertical lifelines that tie off one bridge worker shall have a minimum breaking strength of 5,000 pounds.

(2) Self-retracting lifelines and lanyards that automatically limit free fall distance to two feet or less shall have components capable of sustaining a minimum static tensile load of 3,000 pounds applied to the device with the lifeline or lanyard in the fully extended position.

(3) Self-retracting lifelines and lanyards that do not limit free fall distance to two feet or less, ripstitch, and tearing and deformed lanyards shall be capable of withstanding 5,000 pounds applied to the device with the lifeline or lanyard in the fully extended position.

(4) Horizontal lifelines shall be designed, installed, and used under the supervision of a competent person, as part of a complete personal fall arrest system that maintains a safety factor of at least two.

(5) Lifelines shall not be made of natural fiber rope.

(6) Body belts shall not be used as components of personal fall arrest systems.

(7) The personal fall arrest system shall limit the maximum arresting force on a bridge worker to 1,800 pounds when used with a body harness.

(8) The personal fall arrest system shall bring a bridge worker to a complete stop and limit maximum deceleration distance a bridge worker travels to 3.5 feet.

(9) The personal fall arrest system shall have sufficient strength to withstand twice the potential impact energy of a bridge worker free falling a distance of six feet, or the free fall distance permitted by the system, whichever is less.

(10) The personal fall arrest system shall be arranged so that a bridge worker cannot free fall more than six feet and cannot contact the ground or any lower horizontal surface of the bridge.

(11) Personal fall arrest systems shall be worn with the attachment point of the body harness located in the center of the wearer's back near shoulder level, or above the wearer's head.

(12) When vertical lifelines are used, each bridge worker shall be provided with a separate lifeline.

(13) Devices used to connect to a horizontal lifeline that may become a vertical lifeline shall be capable of locking in either direction.

(14) Dee-rings and snap-hooks shall be capable of sustaining a minimum tensile load of 3,699 pounds without cracking, breaking, or taking permanent deformation.

(15) Dee-rings and snap-hooks shall be capable of sustaining a minimum tensile load of 5,000 pounds.

(16) Snap-hooks shall not be connected to each other.

(17) Snap-hooks shall be dimensionally compatible with the member to which they are connected to prevent unintentional disengagement, or shall be a locking snap-hook designed to prevent unintentional disengagement.

(18) Unless of a locking type, snap-hooks shall not be engaged:

(i) Directly, next to a webbing, rope, or wire rope;

(ii) To each other;

(iii) To a dee-ring to which another snap-hook or other connector is attached;

(iv) To a horizontal lifeline; or

(v) To any object that is incompatibly shaped or dimensioned in relation to the snap-hook so that unintentional disengagement could occur.

(c) *Safety net systems.* Use of safety net systems shall conform to the following standards and practices:

(1) Safety nets shall be installed as close as practicable under the walking/working surface on which bridge workers are working, but shall not be installed more than 30 feet below such surface.

(2) If the distance from the working surface to the net exceeds 30 feet, bridge workers shall be protected by personal fall arrest systems.

(3) The safety net shall be installed such that any fall from the working surface to the net is unobstructed.

(4) Except as provided in this section, safety nets and net installations shall be drop-tested at the jobsite after initial installation and before being used as a fall protection system, whenever relocated, after major repair, and at six-month intervals if left in one place. The drop-test shall consist of a 400-pound bag of sand 30 inches, plus or minus two inches, in diameter dropped into the net from the highest (but not less than 3½ feet) working surface on which bridge workers are to be protected.

(i) When the railroad or railroad contractor demonstrates that a drop-test is not feasible and, as a result, the test is not performed, the railroad or railroad contractor, or designated competent person, shall certify that the net and its installation are in compliance with the provisions of this section by preparing a certification record prior to use of the net.

(ii) The certification shall include an identification of the net, the date it was determined that the net was in compliance with this section, and the signature of the person making this determination. Such person's signature shall certify that the net and its installation are in compliance with this section. The most recent certification for each net installation shall be available at the jobsite where the subject net is located.

(5) Safety nets and their installations shall be capable of absorbing an impact force equal to that produced by the drop test specified in this section.

(6) The safety net shall be installed such that there is no contact with surfaces or structures below the net when subjected to an impact force equal to the drop test specified in this section.

(7) Safety nets shall extend outward from the outermost projection of the work surface as follows:

(i) When the vertical distance from the working level to the horizontal plane of the net is 5 feet or less, the minimum required horizontal distance of the outer edge of the net beyond the edge of the working surface is 8 feet.

(ii) When the vertical distance from the working level to the horizontal plane of the net is 5 feet, but less than 10 feet, the minimum required horizontal distance of the outer edge of the net beyond the edge of the working surface is 10 feet.

(iii) When the vertical distance from the working level to the horizontal plane of the net is more than 10 feet, the minimum required horizontal distance of the outer edge of the net beyond the edge of the working surface is 13 feet.

(8) Defective nets shall not be used. Safety nets shall be inspected at least once a week for mildew, wear, damage, and other deterioration. Defective components shall be removed permanently from service.

(9) Safety nets shall be inspected after any occurrence that could affect the integrity of the safety net system.

(10) Tools, scraps, or other materials that have fallen into the safety net shall be removed as soon as possible, and at least before the next work shift.

(11) Each safety net shall have a border rope for webbing with a minimum breaking strength of 5,000 pounds.

(12) The maximum size of each safety net mesh opening shall not exceed 36 square inches and shall not be longer than 6 inches on any side measured center-to-center of mesh ropes or webbing. All mesh crossing shall be secured to prevent enlargement of the mesh opening.

(13) Connections between safety net panels shall be as strong as integral net components and shall be spaced not more than 6 inches apart.

5. By revising § 214.107 paragraphs (a) and (b) to read as follows:

§ 214.107 Working over or adjacent to water.

(a) Bridge workers working over or adjacent to water with a depth of four feet or more, or where the danger of drowning exists, shall be provided and shall use life vests or buoyant work vests in compliance with U.S. Coast Guard requirements in 46 CFR 160.047, 160.052, and 160.053. Life preservers in compliance with U.S. Coast Guard requirements in 46 CFR 160.055 shall also be within ready access. This section shall not apply to bridge workers using personal fall arrest systems or safety nets that comply with this subpart.

(b) Life vests or buoyant work vests shall not be required when bridge workers are conducting inspections that involve climbing structures above or below the bridge deck.

* * * * *

6. By revising §§ 214.111, 214.113, 214.115 and 214.117 to read as follows:

§ 214.111 Personal protective equipment, generally.

With the exception of foot protection, the railroad or railroad contractor shall provide and the bridge worker shall use appropriate personal protective equipment described in this subpart in all operations where there is exposure to hazardous conditions, or where this subpart indicates the need for using such equipment to reduce the hazards to railroad bridge workers. The railroad or railroad contractor shall require the use of foot protection when the potential for foot injury exists.

§ 214.113 Head protection.

(a) Railroad bridge workers working in areas where there is a possible danger of head injury from impact, or from falling or flying objects, or from electrical shock and burns, shall be provided and shall wear protective helmets.

(b) Helmets for the protection of railroad bridge workers against impact and penetration of falling and flying objects, or from high voltage electrical shock and burns shall conform to the national consensus standards for industrial head protection (American National Standards Institute, Z89.1–1986, Protective Headwear for Industrial Workers). This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from the American National Standards Institute, 25 West 43rd Street, New York, NY 10036. Copies may be inspected at the Federal Railroad Administration, Docket Clerk, 1120 Vermont Avenue NW., Washington, DC, or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

§ 214.115 Foot protection.

(a) The railroad or railroad contractor shall require railroad bridge workers to wear foot protection equipment when potential foot injury may result from impact, falling or flying objects, electrical shock or burns, or other hazardous condition.

(b) Safety-toe footwear for railroad bridge workers shall conform to the national consensus standards for safety-toe footwear (American National Standards Institute, American National Standard Z41–1991, Standard for Personal Protection-Protective Footwear). This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from American National Standards Institute, 25 West 43rd Street, New York, NY 10036. Copies may be inspected at the Federal Railroad Administration, Docket Clerk, 1120 Vermont Avenue, Washington, DC, or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington DC.

§ 214.117 Eye and face protection.

(a) Railroad Bridge workers shall wear eye and face protection equipment when potential eye or face injury may result from physical, chemical, or radiant agents.

(b) Eye and face protection equipment required by this section shall conform to the national consensus standards for occupational and educational eye and face protection (American National Standards Institute, Z87.1–1989, Practice for Occupational and Educational Eye and Face Protection). This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from the American National Standards Institute, 25 West 43rd Street, New York, NY 10036. Copies may be inspected at the Federal Railroad Administration, Docket Clerk, 1120 Vermont Avenue, Washington, DC, or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(c) Face and eye protection equipment required by this section shall be kept clean and in good repair. Use of equipment with structural or optical defects is prohibited.

(d) Railroad bridge workers whose vision requires the use of corrective lenses, when required by this section to wear eye protection, shall be protected by goggles or spectacles of one of the following types:

(i) Spectacles whose protective lenses provide optical correction the, frame of which includes shielding against objects reaching the wearer's eyes around the lenses;

(ii) Goggles that can be worn over corrective lenses without disturbing the adjustment of the lenses; or

(iii) Goggles that incorporate corrective lenses mounted behind the protective lenses.

7. By correcting the heading of § 214.302 to read as follows:

§ 214.302 Information collection requirements.

Issued in Washington, DC on January 7, 2002.

Allan Rutter,

Federal Railroad Administrator.

[FR Doc. 02–723 Filed 1–14–02; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 010413094–1094–01; I.D. 010902A]

Magnuson-Stevens Fishery Conservation and Management Act Provisions; Fisheries of the Northeastern United States; Atlantic Deep-Sea Red Crab Fishery; Closure

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

ACTION: Closure.

SUMMARY: NMFS announces that, effective 0001 hours (l.t.), January 18, 2002, through May 14, 2002, notwithstanding any other regulations implemented for the Atlantic deep-sea red crab fishery, vessels may not fish for, possess, or land red crab in or from the U.S. exclusive economic zone (EEZ) in waters of the western Atlantic Ocean from 35°15.3′ N. lat., the latitude of Cape Hatteras Light, NC, northward to the U.S.-Canada border, in excess of 100 lb (45.4 kg) per trip. This action is based on a determination that the red crab total allowable catch (TAC) is projected to be reached as of January 18, 2002, and is necessary to prevent the fishery from exceeding the TAC established by the emergency rule that was published November 13, 2001.

DATES: Effective 0001 hours (l.t.), January 18, 2002, through 2400 hours, May 14, 2002.

FOR FURTHER INFORMATION CONTACT: E. Martin Jaffe, Fishery Policy Analyst, 978–281–9272, fax 978–281–9135, e-mail *martin.jaffe@noaa.gov* .

SUPPLEMENTARY INFORMATION: On May 8, 2001, NMFS published a red crab emergency interim rule (66 FR 23182) to address concerns that overfishing of the red crab resource may be occurring within the EEZ from Cape Hatteras Light, NC, northward to the U.S.-Canada border. This action contained measures that included a TAC of 2.5 million lb (1,134 mt) of red crab for the 180-day period of effectiveness for the rule. To help ensure that the TAC was not exceeded, this rule also contained regulations that required the closure of the directed red crab fishery as of the date NMFS determined that the total landings of red crab would reach or exceed the TAC. NMFS subsequently determined that the TAC was projected to be harvested prior to completion of the 180–day emergency action (through November 14, 2001) and on August 8, 2001, NMFS published notification of closure of the fishery effective August 17, 2001, through November 14, 2001, in the **Federal Register** (66 FR 41454).

On November 13, 2001, NMFS extended the expiration date of the emergency rule for an additional 180 days (through May 14, 2002) to continue protection of red crab while permanent measures are being developed by the New England Fishery Management Council (Council) (66 FR 56781). The extension adjusted the TAC for its 180–day duration to 2.16 million lb (979.8 mt). This TAC is based on one-half of an annual TAC of 5.0 million lb (2,268 mt), reduced by the overage caught during the initial emergency period (which was approximately 340,000 lb (154.22 mt)). The extension also contained regulations that require the closure of the directed red crab fishery as of the date NMFS determines that the total landings of red crab will reach or exceed the TAC.

NMFS has determined, based on landings and other available information, that 100 percent of the TAC for red crab will be harvested by January 18, 2002. Therefore, effective 0001 hours (l.t.), January 18, 2002, through May 14, 2002, notwithstanding any other regulations of subpart M of 50 CFR part 648, vessels may not fish for, possess, or land red crab from the U.S. EEZ in waters of the western Atlantic Ocean from 35°15.3′ N. lat., the latitude of Cape Hatteras Light, NC, northward to the U.S.-Canada border, in excess of 100 lb (45.4 kg) per trip.

Classification

This action is required by 50 CFR part 648 and is exempt from review under Executive Order 12866.

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

Dated: January 9, 2002.

Jonathan Kurland,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 02–866 Filed 1–9–02; 4:35 pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 67, No. 10
Tuesday, January 15, 2002

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

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Parts 101 and 116

[Docket No. 00–071–1]

Viruses, Serums, Toxins, and Analogous Products; Records and Reports

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to amend the Virus-Serum-Toxin Act regulations concerning records and reports. First, we are proposing to require veterinary biologics licensees and permittees to record and submit reports to the Animal and Plant Health Inspection Service concerning adverse events associated with the use of biological products that they produce or distribute. Second, we are proposing to require veterinary biologics licensees and permittees to report to the Animal and Plant Health Inspection Service the number of doses of each licensed product that they distribute. Third, we are proposing to provide definitions for *adverse event* and *adverse event report*. These actions would assist the Animal and Plant Health Inspection Service in providing complete and accurate information to consumers regarding adverse reactions or other problems associated with the use of licensed biological products.

DATES: We will consider all comments we receive that are postmarked, delivered, or e-mailed by March 18, 2002.

ADDRESSES: You may submit comments by postal mail/commercial delivery or by e-mail. If you use postal mail/commercial delivery, please send four copies of your comment (an original and three copies) to: Docket No. 00–071–1, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 00–071–1. If you use e-mail, address your comment to *regulations@aphis.usda.gov.* Your comment must be contained in the body of your message; do not send attached files. Please include your name and address in your message and ''Docket No. 00–071–1'' on the subject line.

You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS dockets are available on the Internet at *http://www.aphis.usda.gov/ppd/rad/webrepor.html.*

FOR FURTHER INFORMATION CONTACT: Dr. Albert P. Morgan, Chief of Operational Support, Center for Veterinary Biologics, Licensing and Policy Development, VS, APHIS, 4700 River Road Unit 148, Riverdale, MD, 20737–1231; (301) 734–8245.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR part 116 contain requirements for maintaining detailed records of information necessary to give a complete accounting of all the activities within a veterinary biologics establishment.

In this document, we are proposing amendments to that part. First, we are proposing to require veterinary biologics licensees and permittees to record and submit reports to the Animal and Plant Health Inspection Service (APHIS) concerning adverse events associated with the use of biological products that they produce or distribute. Second, we are proposing to require veterinary biologics licensees and permittees to report to APHIS the number of doses of each licensed product that they distribute. Third, we are proposing definitions for *adverse event* and *adverse event report.*

Definitions

The regulations at 9 CFR part 101 contain definitions of terms used in the regulations concerning veterinary biologics. The proposed changes to part 116 of the regulations would make it necessary for us to add definitions in § 101.2 for two terms used in the proposed regulations: *Adverse event* and *adverse event report.* We would define *adverse event* as ''any undesirable and unintended occurrence after the use of a biological product, whether or not the cause of the event is known. For products administered to animals, adverse events are those involving the health of the treated animal, including the apparent failure to protect against disease. For products intended to diagnose disease, adverse events refer to anything that hinders discovery of the correct diagnosis.'' We would define *adverse event report* as ''a communication concerning the occurrence of one or more adverse events which identifies the product(s), animal(s), and person making the report.'' The receipt of an adverse event report does not necessarily imply that the product caused the adverse event.

Adverse Event Records and Reports

Currently, § 116.1(a) requires each licensee, permittee, and foreign manufacturer of biological products imported into the United States to maintain, at the licensed or foreign establishment in which the products are prepared, detailed records of information necessary to give a complete accounting of all the activities within each establishment. Section 116.1, paragraph (a), further states that such records must include, but are not limited to, the items listed in part 116, which are inventory and disposition records (§ 116.2), label records (§ 116.3), sterilization and pasteurization records (§ 116.4), product development and preparation and market suspensions and recalls (§ 116.5), animal records (§ 116.6), and test records (§ 116.7).

In addition, §§ 116.1(b) and 116.5(b) state that if at any time there are indications that raise questions regarding the purity, safety, potency, or efficacy of a product, or if it appears that there may be a problem regarding the preparation, testing, or distribution of a product, the licensee, permittee, or foreign manufacturer must immediately notify APHIS concerning the circumstances and the action taken, if any.

However, the regulations in § 116.1(a) and (b) and § 116.5(b) do not explicitly require licensees and permittees to maintain records of reports of adverse events associated with the use of veterinary biologics, nor do the regulations provide specific guidance in determining when an adverse event report may raise questions regarding the purity, safety, potency, efficacy, preparation, testing, or distribution (PSPEPTD) of such product. Consequently, each veterinary biologics manufacturer makes independent determination concerning (1) whether an adverse event report raises PSPEPTD questions and (2) when and in what manner such report of the adverse event will be provided to APHIS.

To limit the harm to animals posed by unsatisfactory veterinary biologics, APHIS currently must rely primarily on adverse event reports provided by the manufacturer. Unexpected or unexplained adverse events associated with the use of veterinary biologics in animals are reported to the veterinary biologics manufacturer either by the consumer or in the form of a report from a technical service veterinarian employed by the manufacturer to monitor the performance of their products in the field.

Currently, licensees and permittees are using nonstandardized methods to record and submit reports regarding adverse events to APHIS. In addition, adverse event reports that may signal problems concerning the use of veterinary biologics products are not all being submitted to APHIS in a timely manner. Unless we have complete and timely reports, we may not be able to take expeditious action to limit the harm in animals caused by veterinary biological products that may be harmful or dangerous to animals. Therefore, we are proposing to add to the regulations a new § 116.9 for adverse event records. New § 116.9 would require licensees and permittees to record reports of all adverse events that they receive concerning the use of biological products that they produce or distribute and submit a summary of such reports to APHIS on an annual basis. Licensees and permittees would be required to record information concerning adverse events that includes: (1) The date of the report; (2) identification of the person initiating the report; (3) the true name of the product involved and product trade name; (4) the product serial number, if available; (5) a description of the adverse event; (6) the animal(s) involved; and (7) any other pertinent identifying information regarding the product.

In addition, in new § 116.9, we would propose that licensees and permittees prepare summaries of the adverse event report records for submission to APHIS. Beginning with the date the product is licensed, such summaries would have to include intervals of 6 months during the first year and intervals of 1 year thereafter. We would also require summaries to be received by APHIS within 30 days after the end of the interval.

We would require records for each 6-month interval after the product is licensed because little is known about newly licensed products, except for observations made during the immunogenicity studies, safety tests, and field trials for these products. We believe that more frequent reporting requirements for newly licensed products would ensure that we have adequate data to support a decision to take regulatory action against products that are associated with an unusual number of adverse event reports.

We are also proposing to revise §§ 116.1(a)(3) and 116.8 of the regulations to allow adverse event records to be excluded from the list of records to be completed before serials may be marketed because adverse event records cannot be completed before a product has been distributed and used in animals.

The proposed amendments would standardize the adverse event reporting system and the information that should be included when making records of adverse event reports.

Number of Doses Distributed

In order to provide an objective measure of when it may be necessary to take action against a veterinary biologic to limit the harm in animals, and as a component of the adverse event reporting system, we would use the number of doses of product distributed instead of the number of doses of product administered to animals to calculate the incidence of adverse events associated with a particular product. Typically, the number of doses of product administered to animals would be used to calculate incidence. Because we must take timely action and may not know precisely how many animals have been treated with a product, we believe that the number of marketed doses of a product should be representative of the number of doses that were administered to animals.

Currently, the regulations in part 116 do not require veterinary biologics manufacturers to report to APHIS the number of doses of each licensed product that are distributed. Therefore, we are proposing to add this requirement in new § 116.5(c). In addition, we are proposing that the records include the number of doses for each 6-month interval after the product is licensed during the first year and each yearly interval thereafter. We would also require the reports to be received within 30 days after the end of the interval.

We would require records for each 6-month interval after the product is licensed based on the reasons provided previously in this document under ''Adverse Event Reports.''

Miscellaneous

We are also proposing to make minor, nonsubstantive, editorial changes to the regulations, as set out in the rule portion of this document, for clarity.

Executive Order 12866 and Regulatory Flexibility Act

This proposed rule has been reviewed under Executive Order 12866. The rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

We are proposing to amend the Virus-Serum-Toxin Act regulations for records and reports. First, we are proposing to require veterinary biologics licensees and permittees to record and submit reports to APHIS concerning adverse events associated with the use of biological products that they produce or distribute. Second, we are proposing to require veterinary biologics licensees and permittees to report to APHIS the number of doses of each licensed product that they distribute. Third, we are proposing to provide definitions for *adverse event* and *adverse event report.* These actions would assist us in providing complete and accurate information to consumers regarding adverse reactions or other problems associated with the use of licensed biological products.

This proposed rule would affect most, if not all, licensed manufacturers of veterinary biologics. Currently, there are approximately 150 veterinary biologics manufacturers, including permittees. According to the standards of the Small Business Administration, most veterinary biologics establishments would be classified as small entities.

We believe that this proposed rule would not have a significant effect on small entities because most veterinary biologics manufacturers currently maintain recordkeeping systems for adverse event reports, and this proposed rule does not restrict manufacturers from using their discretion to choose the most appropriate recordkeeping system

for maintaining records of these reports. However, one of the purposes of this proposed rule is to provide veterinary biologics manufacturers with criteria that should be included in the reports so that the reports are standardized from manufacturer to manufacturer and submitted to APHIS in a timely manner.

In addition, the proposed requirement that veterinary biologics manufacturers report the number of doses of each licensed or permitted product that has been distributed would not have a significant effect on small entities. Veterinary biologics manufacturers currently maintain records of the number of doses of a product produced and distributed. This proposed rule would only require veterinary biologics manufacturers to report the number of doses to APHIS as required by the proposed regulations.

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

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 proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have retroactive effect. This rule would not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule. The Act does not provide administrative procedures which must be exhausted prior to a judicial challenge to the provisions of this rule.

Paperwork Reduction Act

In accordance with section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB). Please send written comments to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for APHIS, Washington, DC 20503. Please state that your comments refer to Docket No. 00–071–1. Please send a copy of your comments to: (1) Docket No. 00–071–1, Regulatory Analysis and Development, PPD, APHIS, Suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737–1238, and (2) Clearance Officer, OCIO, USDA, room 404–W, 14th Street and Independence Avenue SW., Washington, DC 20250. A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication of this proposed rule.

This proposed rule would require manufacturers of veterinary biological products to maintain records of adverse event reports that they receive concerning the use of veterinary biological products that they produce or distribute for 2 years or longer and submit a summary of such reports to APHIS. The reports would have to be submitted at 6-month intervals during the first year the product is licensed and at 1-year intervals thereafter. In addition, licensees and permittees would have to report to APHIS the number of doses of each licensed product distributed every 6 months during the first year the product is licensed or permitted and at 1-year intervals thereafter. These information collection and recordkeeping requirements would allow us to monitor and provide the appropriate level of regulatory oversight.

We are soliciting comments from the public (as well as affected agencies) concerning this proposed amendment to the records and reports requirements in the regulations. We need this outside input to help us:

(1) Evaluate whether the proposed information collection in the form of records and reports is necessary for the proper performance of our agency's functions, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the proposed information collection, 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 information collection on those who are to respond (such as through the use of appropriate automated, electronic, mechanical or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses).

Estimate of burden: Public reporting burden for this collection of information is estimated to average 1 hour per response.

Respondents: Veterinary biologics licensees and permittees.

Estimated annual number of respondents: 125.

Estimated annual number of responses per respondent: 8.

Estimated annual number of responses: 1,000.

Estimated total annual burden on respondents: 1,000 hours.

Copies of this information collection can be obtained from: Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 734–7477.

List of Subjects

9 CFR Part 101

Animal biologics.

9 CFR Part 116

Animal biologics, Reporting and recordkeeping requirements.

Accordingly, we propose to amend 9 CFR parts 101 and 116 as follows:

PART 101—DEFINITIONS

1. The authority citation for part 101 would be revised to read as follows:

Authority: 21 U.S.C. 151–159; 7 CFR 2.22, 2.80, and 371.4.

2. In § 101.2, definitions of *adverse event* and *adverse event report* would be added in alphabetical order to read as follows:

§ 101.2 Administrative terminology.

* * * * *

Adverse event. Any undesirable and unintended occurrence after the use of a biological product, whether or not the cause of the event is known. For products administered to animals, adverse events are those involving the health of the treated animal, including the apparent failure to protect against disease. For products intended to diagnose disease, adverse events refer to anything that hinders discovery of the correct diagnosis.

Adverse event report. A communication concerning the occurrence of one or more adverse events which identifies the product(s), animal(s), and person making the report.

* * * * *

PART 116—RECORDS AND REPORTS

3. The authority citation for part 116 would be revised to read as follows:

Authority: 21 U.S.C. 151–159; 7 CFR 2.22, 2.80, and 371.4.

4. In § 116.1, paragraph (a)(3) would be revised to read as follows:

§ 116.1 Applicability and general considerations.

(a) * * *

(3) Records (other than disposition records and adverse event records) required by this part must be completed by the licensee, permittee, or foreign manufacturer, as the case may be, before any portion of a serial of any product

may be marketed in the United States or exported.

* * * * *

5. Section 116.5 would be amended by adding a new paragraph (c) to read as follows:

§ 116.5 Reports.

* * * * *

(c) The licensee and/or permittee must report to APHIS the number of doses of each licensed or permitted product that has been distributed. Reports must include the number of doses for each 6 month interval during the first year the product is licensed and at yearly intervals thereafter. Reports must be received by APHIS within 30 days after the end of the interval.

* * * * *

6. Section 116.8 would be revised to read as follows:

§ 116.8 Completion and retention of records.

All records (other than disposition records and adverse event records) required by this part must be completed by the licensee, permittee, or foreign manufacturer before any portion of a serial of any product may be marketed in the United States or exported. All records must be retained at the place of business for the licensee, permittee, or foreign manufacturer for a period of 2 years after the expiration date of a product or longer as may be required by the Administrator.

(Approved by the Office of Management and Budget under control number 0579–0013)

7. A new § 116.9 would be added to read as follows:

§ 116.9 Adverse event records.

(a) A detailed record must be maintained for every adverse event report the licensee or permittee receives for any biological product it produces or distributes. Each record must include:

(1) The date of the report;

(2) The identification of the person initiating the report;

(3) The true name of the product involved and product trade name;

(4) The serial number(s) of the product(s), if available;

(5) A description of the adverse event;

(6) The animal(s) involved; and

(7) Any other pertinent identifying information regarding the product.

(b) For each product, summaries of adverse event report records must be compiled and submitted to APHIS. Beginning with the date the product is licensed, such summary compilations must cover intervals of 6 months during the first year the product is licensed and yearly intervals thereafter. Summaries must be received within 30 days after the end of the interval.

Done in Washington, DC, this 10th day of January, 2002.

W. Ron DeHaven,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 02–938 Filed 1–14–02; 8:45 am]

BILLING CODE 3410–34–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NE–49–AD]

RIN 2120–AA64

Airworthiness Directives; Pratt & Whitney PW4000 Series Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The Federal Aviation Administration (FAA) proposes to supersede an existing airworthiness directive (AD), that is applicable to Pratt & Whitney PW4000 series turbofan engines. That AD currently requires operators to perform initial and repetitive inspections for cracking of high pressure compressor (HPC) front drum rotors based on cycle usage. That AD also requires the removal from service of any cracked HPC front drum rotors. This proposal clarifies inspection requirements for cracking of high pressure compressor (HPC) front drum rotors that have fewer than 1,000 cycles-since-new (CSN). This proposal is prompted by comments from operators seeking more clarity about the inspection requirements of paragraph (a)(1) of the current AD. The actions specified in the proposed AD are intended to prevent HPC drum rotor failure from cracks that could result in an uncontained engine failure and damage to the airplane.

DATES: Comments must be received by February 14, 2002.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 2000–NE–49–AD, 12 New England Executive Park, Burlington, MA 01803–5299. Comments may be inspected at this location, by appointment, between 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. Comments may also be sent via the Internet using the following address: ''*9-ane-adcomment@faa.gov*''. Comments sent via the Internet must contain the docket number in the subject line.

The service information referenced in the proposed rule may be obtained from Pratt & Whitney, 400 Main Street, East Hartford, CT 06108. This information may be examined, by appointment, at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA.

FOR FURTHER INFORMATION CONTACT: Tara Goodman, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington MA 01803–5299; telephone: 781–238–7130, fax: 781–238–7199.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 2000–NE–49–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRM's

Any person may obtain a copy of this NPRM by submitting a request to the FAA, New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 2000–NE–49–AD, 12 New England Executive Park, Burlington, MA 01803–5299.

Discussion

On October 12, 2001, the FAA issued AD 2001–20–13, Amendment 39–12461

(66 FR 52023, October 12, 2001), to require operators to perform initial and repetitive inspections for cracking of HPC front drum rotors based on cycle usage. That amendment also requires the removal from service of any cracked HPC front drum rotors. That action was prompted by reports that 11 HPC front drum rotors have been found cracked on the spacer surface between the sixth and seventh stage disks. That condition, if not corrected, could result in HPC front drum rotor failure that could result in an uncontained engine failure and damage to the airplane.

Since that AD was issued, the FAA received three comments from operators stating that the inspection requirements stated in paragraph (a)(1) are inconsistent with the alert service bulletin. The FAA agreed with these comments and paragraph (a)(1) has been changed to clarify inspection requirements for cracking of HPC front drum rotors that have fewer than 1,000 CSN.

Manufacturer's Service Information

The FAA has reviewed and approved the technical contents of Pratt & Whitney Alert Service Bulletin (ASB) PW4ENG A72–722, dated September 29, 2000 and (ASB) PW4ENG A72–722, Revision 1, dated June 7, 2001 that describe procedures for initial and repetitive inspections for cracking of HPC front drum rotors based on cycle usage and the removal from service of any cracked HPC front drum rotors.

FAA's Determination of an Unsafe Condition and Proposed Actions

Since an unsafe condition has been identified that is likely to exist or develop on other Pratt & Whitney PW4000 series turbofan engines, products of this same type design, the proposed AD would supersede AD 2001–20–13 to clarify inspection requirements for front drum rotors that have fewer than 1,000 cycles-since-new. The actions are required to be done in accordance with the service bulletins described previously.

Economic Analysis

The FAA estimates that there will be no additional costs attributable to this proposed supersedure.

Regulatory Analysis

This proposed rule does not have federalism implications, as defined in Executive Order 13132, because it would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, the FAA has not consulted with state authorities prior to publication of this proposed rule.

For the reasons discussed above, I certify that this proposed regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing Amendment 39–12461, (66 FR 52023, October 12, 2001), and by adding a new airworthiness directive:

Pratt & Whitney: Docket No. 2000–NE–49–AD. Supersedes AD 2001–20–13, Amendment 39–12461.

Applicability

This airworthiness directive (AD) applies to Pratt & Whitney (PW) models PW4052, PW4056, PW4060, PW4062, PW4152, PW4156A, PW4158, PW4460, and PW4462 turbofan engines. These engines are installed on but not limited to Boeing 747, 767, McDonnell Douglas MD–11, Airbus Industrie A300, and A310 series airplanes.

Note 1: This AD applies to each engine identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For engines that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance

Required as indicated, unless accomplished previously.

To prevent failure of the high pressure compressor (HPC) front drum rotor from cracks, that could result in an uncontained engine failure and damage to the airplane, do the following:

Initial Inspection

(a) Perform an initial borescope inspection for cracks in accordance with the Accomplishment Instructions, On-Wing paragraphs 1 through 13, of Pratt & Whitney (PW) Alert Service Bulletin (ASB) No. PW4ENG A72–722, dated September 29, 2000 or Revision 1, dated June 7, 2001, as follows:

(1) For HPC front drum rotors with fewer than 1,000 cycles-since-new (CSN) on the effective date of this AD, perform an initial inspection within 500 cycles-in-service (CIS) after accumulating 1,000 CSN.

(2) For HPC front drum rotors with 1,000 CSN or more after the effective date of this AD, perform an initial inspection within 500 CIS after the effective date of this AD.

(3) If the presence of a crack needs to be confirmed, perform an eddy current inspection (ECI) within five flight cycles of the on-wing borescope inspection.

(4) If the presence of a crack needs to be confirmed and the suspect crack indication extends from the knife edges to the disk radius directly adjacent to the spacer wall of the sixth or seventh stage as shown in Figures 2 and 3 of PW ASB No. PW4ENG A72–722, dated September 29, 2000, or Revision 1, dated June 7, 2001, the ECI inspection must be done before further flight.

(5) If the presence of a crack is confirmed, remove and replace the HPC front drum rotor with a serviceable part before further flight.

(6) HPC front drum rotors fluorescent penetrant inspected at the last shop visit, as cited in the compliance section of the ASB, within 500 cycles of the effective date of this AD, satisfy the initial inspection requirement.

Repetitive Inspections

(b) Thereafter, perform borescope inspections within 2,200 cycles-since-last-inspection, in accordance with the Accomplishment Instructions, On-Wing paragraphs 1 through 13, of PW ASB No. PW4ENG A72–722, dated September 29, 2000, or Revision 1, dated June 7, 2001.

(1) If the presence of a crack needs to be confirmed, perform an ECI within five flight cycles.

(2) If the presence of a crack needs to be confirmed and the suspect crack indication extends from the knife edges to the disk radius directly adjacent to the spacer wall of the sixth or seventh stage as shown in Figures 2 and 3 of PW ASB No. PW4ENG A72–722, dated September 29, 2000, or Revision 1, dated June 7, 2001, the ECI inspection must be done before further flight.

(3) If the presence of a crack is confirmed, remove and replace with a serviceable HPC front drum rotor before further flight.

Definition of Suspect Crack Indication

(c) For the purposes of this AD, a suspect crack indication is defined as a response from the visual borescope inspection procedure that denotes the possible presence of a material discontinuity and requires interpretation to determine its significance.

Alternative Methods of Compliance

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Engine Certification Office (ECO). Operators must submit their request through an appropriate Federal Aviation Administration (FAA) Principal Maintenance Inspector, who may add comments and then send it to the Manager, ECO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the ECO.

Special Flight Permits

(e) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Burlington, Massachusetts, on January 7, 2002.

Jay J. Pardee,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 02–905 Filed 1–14–02; 8:45 am]

BILLING CODE 4910–13–P

FEDERAL TRADE COMMISSION

16 CFR Part 432

Trade Regulation Rule Relating to Power Output Claims for Amplifiers Utilized in Home Entertainment Products

AGENCY: Federal Trade Commission.

ACTION: Notice deferring action on proposed rule.

SUMMARY: On December 22, 2000, the Federal Trade Commission (the ''Commission'') commenced a rulemaking proceeding and requested public comments on a supplemental notice of proposed rulemaking to amend its Rule relating to Power Output Claims for Amplifiers Utilized in Home Entertainment Products (the ''Amplifier Rule'' or the ''Rule''). The Commission solicited comments until March 30, 2001. In response to a request from an industry trade association, the Commission has determined to defer action on the proposed rule, but keep open the rulemaking record in this proceeding.

DATES: The Federal Trade Commission's decision to defer action on the proposed rule is effective January 15, 2002.

FOR FURTHER INFORMATION CONTACT: Dennis Murphy, Economist, Division of Consumer Protection, Bureau of Economics, (202) 326–3524, or Neil Blickman, Attorney, Division of Enforcement, Bureau of Consumer Protection, (202) 326–3038, Federal Trade Commission, Washington, DC 20580.

SUPPLEMENTARY INFORMATION: On December 22, 2000, the Commission published in the **Federal Register** a request for public comments on a supplemental notice of proposed rulemaking (''SNPR'') to amend its Amplifier Rule, 16 CFR part 432 (65 FR 80798). The Amplifier Rule was promulgated on May 3, 1974 (39 FR 15387), to assist consumers in purchasing power amplification equipment for home entertainment purposes by standardizing the measurement and disclosure of various performance characteristics of the equipment. Specifically, the **Federal Register** notice solicited public comments on Commission proposals to amend the Amplifier Rule's testing procedures to provide appropriate power output ratings for the recently introduced class of multichannel audio/video receivers and amplifiers, such as those used in ''home theater'' installations.[1] These receivers and amplifiers, which incorporate five or more discrete channels of amplification, are designed to decode and/or amplify digitally encoded multichannel movie soundtracks, or music program material recorded on video cassette tapes, laser discs, or digital video disks.

Audio/video receivers with digital decoding circuitry and five or more discrete channels of amplification were not available to consumers when the Amplifier Rule originally was promulgated, or when the Commission initiated its review of the Amplifier Rule in 1997 to determine the Rule's current effectiveness and impact.[2] The Commission tentatively concluded in the SNPR that such components raise unique interpretational issues under the Rule that have not heretofore been addressed. The Commission determined, therefore, to publish an SNPR commencing a supplementary rulemaking proceeding, and inviting interested persons to submit written comments addressing the issues raised in that notice.

Section 432.2(a) of the Rule requires that an amplifier's rated continuous power output per channel be ''[m]easured with all associated channels fully driven to rated per channel power.'' [Emphasis added.] This continuous measurement represents the maximum per-channel power an amplifier can deliver over a sustained period of time, which the Rule defines as five minutes. By requiring uniform power output disclosures in the advertising of audio amplifier equipment, the Rule enables consumers to easily make power output comparisons among the types and brands of audio equipment, and assess the products in conjunction with price. When the Rule was promulgated in 1974, virtually all amplifiers available to consumers incorporated either one channel of amplification (''monophonic'' amplifiers), or two channels in a left and right ''stereophonic'' configuration. For such amplifiers, interpretation of the term ''all associated channels'' in § 432.2(a) is self evident. By definition, a monophonic amplifier can be measured only with its single channel driven to full rated power. For stereophonic amplifiers, the left and right channels clearly are associated presentations of the same musical performance and, in any event, are the only channels that could be considered ''associated'' under the Rule.

In recent years, multichannel audio/video receivers and power amplifiers with five or more channels of amplification have accounted for an increasingly large share of consumer audio equipment sales. Current digital audio/video receivers and amplifiers typically incorporate a pair of front left and right stereophonic amplification channels, a center channel designed to reproduce the dialog portion of cinema soundtracks, and two discrete rear amplification channels that may reproduce special sound effects or ambient sound information encoded in cinema soundtracks or music program material. Some home theater amplifiers may also provide one or more ''subwoofer'' amplification channels that are dedicated to reproducing only deep bass frequencies (below approximately 100 Hertz). Future developments may include additional surround or special effects channels placed around the listening room.

[1] On the same day, the Commission published separately in the **Federal Register** a final rule streamlining the Amplifier Rule's advertising disclosure requirements with respect to total rated harmonic distortion and the associated power bandwidth and impedance ratings, and clarifying the testing procedure for self-powered speakers (65 FR 81232).

[2] 62 FR 16500 (April 7, 1997).

Manufacturers of multichannel audio/video receivers and amplifiers who wish to rate power output under § 432.2 of the Rule must decide which of the five or more discrete channels of amplification are to be considered ''associated'' and, therefore, subject to simultaneous operation at full rated power. Under the strictest interpretation of § 432.2(a), all available channels would be considered associated and all channels would be driven to full rated power simultaneously during testing. Such a regimen might severely tax the common power supply utilized in many home theater receivers, and the resulting per channel power ratings might be considerably below those that would be obtained if, for example, only the specific set of channels being rated (e.g., surround channels) were driven to full power simultaneously. The controlling consideration in determining the proper interpretation of ''associated channels'' is whether audio/video receivers and amplifiers would, when operated by consumers in the home at high playback volume, be required to deliver full rated power output in all channels simultaneously, or whether such maximum stress conditions would more likely be restricted at any given moment of time to certain sub-groupings of available channels.

The Commission already has reached a determination relevant to the appropriate treatment of any subwoofer channels of amplification that might be provided in audio/video receivers. This determination, which the Commission announced on December 22, 2000 (65 FR 81232), applies to self-powered combination subwoofer-satellite loudspeaker systems, such as those used with personal computers and in home theater installations. Specifically, the Commission amended § 432.2 of the Rule to specify that:

> * * * when measuring maximum per channel output of self-powered combination speaker systems that employ two or more amplifiers dedicated to different portions of the audio frequency spectrum, such as those incorporated into combination subwoofer-satellite speaker systems, only those channels dedicated to the same audio frequency should be considered associated channels that need be fully driven simultaneously to rated per channel power.

In reaching this determination, the Commission concluded that, under actual in-home use of such combination systems, maximum power demands typically would not occur precisely in the crossover region of frequencies that would be reproduced both by the subwoofer and satellite amplifiers. Rather, simultaneous demands would more likely occur in portions of the audio spectrum that would be assigned primarily either to the subwoofer amplifier or the satellite amplifier.[3] A similar conclusion would appear to hold for home theater receivers that incorporate a separate amplified subwoofer channel(s) and an internal crossover network.

The Commission tentatively concluded, therefore, that subwoofer amplifiers in combination self-powered subwoofer-satellite speaker systems and subwoofer amplifiers in audio/video receivers should be treated consistently under § 432.2(a) of the Rule. That is, the amplified subwoofer channel(s) of digital home theater receivers and the remaining amplified channels need not be considered ''associated'' channels that must be fully driven to rated per channel power when rating the power output of the subwoofer channel(s).

The Commission was unable, however, to make any tentative determination concerning the appropriate designation of associated channels for the remaining amplified channels in multichannel audio/video receivers and amplifiers, since the rulemaking record contained no evidence relevant to this issue. The Commission, therefore, solicited public comment on three alternative methods of grouping associated channels for multichannel audio/video receivers. The Commission stated that these alternatives would govern power ratings applicable when an audio/video receiver is used in full multichannel mode, but would not affect power ratings for the main left and right front channels that apply when the receiver's intended use is restricted to conventional stereo mode. For such conventional stereo ratings, only the two front stereo channels need be driven simultaneously to full rated power.

In the SNPR, the Commission proposed to amend § 432.2 of the Rule to define the term ''associated channels'' for multichannel audio/video receivers such as those used in home theater systems.[4] The Commission solicited public comment on the following three alternative designations of ''associated channels'' for such audio equipment:

Alternative A: When measuring maximum per channel output of multichannel audio/video receivers and power amplifiers, the front stereo channels, the center channel(s), and the surround channels should be considered associated channels that need be fully driven simultaneous to rated per channel power. The subwoofer channels should be considered as a second group of associated channels.

Alternative B: When measuring maximum per channel output of multichannel audio/video receivers and power amplifiers, the front stereo channels and the center channel(s) should be considered one group of associated channels; the surround channels should be considered a second group of associated channels; and the subwoofer channels should be considered a third group of associated channels.

Alternative C: When measuring maximum per channel output of multichannel audio/video receivers and power amplifiers, the front stereo channels should be considered one group of associated channels; the center channel(s) should be considered a second group of associated channels; the surround channels should be considered a third group of associated channels; and the subwoofer channels should be considered a fourth group of associated channels.

The SNPR elicited one comment, which was received from the Consumer Electronics Association (''CEA'').[5] CEA noted that presently there is no industry consensus on testing, measuring and specifying the power output of multichannel amplifier products. In the absence of a voluntary industry standard that adequately addresses multichannel amplifiers, CEA stated that the industry is divided on the complex issue of testing and measuring multichannel receivers and amplifiers. CEA commented that while some manufacturers are testing and measuring the power output of their amplifiers with all channels driven simultaneously, other manufacturers are interpreting the term ''associated'' to mean the simultaneous testing and measuring of only those channels that are ''naturally'' associated. For example, manufacturers are testing and measuring the power output of amplifier channels grouped as follows: a ''2–1–2'' approach (front left and right, center, rear left and

[3] *See, e.g.,* 64 FR 38610, 38613 (July 19, 1999).

[4] The public comment period on the SNPR concluded on March 30, 2001 (66 FR 12915 (March 1, 2001)).

[5] CEA represents more than 625 U.S. companies involved in the design, development, manufacturing and distribution of audio, video, mobile electronics, communications, information technology, multimedia and accessory products, as well as related services that are sold through consumer channels. Combined, these companies account for more than $70 billion in annual sales. CEA's comment appears on the public record in this proceeding and is available for public inspection in the Public Reference Room, Room 130, Federal Trade Commission, 600 Pennsylvania Ave., NW., Washington, DC, from 8:30 a.m. to 5 p.m., Monday through Friday, except federal holidays.

right); or a ''3–2'' approach (front left, right and center, rear left and right). In both examples, front left and right channels, and rear left and right channels are considered ''natural'' groupings in audio systems. Pending clarification, CEA stated that any of these approaches might be acceptable, provided that only one is agreed upon by the industry. With the expectation of future developments in multichannel audio technology, CEA has suggested that the Commission apply a flexible interpretation of the term ''associated'' to the testing and measuring of the power output for any ''associated'' audio channels that may be added in the future. CEA stated that this complex situation demands that the audio industry now take an active leadership role in reviewing and revising existing industry standards to apply them to multichannel receivers and amplifiers.

CEA, therefore, has formed an industry working group, the purpose of which is to establish a voluntary industry consensus standard for measuring the power output of multichannel receivers and amplifiers. CEA has encouraged the Commission to continue its cooperative approach to revising the Amplifier Rule, and consider incorporating its final rule any new voluntary standard developed by CEA for testing, measuring, and specifying the power output of all amplifiers within the scope of the Rule.

The Commission is aware that the issues raised by the SNPR **Federal Register** notice are complex and technical. In the Commission's view, therefore, the public interest would best be served at this time by allowing the industry the opportunity to develop a voluntary standard for testing, measuring, and specifying the power output of multichannel amplifiers and receivers. If the industry is successful in establishing a consensus standard in a reasonable period of time, the Commission will evaluate the technical merits of the standard and consider whether it can function satisfactorily as a voluntary standard, or whether it, or an alternative standard, should be incorporated into the Rule's requirements.

Accordingly, in light of CEA's comment, the Commission has decided to defer action on the proposed rule, but keep open the rulemaking record in this proceeding to allow sufficient time for CEA to address the issues raised in the SNPR, and encourage the exchange of ideas between the Commission and the industry.

Authority: 15 U.S.C. 41–58.

List of Subjects in 16 CFR Part 432

Amplifiers, Home entertainment products, Trade practices.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 02–920 Filed 1–14–02; 8:45 am]

BILLING CODE 6750–01–M

NATIONAL INDIAN GAMING COMMISSION

25 CFR Part 542

RIN 3141–AA24

Public Hearing To Receive Testimony on Proposed Minimum Internal Control Standards

AGENCY: National Indian Gaming Commission.

ACTION: Notice of public hearing.

SUMMARY: On Wednesday, December 26, 2001, the National Indian Gaming Commission published a Proposed Rule in the **Federal Register** updating its existing Minimum Internal Control Standards (MICS). This Proposed Rule is the product of a consultative process that began more than one year ago, including an initial comment period and the extensive participation of a ten-member Tribal Advisory Committee. Comments on the Proposed Rule are due on or before February 25, 2002.

In further keeping with the Commission's policy of consultation with tribal governments, we will host a public hearing on the proposed rule Tuesday, February 5, 2002. This hearing provides an excellent opportunity for individuals to provide comment about the regulation to both the Commission and members of the Tribal Advisory Committee.

DATES: The hearing will be held on Tuesday, February 5, 2002, 9 a.m. to 5 p.m., Arlington, VA.

ADDRESSES: Crystal City Courtyard by Marriott (Club Room), 2899 Jefferson Davis Highway, Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT: Denise Desiderio, 202–632–7003.

Dated: January 10, 2002.

Montie R. Deer,

Chairman.

[FR Doc. 02–930 Filed 1–14–02; 8:45 am]

BILLING CODE 7565–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–301201; FRL–6816–6]

RIN 2070–AB78

Benomyl; Proposed Revocation of Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes to revoke all tolerances for residues of the fungicide benomyl because this pesticide is no longer registered for use in the United States. EPA expects to determine whether any individuals or groups want to support these tolerances. The regulatory actions proposed in this document are part of the Agency's reregistration program under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), and the tolerance reassessment requirements of the Federal Food, Drug, and Cosmetic Act (FFDCA) section 408(q), as amended by the Food Quality Protection Act (FQPA) of 1996. By law, EPA is required by August 2002 to reassess 66% of the tolerances in existence on August 2, 1996, or about 6,400 tolerances. The regulatory actions proposed in this document pertain to the proposed revocation of all tolerances for benomyl of which 100 would be counted among tolerance/exemption reassessments made toward the August, 2002 review deadline.

DATES: Comments, identified by docket control number OPP–301201, must be received on or before March 18, 2002.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I. of the **SUPPLEMENTARY INFORMATION.** To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–301201 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Joseph Nevola, Special Review and Reregistration Division (7508C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave, NW., Washington, DC 20460; telephone number: (703) 308–8037; e-mail address: nevola.joseph@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS codes	Examples of potentially affected entities
Industry	111 112 311 32532	Crop production Animal production Food manufacturing Pesticide manufacturing

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically*. You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select ''Laws and Regulations,'' ''Regulations and Proposed Rules,'' and then look up the entry for this document under the ''**Federal Register**—Environmental Documents.'' You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/. A frequently updated electronic version of 40 CFR part 180 is available at http://www.access.gpo.gov/nara/cfr/cfrhtml_180/Title_40/40cfr180_00.html, a beta site currently under development.

2. *In person*. The Agency has established an official record for this action under docket control number OPP–301201. The official record consists of the documents specifically referenced in this action, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall#2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–301201 in the subject line on the first page of your response.

1. *By mail*. Submit your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier*. Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically*. You may submit your comments electronically by e-mail to: opp-docket@epa.gov, or you can submit a computer disk as described in this unit. Do not submit any information electronically that you consider to be CBI. Electronic comments must be submitted as an ASCII file avoiding use of special characters and any form of encryption. Comments and data will also be accepted on standard disks in WordPerfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket control number OPP–301201. Electronic comments may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI that I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI 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. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Offer alternative ways to improve the proposed rule or collection activity.

7. Make sure to submit your comments by the deadline in this document.

8. To ensure proper receipt by EPA, be sure to identify the docket control number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

F. What Can I do if I Wish the Agency to Maintain a Tolerance that the Agency Proposes to Revoke?

This proposed rule provides a comment period of 60 days for any person to state an interest in retaining a tolerance proposed for revocation. If EPA receives a comment within the 60–day period to that effect, EPA will not proceed to revoke the tolerance immediately. However, EPA will take steps to ensure the submission of any needed supporting data and will issue an order in the **Federal Register** under FFDCA section 408(f) if needed. The order would specify data needed and the time frames for its submission, and

would require that within 90 days some person or persons notify EPA that they will submit the data. If the data are not submitted as required in the order, EPA will take appropriate action under FFDCA.

EPA issues a final rule after considering comments that are submitted in response to this proposed rule. In addition to submitting comments in response to this proposal, you may also submit an objection at the time of the final rule. If you fail to file an objection to the final rule within the time period specified, you will have waived the right to raise any issues resolved in the final rule. After the specified time, issues resolved in the final rule cannot be raised again in any subsequent proceedings.

II. Background

A. What Action is the Agency Taking?

EPA is proposing to revoke all tolerances in 40 CFR 180.294 because benomyl is no longer registered under FIFRA for use on those commodities. The registration for benomyl was canceled because the registrant requested voluntary cancellation of the pesticide. It is EPA's general practice to propose revocation of those tolerances for residues of pesticide active ingredients on crop uses for which there are no active registrations under FIFRA, unless the Agency receives comments on this proposal which indicate a need for the tolerance to cover residues in or on imported commodities or domestic commodities legally treated. One hundred of these tolerances were in existence when FQPA was enacted and therefore count toward the FQPA tolerance reassessment goals.

On April 18, 2001 the registrant, E. I. du Pont de Nemours and Company (DuPont), requested voluntary cancellation of all of their benomyl technical, end use, and special local need product registrations. On May 1, 2001 DuPont announced that it had already ceased the production of technical benomyl for use in products sold and distributed in the United States. DuPont also requested that EPA waive the 180–day waiting period contained in FIFRA section 6(f)(1)(C)(ii). On May 23, 2001 a FIFRA 6(f)(1) notice of receipt of the request by the registrant was published in the **Federal Register** (66 FR 28466) (FRL–6784–3). A cancellation order was published on August 8, 2001 (66 FR 41589) (FRL–6794–9). Receipt of other requests for cancellation of registrations were published on September 26, 2001 (66 FR 49184) (FRL–6802–1) and on October 12, 2001 (66 FR 52132) (FRL–6805–3). EPA allowed DuPont to sell and distribute benomyl stocks until June 30, 2001 and is allowing those other than the registrant to sell and distribute benomyl stocks until December 31, 2002. The Agency expects existing stocks to be exhausted by December 31, 2003.

The time frame for passage of raw agricultural commodities through trade channels, including storage, processing, post-processing, storage/distribution, and retail, varies and depends on the food commodity. The longest time periods are generally associated with food commodities that are stored for extended periods before processing or are in the form of a processed ingredient such as fruit or vegetable concentrates or pastes. Therefore, for all other benomyl tolerances, EPA is proposing expiration/revocation dates from 2 to 5 years beyond the date of exhaustion of benomyl product through passage of benomyl-treated food in channels of trade using available Agency data, U.S. Food and Drug Administration (FDA) data, and food industry data on a basis as follows:

Commodity Crop Group	Tolerances	Maximum Years in Trade Channels	Proposed expiration/revocation date
Bulb Vegetables	Garlic	2	1/1/06
Brassica (Cole) Leafy Vegetables	Broccoli; Brussels sprouts; Cabbage; Cabbage, Chinese, bok choy; Cabbage, Chinese, napa; Cauliflower; Collards; Kale; Kohlrabi; Mustard greens	2	1/1/06
Root and Tuber Vegetables	Beet, sugar, roots; Beet, sugar, tops; Carrot; Rutabaga; Sweet potato; Turnip, roots; Turnip greens	3	1/1/07
Leafy Vegetables (exc. Brassica)	Celery; Spinach; Dandelion, leaves; Watercress	3	1/1/07
Legume Vegetables	Bean, dry; Bean, succulent; Soybean, seed	3	1/1/07
Cucurbit Vegetables	Cucumber; Melon; Pumpkin; Squash, summer; Squash, winter	3	1/1/07
Tree Nuts	Almond, hulls; Nut, tree, group; Pistachio (in § 180.294(a) and (c))[a]	3	1/1/07
Citrus Fruits	Citrus, dried pulp; Fruit, citrus (PRE- and POST-H)	4	1/1/08
Pome Fruits	Apple (PRE- and POST-H); Pear (PRE- and POST-H)	4	1/1/08
Stone Fruits	Apricot; Cherry, sweet; Cherry, tart; Nectarine (PRE- and POST-H); Peach (PRE- and POST-H); Plum, prune, dried; Plum, prune, fresh;	4	1/1/08

Commodity Crop Group	Tolerances	Maximum Years in Trade Channels	Proposed expiration/revocation date
Berries	Blackberry; Blueberry; Boysenberry; Currant; Dewberry; Loganberry; Raspberry	4	1/1/08
Cereal Grains and Forage, Fodder and Straw of Cereal Grains.	Barley, grain; Barley, straw; Corn, sweet, kernel plus cob with husks removed; Corn, sweet, forage; Corn, sweet, stover; Oat, grain; Oat, straw; Rice, grain; Rice, hulls; Rice, straw; Rye, grain; Rye, straw; Wheat, grain; Wheat, straw	4	1/1/08
No group association- Plant commodities.	Avocado; Banana (PRE- and POST- H) (not more than 0.2 ppm shall be present in the pulp after peel is removed and discarded); Grape;. Grape, raisin; Mango; Mushroom (PRE- and POST-H); Papaya; Peanut; Peanut forage; Peanut, hay; Pineapple (POST-H); Strawberry	4	1/1/08
No group association- Animal commodities.	Cattle, fat; Cattle, meat; Cattle, meat byproducts; Egg; Goat, fat; Goat, meat; Goat, meat byproducts; Hog, fat; Hog, meat; Hog, meat byproducts; Horse, fat; Horse, meat; Horse, meat byproducts; Milk; Poultry, fat; Poultry, liver; Poultry, meat; Poultry, meat byproducts, except liver; Sheep, fat; Sheep, meat; Sheep, meat byproducts	4	1/1/08
Fruiting Vegetables	Eggplant; Pepper; Tomato; Tomato, concentrated products	5	1/1/09

[a] Please note that for FQPA reassessment purposes, EPA is counting the pistachio tolerance once; therefore, a total of 100 tolerances would be counted as reassessed for benomyl in a final rule.

Because ''bean vine forage'' is no longer a significant livestock feed item and the tolerance is no longer needed, EPA is proposing to revoke the tolerance for ''bean vine forage'' 90 days following publication of a final rule to ensure that all affected parties receive notice of EPA's actions.

In the interim period of time before the tolerance expires and to conform to current Agency practice, EPA is proposing to revise tolerance commodity terminology names in 180.294(a) as follows:

Old terminology	New terminology
almond hulls	almond, hulls;
apples (PRE- and POST-H).	apple (PRE- and POST-H)
apricots (PRE- and POST-H).	apricot (PRE- and POST-H)
bananas (PRE- and POST-H) (NMT 0.2 ppm shall be present in the pulp after peel is removed and discarded).	banana (PRE- and POST-H) (not more than 0.2 ppm shall be present in the pulp after peel is removed and discarded)
beans	bean, succulent and bean, dry
beets, sugar, roots	beet, sugar, roots
beets, sugar, tops	beet, sugar, tops
blackberries	blackberry
blueberries	blueberry
boysenberries	boysenberry
carrots	carrot
cattle, mbyp	cattle, meat byproducts
cherries (PRE- and POST-H).	cherry, sweet and cherry, tart
Chinese cabbage	cabbage, Chinese, napa and cabbage, Chinese, bok choy
citrus fruit (PRE- and POST-H).	fruit, citrus (PRE- and POST-H)
corn, fresh (inc. sweet K +CWHR).	corn, sweet, kernel plus cob with husks removed
corn, sweet, fodder and forage.	corn, sweet, forage and corn, sweet, stover
cucumbers	cucumber
currants	currant
dewberries	dewberry
eggplants	eggplant
eggs	egg;
goats, fat	goat, fat
goats, meat	goat, meat
goats, mbyp	goat, meat byproducts

Old terminology	New terminology
grapes	grape
hogs, fat	hog, fat
hogs, meat	hog, meat
hogs, mbyp	hog, meat byproducts
horses, fat	horse, fat
horses, meat	horse, meat
horses, mbyp	horse, meat byproducts
loganberries	loganberry
mangoes	mango
melons	melon
mushrooms (PRE- and POST-H).	mushroom (PRE- and POST-H)
nectarines (PRE- and POST-H).	nectarine (PRE- and POST-H)
nuts	nut, tree, group
oats, grain	oat, grain
oats, straw	oat, straw
peaches (PRE- and POST-H).	peach (PRE- and POST-H)
peanuts	peanut
peanut hay	peanut, hay
pears (PRE- and POST-H).	pear (PRE- and POST-H)
peppers	pepper
pineapples (POST-H).	pineapple (POST-H)
pistachios	pistachio
plums (including fresh prunes) (PRE- and POST-H).	plum, prune, dried and plum, prune, fresh
poultry, mbyp	poultry, meat by-products, except liver
pumpkins	pumpkin
raisins	grape, raisin
raspberries	raspberry
rice	rice, grain
rice straw	rice, straw
rutabagas	rutabaga
sheep, mbyp	sheep, meat byproducts
soybeans	soybean, seed
strawberries	strawberry
sweet potatoes	sweet potato
tomatoes	tomato
tomato products, concentrated.	tomato, concentrated products
turnips, roots	turnip, roots
In 40 CFR 180.294(c). avocados	avocado
dandelions	dandelion, leaves
papayas	papaya
pistachios	pistachio.

B. What is the Agency's Authority for Taking this Action?

A ''tolerance'' represents the maximum level for residues of pesticide chemicals legally allowed in or on raw agricultural commodities and processed foods. Section 408 of FFDCA, 21 U.S.C. 301 *et seq.*, as amended by the FQPA of 1996, Public Law 104–170, authorizes the establishment of tolerances, exemptions from tolerance requirements, modifications in tolerances, and revocation of tolerances for residues of pesticide chemicals in or on raw agricultural commodities and processed foods (21 U.S.C. 346(a)). Without a tolerance or exemption, food containing pesticide residues is considered to be unsafe and therefore ''adulterated'' under section 402(a) of the FFDCA. If food containing pesticide residues is considered to be ''adulterated,'' you may not distribute the product in interstate commerce (21 U.S.C. 331(a) and 342(a)). For a food-use pesticide to be sold and distributed, the pesticide must not only have appropriate tolerances under the FFDCA, but also must be registered under FIFRA (7 U.S.C. *et seq.*). Food-use pesticides not registered in the United States have tolerances for residues of pesticides in or on commodities imported into the United States.

It is EPA's general practice to propose revocation of tolerances for residues of pesticide active ingredients on crops for which FIFRA registrations no longer exist and on which the pesticide may therefore no longer be used in the United States. EPA has historically been concerned that retention of tolerances that are not necessary to cover residues in or on legally treated foods may encourage misuse of pesticides within the United States. Nonetheless, EPA will establish and maintain tolerances even when corresponding domestic uses are canceled if the tolerances, which EPA refers to as ''import tolerances,'' are necessary to allow importation into the United States of food containing such pesticide residues. However, where there are no imported commodities that require these import tolerances, the Agency believes it is appropriate to revoke tolerances for unregistered pesticides in order to prevent potential misuse.

Furthermore, as a general matter, the Agency believes that retention of import tolerances not needed to cover any imported food may result in unnecessary restriction on trade of pesticides and foods. Under section 408 of the FFDCA, a tolerance may only be established or maintained if EPA determines that the tolerance is safe based on a number of factors, including an assessment of the aggregate exposure to the pesticide and of the cumulative effects of such pesticide and other substances that have a common mechanism of toxicity. In doing so, EPA must consider potential contributions to such exposure from all tolerances. If the cumulative risk is such that the tolerances in aggregate are not safe, then every one of these tolerances is potentially vulnerable to revocation. Furthermore, if unneeded tolerances are included in the aggregate and cumulative risk assessments, the estimated exposure to the pesticide would be inflated. Consequently, it may be more difficult for others to obtain needed tolerances or to register needed new uses. To avoid potential trade restrictions, the Agency is proposing to revoke tolerances for residues on crops uses for which FIFRA registrations no longer exist, unless someone expresses a need for such tolerances. Through this proposed rule, the Agency is inviting individuals who need these import tolerances to identify themselves and the tolerances that are needed to cover imported commodities.

Parties interested in retention of the tolerances should be aware that additional data may be needed to support retention. These parties should be aware that, under FFDCA section 408(f), if the Agency determines that additional information is reasonably required to support the continuation of a tolerance, EPA may require that parties interested in maintaining the tolerances provide the necessary information. If the requisite information is not submitted, EPA may issue an order revoking the tolerance at issue.

C. When do These Actions Become Effective?

EPA is delaying the effective date of the revocation for ''bean vine forage'' for 90 days following publication of a final rule in the **Federal Register** to ensure that all affected parties receive notice of EPA's actions. With the exception of ''bean vine forage,'' EPA is proposing that all tolerances for benomyl expire and are revoked on dates which range from January 1, 2006 to January 1, 2009 as previously detailed. For most tolerances, EPA is proposing an effective revocation/expiration date because EPA believes that by December 31, 2003 all existing stocks of pesticide products labeled for the uses associated with the tolerances proposed for revocation will have been exhausted, giving ample time, from 2 to 5 years, for any treated fresh and processed food to clear trade channels. Therefore, EPA believes the effective dates proposed in this document are reasonable. However, if EPA is presented with information that existing stocks would still be available for use after the expiration date and that information is verified, EPA will consider extending the expiration date of the tolerance. If you have comments regarding existing stocks and whether the effective date accounts for these stocks, please submit comments as described under **SUPPLEMENTARY INFORMATION.**

Any commodity listed in this proposal treated with the pesticide subject to this proposal, and in the channels of trade following the tolerance revocations, shall be subject to FFDCA section 408(1)(5), as established by FQPA. Under this section, any residues of this pesticide in or on such food shall not render the food adulterated so long as it is shown to the satisfaction of FDA that, (1) the residue is present as the result of an application or use of the pesticide at a time and in a manner that was lawful under FIFRA, and (2) the residue does not exceed the level that was authorized at the time of the application or use to be present on the food under a tolerance or exemption from tolerance. Evidence to show that food was lawfully treated may include records that verify the dates that the pesticide was applied to such food.

D. What Is the Contribution to Tolerance Reassessment?

By law, EPA is required to reassess 66% or about 6,400 of the tolerances in existence on August 2, 1996, by August 2002. EPA is also required to assess the remaining tolerances by August, 2006. As of January 4, 2002, EPA has reassessed over 3,830 tolerances. This document proposes to revoke all tolerances in 40 CFR 180.294. Therefore, 100 tolerance reassessments would be counted when the final rule is published toward the August, 2002 review deadline of FFDCA section 408(q), as amended by FQPA in 1996.

III. Are The Proposed Actions Consistent with International Obligations?

The tolerance revocations in this proposal are not discriminatory and are designed to ensure that both domestically-produced and imported foods meet the food safety standards established by the FFDCA. The same food safety standards apply to domestically produced and imported foods.

EPA is working to ensure that the U.S. tolerance reassessment program under FQPA does not disrupt international trade. EPA considers Codex Maximum Residue Limits (MRLs) in setting U.S. tolerances and in reassessing them. MRLs are established by the Codex Committee on Pesticide Residues, a committee within the Codex Alimentarius Commission, an international organization formed to promote the coordination of international food standards. It is EPA's policy to harmonize U.S. tolerances with Codex MRLs to the extent possible, provided that the MRLs achieve the level of protection required under FFDCA. EPA's effort to harmonize with Codex MRLs is summarized in the tolerance reassessment section of individual Reregistration Eligibility Decision documents. The U.S. EPA has developed guidance concerning submissions for import tolerance support (65 FR 35069, June 1, 2000) (FRL–6559–3). This guidance will be made available to interested persons. Electronic copies are available on the internet at http://www.epa.gov/. On the Home Page select ''Laws and Regulations,'' then select ''Regulations and Proposed Rules'' and then look up the entry for this document under **Federal Register**—Environmental Documents. You can also go directly to the ''Federal Register'' listings at http://www.epa.gov/fedrgstr/.

IV. Regulatory Assessment Requirements

In this proposed rule, EPA is proposing to revoke specific tolerances established under FFDCA section 408. The Office of Management and Budget (OMB) has exempted this type of action (i.e., a tolerance revocation for which extraordinary circumstances do not exist) from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this proposed rule has been exempted from review under Executive Order 12866 due to its lack of significance, this proposed rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001). This proposed rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any special considerations as required by Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or OMB review or any other Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Pursuant to the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), the Agency previously assessed whether revocations of tolerances might significantly impact a substantial number of small entities and concluded that, as a general matter, these actions do not impose a significant economic impact on a substantial number of small entities. This analysis was published on December 17, 1997 (62 FR 66020), and was provided to the Chief Counsel for Advocacy of the Small Business Administration. Taking into account this analysis, and available information concerning the pesticides listed in this rule, I certify that this action will not have a significant economic impact on a substantial number of small entities. Specifically, as per the 1997 notice, EPA has reviewed its available data on imports and foreign pesticide usage and concludes that there is a reasonable international supply of food not treated with canceled pesticides. Furthermore, for the pesticides named in this proposed rule, the Agency knows of no extraordinary circumstances that exist as to the present proposed revocations that would change EPA's previous analysis.

Any comments about the Agency's determination should be submitted to EPA along with comments on the proposal, and will be addressed prior to issuing a final rule.

In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' This proposed rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). For these same reasons, the Agency has determined that this proposed rule does not have any ''tribal implications'' as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes.'' This proposed rule will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this proposed rule.

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: December 20, 2001.

Marcia E. Mulkey,

Director, Office of Pesticide Programs.

Therefore, it is proposed that 40 CFR part 180 be amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346(a) and 371.

2. Section 180.294 is amended by revising the tables to paragraphs (a) and (c) to read as follows:

§ 180.294 Benomyl; tolerances for residues.

(a) * * *

Commodity	Parts per million	Expiration/Revocation Date
Almond, hulls	1.0	1/1/07
Apple (PRE- and POST-H)	7.0	1/1/08
Apricot	15.0	1/1/08
Banana (PRE- and POST-H)(not more than 0.2 ppm shall be present in the pulp after peel is removed and discarded)	1.0	1/1/08
Barley, grain	0.2	1/1/08
Barley, straw	0.2	1/1/08
Bean, dry	2.0	1/1/07
Bean, succulent	2.0	1/1/07
Beet, sugar, roots	0.2	1/1/07
Beet, sugar, tops	15.0	1/1/07
Blackberry	7.0	1/1/08
Blueberry	7.0	1/1/08
Boysenberry	7.0	1/1/08
Broccoli	0.2	1/1/06
Brussels sprouts	15.0	1/1/06
Cabbage	0.2	1/1/06
Cabbage, Chinese, bok choy	10.0	1/1/06
Cabbage, Chinese, napa	10.0	1/1/06
Carrot	0.2	1/1/07
Cattle, fat	0.1	1/1/08
Cattle, meat	0.1	1/1/08
Cattle, meat byproducts	0.1	1/1/08
Cauliflower	0.2	1/1/06
Celery	3.0	1/1/07
Cherry, sweet	15.0	1/1/08
Cherry, tart	15.0	1/1/08
Citrus, dried pulp	50.0	1/1/08
Collards	0.2	1/1/06
Corn, sweet, kernel plus cob with husks removed	0.2	1/1/08
Corn, sweet, forage	0.2	1/1/08
Corn, sweet, stover	0.2	1/1/08
Cucumber	1.0	1/1/07
Currant	7.0	1/1/08
Dewberry	7.0	1/1/08
Egg	0.1	1/1/08

Commodity	Parts per million	Expiration/Revocation Date
Eggplant	0.2	1/1/09
Fruit, citrus (PRE- and POST-H)	10.0	1/1/08
Garlic	0.2	1/1/06
Goat, fat	0.1	1/1/08
Goat, meat	0.1	1/1/08
Goat, meat byproducts	0.1	1/1/08
Grape	10.0	1/1/08
Grape, raisin	50.0	1/1/08
Hog, fat	0.1	1/1/08
Hog, meat	0.1	1/1/08
Hog, meat byproducts	0.1	1/1/08
Horse, fat	0.1	1/1/08
Horse, meat	0.1	1/1/08
Horse, meat byproducts	0.1	1/1/08
Kale	0.2	1/1/06
Kohlrabi	0.2	1/1/06
Loganberry	7.0	1/1/08
Mango	3.0	1/1/08
Melon	1.0	1/1/07
Milk	0.1	1/1/08
Mushroom (PRE- and POST-H)	10.0	1/1/08
Mustard greens	0.2	1/1/06
Nectarine (PRE- and POST-H)	15.0	1/1/08
Nut, tree, group	0.2	1/1/07
Oat, grain	0.2	1/1/08
Oat, straw	0.2	1/1/08
Peach (PRE- and POST-H)	15.0	1/1/08
Peanut	0.2	1/1/08
Peanut forage	15.0	1/1/08
Peanut, hay	15.0	1/1/08
Pear (PRE- and POST-H)	7.0	1/1/08
Pepper	0.2	1/1/09
Pineapple (POST-H)	35.0	1/1/08
Pistachio	0.2	1/1/07
Plum, prune, dried	15.0	1/1/08
Plum, prune, fresh	15.0	1/1/08
Poultry, fat	0.1	1/1/08
Poultry, liver	0.2	1/1/08
Poultry, meat	0.1	1/1/08
Poultry, meat byproducts, except liver	0.1	1/1/08
Pumpkin	1.0	1/1/07
Raspberry	7.0	1/1/08
Rice, grain	5.0	1/1/08
Rice, hulls	20.0	1/1/08
Rice, straw	15.0	1/1/08
Rutabaga	0.2	1/1/07
Rye, grain	0.2	1/1/08
Rye, straw	0.2	1/1/08
Sheep, fat	0.1	1/1/08
Sheep, meat	0.1	1/1/08
Sheep, meat byproducts	0.1	1/1/08
Soybean, seed	0.2	1/1/07
Spinach	0.2	1/1/07
Squash, summer	1.0	1/1/07
Squash, winter	1.0	1/1/07
Strawberry	5.0	1/1/08
Sweet potato	0.2	1/1/07
Tomato	5.0	1/1/09
Tomato, concentrated products	50.0	1/1/09
Turnip, roots	0.2	1/1/07
Wheat, grain	0.2	1/1/08
Wheat, straw	15.0	1/1/08

* * * * *

(c) * * *

Commodity	Parts per million	Expiration/Revocation Date
Avocado	3.0	1/1/08
Dandelion, leaves	10.0	1/1/07
Papaya	3.0	1/1/08
Pistachio	0.2	1/1/07
Turnip greens	6.0	1/1/07
Watercress	10.0	1/1/07

* * * * *

[FR Doc. 02–964 Filed 1–14–02; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–301189; FRL–6807–8]

RIN 2070–AC18

Pesticides; Tolerance Exemptions for Minimal Risk Active and Inert Ingredients

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to list in 40 CFR part 180 the pesticide chemicals that are exempted from the requirement of a tolerance based on the Agency's determination that these chemicals are of ''minimal risk.'' The pesticide chemicals to be listed in 40 CFR 180.1001(g) include both active and inert ingredients and will be accomplished in several steps. As a first step, the existing tolerance exemptions for commonly consumed food commodities, animal feed items, and edible fats and oils will be recodified in the newly created paragraph (g) in a different format. Restructuring to this new format will provide greater clarification in defining a minimal risk pesticide chemical as well as increasing the number of substances that are currently considered to be minimal risk. In the future, EPA will propose other minimal risk pesticide chemicals for inclusion in paragraph (g). These regulatory actions are part of the tolerance reassessment requirements of the Federal Food, Drug, and Cosmetic Act (FFDCA) section 408(q), as amended by the Food Quality Protection Act (FQPA) of 1996. By law, EPA is required to reassess 66% of the tolerances in existence on August 2, 1996, by August 2002, or about 6,400 tolerances. The regulatory actions proposed in this document, the proposed revocation of 39 tolerance exemptions, would be counted toward the August 2002 deadline.

DATES: Comments, identified by docket control number OPP–301189, must be received on or before March 18, 2002.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I.C. of the **SUPPLEMENTARY INFORMATION**. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–301189 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: Kathryn Boyle, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: 703–305–6304; fax number: 703–305–0599; e-mail address: boyle.kathryn@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you formulate or market pesticide products. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS	Examples of Potentially Affected Entities
Industry	111	Crop production
	112	Animal production
	311	Food manufacturing
	32532	Pesticide manufacturing

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this table could also be affected. The North American Industrial Classification System (NAICS) codes are provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically*. You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select ''Laws and Regulations,'' ''Regulations and Proposed Rules,'' and then look up the entry for this document under the ''**Federal Register**—Environmental Documents.'' You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/. A frequently updated electronic version of 40 CFR part 180 is available at http://www.access.gpo.gov/nara/cfr/cfrhtml_180/Title_40/40cfr180_00.html, a beta site currently under development.

2. *In person*. The Agency has established an official record for this action under docket control number OPP–301189. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is

imperative that you identify docket control number OPP–301189 in the subject line on the first page of your response.

1. *By mail.* Submit your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically.* You may submit your comments electronically by e-mail to: opp-docket@epa.gov, or you can submit a computer disk as described above. Do not submit any information electronically that you consider to be CBI. Avoid the use of special characters and any form of encryption. Electronic submissions will be accepted in WordPerfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket control number OPP–301189. Electronic comments may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI that I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI 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. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Provide specific examples to illustrate your concerns.
6. Offer alternative ways to improve the proposed rule or collection activity.
7. Make sure to submit your comments by the deadline in this document.
8. To ensure proper receipt by EPA, be sure to identify the docket control number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. What Action is the Agency Taking?

The Agency is proposing to create a new paragraph (g) in 40 CFR 180.1001, that specifies the pesticide chemicals that are exempt from the requirement of a tolerance under section 408 of Federal Food, Drug, and Cosmetic Act (''FFDCA''). This paragraph will contain a listing of pesticide chemicals that are considered to be of minimal risk. The tolerance exemption in 40 CFR 180.1164(d) (which was established post-FQPA) as well as existing tolerance exemptions in 40 CFR 180.1001(c), (d) and (e) will be recodified in the newly established 40 CFR 180.1001(g), albeit in a different format that will include additional clarification. The effect of these changes will be that all commonly consumed food items (as a reference, there is the Food and Feed Commodity Vocabulary on the Agency's website: see http://www.epa.gov/pesticides/foodfeed/), with the exception of the exclusions noted below, will be exempt from the requirement of a tolerance under the newly established 40 CFR 180.1001(g).

The Agency is also proposing to establish in 40 CFR 180.1001(g) an exemption from the requirement of a tolerance for various animal feed items. The Agency is proposing that 40 CFR 180.1001 be amended by deleting the existing exemptions for various feed items, such as pomaces, corn cobs, peanuts shells, and oat hulls in 40 CFR 180.1001(c) and (d). These will be recodified in 40 CFR 180.1001(g) albeit in a different format that will include additional clarification. All feed items whether or not previously exempted from the requirement of a tolerance with the exception of the exclusions noted below, will be exempt from the requirement of a tolerance under the newly established 40 CFR 180.1001(g).

The Agency is proposing to place expiration dates on seven existing tolerance exemptions for known allergen-containing food commodities. At this time, the Agency cannot consolidate the overlapping and duplicative tolerance exemptions for allergen-containing commodities that currently exist in 40 CFR part 180.

This proposed rule begins the process of harmonizing the regulation of certain pesticide chemicals whether used as inert or active ingredients. At the completion of this process there will be a single consistent approach for all food and feed commodities used as pesticide chemicals.

III. What is the Agency's Authority for Taking these Actions?

This proposed rule is issued under section 408 of FFDCA, 21 U.S.C. 346a, as amended by the Food Quality Protection Act of 1996 (FQPA) (Public Law 104–170). Section 408(e) of FFDCA authorizes EPA to establish, modify, or revoke tolerances, or exemptions from the requirement of a tolerance for residues of pesticide chemicals in or on raw agricultural commodities and processed foods.

IV. Why is the Agency Proposing These Actions?

A. Why is a ''Minimal Risk'' Paragraph Being Created?

The term ''minimal risk'' has been used by EPA for over 10 years, and has generally meant List 4A inert ingredient chemicals. On April 22, 1987 (52 FR 13305), EPA created a series of four lists as part of an initiative to address the risks potentially posed by inert ingredients in pesticides. List 1 inert ingredients are ''inerts of toxicological concern''. List 1 inert ingredients are classified on the basis of peer reviewed studies which demonstrated carcinogenicity, adverse reproductive effects, neurotoxicity or other chronic effects, developmental toxicity (birth defects), ecological effects and the potential for bioaccumulation. List 2 inert ingredients are ''potentially toxic inerts/high priority for testing.'' Many of these inert ingredients are structurally similar to chemicals known to be toxic; some have data suggesting a concern. List 3 inert ingredients are ''unknown

toxicity.'' An inert ingredient was placed on List 3 if there was no basis for listing it on any of the other lists. At that time all List 4 inert ingredients were classified as ''inerts of minimal concern''.

The 4A Inert Ingredient List was created on November 22, 1989 (54 FR 48314) by subdividing List 4 into Lists 4A and 4B. List 4B inert ingredients are ''inerts for which EPA has sufficient information to reasonably conclude that the current use pattern in pesticide products will not adversely affect public health or the environment.'' List 4A inert ingredients are ''minimal risk inert ingredients.'' Examples of List 4A inert ingredients are salt, and sugar.

The September 28, 1994, **Federal Register** Notice (FRL 4872–5) was the last time that the Agency added new substances to and issued the 4A List. Classification as a List 4A inert ingredient is critical to those products that are exempted from Federal regulation under the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) section 25(b). The substances on List 4A are the only inert ingredients that can be used in 25(b) deregulated products (see 40 CFR 152.25(g)(2)).

Minimal risk does not imply no risk under any circumstances. Every substance, even for example water, presents some risk in certain circumstances. Minimal risk is used to indicate a substance for which there is no information to indicate that there is a basis for concern. Minimal risk or List 4A substances are mostly naturally occurring substances to which some refinement has occurred, such as beeswax, salt, sugar, limestone, and red cedar chips. The determination that a chemical is minimal risk would be based on a recognition of the overall safety of the chemical (such as very low toxicity or practically non-toxic) considering the widely available information on the chemical's known properties, and a history of safe use under reasonable circumstances. Minimal risk (List 4A) substances are recognized as safe for use in all pesticide products subject only to good agricultural practices or good manufacturing practices. Classification as a List 4A, minimal risk, substance is a high standard to meet. As an example, substances of high acute toxicity are usually not considered for classification to List 4A. The critical distinction between List 4A minimal risk substances and other substances, is that the Agency does not define how, where, when or in what manner the substance can be used. Any reasonably foreseeable use of these substances is not expected to present a risk to humans. Accordingly, there should not be any unreasonable adverse effects from the inclusion of a List 4A substance in a pesticide product to the person applying a pesticide product in and around their home, to a child in a day-care center, or when ingesting a food commodity that has been treated. A List 4A substance used as an inert ingredient, incorporated into a 25(b) product (meeting all the appropriate exemption criteria) is subject to no Federal regulation. Therefore, unless a substance can meet and continues to meet this high standard, it will not be classified as minimal risk.

B. Why Are Uses as Both an Inert or Active Ingredient Being Included?

Active ingredients are defined in 40 CFR 153.125 as having the capability at the proposed use dilution to function as a pesticide, that is to kill, repel, or mitigate the pest. Inert ingredients are defined as all ingredients that are not active ingredients. However, it is possible for a chemical to be an active ingredient in one pesticide product and an inert ingredient in another pesticide product. Determining whether an ingredient in a pesticide product is inert or active requires information on the purpose of the ingredient in the formulation. As an example, citric acid can be used as a disinfectant, sanitizer, and fungicide (an active ingredient). However, citric acid can also perform as a sequestration agent or to lower the pH, thus functioning as an inert ingredient. To determine whether an ingredient is inert or active requires an understanding of the purpose of the ingredient in the formulation.

Thus, the toxicity of a chemical does not depend on whether it is used as either an inert ingredient or active ingredient, but on its impact to human health and the environment. Establishment of a tolerance exemption under 40 CFR 180.1001(g) indicates that the substance may be used as either an inert or an active ingredient (as appropriate, based on its use in the formulation) in pesticide formulations applied to food crops.

C. Why Are Commonly Consumed Foods Being Included in this New Paragraph?

It is unlikely that a commonly consumed food commodity could be used to control a pest via a toxic mode of action. Generally, when used as an active ingredient, food commodities have been used to either attract or repel pests. Canola oil is a refined vegetable oil that can be used as an active ingredient to control insects in a wide variety of crops. Scientists believe that canola oil repels insects by altering the outer layer of the leaf surface or by acting as an insect irritant. Oils such as canola, however, can also be used as a surfactant in pesticide formulations. Surfactants are used to modify the nature of a surface, such as reducing the surface tension of water. Surfactants can be used as wetting agents, detergents, penetrants, and emulsifiers. When used in this capacity, canola oil would be an inert, rather than an active, ingredient. Other food commodities also are used as inert ingredients. For example, oats can be used as a carrier, i.e., the active ingredient is coated onto the oats, which is then consumed by the pest.

In the September 28, 1994, **Federal Register** Notice titled ''Inert Ingredients in Pesticide Products; List of Minimal Risk Inerts'' the Agency established a policy of considering all commonly consumed foods as acceptable for use in all pesticide products. The Notice specifically stated that a specific exemption from tolerance would not be required for foods used as inert ingredients because foods were generally recognized as safe (GRAS). However, the above GRAS determination was superceded, on December 4, 1998, in the **Federal Register** (63 FR 37307) (FRL 6039–5) by EPA's establishment of a tolerance exemption for all edible food commodities. That exemption excepted certain foods known to have allergenic properties.

D. Why Are the Tolerance Exemptions for Known Food Allergens Being Time-Limited?

As noted above, EPA has previously established an exemption from tolerance for all edible food commodities with the exception of peanuts, tree nuts, milk, soybeans, eggs, fish, crustacea, and wheat due to the allergenic properties of these foods. (40 CFR 180.1164(d)). The comment received by EPA in this 1998 rulemaking proceeding indicated a concern that the proposed exclusions for allergen-containing food commodities were not sufficient, given that tolerance exemptions existed for some of the same commodities when used as inert ingredients.

The following tolerance exemptions are currently listed in 40 CFR 180.1071 and 40 CFR 180.1001(c), (d), and (e), for the eight known allergen food or food groups and their processed commodities:

40 CFR	Tolerance Exemption
180.1001(c)	casein
180.1001(c)	fish meal
180.1001(c)	soy protein, isolated

40 CFR	Tolerance Exemption
180.1001(c)	soybean flour
180.1001(c)	starch (potato, tapioca, wheat)
180.1001(c)	wheat bran
180.1001(d)	sodium caseinate
180.1001(d)	wheat
180.1001(d)	wheat flour
180.1001(e)	soy protein, isolated
180.1001(e)	wheat shorts
180.1071	egg solids (whole)

The Agency has investigated the post-harvest uses of these eight allergen food or food groups, and has determined that such uses do exist. An example would be a formulation, that contains wheat as a carrier, which is then applied to stored grain other than wheat. Thus, some of the above tolerance exemptions are necessary to cover the use of these existing products. The 12 tolerance exemptions overlap to some degree and therefore EPA is proposing to amend them to reduce duplication. The result will be that the 12 tolerances will be reduced to 8.

More importantly, the Agency is proposing to place 3–year expiration dates on the eight tolerance exemptions that will remain. This will give the Agency a period of 3 years to continue its examination of the uses of these food commodities, and discuss product re-formulation with affected registrants. The Agency recognizes that various factors such as restrictions on post-harvest applications or information on the environmental degradation/metabolism of the allergen may enable the Agency, at a future date, to (1) make a determination of safety, (2) reassess these tolerances, and (3) establish tolerance exemptions with limitations on the use pattern, that would not be time-limited.

E. Why Are Animal Feed Exemptions Being Included in this New Paragraph?

Like commonly-consumed human food, animal feed items are of minimal risk to humans who consume animal products (such as meat, milk, poultry or eggs), or to the animals. They are therefore being included in proposed 40 CFR 180.1001(g). Feed items are occasionally used as pesticides. For example, a feed item, such as corn cobs, can be used as a carrier. For such a use, the corn cobs would be ground, and then an active ingredient coated onto the ground feed item, is then consumed by the pest. Or a feed item could be used as a carrier for a lawn and garden product, with the added advantage of degrading over a period of time in the natural environment. Again, there is a long history of safe use of animals consuming these feed items, and then producing meat, milk, poultry, and eggs that are in turn consumed by humans.

Feed items can also include items derived from known allergen-containing foods, such as almond hulls and peanut shells. These by-products of allergen-containing foods are not likely to cause an allergic reaction due to the separation of the hull or shell from the protein allergen.

There are a large variety of feed items. Most agricultural crops and their corresponding raw agricultural and processed commodities can be, and are, fed to livestock. Due to differences in their metabolisms, animals can obtain nutrition from parts of plants that are not digested by humans such as hays, forages, seeds, leaves, hulls and shells, and stovers. Animals also consume plants, such as sorghum, that are not consumed by humans. As a reference, the significant feed items consumed by animals are contained in Table 1 (''Raw Agricultural and Processed Commodities and Feedstuffs Derived From Crops''), OPPTS Test Guidelines, *Residue Chemistry*, Guideline 860.1000, Background. (see http://www.epa.gov/docs/OPPTS—Harmonized/860—Residue—Chemistry—Test—Guidelines/Series/). There are also other feed items not listed in Table 1 such as pineapple forage and fodder, or sugarcane forage and fodder that are consumed by animals, but not in amounts considered to be significant feed items on a national basis.

F. Why Are Edible Fats and Oils Being Included in the New Paragraph?

As previously explained on December 4, 1998, EPA established an exemption from tolerance for all edible food commodities with the exception of peanuts, tree nuts, milk, soybeans, eggs, fish, crustacea, and wheat due to the allergenic properties of these foods. (40 CFR 180.1164(d)) The exception included all processed forms of the allergen-containing food commodities including oils. EPA is proposing to no longer exclude highly refined edible oils derived from peanuts, tree nuts, soybeans, fish, crustacea, and wheat. Most oils are highly refined. The information available to the Agency does not indicate the presence of the protein allergens in the oils. The production process is generally believed to remove or destroy the allergen, which would cause the allergic reaction.

G. Why is Lactose Being Included?

It is also proposed to include lactose (milk sugar) in the to-be-established 40 CFR 180.1001(g) tolerance exemptions. Lactose intolerance occurs when the body does not produce a sufficient amount of lactase, the enzyme that digests lactose. The presence of undigested lactose in the large intestine can cause gas or diarrhea; however, this is not life-threatening, as allergic reactions can be. Many lactose-intolerant individuals are capable of consuming small amounts of lactose with few or no symptoms. EPA can only regulate the use of lactose in pesticide formulations. Given the wide-spread nature of lactose in the food supply, the amount of lactose that can be applied to food as a result of its use in a pesticide product should not significantly increase the existing amounts in the food supply. Additionally, given the nature of plant metabolism it is unlikely that lactose would be directly absorbed or actually present in plant tissues. Lactose can be hydrolyzed to glucose, which is a natural plant compound and is, in fact, the sugar produced by photosynthesis. In plants, glucose is converted into starch or sucrose.

H. Conclusions

All of the substances considered in this proposed rule for inclusion in 40 CFR 180.1001(g) can be grouped into and included in three major categories. These are: (1) Commonly consumed food commodities; (2) animal feed items; and (3) edible fats and oils. All of the revoked tolerances will be recodifed in 40 CFR 180.1001(g), albeit in a different format. In fact, the amendments and revisions to the tolerance exemptions will be beneficial to the regulated community by increasing the number of minimal risk inert ingredients for use in pesticide formulations.

EPA believes that the proposed tolerance exemptions in 40 CFR 180.1001(g) will be safe for humans including infants and children. EPA also is not aware of any data submitted pursuant to Section 6(a)2 of FIFRA showing significant adverse effects to humans from use of commonly consumed food commodities, animal feed items, or fats and oils. Because of the above, EPA has not assessed the risk of these substances using a safety factor approach. Accordingly, application of an additional l0X safety factor analysis or quantitative risk assessment is not necessary to protect infants and children.

V. What is the Contribution to Tolerance Reassessment

By law, EPA is required to reassess 66% or about 6,400 of the tolerances in existence on August 2, 1996, by August 2002. This proposed rule proposes to revoke 39 tolerance exemptions which will be counted toward the August 2002

review deadline of FFDCA section 408(q), as amended by FQPA in 1996.

VI. Future Issues

As previously stated, this proposed rule only considers commonly consumed foods, animal feed commodities, and refined, edible oils and fats. The Agency intends (in future proposed and final rules) to expand beyond these three categories and propose additional minimal risk chemicals for inclusion in 40 CFR 180.1001(g). Possible categories could include naturally occurring organic chemicals (such as fatty acids), common substances derived from weathered rocks and minerals, or some animal feed components.

The eight allergen food or food groups tolerance exemptions mentioned earlier in this preamble cannot be reassessed at this time. The Agency will examine the use patterns of these eight and determine the appropriate actions that would allow the Agency to make the safety finding. As explained earlier, restrictions on post-harvest applications or information on the environmental degradation/metabolism of the allergen could enable the Agency, at a future date, to make a determination of safety. Since use restrictions will be necessary, these allergens will no longer meet the criteria of List 4A classification and therefore these eight food or food groups will be transferred from the Agency's 4A list to the 4B list.

VII. Regulatory Assessment Requirements

The Agency is acting on its own initiative under FFDCA section 408(e) in establishing new tolerance exemptions that will consolidate the existing, overlapping and duplicative tolerance exemptions. Under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' subject to review by the Office of Management and Budget (OMB). Because the proposed rule has been exempted from review under Executive Order 12866 due to its lack of significance, this proposed rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001).

This proposed rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 et seq., or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4).

Nor does it require any special considerations as required by Executive Order 12898 entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994) or require OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note).

This proposed rule would establish a new paragraph in 40 CFR 180.1001. Creating a new paragraph does not have a substantive effect and hence causes no impact. This proposed rule would place expiration dates on seven existing tolerance exemptions for various known allergen-containing food commodities. Currently, the Agency's regulatory approach as written in various CFR paragraphs and sections is inconsistent. This 3–year transition period will allow sufficient time to examine the uses of these food commodities, and discuss product re-formulation with affected registrants. At the completion of this process there will be a single consistent approach for all food commodities used as pesticide chemicals.

This proposed rule would also revoke 39 tolerance exemptions, thus (1) revoking duplicative and overlapping tolerance exemptions for commonly consumed (non-allergen) food commodities, (2) revoking and consolidating the existing tolerance exemptions for animal feed items and allowing additional minimal risk animal feed items not previously exempted for use in pesticide products, and (3) establishing the use of edible oils derived from allergens since the available information indicates that the use of these oils is not of concern.

Pursuant to the section 605(b) of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 et seq.), the Agency hereby certifies that these proposed actions will not have significant negative economic impact on a substantial number of small entities. By contrast, the amendments and revisions to the tolerance exemptions will be beneficial to the regulated community by increasing the number of minimal risk inert ingredients for use in pesticide formulations.

Pursuant to the RFA the Agency previously assessed whether revocations of tolerances or tolerance exemptions might significantly impact a substantial number of small entities and concluded that, as a general matter, these actions do impose a significant economic impact on a substantial number of small entities. This analysis was published on December 17, 1997 (62 FR 66020) (FRL–5753–1), and was provided to the Chief Counsel for Advocacy of the Small Business Administration. Taking into account this analysis, the available information concerning the pesticide chemicals listed in this rule, the transition time for the known allergen containing commodities and considering that all of the to-be-revoked tolerance exemptions will be covered in the to-be-established 40 CFR 180.1001(g), the Agency knows of no extraordinary circumstances that exist as to the present revocation that would change EPA's previous analysis.

In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' This proposed rule does not affect States directly, but does directly regulate growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4).

For these same reasons, the Agency has determined that this rule does not have any ''tribal implications'' as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of

regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes.'' This rule will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practices and procedures, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: December 21, 2001.

James Jones,

Director, Office of Pesticide Programs.

Therefore, it is proposed that 40 CFR chapter I be amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 would continue to read as follows:

Authority: 21 U.S.C. 321(q), 346(a) and 371.

§ 180.1001 [Amended]

2. Section 180.1001 is amended as follows:

A. In paragraph (c) remove the entries for: almond shells; apple pomace; citrus meal; cocoa shells; coconut oil; corn cobs; corn meal; corn oil; cornstarch; corn syrup; cottonseed oil; dextrose; fish oil; grape pomace, dried; lactose; lard; molasses; oatmeal; oats; orange pomace; peanut shells; rice bran; soybean, oil; starch (potato, tapioca, wheat); and sucrose.

B. In paragraph (d) remove the entries for: cinnamon; clove; coffee; corn; corn gluten meal, hydrolized; fenugreek; low erucic acid rapeseed oil, conforming to 21 CFR 184.1555(c) (CAS Reg. No. none); oat hulls; wheat; and wheat flour.

C. In paragraph (e) remove the entries for: corn syrup; dextrose; and sucrose.

3. Section 180.1001 is further amended by revising the following entries in the tables to paragraphs (c), (d), and (e), by adding the entry ''wheat, including flour, bran, and starch'' to the table in paragraph (c), by adding and reserving paragraph (f) and by adding paragraph (g) to read as follows.

§ 180.1001 Exemptions from the requirement of a tolerance.

(c) * * *

Inert ingredients	Limits	Uses
* * * * * *		*
Casein	expires [*insert date 3 years from date of publication of the final rule in the* FEDERAL REGISTER].	Surfactant, emulsifier, wetting agent
* * * * * *		*
Fish meal	expires [*insert date 3 years from date of publication of the final rule in the* FEDERAL REGISTER].	Solid diluent, carrier
* * * * * *		*
Soy protein, isolated	expires [*insert date 3 years from date of publication of the final rule in the* FEDERAL REGISTER].	Adhesive
Soybean flour	expires [*insert date 3 years from date of publication of the final rule in the* FEDERAL REGISTER].	Surfactant
* * * * * *		*
Wheat, including flour, bran, and starch.	expires [*insert date 3 years from date of publication of the final rule in the* FEDERAL REGISTER].	Solid diluent, carrier, attractant
* * * * * *		*

(d) * * *

Inert ingredients	Limits	Uses
* * * * * *		*
Sodium caseinate	expires [*insert date 3 years from date of publication of the final rule in the* FEDERAL REGISTER].	Suspending agent and binder
* * * * * *		*

(e) * * *

Inert ingredients	Limits	Uses
* * * * * *		*
Soy protein, isolated	expires [*insert date 3 years from date of publication of the final rule in the* FEDERAL REGISTER].	Adhesive
* * * * * *		*
Wheat shorts	expires [*insert date 3 years from date of publication of the final rule in the* FEDERAL REGISTER].	Solid diluent
* * * * * *		*

(f) [Reserved]

(g) *Minimal risk substances.* Unless specifically excluded, residues resulting from the use of the following substances as either an inert or an active ingredient in a pesticide chemical formulation, including antimicrobial pesticide chemicals, are exempted from the requirement of a tolerance under section

408 of the FFDCA if such use is in accordance with good agricultural or manufacturing practices.

(1) *Commonly-consumed food commodities.*''Commonly-consumed food commodities'' means foods that are commonly consumed for their nutrient properties. The term ''commonly-consumed food commodities'' shall only apply to food commodities, whether a raw agricultural commodity or a processed commodity, in the form the commodity is sold or distributed to the public for consumption.

(i) Included within the term ''commonly-consumed food commodities'' are:

(A) Sugars such as sucrose, lactose, dextrose and fructose, and invert sugar and syrup.

(B) Spices such as cinnamon, cloves, and red pepper.

(C) Herbs such as basil, anise, or fenugreek.

(ii) Excluded from the term ''commonly-consumed food commodities'' are:

(A) Any food commodity that is adulterated under 21 U.S.C. 342.

(B) Both the raw and processed forms of peanuts, tree nuts, milk, soybeans, eggs, fish, crustacea, and wheat.

(C) Alcoholic beverages.

(D) Dietary supplements.

(2) *Animal feed items.* ''Animal feed items'' means all items derived from field crops that are fed to livestock, and meat meal. Meat meal is an animal feed composed of dried animal fat and protein that has been sterilized. Other than meat meal, the term ''animal feed item'' does not extend to any item designed to be fed to animals that contains, to any extent, components of animals.

(i) Included within the term ''animal feed items'' are:

(A) The hulls and shells of the commodities specified in paragraph (g)(1)(ii)(B) of this section, and cocoa beans.

(B) Bird feed such as canary seed.

(C) Any feed component of a medicated feed meeting the definition of an animal feed item.

(ii) Excluded from the term animal feed item are both the raw and processed forms of peanuts, tree nuts, milk, soybeans, eggs, fish, crustacea, and wheat.

(3) *Edible fats and oils.* Edible fats and oils means all edible (food or feed) fats and oils, derived from either plants or animals, whether or not commonly consumed, including products derived from hydrogenating (food or feed) oils, or liquefying (food or feed) fats. Excluded from the term edible fats and oils are plant oils used in the pesticide chemical formulation for their characteristic smell and/or taste and oils derived from the commodities specified in paragraph (g)(1)(ii)(B) of this section except to the extent such oils are highly refined.

4. Section 180.1071 is revised to read as follows:

§ 180.1071 Egg solids (whole); exemption from the requirement of a tolerance.

A time-limited tolerance exemption expiring [*insert date 3 years from date of publication of the final rule in the* **Federal Register**] is established for residues of whole egg solids (of at least feed grade quality) when used as an animal repellent in or on almonds and applied to the growing crop in accordance with good agricultural practices.

§ 180.1164 [Removed]

5. Section 180.1164 is removed.

§ 180.1194 [Removed]

6. Section 180.1194 is removed.

[FR Doc. 02–699 Filed 1–14–02; 8:45 a.m.]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[FRL–7127–6]

Washington: Proposed Authorization of State Hazardous Waste Management Program Revision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: Washington has applied to EPA for final authorization of changes to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). EPA has reviewed Washington's application and made the preliminary decision that these changes satisfy all requirements needed to qualify for final authorization, and is proposing to authorize the State's changes.

DATES: EPA will accept written comments on the Agency's preliminary decision to authorize changes to the State of Washington's hazardous waste management program which are received at the address below on or before February 14, 2002.

ADDRESSES: Send written comments to Nina Kocourek, U.S. EPA, Region 10, Office of Waste and Chemicals Management, 1200 Sixth Avenue, Mail Stop WCM–122, Seattle, WA 98101, phone, (206) 553–6502. You can examine copies of the materials submitted by Washington during normal business hours at the following locations: EPA Region 10 Library, 1200 Sixth Avenue, Seattle WA 98101, phone, (206) 553–1289; and at the Washington Department of Ecology, 300 Desmond Drive, WA 98503; Ecology contact is Patricia Hervieux at (360) 407–6756.

FOR FURTHER INFORMATION CONTACT: Nina Kocourek, U.S. EPA Region 10, Office of Waste and Chemicals Management, 1200 Sixth Avenue, Mail Stop WCM–122, Seattle, WA, 98101; (206) 553–6502. For general information available on the authorization process, see EPA's website at: *http://www.epa.gov/epaoswer/hazwaste/state/rcra.*

SUPPLEMENTARY INFORMATION:

A. Why Are Revisions to State Programs Necessary?

States which have received final authorization from EPA under RCRA section 3006(b), 42 U.S.C. 6926(b), must maintain a hazardous waste program that is equivalent to and consistent with the Federal program. States are required to have enforcement authority which is adequate to enforce compliance with the requirements of the hazardous waste program. Under RCRA section 3009, States are not allowed to impose any requirements which are less stringent than the Federal program. As the Federal program changes, States must change their programs and ask EPA to authorize the changes. Changes to State programs may be necessary when Federal or State statutory or regulatory authority is modified or when certain other changes occur. Most commonly, States must change their programs because of changes to EPA's regulations in Title 40 of the Code of Federal Regulations (CFR) parts 124, 260 through 266, 268, 270, 273 and 279.

B. What Decisions Have We Made in This Rule?

EPA has made the preliminary determination that Washington's program, as revised, meets the statutory and regulatory requirements established by RCRA. Therefore, we are proposing to grant Washington final authorization to operate its hazardous waste program with the changes described in the authorization application and as described in this proposed rule. Regulatory revisions which are less stringent than Federal program requirements and those regulatory revisions which are broader in scope than Federal program requirements will not be authorized.

Washington's authorized program will be responsible for carrying out the aspects of the RCRA program described in its revised program application, subject to the limitations of the Hazardous and Solid Waste Amendments of 1984 (HSWA) and the limitation of this authorization. Washington's authorized program does not extend to Indian country, except that Washington does have jurisdiction over non-trust lands within the 1873 Survey Area of the Puyallup Reservation as defined in the Settlement Agreement between the Puyallup Tribe, Federal, State and local governments dated August 27, 1988. EPA retains jurisdiction and authority to implement RCRA over Indian country and over trust lands, Indians and Indian activities within the 1873 Survey Area.

New Federal requirements and prohibitions imposed by Federal regulations that EPA promulgates under the authority of HSWA are implementable by EPA and take effect in States with authorized programs before such programs are authorized for the requirements. Thus, EPA will implement those HSWA requirements and prohibitions in Washington, including issuing permits, until the State is granted authorization to do so.

C. What Will Be the Effect if Washington Is Authorized for These Changes?

If Washington is authorized for these changes, a facility in Washington subject to RCRA will have to comply with the authorized State program requirements and with the federal HSWA provisions for which the State is not authorized in order to comply with RCRA. Washington has enforcement responsibilities under its State hazardous waste program for violations of its currently authorized program and will have enforcement responsibilities for the revisions which are the subject of this proposed rule once a final rulemaking becomes effective. EPA continues to have independent enforcement authority under RCRA sections 3007, 3008, 3013, and 7003, which include, among others, authority to:

- Do inspections and require monitoring, tests, analyses, or reports;
- Enforce RCRA requirements, including State program requirements that are authorized by EPA and any applicable Federally-issued statutes and regulations, and suspend or revoke permits; and
- Take enforcement actions regardless of whether the State has taken its own actions.

The action to approve these revisions will not impose additional requirements on the regulated community because the regulations for which Washington's program will be authorized are already effective under State law.

D. What Happens if EPA Receives Comments That Oppose This Action?

If the EPA receives significant written comments on this authorization, we will address those comments in a later final rule. You may not have another opportunity to comment. If you want to comment on this authorization, you must do so at this time.

E. What Has Washington Previously Been Authorized for?

Washington initially received final authorization on January 30, 1986, effective January 31, 1986 (51 FR 3782), to implement the State's dangerous waste management program. EPA granted authorization for changes to Washington's program on September 22, 1987, effective on November 23, 1987 (52 FR 35556); August 17, 1990, effective October 16, 1990 (55 FR 33695); November 4, 1994, effective November 4, 1994 (59 FR 55322); February 29, 1996, effective April 29, 1996 (61 FR 7736); September 22, 1998, effective October 22, 1998 (63 FR 50531) and on October 12, 1999 effective January 11, 2000 (64 FR 55142).

F. What Changes Are We Proposing to Washington's Authorized Program?

EPA is proposing to authorize revisions to Washington's authorized program described in Washington's official program revision application, submitted to EPA on August 2, 2001, and deemed complete by EPA on September 19, 2001. We have made a preliminary determination that Washington's hazardous waste program revisions, as described in this proposed rule, satisfy the requirements necessary to qualify for final authorization. Regulatory revisions which are less stringent than Federal program requirements and those regulatory revisions which are broader in scope than Federal program requirements will not be authorized.

The following table, Table 1, identifies equivalent and more stringent analogues to the Federal regulations for those regulatory revisions Washington is seeking authorization for. All of the referenced analogous state authorities were legally adopted and effective as of June 10, 2000.

TABLE 1.—EQUIVALENT AND MORE STRINGENT ANALOGUES TO THE FEDERAL REGULATIONS [1]

Checklist	Federal requirements	Federal Register	Analogous State authority (WAC 173–303–* * *)
17P [2]	Interim Status	50 FR 28702, 7/15/85	803(1), 803(2); 806(2)(a) 806(2)(b); 806(8); 803(2)(a), 803(2)(b); 810(11)(c), 810(11)(e); 805(1)(b), 805(1)(c), 805(8)(f)(i), 805(8)(f)(ii), 805(8)(g), 805(8)(h), 805(8)(i), 805(8)(j).
144	Removal of Legally Obsolete Rules.	60 FR 33912, 06/29/95	803(2)(b), 803(4)(b), 803(5)(a)(i), 803(5)(a)(i)(A), 803(5)(a)(i)(B), 803(5)(a)(i)(C).
148 [2]	RCRA Expanded Public Participation.	60 FR 63417, 12/11/95	281(4) and 281(4)(a), 281(4)(b), 281(4)(c), 281(4)(d), 281(4)(d)(i), 281(4)(d)(i)(A), 281(4)(d)(i)(B), 281(4)(d)(i)(C), 281(4)(d)(i)(D), 281(4)(d)(ii), 281(4)(d)(ii)(A), 281(4)(d)(ii)(B), 281(4)(d)(ii)(C), 281(4)(d)(ii)(D), 281(4)(d)(ii)(E); 281(5), 281(5)(a), 281(5)(b), 281(5)(b)(i), 281(5)(b)(ii), 281(5)(b)(ii)(A), 281(5)(b)(ii)(B), 281(5)(b)(ii)(C), 281(5)(b)(ii)(D), 281(5)(b)(ii)(E), 281(5)(b)(ii)(F), 281(5)(b)(iii), 281(6) and 281(6)(a), 281(6)(b), 281(6)(c), 281(6)(d), 281(6)(e), 281(6)(f); 040; 806(4)(a)(xxv); 810(16); 804(6)(a); 807(6), 807(6)(a), 807(6)(b), 807(6)(b)(i), 807(6)(b)(ii), 807(6)(b)(iii), 807(6)(b)(iv), 807(7), 807(8)-(11), 807 (14).

TABLE 1.—EQUIVALENT AND MORE STRINGENT ANALOGUES TO THE FEDERAL REGULATIONS [1]—Continued

Checklist	Federal requirements	Federal Register	Analogous State authority (WAC 173–303–* * *)
151	Land Disposal Phase III—Decharacterized Wastewaters, Carbamate Wastes, and Spent Potliners.	61 FR 15566, 04/08/96; 61 FR 15660,04/08/96; 61 FR 19117, 04/30/96; 61 FR 33680, 06/28/96; 61 FR 36421, 07/10/96; 61 FR 43924, 08/26/96; 62 FR 7502, 02/19/97.	140 (2)(a).
153	Conditionally Exempt Small Quantity Generator Disposal Options Under Subtitle D.	61 FR 34252, 07/01/96	070(8)(b), 070(8)(b)(iii), 070(8)(b)(iii)(A), 070(8)(b)(iii)(B), 070(8)(b)(iii)(E), 070(8)(b)(iii)(F), 070(8)(b)(iii)(D), 070(8)(b)(iii)(H).
154 [2]	Consolidated Organic Air Emission Standards for Tanks, Surface Impoundments, and Containers: (Includes CC and the 300 hour BB exemption).	59 FR 62896, 12/06/94; 60 FR 26828, 05/19/95; 60 FR 50426, 09/29/95; 60 FR 56952, 11/13/95; 61 FR 4903, 02/09/96; 61 FR 28508, 06/05/96; 61 FR 59932, 11/25/96.	692(3); 110(3)(g)(ix),110(3)(g)(x); 120(4)(d), 120(4)(e); 200(1)(b)(i), 200(1)(b)(ii); 201(e); 300(5)(f), 300(5)(i), 300(5)(i)(A), 300(5)(i)(B); 320(2)(c); 380(1)(c), 380(1)(f), 390(3)(d); 630(11); 640(11); 650(12); 680(2); 690(1)(b), 690(1)(b)(i), 690(1)(b)(ii), 690(1)(b)(iii), 690(1)(c), 690(2); 691(1)(b), 691(1)(b)(i), 691(1)(b)(ii), 691(1)(b)(iii), 691(1)(f), 691/note at end of (1), 691(2); 692(1)(a), 692(1)(b), 692(1)(b)(i), 692(1)(b)(ii), 692(1)(b)(iii), 692(1)(b)(iv), 692(1)(b)(v), 692(1)(b)(vi), 692(1)(b)(vii), 692(1)(b)(viii), 692(1)(c), 692(1)(d), 692(1)(d)(i), 692(1)(d)(ii), 692(1)(d)(iii); 692(2); 400(2)(a); 300(5)(f), 300(5)(i), 300(5)(i)A), 300(5)(i)(B); 320(2)(c); 380(1)(c), 380(1)(f); 390(3)(d); 400(3)(a); 810(8)(a)(ii), 810(8)(a)(iii), 810(8)(a)(iv); 806(4)(a)(v), 806(4)(b)(vi), 806(4)(c)(xiii), 806(4)(d)(xi), 806(4)(m).
156 [2]	Military Munitions Rule Hazardous Waste Identification and Management; Explosives Emergencies; Manifest Exemption for Transport of Hazardous Waste on Right-of-Ways on Contiguous Properties.	62 FR 6622, 02/12/97	040; 016(3)(b)(iii), 016(3)(b)(iv); 170(5); 180(6); 240 (10); 600(3)(p), 600(3)(p)(i)(D), 600(3)(p)(iv), 600(3)(q); 693(l), 693(2)(a), 693(2)(a)(i), 693(2)(a)(ii), 693(2)(a)(iii), 693(2)(a)(iv), 693(2)(a)(v), 693(2)(b), 693(2)(b)(i), 693(2)(b)(i)(A), 693(2)(b)(i)(B), 693(2)(b)(i)(B)(I)-(III), 693(2)(b)(i)(C), 693(2)(b)(ii), 693(2)(b)(iii), 693(2)(c), 693(2)(d), 693(2)(e), 693(2)(f); 693(3)(a , 693(3)(b); 400(2)(c)(xiii)(A)(IV), 400(2)(c)(xiii)(D), 400(2)(c))(xii), 400(3)(b); 400(3)(c)(xii); 578(1)(a), 578(1)(b), 578(2)(a), 578(2)(a)(i), 578(2)(a)(i)(A), 578(2)(a)(i)(B), 578(2)(a)(i)(C), 578(2)(a)(ii), 578(2)(b), 578(2)(b)(i), 578(2)(b)(ii), 578(2)(b)(iii), 578(2)(b)(iv), 578(2)(c), 578(2)(c)(i), 578(2)(c)(ii), 578(2)(d), 578(3), 578(4)(a), 578(4)(a)(i), 578(4)(a)(i)(A), 578(4)(a)(i)(B), 578(4)(a)(i)(C), 578(4)(a)(i)(D), 578(4)(a)(i)(E), 578(4)(a)(i)(F), 578(4)(a)(i)(G), 578(4)(a)(ii), 578(4)(a)(iii), 578(4)(b), 578(4)(c); 578(5); 800(7)(c)(i)(D), 800(7)(c)(i)(E); 830(4)(h), 830(4)(h)(i), 830(4)(h)(ii), 830(4)(h)(iii), 830(4)(i).
157	Land Disposal Restrictions Phase IV—Treatment Standards for Wood Preserving Wastes, Paperwork Reduction and Streamlining, Exemptions From RCRA for Certain Processed Materials; and Miscellaneous Hazardous Waste Provisions.	62 FR 25998, 05/12/97	040; 016(2)(l), 016(2)(m), 016(2)(n), 016(2)(o); 016(5) Table 1; 071(3)(ff), 071(3)(gg), 071(3)(gg)(i), 071(3)(gg)(ii); 120(2)(a)(iv); 140(2)(a).
158	Testing Monitoring Activities Amendment III.	62 FR 32452, 06/13/97	110(1); 110(3)(h)(v), 110(3)(h)(vi), 110(3)(g)(i), 110(3)(g) (ii), 110(3)(g)(iii), 110(3)(g)(iv), 110(3)(g)(v), 110(3)(g)(vi), 110(3)(g)(viii), 110(3)(h)(i), 110(3)(a), 110(3)(h)(ii), 110(3)(h)(iii), 110(3)(h)(vii), 110(3)(g)(x); 690(2); 691(2); 645(4)(a); 400(3)(a).
162	Clarification of Standards for Hazardous Waste LDR Treatment Variances.	62 FR 64504, 12/05/97	140 (2)(a).

TABLE 1.—EQUIVALENT AND MORE STRINGENT ANALOGUES TO THE FEDERAL REGULATIONS [1]—Continued

Checklist	Federal requirements	Federal Register	Analogous State authority (WAC 173–303–* * *)
163	Organic Air Emission Standards for Tanks, Surface Impoundments, and Containers; Clarification and Technical Amendment: (AA, BB, CC).	62 FR 64636, 12/08/97	320(2)(c); 380(1)(f); 690(1)(b)(iii), 690(1)(c), 690(1)(d); 690(2); 691(1)(b)(iii), 691(1)(c), 691(1)(f), 691(2); 692(1)(b)(i), 692(1)(c), 692(2); 320(2)(c); 400(3)(a); 806(4)(a)(v).
164	Kraft Mill Steam Stripper Condensate Exclusion.	62 FR 18504, 04/15/98	071(3)(mm).
167A	Land Disposal Restriction Phase IV—Treatment Standards for Metal Wastes and Mineral Processing Wastes.	63 FR 28556, 05/26/98	140(2)(a).
167B	Land Disposal Restriction Phase IV—Hazardous Soils Treatment Standards and Exclusions.	63 FR 28556, 05/28/98	140(2)(a).
167C	Land Disposal Restrictions Phase IV—Corrections.	63 FR 28556, 05/26/98	140(2)(a).
167F	Exclusion of Recycled Wood Preserving Wastewater.	63 FR 28556, 05/26/98	071(3)(w)(iii), 071(3)(w)(iii)(A), 071(3)(w)(iii)(B), 071(3)(w)(iii)(C), 071(3)(w)(iii)(D), 071(3)(w)(iii)(E).
169 [2]	Petroleum Refining Process Wastes.	63 FR 42110, 08/06/98	071(3)(p), 071(3)(jj); 071(3)(cc)(i), 071(3)(cc)(ii), 071(3)(hh), 071(3)(hh)(i), 071(3)(hh)(ii), 071(3)(ii); 016(5)(d)(ii); 120 (2)(a)(viii)(c); 9904; 082(4); 140(2)(a).
170	Land Disposal Restrictions Phase IV—Zinc Micro nutrient Fertilizers, Amendment.	63 FR 46332, 08/31/98	140(2)(a).
171	Emergency Revision of the Land Disposal Restrictions (LDR) Treatment Standards for Listed Hazardous Wastes from carbamate Production.	63 FR 47410, 09/04/98	140(2)(a).
172	Land Disposal Restriction Phase IV—Extension of Compliance Date for Characteristic Slags.	63 FR 48124, 09/09/98	140(2)(a).
173	Land Disposal Restrictions; Treatment Standards for Spent Potliners from Primary Aluminum Reduction Rule (K088); Final Rule.	63 FR 51254, 09/24/98	140(2)(a).
174 [3]	Post Closure Permit Requirement and Closure Process: Requirements for alternative groundwater monitoring requirements for regulated units colocated with SWMU's where both types of units have released to the environment..	63 FR 56710, 10/22/98	645(1)(e), 645(1)(e)(i), 645(1)(e)(ii); 610(1)(d), 610(1)(d)(i), 610(1)(d)(ii); 610(3)(a)(ix), 610(3)(b)(ii)(D); 610(8)(b)(iv), 610(8)(d)(ii)(D); 620(1)(d), 620(1)(d)(i), 620(1)(d)(ii); 400(3)(a).
175 [2]	HWIR-Media	63 FR 65874, 11/30/98	040; 071(3)(11) first line, 071(3)(11)(i) through (iii); 280(5); 280(6), 280(6)(a), 280(6)(b), 280(6)(c), 280(6)(d), 280(6)(e), 280(6)(f), 280(6)(g), 280(6)(h), 280(6)(i), 280(6)(j), 280(6)(k); 646(1)(c); 646(4)(a), 646(7)(a), 646(8); 400(2)(a); 140(2)(a); 810(13)(a); 830 Appendix 1, D.3.g.; 830, Appendix 1, N.3.
176	Universal Waste Rule—Technical Amendments.	63 FR 71225, 12/24/98	520(1), 520(2), 520(2)(a), 520(2)(b), 520(2)(c); 040.
177	Organic Air Emission Standards Clarification and Technical Amendments: (AA, BB, CC).	64 FR 3382, 01/21/99	200(1)(b)(i), 200(1)(b)(ii); 690(2); 692(1)(v), 692(2); 400(3), 400(3)(a).

TABLE 1.—EQUIVALENT AND MORE STRINGENT ANALOGUES TO THE FEDERAL REGULATIONS [1]—Continued

Checklist	Federal requirements	Federal Register	Analogous State authority (WAC 173–303–* * *)
178	Petroleum Refining Process Wastes—Leachate Exemption.	64 FR 6806, 02/11/99	071(3)(kk), 071(3)(kk)(i), 071(3)(kk)(ii), 071(3)(kk)(iii), 071(3)(kk)(vi), 071(3)(kk)(v).
179 [2]	Land Disposal Phase IV—Technical Corrections and Clarifications to Treatment Standards.	64 FR 25408, 05/11/99	016(5)(c); 016 Table 1; 017(2)(a)(iii); 201(2); 140(2)(a).
180	Test Procedures for Analysis of Oil and Grease and Non-Polar Material.	64 FR 26315, 05/14/99	110(3)(a), 110(3)(h)(iv).
181 [2]	Universal Waste Rule Specific Provisions for Hazardous Waste Lamps.	64 FR 36466, 07/09/99	040; 077(2), 077(3); 600(3)(o)(ii), 600(3)(o)(iii); 400(2)(c)(xi)(B), 400(2)(c)(xi)(C); 140(2)(a); 800(7)(c)(iii)(B), 800(7)(c)(iii)(C); 573(1)(a)(ii), 573(1)(a)(iii), 573(2)(a)(i), 573(2)(b)(ii), 573(2)(b)(iii), 573(3)(a); 573(5)(a), 573(5)(b), 573(5)(b)(i), 573(5)(b)(ii), 573(5)(c), 573(5)(c)(i), 573(5)(c)(ii), 573(4)(a), 573(4)(a)(i), 573(4)(a)(ii), 573(4)(b), 573(6), 573(9)(c), 573(9)(c)(i), 573(9)(c)(ii), 573(9)(c)(iii), 573(10)(c), 573(17), 573(19)(b)(iv), 573(19)(b)(v), 573(20)(c), 573(20)(c)(i), 573(20)(c)(ii), 573(20)(c)(iii), 573(21)c), 573(28), 573(35)(a), 573(40)(a).
112, 122, 130, 166 (Special Consolidated Checklist [2]).	Recycled Used Oil Management Standards as of June 30, 1999.	57 FR 41566, 09/10/92; 58 FR 26420, 05/03/93; 58 FR 33341, 06/17/93; 59 FR 10550, 03/04/94; 63 FR 24963, 05/06/98; 63 FR 37780, 07/14/98.	040; 515(4); 071(3)(z), 071(3)(kk); 120(3); 120(3)(g), 120(3)(f); 120(2)(v), 120(2)(a)(viii)(A), 120(2)(a)(viii)(B), 120(2)(a)(viii)(C), 120(5); 600(5); 510(1)(b)(i); 515(2), 515(3), 515(4), 515(5), 515(6), 515(6)(c), 515(7), 515(8), 515(9), 515(9)(a), 515(9)(b), 515(10), 515(11), 515(12).

[1] For further discussion on where the revised state rules differ from the Federal rules refer to Section G. below, the authorization revision application, and the administrative record for this proposed rule.
[2] State rule contains some more stringent provisions. For identification of more stringent state provisions refer to the authorization revision application and the administrative record for this decision.
[3] State does not seek authorization for enforceable mechanisms in lieu of post-closure permits.

G. Where Are the Revised State Rules Different From the Federal Rules?

This section discusses some of the differences between the revisions Washington proposed to its authorized program and the Federal regulations. Not all program differences are discussed in this section because Washington writes its own version of the federal hazardous waste rules. This section discusses certain rules where EPA is making a finding that the state program is more stringent and will be authorized, rules where the state program is broader in scope and will not be authorized, and rules where the state program is less stringent than the federal requirements. The state will not be authorized for the less stringent rules. Less stringent state rules do not supplant federal regulations. Persons must consult the table referenced above for the specific state regulations which EPA proposes to authorize.

Certain portions of the federal program are not delegable to the states because of the Federal government's special role in foreign policy matters and because of national concerns that arise with certain decisions. EPA does not delegate import/export functions. Under the RCRA regulations found in 40 CFR part 262 EPA will continue to implement requirements for import/export functions. EPA does not delegate sections of 40 CFR part 268 because of the national concerns that must be examined when decisions are made under the following Federal Land Disposal Restriction requirements: 40 CFR 268.5—Procedures for case-by-case effective date extensions; 40 CFR 268.6—''No migration'' petitions; 40 CFR 268.42(b)—applications for alternate treatment methods; and 40 CFR 268.44(a)-(g)—general treatment standard variances. Washington's program has excluded these requirements from its state regulations and EPA will continue to implement these requirements. EPA will continue to implement these requirements under EPA's HSWA authority. The State is seeking authorization for 40 CFR 268.44(h) through (m), which are provisions for which states may receive authorization.

States are allowed to seek authorization for state requirements that are more stringent than federal requirements. EPA has authority to authorize and enforce those parts of a state's program EPA finds to be more stringent than the federal program. This section does not discuss each more stringent finding made by EPA, but persons can locate such sections by consulting the Table, referenced above, as well as by reviewing the docket for this rule.

The State program does not provide generators with an exemption from the manifest requirements as found in the federal regulations at 40 CFR 262.20(f) or transporters as found at 40 CFR 263.10(f). Generators and transporters in Washington will have to comply with the more stringent state paperwork requirements. The State program is more stringent than the federal program because the State regulations do not allow Remedial Action Plans as found in the federal requirements at 40 CFR part 270, subpart H. The State's program is more stringent than the federal program at 40 CFR 261.5(j) because the State has not adopted this provision. Conditionally exempt small quantity generator hazardous waste mixed with used oil is subject to full regulation as a hazardous waste mixture. The State program is also more stringent than the federal requirements at 40 CFR 273.9 because the State's definition of universal waste does not allow

pesticides to be managed as universal waste.

The State program is more stringent in certain places than the federal military munitions rule. The State did not adopt the alternative requirements for transportation of waste military munitions between military installations as is found in the federal program at 40 CFR 266.203(a)-(c) and is therefore more stringent than the federal program. With respect to chemical agents and chemical munitions slated for destruction pursuant to international treaties or agreements, the State identifies such chemical agents and chemical munitions as characteristic and/or listed hazardous waste. In the Military Munitions Rule, at 62 FR 6633, EPA said that states could be more stringent than the federal program for chemical munitions. EPA finds the State program to be more stringent than the federal program in this area because the State rules do not contain a provision that differentiates between wastes that must be designated and waste chemical munitions or chemical munitions that are not considered wastes because they are scheduled for destruction pursuant to treaty or agreement. The State's regulations at WAC 173–303–693(3)(a) are found to be more stringent than the federal regulation at 40 CFR 264.1202(a) and WAC 173–303–400(3)(b), (c)(xii) is found to be more stringent than the federal regulation at 40 CFR 265.1202(a). EPA also said, at 62 FR 6649 in the Military Munitions Rule, that states did not have to include a conditional exemption for waste munitions storage in their programs. EPA also finds that the State's lack of a conditional exemption for waste munition storage, which is found in the federal regulations at 40 CFR 266.205(d), (d)(2), is more stringent than the federal program. Neither the federal regulations, nor the State program conditionally exempt chemical munitions and chemical agents from storage requirements.

The State is not seeking authorization for the Standards for the Management of Waste Fuel and Used Oil for the Burning of these Materials in Boilers and Industrial Furnaces, 40 CFR 266.102 through 40 CFR 266.111. The State did not adopt these federal provisions as state law. EPA is implementing these BIF requirements in Washington State under EPA's HSWA authority.

States are not allowed to seek authorization for state requirements that are broader in scope than federal requirements. EPA does not have authority to authorize and enforce those parts of a state's program EPA finds to be broader in scope than the federal program. Because the State has not adopted an analog to 40 CFR 261.4(b)(7)—exclusions for solid waste from the extraction, beneficiation, and processing of ores and minerals, the State's lack of an analog for the federal exclusion of mixtures of solid waste and hazardous waste which are hazardous based solely on a hazardous characteristic imparted to the waste as a result of a Bevill characteristic, 40 CFR 261.3(a)(2)(iii), is broader in scope than the federal program. EPA also finds the State's regulation at WAC 173–303–578(2)(e) to be broader in scope than the federal regulation at 40 CFR 266.202(a) because the State added a requirement for when munitions at closed and transferred ranges are considered solid wastes. EPA's final Military Munitions Rule did not include this requirement. This requirement in the State program is found to be broader in scope than the federal program.

Although State programs can be authorized where they are more stringent than the federal program, state programs cannot be authorized where they are less stringent. EPA finds the State's additional regulation at WAC 173–303–515(6) for generators of used oil who self-transport greater than 55 gallons per vehicle trip to a used oil collection center, without also designating as a used oil transporter, are less stringent than the federal provisions which limit generator self-transport of used oil to less than or equal to 55 gallons of used oil per vehicle trip. EPA also finds the State's additional regulation at WAC 171–303–515(7) for used oil collection centers to be less stringent because the regulation allows used oil collection centers to accept greater than 55 gallons of used oil from a generator who self-transports used oil to a used oil collection center. The direct impact of EPA's finding to generators and used oil collection centers in Washington is that generators and used oil collection centers will not be exempted from the State's federally authorized requirements which limit self-transport by generators to less than or equal to 55 gallons and used oil collection from a self-transporting generator to less than or equal to 55 gallons.

States sometimes make changes to their previously authorized programs for which they need to seek reauthorization. In Washington, the Permit by Rule provision at WAC 173–303–802(5) is broader in scope than the federal permit by rule regulations where it applies to state-only wastes. However, the state program is more stringent where the rule applies to federally regulated hazardous wastes generated on-site. The federal regulations at 40 CFR 270.1(c)(2)(iv) and (v) exempt owners and operators of totally enclosed treatment facilities, elementary neutralization units or wastewater treatment units, as defined at 40 CFR 260.10, from RCRA permitting requirements. The State is seeking reauthorization for these changes and will be authorized for the more stringent portion of the rule. The State will not be authorized for the broader in scope provision.

The State is not seeking authorization for the entire Post-Closure rule. While the state will be authorized for the portions of the rule that concern alternative requirements for colocated regulated units and solid waste management units which have commingled releases, the State is not seeking, and will not be authorized for the portions of the rule that allow for the use of alternate authorities in lieu of post closure permits. Although the state did incorporate 40 CFR 265.118(c)(4) by reference into its regulations, the state is not seeking authorization for this provision.

H. Who Handles Permits After This Authorization Takes Effect?

Washington will issue permits for all the provisions for which it is authorized and will administer the permits it issues. All permits issued by EPA Region 10 prior to final authorization of this revision will continue to be administered by EPA Region 10 until the issuance or re-issuance after modification of a State RCRA permit and until EPA takes action on its permit. HSWA provisions for which the State is not authorized will continue in effect under the EPA-issued permit. EPA will continue to issue permits for HSWA requirements for which Washington is not yet authorized.

I. How Does Today's Action Affect Indian Country (18 U.S.C. 1151) in Washington?

EPA's decision to authorize the Washington hazardous waste program does not include any land that is, or becomes after the date of this authorization, ''Indian Country,'' as defined in 18 U.S.C. 1151, with the exception of the non-trust lands within the exterior boundaries of the Puyallup Indian Reservation (also referred to as the ''1873 Survey Area'' or ''Survey Area'') located in Tacoma, Washington. EPA retains jurisdiction over ''Indian Country'' as defined in 18 U.S.C. 1151.

J. Administrative Requirements

The Office of Management and Budget has exempted this action from the requirements of Executive Order 12866 (58 FR 51735, October 4, 1993), and therefore this action is not subject to review by OMB. This action authorizes State requirements for the purpose of RCRA 3006 and imposes no additional requirements beyond those imposed by State law. Accordingly, I certify that this action will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this action authorizes pre-existing requirements under State law and does not impose any additional enforceable duty beyond that required by State law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). For the same reason, this action also does not have Tribal implications within the meaning of Executive Order 13175 (65 FR 67249, November 6, 2000). It does not have substantial direct effects on tribal governments, on the relationships between the Federal government and the Indian Tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. This action will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely authorizes State requirements as part of the State RCRA hazardous waste program without altering the relationship or the distribution of power and responsibilities established by RCRA. This action also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant and it does not make decisions based on environmental health or safety risks. This rule is not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply Distribution or Use'' (66 FR 28344, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866. The proposed rule does not include environmental justice issues that require consideration under Executive Order 12898 (59 FR 7629, February 16, 1994).

Under RCRA 3006(b), EPA grants a State's application for authorization as long as the State meets the criteria required by RCRA. It would thus be inconsistent with applicable law for EPA, when it reviews a State authorization application, to require the use of any particular voluntary consensus standard in place of another standard that otherwise satisfies the requirements of RCRA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the ''Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings' issued under the executive order. This proposed rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 40 CFR Part 271

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous waste, Hazardous waste transportation, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements.

Authority: This action is issued under the authority of sections 2002(a), 3006 and 7004(b) of the Solid Waste Disposal Act as amended 42 U.S.C. 6912(a), 6926, 6974(b).

Dated: January 2, 2002.

L. John Iani,

Regional Administrator, Region 10.

[FR Doc. 02–626 Filed 1–14–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 721

[OPPTS–50640; FRL–6745–7]

RIN 2070–AB27

Proposed Significant New Uses of Certain Chemical Substances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing this significant new use rule (SNUR) under section 5(a)(2) of the Toxic Substances Control Act (TSCA) for the following six chemical substances: C.I. Pigment Orange 20 (CAS No. 12656–57–4); Chromic Acid, Lead(2+) Salt (1:1) (CAS No. 7758–97–6); Chromium Lead Molybdenum Oxide (CAS No. 12709–98–7); Lead Molybdenum Oxide (CAS No. 10190–55–3); Sulfuric Acid, Lead(2+) Salt (1:1) (CAS No. 7446–14–2); and C.I. Pigment Red 104 (CAS No. 12656–85–8). This action proposes to require persons who intend to manufacture, import, or process any of these chemical substances for use in aerosol spray paint for non-industrial, indoor spray application to notify EPA at least 90 days before commencing such activities. The required notification would provide EPA with the opportunity to evaluate the intended use, and if necessary, prohibit or limit that activity before it occurs.

DATES: Comments, identified by the docket control number OPPTS–50640, must be received by EPA on or before March 18, 2002.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I. of the **SUPPLEMENTARY INFORMATION**. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPPTS–50640 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: *For general information contact*: Barbara Cunningham, Acting Director, Environmental Assistance Division, Office of Pollution Prevention and Toxics (7401), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 554–1404; e-mail address: TSCA-Hotline@epa.gov.

For technical information contact: Joe B. Boyd, Chemical Control Division, (7405), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 260–3563 or (540) 778–4609; e-mail address: boyd.joe@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action, if finalized, if you manufacture, import, or process the chemical substances addressed in this proposed rule. In addition, these are

reporting requirements for exporters of these substances. Potentially affected categories and entities may include, but are not limited to:

TABLE 1.—ENTITIES POTENTIALLY AFFECTED BY THE SNUR REQUIREMENTS

Categories	NAICS codes	Examples of potentially affected entities
Chemical manufacturers, importers, or processors	325	Persons who manufacture, defined by statute to include import or process, one or more of the subject chemical substances
Chemical exporters	325	Persons who export, or intend to export, one or more of the subject chemical substances

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in Table 1 of this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action applies to certain entities. To determine whether you or your business could be affected by this action, you should carefully examine the proposed rule and the applicability provisions in 40 CFR 721.5. If you have any questions regarding the applicability of this action to a particular entity, consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically*. You may obtain copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access these documents, on the Home Page select ''Laws and Regulations,'' ''Regulations and Proposed Rules,'' and then look up the entry for this document under the ''**Federal Register**—Environmental Documents.'' You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/. A frequently updated electronic version of 40 CFR part 721 is available at http://www.access.gpo.gov/nara/ cfr/cfrhtml_00/Title_ 40/40cfr721_00.html, a beta site currently under development.

2. *In person*. The Agency has established an official record for this action under docket control number OPPTS–50640. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the TSCA Nonconfidential Information Center, North East Mall Rm. B–607, Waterside Mall, 401 M St., SW., Washington, DC. The Center is open from noon to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Center is (202) 260–7099.

C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPPTS–50640 in the subject line on the first page of your response.

1. *By mail*. Submit your comments to: Document Control Office (7407), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier*. Deliver your comments to: OPPT Document Control Office (DCO) in East Tower Rm. G–099, Waterside Mall, 401 M St., SW., Washington, DC. The DCO is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the DCO is (202) 260–7093.

3. *Electronically*. You may submit your comments electronically by e-mail to: oppt.ncic@epa.gov, or mail your computer disk to the address identified above. Do not submit any information electronically that you consider to be CBI. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments will also be accepted on standard disks in WordPerfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket control number OPPTS–50640. Electronic comments may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI That I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI 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. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

E. What Should I Consider as I Prepare My Comments for EPA?

We invite you to provide your views on the various options we propose, new approaches we haven't considered, the potential impacts of the various options (including possible unintended consequences), and any data or information that you would like the Agency to consider during the development of the final action. You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Offer alternative ways to improve the proposed rule.

7. Make sure to submit your comments by the deadline in this document.

8. To ensure proper receipt by EPA, be sure to identify the docket control numberassigned to this action in the subject line on the first page of your response. You mayalso provide the name, date, and **Federal Register** citation.

II. Background

A. What Action is the Agency Taking?

This proposed SNUR would require persons to notify EPA at least 90 days before commencing the manufacturing, importing, or processing of any amount of one or more of the six chemical substances listed in Table 2 of Unit III. for use in aerosol spray paint for non-industrial, indoor spray application.

B. What is the Agency's Authority for Taking this Action?

Section 5(a)(2) of TSCA (15 U.S.C. 2604(a)(2)) authorizes EPA to determine that a use of a chemical substance is a ''significant new use.'' EPA must make this determination by rule after considering all relevant factors, including those listed in TSCA section 5(a)(2). Once EPA determines that a use of a chemical substance is a significant new use, TSCA section 5(a)(1)(B) requires persons to submit notification to EPA at least 90 days before they manufacture, import, or process the substance for that use.

C. Applicability of General Provisions

General provisions for SNURs appear under subpart A of 40 CFR part 721. These provisions describe persons subject to the rule, reporting and recordkeeping requirements, and exemptions. Provisions relating to user fees appear at 40 CFR part 700. Persons subject to a SNUR must comply with the same notification requirements and EPA regulatory procedures as submitters of Premanufacture Notices (PMNs) under TSCA section 5(a)(1)(A). In particular, these requirements include the information submission requirements of TSCA section 5(b) and 5(d)(1), the exemptions authorized by TSCA section 5 (h)(1), (h)(2), (h)(3), and (h)(5), and the regulations at 40 CFR part 720. Once the Agency receives notification under a SNUR, EPA may, if warranted, take regulatory action under TSCA section 5(e), 5(f), 6, or 7 to control the activities on which it has received the SNUR notification. If EPA does not take action, EPA is required under TSCA section 5(g) to explain in the **Federal Register** its reasons for not taking action.

Persons who intend to export a chemical substance identified in a proposed or final SNUR are subject to the export notification provisions of TSCA section 12(b) (15 U.S.C. 2611 (b)). The regulations that implement TSCA section 12(b) appear at 40 CFR part 707, subpart D. Additionally, persons who intend to import any chemical substance are subject to the TSCA section 13 (15 U.S.C. 2612) import certification requirements, and to the United States Customs Service regulations codified at 19 CFR 12.118 through 12.127 and 127.28. Importers would need to certify that their import shipments are in compliance with the final SNUR requirements among any other TSCA requirements. The EPA policy in support of import certification appears at 40 CFR 707.20.

III. Summary of this Proposed Rule

The chemical substances which are the subjects of this proposed SNUR are listed in Table 2 of this unit. EPA is proposing to designate as a significant new use the use of any of these six chemical substances in aerosol spray paints for non-industrial, indoor spray application. EPA is proposing that ''aerosol spray paint'' be defined as ''a liquid mixture, usually of a solid pigment in a liquid medium, sold in pressurized containers and applied to a surface to form a decorative or protective coating. Aerosol spray paints are sold in individual containers the contents of which are applied without the aid of an air compressor or other external aspirating device.'' EPA is also proposing a definition for ''indoor spray application'' as ''any application of a liquid from a pressurized container within a confined space, including but not limited to inside a building, tank, vessel, motor vehicle, or other structure. Indoor application to objects intended for outdoor use, e.g., painting lawn furniture in a basement for outdoor use, is included within the meaning of indoor spray application.'' ''Non-industrial use'' is already defined in the regulations governing SNURs at 40 CFR 721.3 as a ''use other than at a facility (also defined in § 721.3) where chemical substances or mixtures are manufactured, imported or processed,'' and EPA is not proposing to change the definition for this action. This proposed SNUR would require persons to notify EPA at least 90 days before commencing the manufacture, import, or processing of any of these chemical substances for use in aerosol spray paints intended for non-industrial, indoor spray application.

TABLE 2.—CHEMICAL SUBSTANCES CONTAINING LEAD, CHROMIUM, AND/OR CADMIUM WHICH ARE COVERED BY THIS PROPOSED RULE

Chemical substance	CAS No.
C.I. Pigment Orange 20 (*)	12656–57–4
Chromic Acid, Lead(2+) Salt (1:1) (**) (***)	7758–97–6
Chromium Lead Molybdenum Oxide (**) (***)	12709–98–7
C.I. Pigment Red 104 (**) (***)	12656–85–8
Lead Molybdenum Oxide (***)	10190–55–3
Sulfuric Acid, Lead(2+) Salt (1:1) (***)	7446–14–2

(*) Contains cadmium
(**) Contains chromium
(***) Contains lead

IV. Objectives and Rationale for this Proposed SNUR

EPA is concerned about the potential risks related to the toxicity and potential exposures which could result from non-industrial, indoor spray application of aerosol spray paints containing one of more of the chemical substances listed in Table 2 of this unit. The Agency is proposing definitions for indoor spray application and aerosol spray paint. The terms of these definitions convey the technical framework for what is included in the significant new use. In addition, EPA believes that use of the subject substances for the proposed significant new use has a high potential to increase both the magnitude and

duration of exposure to these substances beyond existing levels.

At this time, the six chemical substances covered by this proposed rule are the only specific compounds containing lead, chromium, and/or cadmium that are known to have been formulated in aerosol spray paints with the potential for non-industrial, indoor spray application. If EPA identifies other chemical substances of concern with similar potential uses, it may propose SNURs to cover such additional chemical substances.

EPA believes that there is no ongoing manufacture, import, or processing of these chemical substances for use in aerosol spray paints except for those intended for industrial and/or outdoor uses. If EPA receives information through comments on this proposed rule or otherwise that indicates that indoor non-industrial uses are ongoing, EPA would consider modifying the proposed significant new use accordingly, to exclude particular ongoing uses, in developing a final rule. The Agency would assess whether separate regulatory or voluntary action may be appropriate for any such ongoing uses.

In determining what would constitute a significant new use for the six chemical substances that are subjects of this proposed SNUR, EPA considered relevant information on the toxicity of the chemical substances, likely exposures associated with potential uses, information provided by industry sources (Ref. 5), and the four factors listed in TSCA section 5(a)(2).

Based on these considerations, EPA wishes to achieve the following objectives with regard to the significant new use that is designated in this proposed SNUR. EPA wants to ensure that:

1. The Agency would receive notification of any company's intent to manufacture, import, or process the subject chemical substances for use in aerosol spray paints intended for non-industrial, indoor spray application.

2. The Agency would have an opportunity to review and evaluate data submitted in a Significant New Use Notice (SNUN) before the notice submitter begins manufacturing, importing, or processing the subject chemical substances for use in aerosol spray paints for non-industrial, indoor spray application.

3. The Agency would be able to regulate prospective manufacturers, importers, or processors of the subject chemical substances before a significant new use occurs provided that the degree of potential risk, or uncertainty about the risks, is sufficient to warrant such regulation.

V. Information on the Subject Lead, Chromium, and/or Cadmium Containing Compounds

A. Health Effects

EPA reviewed health hazard data associated with a wide range of chemical components of aerosol spray paints including the six chemical substances listed in Table 2 of Unit III. (Ref. 1). When inhaled, the six chemical substances covered under this proposed rule may be absorbed through the lungs or retained in the lungs and cause a variety of chronic toxicities. In particular, hexavalent chromium compounds, including chromate pigments such as those listed in Table 2 of Unit III., are recognized human carcinogens (Refs. 9, 13). In addition, dermal exposure to hexavalent chromium compounds has been associated with irritant and allergic contact dermatitis (Ref. 9). There is adequate evidence that cadmium compounds are carcinogenic in animals and some epidemiologic evidence suggests that they may also be carcinogenic in humans. These data caused EPA to list cadmium compounds as probable human carcinogens following inhalation exposure (Ref. 10), while the International Agency for Research on Cancer listed cadmium compounds as carcinogenic in humans (Ref. 14). Also, long-term human exposure to low levels of cadmium compounds has been associated with a variety of toxic effects such as osteomalacia, osteoporosis, obstructive lung diseases, and kidney dysfunction (Refs. 8, 16). In addition, there is adequate evidence that some lead compounds are carcinogenic in animals but inadequate evidence to assess their carcinogenic potential in humans. EPA has listed lead compounds as probable human carcinogens (Ref. 11) while the International Agency for Research on Cancer has considered lead compounds as possibly carcinogenic in humans (Ref. 12). Finally, exposure of developing fetuses and young children to lead containing substances can result in damage to the brain and central nervous system, slow growth, hyperactivity, and learning problems. Adults exposed to lead may develop symptoms indicative of nervous disorders and anemia as well as memory and concentration problems (Refs. 14, 15).

B. Exposure Data

Assessments for consumer exposures to components of aerosol spray paints are described in the ''Indoor Air Cluster Report: Consumer Exposure to Components of Aerosol Spray Paint'' (Ref. 2). Those analyses include estimates of amounts of nonvolatile pigments in the spray paint and the amounts of aerosolized spray paint not deposited on the target and available for inhalation and inadvertent ingestion. Consumer exposure assessments using a multi chamber exposure assessment model were performed in order to estimate user exposures from indoor spray applications in a residential kitchen, basement and garage. One assessment indicated that the exposure to an adult spraying paint in a kitchen (e.g., spray painting metal cabinets, air plane models, etc.) a couple times a year could be toxicologically significant. This and other exposure scenarios showed that nonvolatile pigments, as components of paint sprayed indoors, were both respirable and ingestible. These routes of exposure were the basis of risk screening concerns (Ref. 3). Based on data from a usage survey and the Census Bureau EPA believes that 68.2 million U.S. consumers have potential annual exposure to components of aerosol spray paints (Ref. 3). Specific exposure to individual consumers who spray paint indoors is dependent on many factors, especially on the amount of air that flows through the building and into and out of the immediate vicinity of application. People who spray paint indoors with windows and doors open and use a fan to direct contaminated air out-of-doors are less likely to have significant exposures than those who spray paint without increasing their work area ventilation.

EPA believes that, generally, indoor spray application of aerosol paints containing lead, chromium or cadmium in industrial settings, where protective measures are required should not result in exposure levels as high as those of consumers or other non-industrial indoor users. Industrial workers who use aerosol spray paints in industrial settings are protected by applicable safeguards and controls under the Occupational Health and Safety Administration's hazard communication standard (29 CFR 1910.1200). For example, carcinogenic chemical substances in the workplace must be addressed in a hazard communication program and listed on the material safety data sheet (MSDS).

Exposures from outdoor spray applications of aerosol spray paint products by consumers, e.g., painting lawn furniture out-of-doors, are usually much lower. This is due to the large volume of air available for dilution out-

of-doors and removal of over spray away from the user's breathing zone by natural air circulation.

C. Consumer Product Safety Commission's Related Action on Lead Paint

Effective February 27, 1978, the Consumer Product Safety Commission (CPSC) banned most paint and similar surface coating materials with 0.06% or more of lead content by weight from consumer use (42 FR 44199, September 1, 1977) (codified at 16 CFR part 1303). This action was taken under the hazardous products provisions of sections 8 and 9 of the Consumer Product Safety Act (CPSA) (15 U.S.C. 2057 and 2058). The determination was based on a two-part finding:

1. There was an unreasonable risk of lead poisoning in children associated with lead content of more than 0.06% in paints and coatings to which children have access.

2. No feasible consumer product safety standard under the CPSA would adequately protect the public from this risk, 16 CFR 1303.1(c).

The lead containing chemical substances addressed in this proposed SNUR were once associated with several commercial automotive uses (Table 3 of this Unit). Such uses of lead containing products were excluded from CPSC's ban because the ban was issued under the CPSA, and the CPSA specifically excludes ''motor vehicles and motor vehicle equipment'' from the scope of the Act (15 U.S.C. 2052(a)(1)(c)).

Certain lead paint products are exempted from the CPSC ban, with the provision that certain cautionary labeling requirements be followed (16 CFR 1303.3(b)) including:

1. Agricultural and industrial equipment refinish coatings.

2. Industrial (and commercial) building and equipment maintenance coatings, including traffic and safety marking coatings.

3. Graphic art coatings (i.e., products marketed solely for applications on billboards, road signs, and similar uses and for identification marking in industrial buildings).

4. Touch up coatings for agricultural equipment, lawn and garden equipment, and appliances.

5. Catalyzed coatings marketed solely for use on radio-controlled model powered aircraft.

In addition, three product categories are exempted from CPSC's ban with no cautionary labeling requirements (16 CFR 1303.3(c)):

1. Mirrors with lead containing backing paint when part of furniture articles.

2. Artist paint and related materials.[1]

3. Metal furniture articles (but not metal children's furniture) bearing factory applied coatings that contain lead.

Altogether in 1978, the CPSC determined that the eight product categories of exemption met public needs, and although some industrial products contained more than 0.06% lead, there were no effective substitutes, and such products were unlikely to be accessed by children. Activities associated with certain of the use categories exempted under the CPSC rule may be covered by this proposed SNUR. For example, touch up by consumers of appliances in the home.

D. Applicable OSHA Standards and Recommendations from the ACGIH

Under the OSHA Hazard Communication Standard (29 CFR 1910.1200), employees who engage in industrial, indoor spray application of aerosol spray paints containing lead, cadmium, or chromium must be informed of the hazards of exposure to these compounds. This standard requires a written hazard communication program, appropriate hazard labeling and warnings, employee training, and the availability of material safety data sheets. In addition to the Hazard Communication Standard, OSHA has established Permissible Exposure Limits (PELs) for lead, chromium, and cadmium. These values are listed in 29 CFR 1910.1000 in Tables Z-1 (http://www.osha-slc.gov/OshStd_data/1910_1000_TABLE_Z-1.html) and Z-2 (http://www.osha-slc.gov/OshStd_data/1910_1000_TABLE_Z-2.html). Lead and cadmium are found in Table Z-1 of 29 CFR 1910.1000, which lists applicable PELs in workplace air of 0.05 mg/cubic meter for lead and 0.005 mg/cubic meter for cadmium (each averaged over an 8-hour, time-weighted average (TWA)). Chromium can have a PEL ranging from 0.1 to 0.5 mg/cubic meter (also determined over an 8-hour TWA), depending upon the specific type of chromium compound. The lower value of 0.1 mg/cubic applies to hexavalent chromium compounds, while 0.5 mg/cubic meter applies to other chromium compounds. Hexavalent chromium compounds are listed in Table Z-2 of 29 CFR 1910.1000, while other chromium compounds are listed in Table Z-1 of 29 CFR 1910.1000. Lead and cadmium are also covered under substance-specific standards found in 29 CFR part 1910, Subpart Z—Toxic and Hazardous Substances, at 29 CFR 1910.1025 and 29 CFR 1910.1027, respectively, which contain particular guidance and requirements on exposure limits, workplace sampling, and medical monitoring requirements.

Recommended occupational exposure guidelines have also been published for lead, cadmium, and chromium by the American Conference of Governmental Industrial Hygienists (ACGIH) (Ref.17). These exposure guidelines for airborne contaminants are known as threshold limit values (TLVs). These values are often based on very recent data, and can provide information that is supplementary to that provided by PELs so reliance on TLVs may further limit workplace exposure to certain hazardous substances. The TLVs include 0.01 mg/cubic meter for cadmium metal, 0.002 mg/cubic meter for all cadmium compounds, 0.05 mg/cubic meter for lead, 0.5 mg/cubic meter for all non-hexavalent chromium compounds, 0.05 mg/cubic meter for water-soluble hexavalent chromium compounds, and 0.01 for insoluble hexavalent chromium compounds.

The protections available in occupational settings are not available for non-industrial, indoor spray applicators of the substances covered by this proposed rule.

E. Available Use Data (Ref. 4)

Table 3 of this unit shows what were once aerosol spray applications of the pigments of concern. No production volume data for paints containing these pigments are available; however, an industry survey (Ref. 5) found that most uses were discontinued by 1994. The only exceptions were products intended for high temperature applications with pigments of cadmium or chromium and as a chromate component in primer of a specialized market. In addition, the survey provider, the National Paint and Coatings Association (NPCA), reported a lengthy history of manufacturing phase-outs for aerosol products containing lead, chromium, and cadmium. The overwhelming majority of NPCA member manufacturers responded that products containing the heavy metal pigments were no longer produced. As previously stated and based on the available data, EPA has tentatively

[1] More recently, following enactment of the Labeling of Hazardous Art Materials Act (LHAMA), 15 U.S.C. 1277 (Public Law 100–695, enacted November 18, 1988), the CPSC has issued regulations in the **Federal Register** of October 9 1992 (57 FR 46626) regarding the labeling of craft materials that present a chronic hazard. These products include solvents, spray paints, silk-screen inks, adhesives, and any other substance marketed or represented as suitable for use in the creation of any work of visual or graphic art of any medium. CPSC's regulatory enforcement policy for these regulations was set forth in the **Federal Register** of February 13, 1995 (60 FR 8188).

concluded that no non-industrial, indoor spray applications of these paints are ongoing (Ref. 4). The Agency seeks comment on this tentative conclusion.

TABLE 3.—AEROSOL SPRAY PAINTS CONTAINING PIGMENTS OF LEAD, CHROMIUM, OR CADMIUM WHICH WERE ONCE IN COMMERCIAL USE AS NON-INDUSTRIAL, INDOOR APPLICATIONS

Chemical name	CAS No.	Use in aerosol spray paints
C.I. Pigment Orange 20	12656–57–4	Retouching auto finishes, and for engine enamels, high temperature applications*
Chromic Acid, Lead(2+) Salt (1:1)	7758–97–6	Retouching auto finishes, rust-inhibitive primers, traffic marking, engine enamels, and high-temperature applications *
Chromium Lead Molybdenum Oxide	12709–98–7	Retouching auto finishes, engine enamels, and high-temperature applications applications*
C.I. Pigment Red 104 (Also known as Molybdate Orange)	12656–85–8	Retouching machinery equipment and automotive finishes, engine enamels, and high-temperature applications*
Lead Molybdenum Oxide	10190–55–3	Retouching auto finishes, engine enamels and high temperature applications*
Sulfuric Acid, Lead (2+) Salt	7446–14–2	Component of molybdate orange and used as a white pigment

* *High temperature applications*, are applications of paint on automotive parts (such as exhaust manifolds or machinery equipment) while hot due to normal operation conditions.

VI. Test Data and Other Information

EPA recognizes that under TSCA section 5, persons are not required to develop any particular test data before submitting a SNUN. Rather, persons are required only to submit test data in their possession or control and to describe any other data known to, or reasonably ascertainable by them (15 U.S.C. 2604(d)). However, a SNUN submitted without accompanying test data may increase the likelihood that EPA will take action under TSCA section 5(e).

Should EPA finalize this proposed rule, the Agency would encourage persons to consult with it before submitting a SNUN or before selecting a protocol for testing of any of the chemical substances listed in Table 2 of Unit III. As part of this optional pre-notification consultation, EPA would discuss specific test data it believes are necessary to evaluate a significant new use of these chemical substances and advise the submitter on the selection of test protocols. The Agency would request that all test data be developed according to TSCA Good Laboratory Practice Standards set forth in 40 CFR part 792. Failure to do so could result in EPA's finding that submitted data are insufficient to reasonably evaluate the health effects of these chemical substances.

Should EPA finalize this proposed rule, it would urge SNUN submitters to provide detailed information on human exposure that may result from the significant new use of the chemical substances listed in Table 2 of Unit III. and at § 721.4583 of the proposed regulation. In addition, EPA would encourage persons to submit information on potential benefits of these chemical substances and information on risks posed by the chemical substances compared to risks posed by possible substitutes.

VII. Applicability to Uses Occurring After the Date of Publication of this Proposed SNUR

EPA believes that the intent of TSCA section 5(a)(1)(B) is best served by designating a use as a significant new use if it occurs after the date of the proposed SNUR rather than after the effective date of the final rule. Otherwise, uses commenced during the proposed SNUR period would be considered ongoing, rather than new, and it would be difficult for EPA to establish final SNUR notification requirements, because any person could defeat the SNUR rulemaking by initiating the proposed significant new use before the rule became final and then argue that such a use was ongoing.

Persons who begin commercial manufacture, import, or processing of the six compounds listed in Table 2 of Unit III. for the significant new use listed in this proposed SNUR after the date of publication of the proposed SNUR must stop that activity before the effective date of the final rule. Persons who ceased those activities will have to meet all final SNUR notification requirements and wait until the end of the notification review period, including all extensions, before recommencing their activities. If, however, persons who begin commercial manufacture, import, or processing of these chemical substances between the date of publication of the proposed SNUR and the effective date of the final SNUR meet the conditions of advance compliance as codified at 40 CFR 721.45(h), those persons will be considered to have met the final SNUR requirements for those activities.

VIII. Alternatives

A. Promulgate a Chemical Specific TSCA Section 8(a) Reporting Rule for the Chemical Substances Listed in Table 2 of Unit III.

Under TSCA section 8(a), EPA could require persons to report information to the Agency when they intend to manufacture, import, or process the chemical substances listed in Table 2 of Unit III. for non-industrial, indoor spray application. However, the use of TSCA section 8(a) rather than SNUR authority would not provide the opportunity for EPA to take immediate regulatory action under TSCA section 5(e) or section 5(f) to prohibit or limit the activity before it begins. In addition, EPA may not receive important information from small businesses, because those firms generally are exempt from TSCA section 8(a) reporting requirements. In view of EPA's concerns about these chemical substances and its interest in having the opportunity to regulate these substances further as needed, pending the development of exposure and/or hazard information should a significant new use be initiated, the Agency believes that a TSCA section 8(a) rule for those chemical substances would not meet all of EPA's regulatory objectives.

B. Regulate the Chemical Substances Listed in Table 2 of Unit III. Under TSCA Section 6

EPA may regulate under TSCA section 6 (15 U.S.C. 2605) if there is a reasonable basis to conclude that the manufacture, import, processing, distribution in commerce, use, or disposal of a chemical substance or

mixture ''presents or will present'' an unreasonable risk of injury to human health or the environment. There is insufficient information about prospective manufacture, import, or processing operations at this time to enable EPA to make a reasoned determination of risk. Therefore, EPA is not able to take action under TSCA section 6 to regulate the subject compounds at this time. The final SNUR would facilitate the Agency's consideration of potential risks associated with any intended significant new use of these chemical substances.

IX. Economic Analysis

EPA evaluated the potential costs of establishing a final SNUR on the substances listed in Table 2 of Unit III. If this proposal becomes final, the manufacture, import or processing of any amount of one or more of the six chemical substances listed in Table 2 of Unit III. in aerosol spray paint for non-industrial, indoor spray application would be reportable. While there is no precise way to calculate the total annual cost of compliance with this proposed SNUR, EPA estimates that the reporting cost for submission of a SNUN ranges from $8,457 to $9,692 which includes a $2,500 user fee. The corresponding time burden to complete a SNUN would average 119.92 hours. EPA believes that there would be few, if any, SNUNs submitted. Furthermore, while the expense of a notification and the uncertainty of possible EPA regulation may discourage certain innovations, the impact would be limited because those factors are unlikely to deter an innovation that has high potential value. The Agency's economic analysis is available in the public record for this proposed SNUR (Ref. 6).

X. References

These references have been placed in the official record that was established under docket control number OPPTS–50640 for this rulemaking as indicated in Unit I.B.2. Reference documents identified with an administrative record number (AR) are cross-indexed to non-regulatory, publically accessible information files maintained in the TSCA Nonconfidential Information Center. Copies of the documents can be obtained as described in Unit I.B.2.

1. (AR098–07) OPPT Structure Activity Team (SAT) Health Assessment of the Aerosol Spray Paint Cluster. pp. 48, 51, 56, 58, 59, and 60. April 16, 1992.

2. (AR098–06) Indoor Air Cluster Report: Consumer Exposure to Components of Aerosol Spray Paint. November 10, 1992.

3. (AR098–02) OPPT RM1 Dossier: Aerosol Spray Paints Indoor Air Screen Cluster. December 28, 1992.

4. (AR098–029) RM2 Use Cluster for Aerosol Spray Paints Draft Final Report Preliminary Screening, Sherry Wise, USEPA/OPPT/EETD/RIB. November 1994.

5. (AR098–026) Letter and attachment from Stephen R. Sides, Director, Health and Safety Affairs National Paint and Coatings Association, to Christina Cinalli. EPA. June 7, 1994.

6. (AR098–032) Memorandum and attachment of Economic Assessment for the Proposed SNUR on Certain Chemical Substances Used in Aerosol Spray Paint Intended for Non-industrial, Indoor Spray Application from Timothy S. Lehman. EPA. February 27, 2001.

7. (AR098–033) Toxicological Profile for Lead (Update). Agency for Toxic Substances and Disease Registry. Atlanta, GA, 1993.

8. (AR098–034)Toxicological Profile for Cadmium (Update). Agency for Toxic Substances and Disease Registry. Atlanta, GA, 1999. Available in EPA Headquarters Library.

9. (AR098–035) Integrated Risk Information System Toxicological Review on Chromium (VI). EPA. Washington, DC, 1998.

10. (AR098–036) Integrated Risk Information System Toxicological Review on Cadmium, EPA. Washington, DC, 1998.

11. (AR098–037) Integrated Risk Information System Toxicological Review on Lead and Compounds (inorganic). EPA. Washington, DC, 1998.

12. (AR098–038) Monographs on the Evaluation of Carcinogenic Risk to Humans. Supplement 7. International Agency for Research on Cancer. Lyon, France, 1986.

13. (AR098–039) Monographs on the Evaluation of Carcinogenic Risk to Humans. Volume 49. International Agency for Research on Cancer. Lyon, France, 1990.

14. (AR098–040) Monographs on the Evaluation of Carcinogenic Risk to Humans. Volume 58. International Agency for Research on Cancer. Lyon, France, 1993.

15. (AR098–041) Tsuchiya, R., 1986. Lead. *Handbook on the Toxicology of Metals.* Volume II. L. Friberg, G.F. Nordberg, and V.B. Vouk, Eds. Elsevier, Amsterdam. Chapter 14, p. 298.

16. (AR098–042) Friberg, L., Kjellstrom, T., and Nordberg, G.F., 1986. Cadmium. *Handbook on the Toxicology of Metals.* Volume II. L. Friberg, G.F. Nordberg, and V.B. Vouk, Eds. Elsevier, Amsterdam. Chapter 7, p. 130.

17.(AR098–043) ACGIH Worldwide. 2001 TLVs and BEIs: Threshold Limit Values for Chemical Substances and Physical Agents and Biological Exposure Indices. Cincinnati, OH. http://www.acgih.org.

XI. Regulatory Assessment Requirements

Under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993), the Office of Management and Budget (OMB) has determined that SNURs are not significant regulatory actions subject to review by OMB, because they do not meet the criteria in section 3(f) of the Executive Order.

Based on EPA's experience with SNURs, State, local, and tribal governments have not been impacted by these rulemakings, and EPA does not have any reason to believe that any State, local, or tribal government would be impacted by this rulemaking. As such, EPA has determined that this regulatory action would not impose any enforceable duty, contain any unfunded mandate, or otherwise have any affect on small governments subject to the requirements of sections 202, 203, 204, or 205 of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Similarly, this action is not expected to have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999).

This rule, if finalized, would not have tribal implications because it is not expected to have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000).

However, in the spirit of Executive Orders 13132 and 13175, and consistent with EPA policy to promote communications among EPA, State and Tribal governments, EPA specifically solicits additional comment on this proposed rule from State and Tribal officials.

EPA has complied with Executive Order 12630, entitled *Governmental Actions and Interference with Constitutionally Protected Property Rights* (53 FR 8859, March 15, 1988), and the ''Attorney General's Supplemental Guidelines for the

Evaluation of Risk and Avoidance of Unanticipated Takings'' in the preparation of this proposed rule.

This action does not involve special considerations of environmental justice related issues which would be addressed under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994).

This action is not subject to Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997), because this is not an economically significant regulatory action as defined by Executive Order 12866, and this action does not address environmental health or safety risks disproportionately affecting children.

In addition, since this action does not involve any technical standards, section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note), does not apply to this action.

Pursuant to section 605(b) of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), the Agency has determined and hereby certifies that promulgation of this SNUR would not have a significant adverse economic impact on a substantial number of small entities. The rationale supporting this conclusion is as follows. A SNUR applies to any person (including small or large entities) who intends to engage in any activity described in the rule as a ''significant new use.'' By definition of the word ''new,'' and based on all information currently available to EPA, it appears that no small or large entities presently engage in such activity. Since a SNUR only requires that any person who intends to engage in such activity in the future must first notify EPA (by submitting a SNUN), no significant economic impact will even occur until someone decides to engage in those activities. Although some small entities may decide to conduct such activities in the future, EPA cannot presently determine how many, if any, there may be. However, EPA's experience to date is that, in response to the promulgation of over 530 SNURs, the Agency has received fewer than 15 SNUNs. Of those SNUNs submitted, none appear to be from small entities. In addition, the estimated reporting cost for submission of a SNUN (see Unit IX.), are minimal regardless of the size of the firm. Therefore, EPA believes that the potential economic impact of complying with this SNUR are not expected to be significant or adversely impact a substantial number of small entities. In a SNUR that was published on June 2, 1997 (62 FR 29684) (FRL–5597–1), the Agency presented its general determination that proposed and final SNURs are not expected to have a significant economic impact on a substantial number of small entities, which was provided to the Chief Counsel for Advocacy of the Small Business Administration.

According to the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), an Agency may not conduct or sponsor, and a person is not required to respond to a collection of information that requires OMB approval under the PRA, unless it has been approved by OMB and displays a currently valid OMB control number. The OMB control numbers for EPA's regulations, after initial display in the preamble of the final rule and in addition to its display on any related collection instrument, are listed in 40 CFR part 9.

The information collection requirements related to this action have already been approved by OMB pursuant to the PRA under OMB control number 2070–0038 (EPA ICR No. 1188.06). This action would not impose any burden requiring additional OMB approval. If an entity were to submit a SNUN to the Agency, the annual burden is estimated to average 119.92 hours per response and to cost ranged from $8,457 to $9,692 including the $2,500 EPA user fee (set at $100 for businesses with annual sales of less than $40 million). This burden estimate includes the time needed to review instructions, search existing data sources, gather and maintain the data needed, and complete, review and submit the required significant new use notice, and maintain the required records.

Send any comments about the accuracy of the burden estimate, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques, as instructed in Unit I.C. or to the Director, Collection Strategies Division, Office of Environmental Information, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. Please remember to include the OMB control number in any correspondence, but do not submit any information collection forms to this address.

This rule is not subject to Executive Order 13211, entitled *Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution or Use* (66 FR 28355, May 21, 2001), because this action is not a significant regulatory action under Executive Order 12866, nor is it expected to adversely affect energy supply, distribution, or use.

List of Subjects in 40 CFR Part 721

Environmental protection, Chemicals, Hazardous substances, Reporting and recordkeeping requirements.

Dated: December 21, 2001.

William H. Sanders III,

Director, Office of Pollution Prevention and Toxics.

Therefore, 40 CFR chapter I is proposed to be amended as follows:

PART 721—[AMENDED]

1. The authority citation for part 721 would continue to read as follows:

Authority: 15 U.S.C. 2604, 2607, and 2625(c).

2. By adding two new definitions in alphabetical order in § 721.3 to read as follows:

§ 721.3 Definitions.

* * * * *

Aerosol spray paint means a liquid mixture, usually of a solid pigment in a liquid medium, sold in pressurized containers and applied to a surface to form a decorative or protective coating. Aerosol spray paints are sold in individual containers whose contents are applied without aid of an air compressor or other external aspirating device.

* * * * *

Indoor spray application means any application as a liquid from a pressurized container within a confined space including but not limited to inside a building, tank, vessel, motor vehicle, or other structure. Indoor application to objects intended for outdoor use, e.g., spray painting lawn furniture in a basement for outdoor use, is included within the meaning of indoor spray application.

* * * * *

3. By adding a new § 721.4583 to read as follows:

§ 721.4583 Certain compounds of lead, chromium, and cadmium.

(a) *Chemical substances and significant new uses subject to reporting.* (1) The chemical substances, C.I. Pigment Orange 20 (CAS No. 12656–57–4); Chromic Acid, Lead(2+) Salt (1:1) (CAS No. 7758–97–6); Chromium Lead Molybdenum Oxide (CAS No. 12709–98–7); Lead Molybdenum Oxide (CAS No. 10190–55–3); Sulfuric Acid, Lead(2+) Salt (1:1) (CAS No. 7446–14–2); and C.I. Pigment Red 104 (CAS No. 12656–85–8) are subject to reporting under this section for the significant

new uses described in the paragraph (a)(2) of this section.

(2) The significant new use is use of any of the six chemical substances listed in paragraph (a)(1) of this section in aerosol spray paint for non-industrial, indoor spray application.

(b) [Reserved]

[FR Doc. 02–963 Filed 1–14–02; 8:45 am]

BILLING CODE 6560–50–S

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 51

[CC Docket No. 01–337, FCC 01–360]

Review of Regulatory Requirements for Incumbent LEC Broadband Telecommunications Services

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document seeks comment on changes, if any, the Commission should make to its traditional regulatory requirements for incumbent local exchange carriers' (LECs) broadband service. In particular, it asks: What the relevant product and geographic markets should be for broadband services; whether incumbent LECs possess market power in any relevant market; and whether dominant carrier safeguards or other regulatory requirements should govern incumbent LECs provision of broadband service.

DATES: Comments are due March 1, 2002 and Reply Comments are due April 1, 2002.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rulemaking (NPRM) in CC Docket No. 01–337, FCC 01–360, adopted December 12, 2001, and released December 20, 2001. The complete text of this NPRM is available for inspection and copying during normal business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. This document may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail qualexint@aol.com. It is also available on the Commission's Web site at *http://www.fcc.gov.*

Synopsis of the Notice of Proposed Rulemaking (NPRM)

1. In this proceeding, the Commission initiates an examination of appropriate regulatory requirements for incumbent LECs' provision of domestic broadband telecommunications services (broadband services). The NPRM focuses on traditional Title II common carrier regulation, arising largely out of sections 201 and 202 of the Communications Act of 1934, as amended, as applied to incumbent LEC provision of broadband services. In particular, the Commission seeks comment on what regulatory safeguards and carrier obligations, if any, should apply when a carrier that is dominant in the provision of traditional local exchange and exchange access services provides broadband service.

2. The Commission asks for comments on the nature and scope of the market for domestic broadband services. It also seeks comment on the relevant market dynamics—including intermodal competition and the nascent stage of market development for residential broadband services—affecting the provision of domestic broadband services. The Commission requests comment on the appropriate regulatory requirements under Title II of the Act for the provision of broadband services by incumbent LECs given current market conditions.

3. In particular, the Commission asks interested parties to address how the Commission can best balance the goals of encouraging broadband investment and deployment, fostering competition in the provision of broadband services, promoting innovation, and eliminating unnecessary regulation. As part of this proceeding, the Commission also invites comment on the Petition filed by SBC Communications on October 3, 2001, requesting an expedited ruling that it is non-dominant in the provision of broadband services, and asking the Commission to forbear from dominant carrier regulation of those services.

4. Background. The NPRM summarizes the various regulatory requirements the Commission has developed in the past, which involve streamlining regulation of firms in increasingly competitive markets, and competitive safeguards to ensure competition in related markets.

5. Identification of Incumbent LEC-Provided Broadband Services Markets. The Commission asks for comment aimed at defining and analyzing the relevant markets in which incumbent LECs provide these broadband services. Consistent with Commission precedent, our regulatory response should be guided by a full understanding of the existing market dynamics for broadband services. The Commission begins its analysis by asking questions about the relevant product and geographic markets for incumbent LEC-provided broadband services. It then analyzes what, if any, market power the incumbent LECs may possess in the relevant markets for broadband services.

6. Appropriate Regulatory Requirements. Once the Commission has defined the relevant product and geographic markets for broadband services, it can use this information to determine what regulatory requirements, if any, should govern the provision of broadband services. The Commission begins by briefly describing relevant portions of the existing regulatory structure for broadband services provided by incumbent LECs. Then it invites interested parties to propose alternative requirements for these broadband services in light of existing market and technological developments. The Commission encourages interested parties to develop proposals for new or modified regulatory requirements for broadband services.

I. Initial Regulatory Flexibility Analysis

7. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), the Commission has prepared the present Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities by the policies and rules proposed in this NPRM. Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the NPRM provided in section V.B. The Commission will send a copy of the NPRM, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration. In addition, the Notice and IRFA (or summaries thereof) will be published in the **Federal Register**.

II. Need for, and Objectives of, the Proposed Rules

8. In this proceeding, the Commission seeks comment on: (1) The nature and scope of the market for domestic broadband services; (2) the relevant market dynamics affecting the provision of domestic broadband services; and (3) the appropriate regulatory requirements for the provision of broadband services by incumbent LECs, given current market conditions. The basic elements of the existing regulatory requirements for incumbent LEC-provided broadband services were initially developed in an era of circuit-switched, analog voice services, and may no longer serve the public interest. Thus, the Commission asks interested parties to address how it can best balance the goals of

encouraging advanced telecommunications investment and deployment, fostering competition in the provision of broadband services, promoting innovation, and eliminating unnecessary regulation. This proceeding also invites comment on the Petition filed by SBC Communications on October 3, 2001, requesting an expedited ruling that it is non-dominant in the provision of advanced services, and asking the Commission to forebear from dominant carrier regulation of those services.

III. Legal Basis

9. The legal basis for any action that may be taken pursuant to the NPRM is contained in sections 4, 10, 201–202, 214, 303 and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 154, 160, 201–204, 214, 303, and 403, section 706 of the Telecommunications Act of 1996, and sections 1.1, 1.48, 1.411, 1.412, 1.415, 1.419, and 1.1200–1.1216, of the Commission's rules, 47 CFR §§ 1.1, 1.48, 1.411, 1.412, 1.415, 1.419, and 1.1200–1.1216.

IV. Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply

10. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that will be affected by the proposed rules. The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act. A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).

11. The Commission has included small incumbent LECs in this present RFA analysis. As noted above, a ''small business'' under the RFA is one that, *inter alia,* meets the pertinent small business size standard (e.g., a telephone communications business having 1,500 or fewer employees), and ''is not dominant in its field of operation.'' The SBA's Office of Advocacy contends that, for RFA purposes, small incumbent LECs are not dominant in their field of operation because any such dominance is not ''national'' in scope. The Commission has therefore included small incumbent LECs in this RFA analysis, although it emphasizes that this RFA action has no effect on FCC analyses and determinations in other, non-RFA contexts.

12. *Local Exchange Carriers.* Neither the Commission nor the SBA has developed a definition for small local exchange carriers. The closest applicable definitions for this type of carrier under SBA rules is for telephone communications companies other than radiotelephone (wireless) companies. The most reliable source of information regarding the number of LECs nationwide appears To be the data that we collect annually in connection with the Telecommunications Relay Service (TRS). According to our most recent data, there are 1,335 incumbent LECs. Although some of these carriers may not be independently owned and operated, or have more than 1,500 employees, the Commission is unable at this time to estimate with greater precision the number of LECs that would qualify as small business concerns under the SBA's definition. Consequently, the Commission estimates that there are no more than 1,335 small entity incumbent LECs that may be affected by the proposals in the NPRM.

V. Description of Projected Reporting, Recordkeeping and Other Compliance Requirements

13. The Commission expects that any proposal we may adopt pursuant this NPRM will decrease existing reporting, recordkeeping or other compliance requirements. As noted above, dominant carriers are currently subject to a broad range of regulatory requirements that are generally intended to protect consumers from unjust and unreasonable rates, terms, and conditions and unreasonable discrimination in the provision of communications services. The Commission's dominant carrier regulation includes rate regulation and tariff filing requirements, and also requires supporting information, which in some cases includes detailed cost data, to be filed by dominant carriers with their tariff filings. Incumbent LECs are subject to rate level regulation in the provision of their interstate access services. The BOCs and GTE are subject to mandatory price cap regulation, and several other incumbent LECs have entered price caps on an elective basis, while smaller incumbent LECs are regulated under rate-of-return regulation. In addition, in markets where carriers may have the incentive and ability to leverage control over bottleneck facilities to disadvantage competitors in related markets, the Commission has developed various safeguards to neutralize that ability. This NPRM seeks comment on what relevance, if any, these types of regulations have for broadband services provided by incumbent LECs, and asks whether it would be appropriate to streamline the traditional dominant carrier regulations of incumbent LECs' provision of broadband services.

VI. Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

14. The RFA requires an agency to describe any significant, specifically small business, alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.

15. The overall objective of this proceeding is to reduce existing regulatory burdens on incumbent LECs to the extent consistent with the public interest. The NPRM seeks specific proposals as to which existing regulations might be removed or streamlined in their application to broadband services, and asks parties to comment on whether incumbent LECs should be reclassified as non-dominant in the provision of broadband services. The NPRM further asks parties to discuss the extent to which different categories of broadband services face different levels of competition, warranting different regulatory treatment, and to address the extent to which the markets for different broadband services are at different stages in their development and thus should be treated differently for regulatory purposes. It asks what forms of regulation or de-regulation would best spur deployment of alternative technologies and facilities by existing and potential competitors, and seeks comment on whether existing regulation inhibits or stimulates the deployment of broadband services.

VII. Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules

16. None.

Ordering Clauses

17. Accordingly, pursuant to the authority contained in sections 2, 4(i)–

4(j), 201, and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 152, 154(i)–4(j), 201, 303(r), this NPRM is adopted.

18. The Commission's Consumer Information Bureau, Reference Information Center, shall send a copy of this NPRM, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

Federal Communications Commission.

William F. Caton,

Deputy Secretary.

[FR Doc. 02–903 Filed 1–14–02; 8:45 am]

BILLING CODE 6712–02–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 51

[CC Docket No. 01–338, CC Docket No. 96–98, CC Docket No. 98–147, FCC 01–361]

Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers; Implementation of the Local Competition Provisions of the Telecommunications Act of 1996; Deployment of Wireline Services Offering Advanced Telecommunications Capability

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document seeks comment on whether the Commission should adopt a more granular approach to its unbundling analysis under section 251 of the Communications Act of 1934 (the Act) and on the identification of specific unbundling requirements for incumbent local exchange carriers (LECs). In particular, the Commission seeks comment on whether it should consider application of its unbundling requirements on the basis of service, geographic, facility, customer or other factors. In addition, the Commission seeks comment on whether to retain, modify or eliminate its existing definitions and requirements for network elements. The Commission also seeks comment on the role of state commissions and whether to retain or modify the existing triennial review process for examination of its unbundling requirements.

DATES: Comments are due March 18, 2002 and Reply Comments are due April 30, 2002.

FOR FURTHER INFORMATION CONTACT: Jeremy Miller, Attorney Advisor, Policy and Program Planning Division, Common Carrier Bureau, telephone (202) 418–1580.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rulemaking (NPRM) in CC Docket No. 01–338, FCC 01–361, adopted December 12, 2001, and released December 20, 2001. The complete text of this NPRM is available for inspection and copying during normal business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. This document may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone (202) 863–2893, facsimile (202) 863–2898, or via email *qualexint@aol.com.* It is also available on the Commission's website at *http://www.fcc.gov.*

Synopsis of the Notice of Proposed Rulemaking

1. Background. In the Third Local Competition Report and Order, (65 FR 19334, April 11, 2000) the Commission stated that it would reexamine its network element unbundling requirements every three years. In addition, the Commission intends to address a number of outstanding issues concerning the unbundling obligations of incumbent LECs raised by parties in the last several years.

2. The Commission seeks comment on how it should apply section 251(d)(2). In particular, the Commission seeks comment on how to align more directly its unbundling requirements with the multiple stated goals of the Act, such as the directive to encourage the deployment of advanced telecommunications capability. The Commission also seeks comment on whether and how to apply a more granular approach to its existing unbundling analysis by incorporating such refinements as considering for each network element the specific service to be provided, the geographic location, the facility to be unbundled, or the customer to be served. The Commission also seeks comment on what triggers might be adopted to limit or sunset unbundling requirements over time.

3. The Commission seeks comment on its existing rules for network elements. The Commission seeks comment on how to apply a more refined unbundling analysis to its existing unbundling requirements and whether it should retain, modify or eliminate any of these requirements. In addition, the Commission seeks comment on parties' practical experience with the current unbundling requirements. The Commission also seeks comment on a number of general issues including (1) application of the ''just, reasonable and nondiscriminatory'' standard of section 251(c)(3); (2) the relationship between services as governed by sections 251(c)(4) and 251(b)(1) and network elements as governed by sections 251(d)(2) and 251(c)(3); (3) the Commission's existing co-mingling restrictions; (4) the Commission's safe harbor provisions for ''significant local usage;'' (5) the relationship between section 271(c)(2)(B) and sections 251(d)(2) and 251(c)(3); (6) the applicability of sections 201, 202 or other sections of the Act to incumbent LEC wholesale services in the absence of a section 251 unbundling obligation; and (7) clarification of the term ''superior'' as used in the now invalidated rule 47 CFR 51.311(c).

4. State Role. The Commission seeks comment on the role of states in adoption and implementation of unbundling requirements. Among other alternatives, the Commission offers for comment a proposal to adopt national standards for unbundling that would leave specific implementation to the states.

5. Procedural Issues. The Commission seeks comment on whether to retain or modify the existing triennial review process for the examination of its unbundling requirements. The Commission also seeks comment on the use of a sunset period for unbundling obligations and whether it needs to consider transitional mechanisms to address the potential financial impact that would be created by changes to unbundling obligations.

I. Initial Regulatory Flexibility Analysis

6. As required by the Regulatory Flexibility Act (RFA), as amended, the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities by the policies and rules proposed in this document. Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the document provided above. The Commission will send a copy of the document, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA). In addition, this document will be published in the **Federal Register**.

II. Need for, and Objectives of, the Proposed Rules

7. In the Third Local Competition Report and Order, the Commission stated that it would reexamine its network element requirements within a three-year period. In this document, the Commission seeks comment on its unbundling analysis under sections 251(d)(2) and 251(c)(3) and whether it should retain, modify or eliminate any of the current unbundling requirements for network elements. Moreover, the Commission seeks comment on the role of the states and whether, in the future, it should retain a triennial review process.

III. Legal Basis

8. The legal basis for any action that may be taken pursuant to this document is contained in sections 1–4, 157, 201–05, 251, 252, 254, 256, 271, 303(r), and 332 of the Communications Act of 1934, as amended, 47 U.S.C. 151–54, 157, 201–05, 251, 252, 254, 256, 271, 303(r), and 332.

IV. Description and Estimate of the Number of Small Entities To Which the Proposed Rules Will Apply

9. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that will be affected by the proposed rules. The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act. A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).

10. In this section, the Commission further describes and estimates the number of small entity licensees and regulatees that may be affected by rules adopted pursuant to this NPRM. The most reliable source of information regarding the total numbers of certain common carrier and related providers nationwide, as well as the number of commercial wireless entities, appears to be the data that the Commission publishes in its *Trends in Telephone Service* report. In a news release, the Commission indicated that there are 4,822 interstate carriers. These carriers include, *inter alia,* local exchange carriers, wireline carriers and service providers, interexchange carriers, competitive access providers, operator service providers, pay telephone operators, providers of telephone service, providers of telephone exchange service, and resellers.

11. The SBA has defined establishments engaged in providing ''Radiotelephone Communications'' and ''Telephone Communications, Except Radiotelephone'' to be small businesses when they have no more than 1,500 employees. Below, we discuss the total estimated number of telephone companies falling within the two categories, and the number of small businesses in each. The Commission then attempts to further refine those estimates to correspond with the categories of telephone companies that are commonly used under our rules.

12. The Commission has included small incumbent LECs in this present RFA analysis. As noted above, a ''small business'' under the RFA is one that, *inter alia,* meets the pertinent small business size standard (*e.g.,* a telephone communications business having 1,500 or fewer employees), and ''is not dominant in its field of operation.'' The SBA's Office of Advocacy contends that, for RFA purposes, small incumbent LECs are not dominant in their field of operation because any such dominance is not ''national'' in scope. The Commission has therefore included small incumbent LECs in this RFA analysis, although it emphasizes that this RFA action has no effect on Commission analyses and determinations in other, non-RFA contexts.

13. *Total Number of Telephone Companies Affected.* The U.S. Bureau of the Census (''Census Bureau'') reports that, at the end of 1992, there were 3,497 firms engaged in providing telephone services, as defined therein, for at least one year. This number contains a variety of different categories of carriers, including local exchange carriers, interexchange carriers, competitive access providers, cellular carriers, mobile service carriers, operator service providers, pay telephone operators, covered specialized mobile radio providers, and resellers. It seems certain that some of these 3,497 telephone service firms may not qualify as small entities because they are not ''independently owned and operated.'' For example, a PCS provider that is affiliated with an interexchange carrier having more than 1,500 employees would not meet the definition of a small business. It is reasonable to conclude that fewer than 3,497 telephone service firms are small entity telephone service firms that may be affected by the new rules.

14. *Wireline Carriers and Service Providers.* The SBA has developed a definition of small entities for telephone communications companies except radiotelephone (*i.e.,* wireless) companies. The Census Bureau reports that there were 2,321 such telephone companies in operation for at least one year at the end of 1992. According to the SBA's definition, a small business telephone company other than a radiotelephone company is one employing no more than 1,500 persons. All but 26 of the 2,321 non-radiotelephone companies listed by the Census Bureau were reported to have fewer than 1,000 employees. Thus, even if all 26 of those companies had more than 1,500 employees, there would still be 2,295 non-radiotelephone companies that might qualify as small entities. The Commission does not have data specifying the number of these carriers that are not independently owned and operated, and thus are unable at this time to estimate with greater precision the number of wireline carriers and service providers that would qualify as small business concerns under the SBA's definition. Consequently, the Commission estimates 2,295 or fewer small telephone communications companies other than radiotelephone companies are small entities that may be affected by rules adopted pursuant to this NPRM.

15. *Local Exchange Carriers.* Neither the Commission nor the SBA has developed a definition for small providers of local exchange services. The closest applicable definition under the SBA rules is for telephone communications companies other than radiotelephone (*i.e.,* wireless) companies. According to the most recent *Telecommunications Industry Revenue* data, 1,335 incumbent carriers reported that they were engaged in the provision of local exchange services. The Commission does not have data specifying the number of these carriers that are either dominant in their field of operations, are not independently owned and operated, or have more than 1,500 employees, and thus it is unable at this time to estimate with greater precision the number of LECs that would qualify as small business concerns under the SBA's definition. Consequently, the Commission estimates that 1,335 or fewer providers of local exchange service are small entities or small incumbent LECs that may be affected by the new rules.

16. *Interexchange Carriers.* Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to providers of interexchange services (IXCs). The

closest applicable definition under the SBA rules is for telephone communications companies other than radiotelephone (*i.e.,* wireless) companies. According to the most recent *Trends in Telephone Service* data, 204 carriers reported that they were engaged in the provision of interexchange services. We do not have data specifying the number of these carriers that are not independently owned and operated or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of IXCs that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are 204 or fewer small-entity IXCs that may be affected by rules adopted pursuant to this NPRM.

17. *Competitive Access Providers.* Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to competitive access services providers (CAPs). The closest applicable definition under the SBA rules is for telephone communications companies other than radiotelephone (*i.e.*, wireless) companies. According to the most recent *Trends in Telephone Service* data, 349 CAP/CLEC carriers and 60 other LECs reported that they were engaged in the provision of competitive local exchange services. The Commission does not have data specifying the number of these carriers that are not independently owned and operated, or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of CAPs that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are 349 or fewer small-entity CAPs and 60 or fewer other LECs that may be affected by rules adopted pursuant to this NPRM.

18. *Operator Service Providers.* Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to providers of operator services. The closest applicable definition under the SBA rules is for telephone communications companies other than radiotelephone (*i.e.*, wireless) companies. According to the most recent *Trends in Telephone Service* data, 21 carriers reported that they were engaged in the provision of operator services. The Commission does not have data specifying the number of these carriers that are not independently owned and operated or have more than 1,500 employees, and thus it is unable at this time to estimate with greater precision the number of operator service providers that would qualify as small business concerns under the SBA's definition. Consequently, the Commission estimates that there are 21 or fewer small-entity operator service providers that may be affected by rules adopted pursuant to this NPRM.

19. *Pay Telephone Operators.* Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to pay telephone operators. The closest applicable definition under SBA rules is for telephone communications companies other than radiotelephone (*i.e.*, wireless) companies. According to the most recent *Trends in Telephone Service* data, 758 carriers reported that they were engaged in the provision of pay telephone services. The Commission does not have data specifying the number of these carriers that are not independently owned and operated or have more than 1,500 employees, and thus it is unable at this time to estimate with greater precision the number of pay telephone operators that would qualify as small business concerns under the SBA's definition. Consequently, the Commission estimates that there are 758 or fewer small-entity pay telephone operators that may be affected by rules adopted pursuant to this NPRM.

20. *Resellers (including debit card providers).* Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to resellers. The closest applicable SBA definition for a reseller is a telephone communications company other than radiotelephone (*i.e.*, wireless) companies. According to the most recent *Trends in Telephone Service* data, 454 toll and 87 local entities reported that they were engaged in the resale of telephone service. The Commission does not have data specifying the number of these carriers that are not independently owned and operated or have more than 1,500 employees, and thus it is unable at this time to estimate with greater precision the number of resellers that would qualify as small business concerns under the SBA's definition. Consequently, the Commission estimates that there are 454 or fewer small-toll-entity resellers and 87 or fewer small-local-entity resellers that may be affected by rules adopted pursuant to this NPRM.

21. *Toll-Free 800 and 800-Like Service Subscribers.* Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to 800 and 800-like service (''toll free'') subscribers. The most reliable source of information regarding the number of these service subscribers appears to be data the Commission collects on the 800, 888, and 877 numbers in use. According to the Commission's most recent data, at the end of January 1999, the number of 800 numbers assigned was 7,692,955; the number of 888 numbers that had been assigned was 7,706,393; and the number of 877 numbers assigned was 1,946,538. The Commission does not have data specifying the number of these subscribers that are not independently owned and operated or have more than 1,500 employees, and thus it is unable at this time to estimate with greater precision the number of toll free subscribers that would qualify as small business concerns under the SBA's definition. Consequently, the Commission estimates that there are 7,692,955 or fewer small-entity 800 subscribers, 7,706,393 or fewer small-entity 888 subscribers, and 1,946,538 or fewer small-entity 877 subscribers that may be affected by rules adopted pursuant to this NPRM.

22. *Cellular Licensees.* Neither the Commission nor the SBA has developed a definition of small entities applicable to cellular licensees. Therefore, the applicable definition of small entity is the definition under the SBA rules applicable to radiotelephone (*i.e.*, wireless) companies. This definition provides that a small entity is a radiotelephone company employing no more than 1,500 persons. According to the Bureau of the Census, only 12 radiotelephone firms out of a total of 1,178 such firms that operated during 1992 had 1,000 or more employees. Therefore, even if all 12 of these firms were cellular telephone companies, nearly all cellular carriers were small businesses under the SBA's definition. In addition, the Commission notes that there are 1,758 cellular licenses; however, it does not know the number of cellular licensees, since a cellular licensee may own several licenses. The most reliable source of information regarding the number of cellular service providers nationwide appears to be data the Commission publishes annually in its *Telecommunications Industry Revenue* report, regarding the Telecommunications Relay Service (TRS). The report places cellular licensees and Personal Communications Service (PCS) licensees in one group. According to recent data, 808 carriers reported that they were engaged in the provision of either cellular or PCS services. The Commission does not have data specifying the number of these carriers that are not independently owned and operated or have more than

1,500 employees, and thus it is unable at this time to estimate with greater precision the number of cellular service carriers that would qualify as small business concerns under the SBA's definition. Consequently, the Commission estimates that there are no more than 808 small cellular service carriers.

23. *220 MHz Radio Service—Phase I Licensees.* The 220 MHz service has both Phase I and Phase II licenses. Phase I licensing was conducted by lotteries in 1992 and 1993. There are approximately 1,515 such non-nationwide licensees and 4 nationwide licensees currently authorized to operate in the 220 MHz band. The Commission has not developed a definition of small entities specifically applicable to such incumbent 220 MHz Phase I licensees. To estimate the number of such licensees that are small businesses, the Commission applies the definition under the SBA rules applicable to radiotelephone communications companies. This definition provides that a small entity is a radiotelephone company employing no more than 1,500 persons. According to a 1995 estimate by the Bureau of the Census, only 12 radiotelephone firms out of a total of 1,178 such firms that operated during 1992 had 1,000 or more employees. Therefore, assuming that this general ratio has not changed significantly in recent years in the context of Phase I 220 MHz licensees, we estimate that nearly all such licensees are small businesses under the SBA's definition.

24. *220 MHz Radio Service—Phase II Licensees.* The Phase II 220 MHz service is a new service, and is subject to spectrum auctions. In the *220 MHz Third Report and Order* (63 FR 2976, January 20, 1998), the Commission adopted criteria for defining small businesses and very small businesses for purposes of determining their eligibility for special provisions such as bidding credits and installment payments. The Commission has defined a small business as an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $15 million for the preceding three years. Additionally, a very small business is defined as an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than $3 million for the preceding three years. The SBA has approved these definitions. An auction of Phase II licenses commenced on September 15, 1998, and closed on October 22, 1998. Nine hundred and eight (908) licenses were auctioned in three different-sized geographic areas: 3 nationwide licenses, 30 Regional Economic Area Group (REAG) licenses, and 875 Economic Area (EA) licenses. Of the 908 licenses auctioned, 693 were sold. Companies claiming small business status won: 1 of the Nationwide licenses, 67% of the Regional licenses, 47% of the REAG licenses and 54% of the EA licenses. As of January 22, 1999, the Commission announced that it was prepared to grant 654 of the Phase II licenses won at auction. A second 220 MHz Radio Service auction began on June 8, 1999 and closed on June 30, 1999. This auction offered 225 licenses in 87 EAs and 4 REAGs. (A total of 9 REAG licenses and 216 EA licenses. No nationwide licenses were available in this auction.) Of the 215 EA licenses won, 153 EA licenses (71%) were won by bidders claiming small business status. Of the 7 REAG licenses won, 5 REAG licenses (71%) were won by bidders claiming small business status.

25. *Private and Common Carrier Paging.* The Commission has adopted a two-tier definition of small businesses in the context of auctioning licenses in the Common Carrier Paging and exclusive Private Carrier Paging services. A small business will be defined as either: (1) An entity that, together with its affiliates and controlling principals, has average gross revenues for the three preceding years of not more than $3 million; or (2) an entity that, together with affiliates and controlling principals, has average gross revenues for the three preceding calendar years of not more than $15 million. Because the SBA has not yet approved this definition for paging services, we will utilize the SBA's definition applicable to radiotelephone companies, *i.e.*, an entity employing no more than 1,500 persons. At present, there are approximately 24,000 Private Paging licenses and 74,000 Common Carrier Paging licenses. According to recent data, 172 carriers reported that they were engaged in the provision of either paging or ''other mobile'' services, which are placed together in the data. The Commission does not have data specifying the number of these carriers that are not independently owned and operated or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of paging carriers that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are no more than 172 small paging carriers. We estimate that the majority of private and common carrier paging providers would qualify as small entities under the SBA definition.

26. *Mobile Service Carriers.* Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to mobile service carriers, such as paging companies. As noted above in the section concerning paging service carriers, the closest applicable definition under the SBA rules is that for radiotelephone (*i.e.*, wireless) companies, and recent data show that 172 carriers reported that they were engaged in the provision of either paging or ''other mobile'' services. Consequently, the Commission estimates that there are no more than 172 small mobile service carriers.

27. *Broadband Personal Communications Service (PCS).* The broadband PCS spectrum is divided into six frequency blocks designated A through F, and the Commission has held auctions for each block. The Commission defined ''small entity'' for blocks C and F as an entity that has average gross revenues of less than $40 million in the three previous calendar years. For block F, an additional classification for ''very small business'' was added and is defined as an entity that, together with affiliates, has average gross revenues of not more than $15 million for the preceding three calendar years. These regulations defining ''small entity'' in the context of broadband PCS auctions have been approved by the SBA. No small businesses within the SBA-approved definition bid successfully for licenses in blocks A and B. There were 90 winning bidders that qualified as small entities in the C block auctions. A total of 93 small and very small business bidders won approximately 40% of the 1,479 licenses for blocks D, E and F. On March 23, 1999, the Commission held another auction (Auction No. 22) of C, D, E and F block licenses for PCS spectrum returned to the Commission by previous license holders. In that auction, 48 bidders claiming small business, very small business or entrepreneurial status won 272 of the 341 licenses (80%) offered. Based on this information, we conclude that the number of small broadband PCS licensees includes the 90 winning C block bidders, the 93 qualifying bidders in the D, E and F blocks, and the 48 winning bidders from Auction No. 22, for a total of 231 small-entity PCS providers as defined by the SBA and the Commission's auction rules.

28. *Narrowband PCS.* The Commission has auctioned nationwide and regional licenses for narrowband PCS. There are 11 nationwide and 30 regional licensees for narrowband PCS. The Commission does not have sufficient information to determine

whether any of these licensees are small businesses within the SBA-approved definition for radiotelephone companies. At present, there have been no auctions held for the major trading area (MTA) and basic trading area (BTA) narrowband PCS licenses. The Commission anticipates a total of 561 MTA licenses and 2,958 BTA licenses will be awarded by auction. Such auctions, however, have not yet been scheduled. Given that nearly all radiotelephone companies have no more than 1,500 employees, and no reliable estimate of the number of prospective MTA and BTA narrowband licensees can be made, we assume, for our purposes here, that all of the licenses will be awarded to small entities, as that term is defined by the SBA.

29. *Rural Radiotelephone Service.* The Commission has not adopted a definition of small entity specific to the Rural Radiotelephone Service. A significant subset of the Rural Radiotelephone Service is the Basic Exchange Telephone Radio Systems (BETRS). The Commission will use the SBA's definition applicable to radiotelephone companies, *i.e.*, an entity employing no more than 1,500 persons. There are approximately 1,000 licensees in the Rural Radiotelephone Service, and we estimate that almost all of them qualify as small entities under the SBA's definition.

30. *Air-Ground Radiotelephone Service.* The Commission has not adopted a definition of small entity specific to the Air-Ground Radiotelephone Service. Accordingly, we will use the SBA's definition applicable to radiotelephone companies, *i.e.*, an entity employing no more than 1,500 persons. There are approximately 100 licensees in the Air-Ground Radiotelephone Service, and the Commission estimates that almost all of them qualify as small under the SBA definition.

31. *Specialized Mobile Radio (SMR).* The Commission awards bidding credits in auctions for geographic area 800 MHz and 900 MHz SMR licenses to two tiers of firms: (1) ''Small entities,'' those with revenues of no more than $15 million in each of the three previous calendar years; and (2) ''very small entities,'' those with revenues of no more than $3 million in each of the three previous calendar years. The regulations defining ''small entity'' and ''very small entity'' in the context of 800 MHz SMR (upper 10 MHz and lower 230 channels) and 900 MHz SMR have been approved by the SBA. The Commission does not know how many firms provide 800 MHz or 900 MHz geographic area SMR service pursuant to extended implementation authorizations, nor how many of these providers have annual revenues of no more than $15 million. One firm has over $15 million in revenues. The Commission assumes, for its purposes here, that all of the remaining existing extended implementation authorizations are held by small entities, as that term is defined by the SBA. The Commission has held auctions for geographic area licenses in the 800 MHz (upper 10 MHz) and 900 MHz SMR bands. There were 60 winning bidders that qualified as small and very small entities in the 900 MHz auction. Of the 1,020 licenses won in the 900 MHz auction, 263 licenses were won by bidders qualifying as small and very small entities. In the 800 MHz SMR auction, 38 of the 524 licenses won were won by small and very small entities.

32. *Marine Coast Service.* Between December 3, 1998 and December 14, 1998, the Commission held an auction of 42 VHF Public Coast licenses in the 157.1875–157.4500 MHz (ship transmit) and 161.775–162.0125 MHz (coast transmit) bands. For purposes of this auction, and for future public coast auctions, the Commission defines a ''small'' business as an entity that, together with controlling interests and affiliates, has average gross revenues for the preceding three years not to exceed $15 million dollars. A ''very small'' business is one that, together with controlling interests and affiliates, has average gross revenues for the preceding three years not to exceed $3 million dollars. There are approximately 10,672 licensees in the Marine Coast Service, and the Commission estimates that almost all of them qualify as ''small'' businesses under the Commission's definition, which has been approved by the SBA.

33. *Fixed Microwave Services.* Microwave services include common carrier, private-operational fixed, and broadcast auxiliary radio services. At present, there are approximately 22,015 common carrier fixed licensees and 61,670 private operational-fixed licensees and broadcast auxiliary radio licensees in the microwave services. The Commission has not yet defined a small business with respect to microwave services. For the Commission's purposes here, it will utilize the SBA's definition applicable to radiotelephone companies'*i.e.*, an entity with no more than 1,500 persons. Under this definition, the Commission estimates that all of the Fixed Microwave licensees (excluding broadcast auxiliary licensees) would qualify as small entities.

34. *Local Multipoint Distribution Service.* The Commission held two auctions for licenses in the Local Multipoint Distribution Services (LMDS) (Auction No. 17 and Auction No. 23). For both of these auctions, the Commission defined a small business as an entity, together with its affiliates and controlling principals, having average gross revenues for the three preceding years of not more than $40 million. A very small business was defined as an entity, together with affiliates and controlling principals, having average gross revenues for the three preceding years of not more than $15 million. Of the 144 winning bidders in Auction Nos. 17 and 23, 125 bidders (87%) were small or very small businesses.

35. *24 GHz—Incumbent 24 GHz Licensees.* The rules that the Commission may later adopt could affect incumbent licensees who were relocated to the 24 GHz band from the 18 GHz band, and applicants who wish to provide services in the 24 GHz band. The Commission has not developed a definition of small entities applicable to licensees in the 24 GHz band. Therefore, the applicable definition of small entity is the definition under the SBA rules for the radiotelephone industry, providing that a small entity is a radiotelephone company employing fewer than 1,500 persons. The 1992 Census of Transportation, Communications and Utilities, conducted by the Bureau of the Census, which is the most recent information available, shows that only 12 radiotelephone firms out of a total of 1,178 such firms that operated during 1992 had 1,000 or more employees. This information notwithstanding, the Commission believes that there are only two licensees in the 24 GHz band that were relocated from the 18 GHz band, Teligent and TRW, Inc. Both Teligent and TRW, Inc. appear to have more than 1,500 employees. Therefore, it appears that no incumbent licensee in the 24 GHz band is a small business entity.

36. *Future 24 GHz Licensees.* The rules that the Commission may later adopt could also affect potential new licensees on the 24 GHz band. Pursuant to 47 CFR 24.720(b), the Commission has defined ''small business'' for Blocks C and F broadband PCS licensees as firms that had average gross revenues of less than $40 million in the three previous calendar years. This regulation defining ''small business'' in the context of broadband PCS auctions has been approved by the SBA. With respect to new applicants in the 24 GHz band, we shall use this definition of ''small business'' and apply it to the 24 GHz band under the name ''entrepreneur.'' With regard to ''small business,'' we shall adopt the definition of ''very small business'' used for 39 GHz licenses and

PCS C and F block licenses: businesses with average annual gross revenues for the three preceding years not in excess of $15 million. Finally, ''very small business'' in the 24 GHz band shall be defined as an entity with average gross revenues not to exceed $3 million for the preceding three years. The Commission will not know how many licensees will be small or very small businesses until the auction, if required, is held. Even after that, the Commission will not know how many licensees will partition their license areas or disaggregate their spectrum blocks, if partitioning and disaggregation are allowed.

37. *39 GHz*. The Commission held an auction (Auction No. 30) for fixed point-to-point microwave licenses in the 38.6 to 40.0 GHz band (39 GHz Band). For this auction, the Commission defined a small business as an entity, together with affiliates and controlling interests, having average gross revenues for the three preceding years of not more than $40 million. A very small business was defined as an entity, together with affiliates and controlling principals, having average gross revenues for the three preceding years of not more than $15 million. The SBA has approved these definitions. Of the 29 winning bidders in Auction No. 30, 18 bidders (62%) were small business participants.

38. *Multipoint Distribution Service (MDS)*. This service involves a variety of transmitters, which are used to relay data and programming to the home or office, similar to that provided by cable television systems. In connection with the 1996 MDS auction, the Commission defined small businesses as entities that had annual average gross revenues for the three preceding years not in excess of $40 million. This definition of a small entity in the context of MDS auctions has been approved by the SBA. These stations were licensed prior to implementation of Section 309(j) of the Communications Act of 1934, as amended. Licenses for new MDS facilities are now awarded to auction winners in Basic Trading Areas (BTAs) and BTA-like areas. The MDS auctions resulted in 67 successful bidders obtaining licensing opportunities for 493 BTAs. Of the 67 auction winners, 61 meet the definition of a small business.

39. MDS is also heavily encumbered with licensees of stations authorized prior to the MDS auction. SBA has developed a definition of small entities for pay television services, which includes all such companies generating $11 million or less in annual receipts. This definition includes MDS systems, and thus applies to incumbent MDS licensees and wireless cable operators which may not have participated or been successful in the MDS auction. Information available to us indicates that there are 832 of these licensees and operators that do not generate revenue in excess of $11 million annually. Therefore, for purposes of this analysis, the Commission finds there are approximately 892 small MDS providers as defined by the SBA and the Commission's auction rules.

40. *Offshore Radiotelephone Service*. This service operates on several UHF TV broadcast channels that are not used for TV broadcasting in the coastal area of the states bordering the Gulf of Mexico. At present, there are approximately 55 licensees in this service. The Commission is unable at this time to estimate the number of licensees that would qualify as small under the SBA's definition for radiotelephone communications.

41. *Wireless Communications Services (WCS)*. This service can be used for fixed, mobile, radio-location and digital audio broadcasting satellite uses. The Commission defined ''small business'' for the WCS auction as an entity with average gross revenues of $40 million for each of the three preceding years, and a ''very small business'' as an entity with average gross revenues of $15 million for each of the three preceding years. The Commission auctioned geographic area licenses in the WCS service. In the auction, there were seven winning bidders that qualified as very small business entities, and one winning bidder that qualified as a small business entity. We conclude that the number of geographic area WCS licensees affected includes these eight entities.

42. *General Wireless Communication Service (GWCS)*. This service was created by the Commission on July 31, 1995 by transferring 25 MHz of spectrum in the 4660–4685 MHz band from the federal government to private sector use. The Commission sought and obtained SBA approval of a refined definition of ''small business'' for GWCS in this band. According to this definition, a small business is any entity, together with its affiliates and entities holding controlling interests in the entity, that has average annual gross revenues over the three preceding years that are not more than $40 million. By letter dated March 30, 1999, NTIA reclaimed the spectrum allocated to GWCS and identified alternative spectrum at 4940–4990 MHz. On February 23, 2000, the Commission released its *Notice of Proposed Rulemaking* (65 FR 14230) in WT Docket No. 00–32 proposing to allocate and establish licensing and service rules for the 4.9 GHz band.

V. Description of Projected Reporting, Recordkeeping and Other Compliance Requirements

43. In this NPRM, we seek comment on crafting unbundling rules that promote the goals of the Act and on a more granular approach to unbundling. In addition, the Commission asks for comment on how to involve the experience and expertise of state commissions. As a result, our unbundling regulations may require incumbent LECs to unbundle their networks by facility, service, or geography, rather than on a national basis for an entire element as they currently do. However, to identify which factors advancing the goals of the Act are relevant to an unbundling analysis, the Commission asks about the weight to assign to reducing regulatory obligations as alternatives to the incumbent's network becomes available, and whether the unbundling obligations are administratively practical.

VI. Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

44. The RFA requires an agency to describe any significant small business, alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.

45. In this NPRM, we seek comment on refining our unbundling rules by examining whether we should consider the type of customer that a requesting carrier seeks to serve. In particular, the Commission asks whether the availability of UNEs should differ on the basis of whether the requesting carrier serves business or residential customers, and whether to have different rules for facilities serving larger business customers. The Commission asks questions in considerable depth with regard to the carve-out for the residential market for local switching, and seek comment on the practical experience of the carve-out has worked in practice and whether a substantially

revised approach is warranted. The size of the entity as a subscriber to telecommunications services is therefore an important component of our unbundling analysis.

46. In addition to examining the economic impact on customers, the Commission also examines the economic impact on carriers. It especially seeks comment from small entities on these issues. As the Commission considers undertaking a more granular approach, it recognizes that the resulting rules could be more administratively burdensome on carriers because it would be more difficult to keep track of where and under what circumstances certain elements must be unbundled. Accordingly, the Commission asks for comment about balancing any administrative burden against the benefits of a refined approach to unbundling. Particularly with regard to definitions of different network elements, the Commission asks whether there are less burdensome alternatives available to achieve the goals of the Act.

VII. Federal Rules that May Duplicate, Overlap, or Conflict With the Proposed Rules

47. None.

Ordering Clauses

48. Pursuant to the authority contained in sections 1–4, 157, 201–05, 251, 252, 254, 256, 271, 303(r), and 332 of the Communications Act of 1934, as amended, 47 U.S.C. 151–54, 157, 201–05, 251, 252, 254, 256, 271, 303(r), and 332, this NPRM *Is adopted*.

49. The Commission's Consumer Information Bureau, Reference Information Center, *Shall send* a copy of this document, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

Federal Communications Commission.

William F. Caton,

Deputy Secretary.

[FR Doc. 02–902 Filed 1–14–02; 8:45 am]

BILLING CODE 6712–02–P

Proposed Rules

Federal Register
Vol. 67, No. 10
Tuesday, January 15, 2002

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

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Parts 101 and 116

[Docket No. 00–071–1]

Viruses, Serums, Toxins, and Analogous Products; Records and Reports

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to amend the Virus-Serum-Toxin Act regulations concerning records and reports. First, we are proposing to require veterinary biologics licensees and permittees to record and submit reports to the Animal and Plant Health Inspection Service concerning adverse events associated with the use of biological products that they produce or distribute. Second, we are proposing to require veterinary biologics licensees and permittees to report to the Animal and Plant Health Inspection Service the number of doses of each licensed product that they distribute. Third, we are proposing to provide definitions for *adverse event* and *adverse event report*. These actions would assist the Animal and Plant Health Inspection Service in providing complete and accurate information to consumers regarding adverse reactions or other problems associated with the use of licensed biological products.

DATES: We will consider all comments we receive that are postmarked, delivered, or e-mailed by March 18, 2002.

ADDRESSES: You may submit comments by postal mail/commercial delivery or by e-mail. If you use postal mail/commercial delivery, please send four copies of your comment (an original and three copies) to: Docket No. 00–071–1, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 00–071–1. If you use e-mail, address your comment to *regulations@aphis.usda.gov.* Your comment must be contained in the body of your message; do not send attached files. Please include your name and address in your message and ''Docket No. 00–071–1'' on the subject line.

You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS dockets are available on the Internet at *http://www.aphis.usda.gov/ppd/rad/webrepor.html.*

FOR FURTHER INFORMATION CONTACT: Dr. Albert P. Morgan, Chief of Operational Support, Center for Veterinary Biologics, Licensing and Policy Development, VS, APHIS, 4700 River Road Unit 148, Riverdale, MD, 20737–1231; (301) 734–8245.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR part 116 contain requirements for maintaining detailed records of information necessary to give a complete accounting of all the activities within a veterinary biologics establishment.

In this document, we are proposing amendments to that part. First, we are proposing to require veterinary biologics licensees and permittees to record and submit reports to the Animal and Plant Health Inspection Service (APHIS) concerning adverse events associated with the use of biological products that they produce or distribute. Second, we are proposing to require veterinary biologics licensees and permittees to report to APHIS the number of doses of each licensed product that they distribute. Third, we are proposing definitions for *adverse event* and *adverse event report.*

Definitions

The regulations at 9 CFR part 101 contain definitions of terms used in the regulations concerning veterinary biologics. The proposed changes to part 116 of the regulations would make it necessary for us to add definitions in § 101.2 for two terms used in the proposed regulations: *Adverse event* and *adverse event report.* We would define *adverse event* as ''any undesirable and unintended occurrence after the use of a biological product, whether or not the cause of the event is known. For products administered to animals, adverse events are those involving the health of the treated animal, including the apparent failure to protect against disease. For products intended to diagnose disease, adverse events refer to anything that hinders discovery of the correct diagnosis.'' We would define *adverse event report* as ''a communication concerning the occurrence of one or more adverse events which identifies the product(s), animal(s), and person making the report.'' The receipt of an adverse event report does not necessarily imply that the product caused the adverse event.

Adverse Event Records and Reports

Currently, § 116.1(a) requires each licensee, permittee, and foreign manufacturer of biological products imported into the United States to maintain, at the licensed or foreign establishment in which the products are prepared, detailed records of information necessary to give a complete accounting of all the activities within each establishment. Section 116.1, paragraph (a), further states that such records must include, but are not limited to, the items listed in part 116, which are inventory and disposition records (§ 116.2), label records (§ 116.3), sterilization and pasteurization records (§ 116.4), product development and preparation and market suspensions and recalls (§ 116.5), animal records (§ 116.6), and test records (§ 116.7).

In addition, §§ 116.1(b) and 116.5(b) state that if at any time there are indications that raise questions regarding the purity, safety, potency, or efficacy of a product, or if it appears that there may be a problem regarding the preparation, testing, or distribution of a product, the licensee, permittee, or foreign manufacturer must immediately notify APHIS concerning the circumstances and the action taken, if any.

However, the regulations in § 116.1(a) and (b) and § 116.5(b) do not explicitly require licensees and permittees to maintain records of reports of adverse events associated with the use of veterinary biologics, nor do the regulations provide specific guidance in determining when an adverse event report may raise questions regarding the purity, safety, potency, efficacy, preparation, testing, or distribution (PSPEPTD) of such product. Consequently, each veterinary biologics manufacturer makes independent determination concerning (1) whether an adverse event report raises PSPEPTD questions and (2) when and in what manner such report of the adverse event will be provided to APHIS.

To limit the harm to animals posed by unsatisfactory veterinary biologics, APHIS currently must rely primarily on adverse event reports provided by the manufacturer. Unexpected or unexplained adverse events associated with the use of veterinary biologics in animals are reported to the veterinary biologics manufacturer either by the consumer or in the form of a report from a technical service veterinarian employed by the manufacturer to monitor the performance of their products in the field.

Currently, licensees and permittees are using nonstandardized methods to record and submit reports regarding adverse events to APHIS. In addition, adverse event reports that may signal problems concerning the use of veterinary biologics products are not all being submitted to APHIS in a timely manner. Unless we have complete and timely reports, we may not be able to take expeditious action to limit the harm in animals caused by veterinary biological products that may be harmful or dangerous to animals. Therefore, we are proposing to add to the regulations a new § 116.9 for adverse event records. New § 116.9 would require licensees and permittees to record reports of all adverse events that they receive concerning the use of biological products that they produce or distribute and submit a summary of such reports to APHIS on an annual basis. Licensees and permittees would be required to record information concerning adverse events that includes: (1) The date of the report; (2) identification of the person initiating the report; (3) the true name of the product involved and product trade name; (4) the product serial number, if available; (5) a description of the adverse event; (6) the animal(s) involved; and (7) any other pertinent identifying information regarding the product.

In addition, in new § 116.9, we would propose that licensees and permittees prepare summaries of the adverse event report records for submission to APHIS. Beginning with the date the product is licensed, such summaries would have to include intervals of 6 months during the first year and intervals of 1 year thereafter. We would also require summaries to be received by APHIS within 30 days after the end of the interval.

We would require records for each 6-month interval after the product is licensed because little is known about newly licensed products, except for observations made during the immunogenicity studies, safety tests, and field trials for these products. We believe that more frequent reporting requirements for newly licensed products would ensure that we have adequate data to support a decision to take regulatory action against products that are associated with an unusual number of adverse event reports.

We are also proposing to revise §§ 116.1(a)(3) and 116.8 of the regulations to allow adverse event records to be excluded from the list of records to be completed before serials may be marketed because adverse event records cannot be completed before a product has been distributed and used in animals.

The proposed amendments would standardize the adverse event reporting system and the information that should be included when making records of adverse event reports.

Number of Doses Distributed

In order to provide an objective measure of when it may be necessary to take action against a veterinary biologic to limit the harm in animals, and as a component of the adverse event reporting system, we would use the number of doses of product distributed instead of the number of doses of product administered to animals to calculate the incidence of adverse events associated with a particular product. Typically, the number of doses of product administered to animals would be used to calculate incidence. Because we must take timely action and may not know precisely how many animals have been treated with a product, we believe that the number of marketed doses of a product should be representative of the number of doses that were administered to animals.

Currently, the regulations in part 116 do not require veterinary biologics manufacturers to report to APHIS the number of doses of each licensed product that are distributed. Therefore, we are proposing to add this requirement in new § 116.5(c). In addition, we are proposing that the records include the number of doses for each 6-month interval after the product is licensed during the first year and each yearly interval thereafter. We would also require the reports to be received within 30 days after the end of the interval.

We would require records for each 6-month interval after the product is licensed based on the reasons provided previously in this document under ''Adverse Event Reports.''

Miscellaneous

We are also proposing to make minor, nonsubstantive, editorial changes to the regulations, as set out in the rule portion of this document, for clarity.

Executive Order 12866 and Regulatory Flexibility Act

This proposed rule has been reviewed under Executive Order 12866. The rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

We are proposing to amend the Virus-Serum-Toxin Act regulations for records and reports. First, we are proposing to require veterinary biologics licensees and permittees to record and submit reports to APHIS concerning adverse events associated with the use of biological products that they produce or distribute. Second, we are proposing to require veterinary biologics licensees and permittees to report to APHIS the number of doses of each licensed product that they distribute. Third, we are proposing to provide definitions for *adverse event* and *adverse event report.* These actions would assist us in providing complete and accurate information to consumers regarding adverse reactions or other problems associated with the use of licensed biological products.

This proposed rule would affect most, if not all, licensed manufacturers of veterinary biologics. Currently, there are approximately 150 veterinary biologics manufacturers, including permittees. According to the standards of the Small Business Administration, most veterinary biologics establishments would be classified as small entities.

We believe that this proposed rule would not have a significant effect on small entities because most veterinary biologics manufacturers currently maintain recordkeeping systems for adverse event reports, and this proposed rule does not restrict manufacturers from using their discretion to choose the most appropriate recordkeeping system

for maintaining records of these reports. However, one of the purposes of this proposed rule is to provide veterinary biologics manufacturers with criteria that should be included in the reports so that the reports are standardized from manufacturer to manufacturer and submitted to APHIS in a timely manner.

In addition, the proposed requirement that veterinary biologics manufacturers report the number of doses of each licensed or permitted product that has been distributed would not have a significant effect on small entities. Veterinary biologics manufacturers currently maintain records of the number of doses of a product produced and distributed. This proposed rule would only require veterinary biologics manufacturers to report the number of doses to APHIS as required by the proposed regulations.

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

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 proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have retroactive effect. This rule would not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule. The Act does not provide administrative procedures which must be exhausted prior to a judicial challenge to the provisions of this rule.

Paperwork Reduction Act

In accordance with section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB). Please send written comments to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for APHIS, Washington, DC 20503. Please state that your comments refer to Docket No. 00–071–1. Please send a copy of your comments to: (1) Docket No. 00–071–1, Regulatory Analysis and Development, PPD, APHIS, Suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737–1238, and (2) Clearance Officer, OCIO, USDA, room 404–W, 14th Street and Independence Avenue SW., Washington, DC 20250. A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication of this proposed rule.

This proposed rule would require manufacturers of veterinary biological products to maintain records of adverse event reports that they receive concerning the use of veterinary biological products that they produce or distribute for 2 years or longer and submit a summary of such reports to APHIS. The reports would have to be submitted at 6-month intervals during the first year the product is licensed and at 1-year intervals thereafter. In addition, licensees and permittees would have to report to APHIS the number of doses of each licensed product distributed every 6 months during the first year the product is licensed or permitted and at 1-year intervals thereafter. These information collection and recordkeeping requirements would allow us to monitor and provide the appropriate level of regulatory oversight.

We are soliciting comments from the public (as well as affected agencies) concerning this proposed amendment to the records and reports requirements in the regulations. We need this outside input to help us:

(1) Evaluate whether the proposed information collection in the form of records and reports is necessary for the proper performance of our agency's functions, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the proposed information collection, 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 information collection on those who are to respond (such as through the use of appropriate automated, electronic, mechanical or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses).

Estimate of burden: Public reporting burden for this collection of information is estimated to average 1 hour per response.

Respondents: Veterinary biologics licensees and permittees.

Estimated annual number of respondents: 125.

Estimated annual number of responses per respondent: 8.

Estimated annual number of responses: 1,000.

Estimated total annual burden on respondents: 1,000 hours.

Copies of this information collection can be obtained from: Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 734–7477.

List of Subjects

9 CFR Part 101

Animal biologics.

9 CFR Part 116

Animal biologics, Reporting and recordkeeping requirements.

Accordingly, we propose to amend 9 CFR parts 101 and 116 as follows:

PART 101—DEFINITIONS

1. The authority citation for part 101 would be revised to read as follows:

Authority: 21 U.S.C. 151–159; 7 CFR 2.22, 2.80, and 371.4.

2. In § 101.2, definitions of *adverse event* and *adverse event report* would be added in alphabetical order to read as follows:

§ 101.2 Administrative terminology.

* * * * *

Adverse event. Any undesirable and unintended occurrence after the use of a biological product, whether or not the cause of the event is known. For products administered to animals, adverse events are those involving the health of the treated animal, including the apparent failure to protect against disease. For products intended to diagnose disease, adverse events refer to anything that hinders discovery of the correct diagnosis.

Adverse event report. A communication concerning the occurrence of one or more adverse events which identifies the product(s), animal(s), and person making the report.

* * * * *

PART 116—RECORDS AND REPORTS

3. The authority citation for part 116 would be revised to read as follows:

Authority: 21 U.S.C. 151–159; 7 CFR 2.22, 2.80, and 371.4.

4. In § 116.1, paragraph (a)(3) would be revised to read as follows:

§ 116.1 Applicability and general considerations.

(a) * * *

(3) Records (other than disposition records and adverse event records) required by this part must be completed by the licensee, permittee, or foreign manufacturer, as the case may be, before any portion of a serial of any product

may be marketed in the United States or exported.

* * * * *

5. Section 116.5 would be amended by adding a new paragraph (c) to read as follows:

§ 116.5 Reports.

* * * * *

(c) The licensee and/or permittee must report to APHIS the number of doses of each licensed or permitted product that has been distributed. Reports must include the number of doses for each 6 month interval during the first year the product is licensed and at yearly intervals thereafter. Reports must be received by APHIS within 30 days after the end of the interval.

* * * * *

6. Section 116.8 would be revised to read as follows:

§ 116.8 Completion and retention of records.

All records (other than disposition records and adverse event records) required by this part must be completed by the licensee, permittee, or foreign manufacturer before any portion of a serial of any product may be marketed in the United States or exported. All records must be retained at the place of business for the licensee, permittee, or foreign manufacturer for a period of 2 years after the expiration date of a product or longer as may be required by the Administrator.

(Approved by the Office of Management and Budget under control number 0579–0013)

7. A new § 116.9 would be added to read as follows:

§ 116.9 Adverse event records.

(a) A detailed record must be maintained for every adverse event report the licensee or permittee receives for any biological product it produces or distributes. Each record must include:

(1) The date of the report;

(2) The identification of the person initiating the report;

(3) The true name of the product involved and product trade name;

(4) The serial number(s) of the product(s), if available;

(5) A description of the adverse event;

(6) The animal(s) involved; and

(7) Any other pertinent identifying information regarding the product.

(b) For each product, summaries of adverse event report records must be compiled and submitted to APHIS. Beginning with the date the product is licensed, such summary compilations must cover intervals of 6 months during the first year the product is licensed and yearly intervals thereafter. Summaries must be received within 30 days after the end of the interval.

Done in Washington, DC, this 10th day of January, 2002.

W. Ron DeHaven,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 02–938 Filed 1–14–02; 8:45 am]

BILLING CODE 3410–34–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NE–49–AD]

RIN 2120–AA64

Airworthiness Directives; Pratt & Whitney PW4000 Series Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The Federal Aviation Administration (FAA) proposes to supersede an existing airworthiness directive (AD), that is applicable to Pratt & Whitney PW4000 series turbofan engines. That AD currently requires operators to perform initial and repetitive inspections for cracking of high pressure compressor (HPC) front drum rotors based on cycle usage. That AD also requires the removal from service of any cracked HPC front drum rotors. This proposal clarifies inspection requirements for cracking of high pressure compressor (HPC) front drum rotors that have fewer than 1,000 cycles-since-new (CSN). This proposal is prompted by comments from operators seeking more clarity about the inspection requirements of paragraph (a)(1) of the current AD. The actions specified in the proposed AD are intended to prevent HPC drum rotor failure from cracks that could result in an uncontained engine failure and damage to the airplane.

DATES: Comments must be received by February 14, 2002.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 2000–NE–49–AD, 12 New England Executive Park, Burlington, MA 01803–5299. Comments may be inspected at this location, by appointment, between 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. Comments may also be sent via the Internet using the following address: ''*9-ane-adcomment@faa.gov*''. Comments sent via the Internet must contain the docket number in the subject line.

The service information referenced in the proposed rule may be obtained from Pratt & Whitney, 400 Main Street, East Hartford, CT 06108. This information may be examined, by appointment, at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA.

FOR FURTHER INFORMATION CONTACT: Tara Goodman, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington MA 01803–5299; telephone: 781–238–7130, fax: 781–238–7199.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 2000–NE–49–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRM's

Any person may obtain a copy of this NPRM by submitting a request to the FAA, New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 2000–NE–49–AD, 12 New England Executive Park, Burlington, MA 01803–5299.

Discussion

On October 12, 2001, the FAA issued AD 2001–20–13, Amendment 39–12461

(66 FR 52023, October 12, 2001), to require operators to perform initial and repetitive inspections for cracking of HPC front drum rotors based on cycle usage. That amendment also requires the removal from service of any cracked HPC front drum rotors. That action was prompted by reports that 11 HPC front drum rotors have been found cracked on the spacer surface between the sixth and seventh stage disks. That condition, if not corrected, could result in HPC front drum rotor failure that could result in an uncontained engine failure and damage to the airplane.

Since that AD was issued, the FAA received three comments from operators stating that the inspection requirements stated in paragraph (a)(1) are inconsistent with the alert service bulletin. The FAA agreed with these comments and paragraph (a)(1) has been changed to clarify inspection requirements for cracking of HPC front drum rotors that have fewer than 1,000 CSN.

Manufacturer's Service Information

The FAA has reviewed and approved the technical contents of Pratt & Whitney Alert Service Bulletin (ASB) PW4ENG A72–722, dated September 29, 2000 and (ASB) PW4ENG A72–722, Revision 1, dated June 7, 2001 that describe procedures for initial and repetitive inspections for cracking of HPC front drum rotors based on cycle usage and the removal from service of any cracked HPC front drum rotors.

FAA's Determination of an Unsafe Condition and Proposed Actions

Since an unsafe condition has been identified that is likely to exist or develop on other Pratt & Whitney PW4000 series turbofan engines, products of this same type design, the proposed AD would supersede AD 2001–20–13 to clarify inspection requirements for front drum rotors that have fewer than 1,000 cycles-since-new. The actions are required to be done in accordance with the service bulletins described previously.

Economic Analysis

The FAA estimates that there will be no additional costs attributable to this proposed supersedure.

Regulatory Analysis

This proposed rule does not have federalism implications, as defined in Executive Order 13132, because it would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, the FAA has not consulted with state authorities prior to publication of this proposed rule.

For the reasons discussed above, I certify that this proposed regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing Amendment 39–12461, (66 FR 52023, October 12, 2001), and by adding a new airworthiness directive:

Pratt & Whitney: Docket No. 2000–NE–49–AD. Supersedes AD 2001–20–13, Amendment 39–12461.

Applicability

This airworthiness directive (AD) applies to Pratt & Whitney (PW) models PW4052, PW4056, PW4060, PW4062, PW4152, PW4156A, PW4158, PW4460, and PW4462 turbofan engines. These engines are installed on but not limited to Boeing 747, 767, McDonnell Douglas MD–11, Airbus Industrie A300, and A310 series airplanes.

Note 1: This AD applies to each engine identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For engines that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance

Required as indicated, unless accomplished previously.

To prevent failure of the high pressure compressor (HPC) front drum rotor from cracks, that could result in an uncontained engine failure and damage to the airplane, do the following:

Initial Inspection

(a) Perform an initial borescope inspection for cracks in accordance with the Accomplishment Instructions, On-Wing paragraphs 1 through 13, of Pratt & Whitney (PW) Alert Service Bulletin (ASB) No. PW4ENG A72–722, dated September 29, 2000 or Revision 1, dated June 7, 2001, as follows:

(1) For HPC front drum rotors with fewer than 1,000 cycles-since-new (CSN) on the effective date of this AD, perform an initial inspection within 500 cycles-in-service (CIS) after accumulating 1,000 CSN.

(2) For HPC front drum rotors with 1,000 CSN or more after the effective date of this AD, perform an initial inspection within 500 CIS after the effective date of this AD.

(3) If the presence of a crack needs to be confirmed, perform an eddy current inspection (ECI) within five flight cycles of the on-wing borescope inspection.

(4) If the presence of a crack needs to be confirmed and the suspect crack indication extends from the knife edges to the disk radius directly adjacent to the spacer wall of the sixth or seventh stage as shown in Figures 2 and 3 of PW ASB No. PW4ENG A72–722, dated September 29, 2000, or Revision 1, dated June 7, 2001, the ECI inspection must be done before further flight.

(5) If the presence of a crack is confirmed, remove and replace the HPC front drum rotor with a serviceable part before further flight.

(6) HPC front drum rotors fluorescent penetrant inspected at the last shop visit, as cited in the compliance section of the ASB, within 500 cycles of the effective date of this AD, satisfy the initial inspection requirement.

Repetitive Inspections

(b) Thereafter, perform borescope inspections within 2,200 cycles-since-last-inspection, in accordance with the Accomplishment Instructions, On-Wing paragraphs 1 through 13, of PW ASB No. PW4ENG A72–722, dated September 29, 2000, or Revision 1, dated June 7, 2001.

(1) If the presence of a crack needs to be confirmed, perform an ECI within five flight cycles.

(2) If the presence of a crack needs to be confirmed and the suspect crack indication extends from the knife edges to the disk radius directly adjacent to the spacer wall of the sixth or seventh stage as shown in Figures 2 and 3 of PW ASB No. PW4ENG A72–722, dated September 29, 2000, or Revision 1, dated June 7, 2001, the ECI inspection must be done before further flight.

(3) If the presence of a crack is confirmed, remove and replace with a serviceable HPC front drum rotor before further flight.

Definition of Suspect Crack Indication

(c) For the purposes of this AD, a suspect crack indication is defined as a response from the visual borescope inspection procedure that denotes the possible presence of a material discontinuity and requires interpretation to determine its significance.

Alternative Methods of Compliance

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Engine Certification Office (ECO). Operators must submit their request through an appropriate Federal Aviation Administration (FAA) Principal Maintenance Inspector, who may add comments and then send it to the Manager, ECO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the ECO.

Special Flight Permits

(e) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Burlington, Massachusetts, on January 7, 2002.

Jay J. Pardee,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 02–905 Filed 1–14–02; 8:45 am]

BILLING CODE 4910–13–P

FEDERAL TRADE COMMISSION

16 CFR Part 432

Trade Regulation Rule Relating to Power Output Claims for Amplifiers Utilized in Home Entertainment Products

AGENCY: Federal Trade Commission.

ACTION: Notice deferring action on proposed rule.

SUMMARY: On December 22, 2000, the Federal Trade Commission (the ''Commission'') commenced a rulemaking proceeding and requested public comments on a supplemental notice of proposed rulemaking to amend its Rule relating to Power Output Claims for Amplifiers Utilized in Home Entertainment Products (the ''Amplifier Rule'' or the ''Rule''). The Commission solicited comments until March 30, 2001. In response to a request from an industry trade association, the Commission has determined to defer action on the proposed rule, but keep open the rulemaking record in this proceeding.

DATES: The Federal Trade Commission's decision to defer action on the proposed rule is effective January 15, 2002.

FOR FURTHER INFORMATION CONTACT: Dennis Murphy, Economist, Division of Consumer Protection, Bureau of Economics, (202) 326–3524, or Neil Blickman, Attorney, Division of Enforcement, Bureau of Consumer Protection, (202) 326–3038, Federal Trade Commission, Washington, DC 20580.

SUPPLEMENTARY INFORMATION: On December 22, 2000, the Commission published in the **Federal Register** a request for public comments on a supplemental notice of proposed rulemaking (''SNPR'') to amend its Amplifier Rule, 16 CFR part 432 (65 FR 80798). The Amplifier Rule was promulgated on May 3, 1974 (39 FR 15387), to assist consumers in purchasing power amplification equipment for home entertainment purposes by standardizing the measurement and disclosure of various performance characteristics of the equipment. Specifically, the **Federal Register** notice solicited public comments on Commission proposals to amend the Amplifier Rule's testing procedures to provide appropriate power output ratings for the recently introduced class of multichannel audio/video receivers and amplifiers, such as those used in ''home theater'' installations.[1] These receivers and amplifiers, which incorporate five or more discrete channels of amplification, are designed to decode and/or amplify digitally encoded multichannel movie soundtracks, or music program material recorded on video cassette tapes, laser discs, or digital video disks.

Audio/video receivers with digital decoding circuitry and five or more discrete channels of amplification were not available to consumers when the Amplifier Rule originally was promulgated, or when the Commission initiated its review of the Amplifier Rule in 1997 to determine the Rule's current effectiveness and impact.[2] The Commission tentatively concluded in the SNPR that such components raise unique interpretational issues under the Rule that have not heretofore been addressed. The Commission determined, therefore, to publish an SNPR commencing a supplementary rulemaking proceeding, and inviting interested persons to submit written comments addressing the issues raised in that notice.

Section 432.2(a) of the Rule requires that an amplifier's rated continuous power output per channel be ''[m]easured with all associated channels fully driven to rated per channel power.'' [Emphasis added.] This continuous measurement represents the maximum per-channel power an amplifier can deliver over a sustained period of time, which the Rule defines as five minutes. By requiring uniform power output disclosures in the advertising of audio amplifier equipment, the Rule enables consumers to easily make power output comparisons among the types and brands of audio equipment, and assess the products in conjunction with price. When the Rule was promulgated in 1974, virtually all amplifiers available to consumers incorporated either one channel of amplification (''monophonic'' amplifiers), or two channels in a left and right ''stereophonic'' configuration. For such amplifiers, interpretation of the term ''all associated channels'' in § 432.2(a) is self evident. By definition, a monophonic amplifier can be measured only with its single channel driven to full rated power. For stereophonic amplifiers, the left and right channels clearly are associated presentations of the same musical performance and, in any event, are the only channels that could be considered ''associated'' under the Rule.

In recent years, multichannel audio/video receivers and power amplifiers with five or more channels of amplification have accounted for an increasingly large share of consumer audio equipment sales. Current digital audio/video receivers and amplifiers typically incorporate a pair of front left and right stereophonic amplification channels, a center channel designed to reproduce the dialog portion of cinema soundtracks, and two discrete rear amplification channels that may reproduce special sound effects or ambient sound information encoded in cinema soundtracks or music program material. Some home theater amplifiers may also provide one or more ''subwoofer'' amplification channels that are dedicated to reproducing only deep bass frequencies (below approximately 100 Hertz). Future developments may include additional surround or special effects channels placed around the listening room.

[1] On the same day, the Commission published separately in the **Federal Register** a final rule streamlining the Amplifier Rule's advertising disclosure requirements with respect to total rated harmonic distortion and the associated power bandwidth and impedance ratings, and clarifying the testing procedure for self-powered speakers (65 FR 81232).

[2] 62 FR 16500 (April 7, 1997).

Manufacturers of multichannel audio/video receivers and amplifiers who wish to rate power output under § 432.2 of the Rule must decide which of the five or more discrete channels of amplification are to be considered ''associated'' and, therefore, subject to simultaneous operation at full rated power. Under the strictest interpretation of § 432.2(a), all available channels would be considered associated and all channels would be driven to full rated power simultaneously during testing. Such a regimen might severely tax the common power supply utilized in many home theater receivers, and the resulting per channel power ratings might be considerably below those that would be obtained if, for example, only the specific set of channels being rated (e.g., surround channels) were driven to full power simultaneously. The controlling consideration in determining the proper interpretation of ''associated channels'' is whether audio/video receivers and amplifiers would, when operated by consumers in the home at high playback volume, be required to deliver full rated power output in all channels simultaneously, or whether such maximum stress conditions would more likely be restricted at any given moment of time to certain sub-groupings of available channels.

The Commission already has reached a determination relevant to the appropriate treatment of any subwoofer channels of amplification that might be provided in audio/video receivers. This determination, which the Commission announced on December 22, 2000 (65 FR 81232), applies to self-powered combination subwoofer-satellite loudspeaker systems, such as those used with personal computers and in home theater installations. Specifically, the Commission amended § 432.2 of the Rule to specify that:

> * * * when measuring maximum per channel output of self-powered combination speaker systems that employ two or more amplifiers dedicated to different portions of the audio frequency spectrum, such as those incorporated into combination subwoofer-satellite speaker systems, only those channels dedicated to the same audio frequency should be considered associated channels that need be fully driven simultaneously to rated per channel power.

In reaching this determination, the Commission concluded that, under actual in-home use of such combination systems, maximum power demands typically would not occur precisely in the crossover region of frequencies that would be reproduced both by the subwoofer and satellite amplifiers. Rather, simultaneous demands would more likely occur in portions of the audio spectrum that would be assigned primarily either to the subwoofer amplifier or the satellite amplifier.[3] A similar conclusion would appear to hold for home theater receivers that incorporate a separate amplified subwoofer channel(s) and an internal crossover network.

The Commission tentatively concluded, therefore, that subwoofer amplifiers in combination self-powered subwoofer-satellite speaker systems and subwoofer amplifiers in audio/video receivers should be treated consistently under § 432.2(a) of the Rule. That is, the amplified subwoofer channel(s) of digital home theater receivers and the remaining amplified channels need not be considered ''associated'' channels that must be fully driven to rated per channel power when rating the power output of the subwoofer channel(s).

The Commission was unable, however, to make any tentative determination concerning the appropriate designation of associated channels for the remaining amplified channels in multichannel audio/video receivers and amplifiers, since the rulemaking record contained no evidence relevant to this issue. The Commission, therefore, solicited public comment on three alternative methods of grouping associated channels for multichannel audio/video receivers. The Commission stated that these alternatives would govern power ratings applicable when an audio/video receiver is used in full multichannel mode, but would not affect power ratings for the main left and right front channels that apply when the receiver's intended use is restricted to conventional stereo mode. For such conventional stereo ratings, only the two front stereo channels need be driven simultaneously to full rated power.

In the SNPR, the Commission proposed to amend § 432.2 of the Rule to define the term ''associated channels'' for multichannel audio/video receivers such as those used in home theater systems.[4] The Commission solicited public comment on the following three alternative designations of ''associated channels'' for such audio equipment:

Alternative A: When measuring maximum per channel output of multichannel audio/video receivers and power amplifiers, the front stereo channels, the center channel(s), and the surround channels should be considered associated channels that need be fully driven simultaneous to rated per channel power. The subwoofer channels should be considered as a second group of associated channels.

Alternative B: When measuring maximum per channel output of multichannel audio/video receivers and power amplifiers, the front stereo channels and the center channel(s) should be considered one group of associated channels; the surround channels should be considered a second group of associated channels; and the subwoofer channels should be considered a third group of associated channels.

Alternative C: When measuring maximum per channel output of multichannel audio/video receivers and power amplifiers, the front stereo channels should be considered one group of associated channels; the center channel(s) should be considered a second group of associated channels; the surround channels should be considered a third group of associated channels; and the subwoofer channels should be considered a fourth group of associated channels.

The SNPR elicited one comment, which was received from the Consumer Electronics Association (''CEA'').[5] CEA noted that presently there is no industry consensus on testing, measuring and specifying the power output of multichannel amplifier products. In the absence of a voluntary industry standard that adequately addresses multichannel amplifiers, CEA stated that the industry is divided on the complex issue of testing and measuring multichannel receivers and amplifiers. CEA commented that while some manufacturers are testing and measuring the power output of their amplifiers with all channels driven simultaneously, other manufacturers are interpreting the term ''associated'' to mean the simultaneous testing and measuring of only those channels that are ''naturally'' associated. For example, manufacturers are testing and measuring the power output of amplifier channels grouped as follows: a ''2–1–2'' approach (front left and right, center, rear left and

[3] *See, e.g.,* 64 FR 38610, 38613 (July 19, 1999).

[4] The public comment period on the SNPR concluded on March 30, 2001 (66 FR 12915 (March 1, 2001)).

[5] CEA represents more than 625 U.S. companies involved in the design, development, manufacturing and distribution of audio, video, mobile electronics, communications, information technology, multimedia and accessory products, as well as related services that are sold through consumer channels. Combined, these companies account for more than $70 billion in annual sales. CEA's comment appears on the public record in this proceeding and is available for public inspection in the Public Reference Room, Room 130, Federal Trade Commission, 600 Pennsylvania Ave., NW., Washington, DC, from 8:30 a.m. to 5 p.m., Monday through Friday, except federal holidays.

right); or a ''3–2'' approach (front left, right and center, rear left and right). In both examples, front left and right channels, and rear left and right channels are considered ''natural'' groupings in audio systems. Pending clarification, CEA stated that any of these approaches might be acceptable, provided that only one is agreed upon by the industry. With the expectation of future developments in multichannel audio technology, CEA has suggested that the Commission apply a flexible interpretation of the term ''associated'' to the testing and measuring of the power output for any ''associated'' audio channels that may be added in the future. CEA stated that this complex situation demands that the audio industry now take an active leadership role in reviewing and revising existing industry standards to apply them to multichannel receivers and amplifiers.

CEA, therefore, has formed an industry working group, the purpose of which is to establish a voluntary industry consensus standard for measuring the power output of multichannel receivers and amplifiers. CEA has encouraged the Commission to continue its cooperative approach to revising the Amplifier Rule, and consider incorporating its final rule any new voluntary standard developed by CEA for testing, measuring, and specifying the power output of all amplifiers within the scope of the Rule.

The Commission is aware that the issues raised by the SNPR **Federal Register** notice are complex and technical. In the Commission's view, therefore, the public interest would best be served at this time by allowing the industry the opportunity to develop a voluntary standard for testing, measuring, and specifying the power output of multichannel amplifiers and receivers. If the industry is successful in establishing a consensus standard in a reasonable period of time, the Commission will evaluate the technical merits of the standard and consider whether it can function satisfactorily as a voluntary standard, or whether it, or an alternative standard, should be incorporated into the Rule's requirements.

Accordingly, in light of CEA's comment, the Commission has decided to defer action on the proposed rule, but keep open the rulemaking record in this proceeding to allow sufficient time for CEA to address the issues raised in the SNPR, and encourage the exchange of ideas between the Commission and the industry.

Authority: 15 U.S.C. 41–58.

List of Subjects in 16 CFR Part 432

Amplifiers, Home entertainment products, Trade practices.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 02–920 Filed 1–14–02; 8:45 am]

BILLING CODE 6750–01–M

NATIONAL INDIAN GAMING COMMISSION

25 CFR Part 542

RIN 3141–AA24

Public Hearing To Receive Testimony on Proposed Minimum Internal Control Standards

AGENCY: National Indian Gaming Commission.

ACTION: Notice of public hearing.

SUMMARY: On Wednesday, December 26, 2001, the National Indian Gaming Commission published a Proposed Rule in the **Federal Register** updating its existing Minimum Internal Control Standards (MICS). This Proposed Rule is the product of a consultative process that began more than one year ago, including an initial comment period and the extensive participation of a ten-member Tribal Advisory Committee. Comments on the Proposed Rule are due on or before February 25, 2002.

In further keeping with the Commission's policy of consultation with tribal governments, we will host a public hearing on the proposed rule Tuesday, February 5, 2002. This hearing provides an excellent opportunity for individuals to provide comment about the regulation to both the Commission and members of the Tribal Advisory Committee.

DATES: The hearing will be held on Tuesday, February 5, 2002, 9 a.m. to 5 p.m., Arlington, VA.

ADDRESSES: Crystal City Courtyard by Marriott (Club Room), 2899 Jefferson Davis Highway, Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT: Denise Desiderio, 202–632–7003.

Dated: January 10, 2002.

Montie R. Deer,

Chairman.

[FR Doc. 02–930 Filed 1–14–02; 8:45 am]

BILLING CODE 7565–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–301201; FRL–6816–6]

RIN 2070–AB78

Benomyl; Proposed Revocation of Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes to revoke all tolerances for residues of the fungicide benomyl because this pesticide is no longer registered for use in the United States. EPA expects to determine whether any individuals or groups want to support these tolerances. The regulatory actions proposed in this document are part of the Agency's reregistration program under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), and the tolerance reassessment requirements of the Federal Food, Drug, and Cosmetic Act (FFDCA) section 408(q), as amended by the Food Quality Protection Act (FQPA) of 1996. By law, EPA is required by August 2002 to reassess 66% of the tolerances in existence on August 2, 1996, or about 6,400 tolerances. The regulatory actions proposed in this document pertain to the proposed revocation of all tolerances for benomyl of which 100 would be counted among tolerance/exemption reassessments made toward the August, 2002 review deadline.

DATES: Comments, identified by docket control number OPP–301201, must be received on or before March 18, 2002.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I. of the **SUPPLEMENTARY INFORMATION.** To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–301201 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Joseph Nevola, Special Review and Reregistration Division (7508C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave, NW., Washington, DC 20460; telephone number: (703) 308–8037; e-mail address: nevola.joseph@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS codes	Examples of potentially affected entities
Industry	111 112 311 32532	Crop production Animal production Food manufacturing Pesticide manufacturing

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically*. You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select ''Laws and Regulations,'' ''Regulations and Proposed Rules,'' and then look up the entry for this document under the ''**Federal Register**—Environmental Documents.'' You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/. A frequently updated electronic version of 40 CFR part 180 is available at http://www.access.gpo.gov/nara/cfr/cfrhtml_180/Title_40/40cfr180_00.html, a beta site currently under development.

2. *In person*. The Agency has established an official record for this action under docket control number OPP–301201. The official record consists of the documents specifically referenced in this action, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall#2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–301201 in the subject line on the first page of your response.

1. *By mail*. Submit your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier*. Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically*. You may submit your comments electronically by e-mail to: opp-docket@epa.gov, or you can submit a computer disk as described in this unit. Do not submit any information electronically that you consider to be CBI. Electronic comments must be submitted as an ASCII file avoiding use of special characters and any form of encryption. Comments and data will also be accepted on standard disks in WordPerfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket control number OPP–301201. Electronic comments may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI that I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI 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. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Offer alternative ways to improve the proposed rule or collection activity.

7. Make sure to submit your comments by the deadline in this document.

8. To ensure proper receipt by EPA, be sure to identify the docket control number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

F. What Can I do if I Wish the Agency to Maintain a Tolerance that the Agency Proposes to Revoke?

This proposed rule provides a comment period of 60 days for any person to state an interest in retaining a tolerance proposed for revocation. If EPA receives a comment within the 60–day period to that effect, EPA will not proceed to revoke the tolerance immediately. However, EPA will take steps to ensure the submission of any needed supporting data and will issue an order in the **Federal Register** under FFDCA section 408(f) if needed. The order would specify data needed and the time frames for its submission, and

would require that within 90 days some person or persons notify EPA that they will submit the data. If the data are not submitted as required in the order, EPA will take appropriate action under FFDCA.

EPA issues a final rule after considering comments that are submitted in response to this proposed rule. In addition to submitting comments in response to this proposal, you may also submit an objection at the time of the final rule. If you fail to file an objection to the final rule within the time period specified, you will have waived the right to raise any issues resolved in the final rule. After the specified time, issues resolved in the final rule cannot be raised again in any subsequent proceedings.

II. Background

A. What Action is the Agency Taking?

EPA is proposing to revoke all tolerances in 40 CFR 180.294 because benomyl is no longer registered under FIFRA for use on those commodities. The registration for benomyl was canceled because the registrant requested voluntary cancellation of the pesticide. It is EPA's general practice to propose revocation of those tolerances for residues of pesticide active ingredients on crop uses for which there are no active registrations under FIFRA, unless the Agency receives comments on this proposal which indicate a need for the tolerance to cover residues in or on imported commodities or domestic commodities legally treated. One hundred of these tolerances were in existence when FQPA was enacted and therefore count toward the FQPA tolerance reassessment goals.

On April 18, 2001 the registrant, E. I. du Pont de Nemours and Company (DuPont), requested voluntary cancellation of all of their benomyl technical, end use, and special local need product registrations. On May 1, 2001 DuPont announced that it had already ceased the production of technical benomyl for use in products sold and distributed in the United States. DuPont also requested that EPA waive the 180–day waiting period contained in FIFRA section 6(f)(1)(C)(ii). On May 23, 2001 a FIFRA 6(f)(1) notice of receipt of the request by the registrant was published in the **Federal Register** (66 FR 28466) (FRL–6784–3). A cancellation order was published on August 8, 2001 (66 FR 41589) (FRL–6794–9). Receipt of other requests for cancellation of registrations were published on September 26, 2001 (66 FR 49184) (FRL–6802–1) and on October 12, 2001 (66 FR 52132) (FRL–6805–3). EPA allowed DuPont to sell and distribute benomyl stocks until June 30, 2001 and is allowing those other than the registrant to sell and distribute benomyl stocks until December 31, 2002. The Agency expects existing stocks to be exhausted by December 31, 2003.

The time frame for passage of raw agricultural commodities through trade channels, including storage, processing, post-processing, storage/distribution, and retail, varies and depends on the food commodity. The longest time periods are generally associated with food commodities that are stored for extended periods before processing or are in the form of a processed ingredient such as fruit or vegetable concentrates or pastes. Therefore, for all other benomyl tolerances, EPA is proposing expiration/revocation dates from 2 to 5 years beyond the date of exhaustion of benomyl product through passage of benomyl-treated food in channels of trade using available Agency data, U.S. Food and Drug Administration (FDA) data, and food industry data on a basis as follows:

Commodity Crop Group	Tolerances	Maximum Years in Trade Channels	Proposed expiration/revocation date
Bulb Vegetables	Garlic	2	1/1/06
Brassica (Cole) Leafy Vegetables	Broccoli; Brussels sprouts; Cabbage; Cabbage, Chinese, bok choy; Cabbage, Chinese, napa; Cauliflower; Collards; Kale; Kohlrabi; Mustard greens	2	1/1/06
Root and Tuber Vegetables	Beet, sugar, roots; Beet, sugar, tops; Carrot; Rutabaga; Sweet potato; Turnip, roots; Turnip greens	3	1/1/07
Leafy Vegetables (exc. Brassica)	Celery; Spinach; Dandelion, leaves; Watercress	3	1/1/07
Legume Vegetables	Bean, dry; Bean, succulent; Soybean, seed	3	1/1/07
Cucurbit Vegetables	Cucumber; Melon; Pumpkin; Squash, summer; Squash, winter	3	1/1/07
Tree Nuts	Almond, hulls; Nut, tree, group; Pistachio (in § 180.294(a) and (c))[a]	3	1/1/07
Citrus Fruits	Citrus, dried pulp; Fruit, citrus (PRE- and POST-H)	4	1/1/08
Pome Fruits	Apple (PRE- and POST-H); Pear (PRE- and POST-H)	4	1/1/08
Stone Fruits	Apricot; Cherry, sweet; Cherry, tart; Nectarine (PRE- and POST-H); Peach (PRE- and POST-H); Plum, prune, dried; Plum, prune, fresh;	4	1/1/08

Commodity Crop Group	Tolerances	Maximum Years in Trade Channels	Proposed expiration/revocation date
Berries	Blackberry; Blueberry; Boysenberry; Currant; Dewberry; Loganberry; Raspberry	4	1/1/08
Cereal Grains and Forage, Fodder and Straw of Cereal Grains.	Barley, grain; Barley, straw; Corn, sweet, kernel plus cob with husks removed; Corn, sweet, forage; Corn, sweet, stover; Oat, grain; Oat, straw; Rice, grain; Rice, hulls; Rice, straw; Rye, grain; Rye, straw; Wheat, grain; Wheat, straw	4	1/1/08
No group association- Plant commodities.	Avocado; Banana (PRE- and POST- H) (not more than 0.2 ppm shall be present in the pulp after peel is removed and discarded); Grape;. Grape, raisin; Mango; Mushroom (PRE- and POST-H); Papaya; Peanut; Peanut forage; Peanut, hay; Pineapple (POST-H); Strawberry	4	1/1/08
No group association- Animal commodities.	Cattle, fat; Cattle, meat; Cattle, meat byproducts; Egg; Goat, fat; Goat, meat; Goat, meat byproducts; Hog, fat; Hog, meat; Hog, meat byproducts; Horse, fat; Horse, meat; Horse, meat byproducts; Milk; Poultry, fat; Poultry, liver; Poultry, meat; Poultry, meat byproducts, except liver; Sheep, fat; Sheep, meat; Sheep, meat byproducts	4	1/1/08
Fruiting Vegetables	Eggplant; Pepper; Tomato; Tomato, concentrated products	5	1/1/09

[a] Please note that for FQPA reassessment purposes, EPA is counting the pistachio tolerance once; therefore, a total of 100 tolerances would be counted as reassessed for benomyl in a final rule.

Because ''bean vine forage'' is no longer a significant livestock feed item and the tolerance is no longer needed, EPA is proposing to revoke the tolerance for ''bean vine forage'' 90 days following publication of a final rule to ensure that all affected parties receive notice of EPA's actions.

In the interim period of time before the tolerance expires and to conform to current Agency practice, EPA is proposing to revise tolerance commodity terminology names in 180.294(a) as follows:

Old terminology	New terminology
almond hulls	almond, hulls;
apples (PRE- and POST-H).	apple (PRE- and POST-H)
apricots (PRE- and POST-H).	apricot (PRE- and POST-H)
bananas (PRE- and POST-H) (NMT 0.2 ppm shall be present in the pulp after peel is removed and discarded).	banana (PRE- and POST-H) (not more than 0.2 ppm shall be present in the pulp after peel is removed and discarded)
beans	bean, succulent and bean, dry
beets, sugar, roots	beet, sugar, roots
beets, sugar, tops	beet, sugar, tops
blackberries	blackberry
blueberries	blueberry
boysenberries	boysenberry
carrots	carrot
cattle, mbyp	cattle, meat byproducts
cherries (PRE- and POST-H).	cherry, sweet and cherry, tart
Chinese cabbage	cabbage, Chinese, napa and cabbage, Chinese, bok choy
citrus fruit (PRE- and POST-H).	fruit, citrus (PRE- and POST-H)
corn, fresh (inc. sweet K +CWHR).	corn, sweet, kernel plus cob with husks removed
corn, sweet, fodder and forage.	corn, sweet, forage and corn, sweet, stover
cucumbers	cucumber
currants	currant
dewberries	dewberry
eggplants	eggplant
eggs	egg;
goats, fat	goat, fat
goats, meat	goat, meat
goats, mbyp	goat, meat byproducts

Old terminology	New terminology
grapes	grape
hogs, fat	hog, fat
hogs, meat	hog, meat
hogs, mbyp	hog, meat byproducts
horses, fat	horse, fat
horses, meat	horse, meat
horses, mbyp	horse, meat byproducts
loganberries	loganberry
mangoes	mango
melons	melon
mushrooms (PRE- and POST-H).	mushroom (PRE- and POST-H)
nectarines (PRE- and POST-H).	nectarine (PRE- and POST-H)
nuts	nut, tree, group
oats, grain	oat, grain
oats, straw	oat, straw
peaches (PRE- and POST-H).	peach (PRE- and POST-H)
peanuts	peanut
peanut hay	peanut, hay
pears (PRE- and POST-H).	pear (PRE- and POST-H)
peppers	pepper
pineapples (POST-H).	pineapple (POST-H)
pistachios	pistachio
plums (including fresh prunes) (PRE- and POST-H).	plum, prune, dried and plum, prune, fresh
poultry, mbyp	poultry, meat by-products, except liver
pumpkins	pumpkin
raisins	grape, raisin
raspberries	raspberry
rice	rice, grain
rice straw	rice, straw
rutabagas	rutabaga
sheep, mbyp	sheep, meat byproducts
soybeans	soybean, seed
strawberries	strawberry
sweet potatoes	sweet potato
tomatoes	tomato
tomato products, concentrated.	tomato, concentrated products
turnips, roots	turnip, roots
In 40 CFR 180.294(c). avocados	avocado
dandelions	dandelion, leaves
papayas	papaya
pistachios	pistachio.

B. What is the Agency's Authority for Taking this Action?

A ''tolerance'' represents the maximum level for residues of pesticide chemicals legally allowed in or on raw agricultural commodities and processed foods. Section 408 of FFDCA, 21 U.S.C. 301 *et seq.*, as amended by the FQPA of 1996, Public Law 104–170, authorizes the establishment of tolerances, exemptions from tolerance requirements, modifications in tolerances, and revocation of tolerances for residues of pesticide chemicals in or on raw agricultural commodities and processed foods (21 U.S.C. 346(a)). Without a tolerance or exemption, food containing pesticide residues is considered to be unsafe and therefore ''adulterated'' under section 402(a) of the FFDCA. If food containing pesticide residues is considered to be ''adulterated,'' you may not distribute the product in interstate commerce (21 U.S.C. 331(a) and 342(a)). For a food-use pesticide to be sold and distributed, the pesticide must not only have appropriate tolerances under the FFDCA, but also must be registered under FIFRA (7 U.S.C. *et seq.*). Food-use pesticides not registered in the United States have tolerances for residues of pesticides in or on commodities imported into the United States.

It is EPA's general practice to propose revocation of tolerances for residues of pesticide active ingredients on crops for which FIFRA registrations no longer exist and on which the pesticide may therefore no longer be used in the United States. EPA has historically been concerned that retention of tolerances that are not necessary to cover residues in or on legally treated foods may encourage misuse of pesticides within the United States. Nonetheless, EPA will establish and maintain tolerances even when corresponding domestic uses are canceled if the tolerances, which EPA refers to as ''import tolerances,'' are necessary to allow importation into the United States of food containing such pesticide residues. However, where there are no imported commodities that require these import tolerances, the Agency believes it is appropriate to revoke tolerances for unregistered pesticides in order to prevent potential misuse.

Furthermore, as a general matter, the Agency believes that retention of import tolerances not needed to cover any imported food may result in unnecessary restriction on trade of pesticides and foods. Under section 408 of the FFDCA, a tolerance may only be established or maintained if EPA determines that the tolerance is safe based on a number of factors, including an assessment of the aggregate exposure to the pesticide and of the cumulative effects of such pesticide and other substances that have a common mechanism of toxicity. In doing so, EPA must consider potential contributions to such exposure from all tolerances. If the cumulative risk is such that the tolerances in aggregate are not safe, then every one of these tolerances is potentially vulnerable to revocation. Furthermore, if unneeded tolerances are included in the aggregate and cumulative risk assessments, the estimated exposure to the pesticide would be inflated. Consequently, it may be more difficult for others to obtain needed tolerances or to register needed new uses. To avoid potential trade restrictions, the Agency is proposing to revoke tolerances for residues on crops uses for which FIFRA registrations no longer exist, unless someone expresses a need for such tolerances. Through this proposed rule, the Agency is inviting individuals who need these import tolerances to identify themselves and the tolerances that are needed to cover imported commodities.

Parties interested in retention of the tolerances should be aware that additional data may be needed to support retention. These parties should be aware that, under FFDCA section 408(f), if the Agency determines that additional information is reasonably required to support the continuation of a tolerance, EPA may require that parties interested in maintaining the tolerances provide the necessary information. If the requisite information is not submitted, EPA may issue an order revoking the tolerance at issue.

C. When do These Actions Become Effective?

EPA is delaying the effective date of the revocation for ''bean vine forage'' for 90 days following publication of a final rule in the **Federal Register** to ensure that all affected parties receive notice of EPA's actions. With the exception of ''bean vine forage,'' EPA is proposing that all tolerances for benomyl expire and are revoked on dates which range from January 1, 2006 to January 1, 2009 as previously detailed. For most tolerances, EPA is proposing an effective revocation/expiration date because EPA believes that by December 31, 2003 all existing stocks of pesticide products labeled for the uses associated with the tolerances proposed for revocation will have been exhausted, giving ample time, from 2 to 5 years, for any treated fresh and processed food to clear trade channels. Therefore, EPA believes the effective dates proposed in this document are reasonable. However, if EPA is presented with information that existing stocks would still be available for use after the expiration date and that information is verified, EPA will consider extending the expiration date of the tolerance. If you have comments regarding existing stocks and whether the effective date accounts for these stocks, please submit comments as described under **SUPPLEMENTARY INFORMATION.**

Any commodity listed in this proposal treated with the pesticide subject to this proposal, and in the channels of trade following the tolerance revocations, shall be subject to FFDCA section 408(1)(5), as established by FQPA. Under this section, any residues of this pesticide in or on such food shall not render the food adulterated so long as it is shown to the satisfaction of FDA that, (1) the residue is present as the result of an application or use of the pesticide at a time and in a manner that was lawful under FIFRA, and (2) the residue does not exceed the level that was authorized at the time of the application or use to be present on the food under a tolerance or exemption from tolerance. Evidence to show that food was lawfully treated may include records that verify the dates that the pesticide was applied to such food.

D. What Is the Contribution to Tolerance Reassessment?

By law, EPA is required to reassess 66% or about 6,400 of the tolerances in existence on August 2, 1996, by August 2002. EPA is also required to assess the remaining tolerances by August, 2006. As of January 4, 2002, EPA has reassessed over 3,830 tolerances. This document proposes to revoke all tolerances in 40 CFR 180.294. Therefore, 100 tolerance reassessments would be counted when the final rule is published toward the August, 2002 review deadline of FFDCA section 408(q), as amended by FQPA in 1996.

III. Are The Proposed Actions Consistent with International Obligations?

The tolerance revocations in this proposal are not discriminatory and are designed to ensure that both domestically-produced and imported foods meet the food safety standards established by the FFDCA. The same food safety standards apply to domestically produced and imported foods.

EPA is working to ensure that the U.S. tolerance reassessment program under FQPA does not disrupt international trade. EPA considers Codex Maximum Residue Limits (MRLs) in setting U.S. tolerances and in reassessing them. MRLs are established by the Codex Committee on Pesticide Residues, a committee within the Codex Alimentarius Commission, an international organization formed to promote the coordination of international food standards. It is EPA's policy to harmonize U.S. tolerances with Codex MRLs to the extent possible, provided that the MRLs achieve the level of protection required under FFDCA. EPA's effort to harmonize with Codex MRLs is summarized in the tolerance reassessment section of individual Reregistration Eligibility Decision documents. The U.S. EPA has developed guidance concerning submissions for import tolerance support (65 FR 35069, June 1, 2000) (FRL–6559–3). This guidance will be made available to interested persons. Electronic copies are available on the internet at http://www.epa.gov/. On the Home Page select ''Laws and Regulations,'' then select ''Regulations and Proposed Rules'' and then look up the entry for this document under **Federal Register**—Environmental Documents. You can also go directly to the ''Federal Register'' listings at http://www.epa.gov/fedrgstr/.

IV. Regulatory Assessment Requirements

In this proposed rule, EPA is proposing to revoke specific tolerances established under FFDCA section 408. The Office of Management and Budget (OMB) has exempted this type of action (i.e., a tolerance revocation for which extraordinary circumstances do not exist) from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this proposed rule has been exempted from review under Executive Order 12866 due to its lack of significance, this proposed rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001). This proposed rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any special considerations as required by Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or OMB review or any other Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Pursuant to the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), the Agency previously assessed whether revocations of tolerances might significantly impact a substantial number of small entities and concluded that, as a general matter, these actions do not impose a significant economic impact on a substantial number of small entities. This analysis was published on December 17, 1997 (62 FR 66020), and was provided to the Chief Counsel for Advocacy of the Small Business Administration. Taking into account this analysis, and available information concerning the pesticides listed in this rule, I certify that this action will not have a significant economic impact on a substantial number of small entities. Specifically, as per the 1997 notice, EPA has reviewed its available data on imports and foreign pesticide usage and concludes that there is a reasonable international supply of food not treated with canceled pesticides. Furthermore, for the pesticides named in this proposed rule, the Agency knows of no extraordinary circumstances that exist as to the present proposed revocations that would change EPA's previous analysis.

Any comments about the Agency's determination should be submitted to EPA along with comments on the proposal, and will be addressed prior to issuing a final rule.

In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' This proposed rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). For these same reasons, the Agency has determined that this proposed rule does not have any ''tribal implications'' as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes.'' This proposed rule will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this proposed rule.

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: December 20, 2001.

Marcia E. Mulkey,

Director, Office of Pesticide Programs.

Therefore, it is proposed that 40 CFR part 180 be amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346(a) and 371.

2. Section 180.294 is amended by revising the tables to paragraphs (a) and (c) to read as follows:

§ 180.294 Benomyl; tolerances for residues.

(a) * * *

Commodity	Parts per million	Expiration/Revocation Date
Almond, hulls	1.0	1/1/07
Apple (PRE- and POST-H)	7.0	1/1/08
Apricot	15.0	1/1/08
Banana (PRE- and POST-H)(not more than 0.2 ppm shall be present in the pulp after peel is removed and discarded)	1.0	1/1/08
Barley, grain	0.2	1/1/08
Barley, straw	0.2	1/1/08
Bean, dry	2.0	1/1/07
Bean, succulent	2.0	1/1/07
Beet, sugar, roots	0.2	1/1/07
Beet, sugar, tops	15.0	1/1/07
Blackberry	7.0	1/1/08
Blueberry	7.0	1/1/08
Boysenberry	7.0	1/1/08
Broccoli	0.2	1/1/06
Brussels sprouts	15.0	1/1/06
Cabbage	0.2	1/1/06
Cabbage, Chinese, bok choy	10.0	1/1/06
Cabbage, Chinese, napa	10.0	1/1/06
Carrot	0.2	1/1/07
Cattle, fat	0.1	1/1/08
Cattle, meat	0.1	1/1/08
Cattle, meat byproducts	0.1	1/1/08
Cauliflower	0.2	1/1/06
Celery	3.0	1/1/07
Cherry, sweet	15.0	1/1/08
Cherry, tart	15.0	1/1/08
Citrus, dried pulp	50.0	1/1/08
Collards	0.2	1/1/06
Corn, sweet, kernel plus cob with husks removed	0.2	1/1/08
Corn, sweet, forage	0.2	1/1/08
Corn, sweet, stover	0.2	1/1/08
Cucumber	1.0	1/1/07
Currant	7.0	1/1/08
Dewberry	7.0	1/1/08
Egg	0.1	1/1/08

Commodity	Parts per million	Expiration/Revocation Date
Eggplant	0.2	1/1/09
Fruit, citrus (PRE- and POST-H)	10.0	1/1/08
Garlic	0.2	1/1/06
Goat, fat	0.1	1/1/08
Goat, meat	0.1	1/1/08
Goat, meat byproducts	0.1	1/1/08
Grape	10.0	1/1/08
Grape, raisin	50.0	1/1/08
Hog, fat	0.1	1/1/08
Hog, meat	0.1	1/1/08
Hog, meat byproducts	0.1	1/1/08
Horse, fat	0.1	1/1/08
Horse, meat	0.1	1/1/08
Horse, meat byproducts	0.1	1/1/08
Kale	0.2	1/1/06
Kohlrabi	0.2	1/1/06
Loganberry	7.0	1/1/08
Mango	3.0	1/1/08
Melon	1.0	1/1/07
Milk	0.1	1/1/08
Mushroom (PRE- and POST-H)	10.0	1/1/08
Mustard greens	0.2	1/1/06
Nectarine (PRE- and POST-H)	15.0	1/1/08
Nut, tree, group	0.2	1/1/07
Oat, grain	0.2	1/1/08
Oat, straw	0.2	1/1/08
Peach (PRE- and POST-H)	15.0	1/1/08
Peanut	0.2	1/1/08
Peanut forage	15.0	1/1/08
Peanut, hay	15.0	1/1/08
Pear (PRE- and POST-H)	7.0	1/1/08
Pepper	0.2	1/1/09
Pineapple (POST-H)	35.0	1/1/08
Pistachio	0.2	1/1/07
Plum, prune, dried	15.0	1/1/08
Plum, prune, fresh	15.0	1/1/08
Poultry, fat	0.1	1/1/08
Poultry, liver	0.2	1/1/08
Poultry, meat	0.1	1/1/08
Poultry, meat byproducts, except liver	0.1	1/1/08
Pumpkin	1.0	1/1/07
Raspberry	7.0	1/1/08
Rice, grain	5.0	1/1/08
Rice, hulls	20.0	1/1/08
Rice, straw	15.0	1/1/08
Rutabaga	0.2	1/1/07
Rye, grain	0.2	1/1/08
Rye, straw	0.2	1/1/08
Sheep, fat	0.1	1/1/08
Sheep, meat	0.1	1/1/08
Sheep, meat byproducts	0.1	1/1/08
Soybean, seed	0.2	1/1/07
Spinach	0.2	1/1/07
Squash, summer	1.0	1/1/07
Squash, winter	1.0	1/1/07
Strawberry	5.0	1/1/08
Sweet potato	0.2	1/1/07
Tomato	5.0	1/1/09
Tomato, concentrated products	50.0	1/1/09
Turnip, roots	0.2	1/1/07
Wheat, grain	0.2	1/1/08
Wheat, straw	15.0	1/1/08

* * * * *

(c) * * *

Commodity	Parts per million	Expiration/Revocation Date
Avocado	3.0	1/1/08
Dandelion, leaves	10.0	1/1/07
Papaya	3.0	1/1/08
Pistachio	0.2	1/1/07
Turnip greens	6.0	1/1/07
Watercress	10.0	1/1/07

* * * * *

[FR Doc. 02–964 Filed 1–14–02; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–301189; FRL–6807–8]

RIN 2070–AC18

Pesticides; Tolerance Exemptions for Minimal Risk Active and Inert Ingredients

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to list in 40 CFR part 180 the pesticide chemicals that are exempted from the requirement of a tolerance based on the Agency's determination that these chemicals are of ''minimal risk.'' The pesticide chemicals to be listed in 40 CFR 180.1001(g) include both active and inert ingredients and will be accomplished in several steps. As a first step, the existing tolerance exemptions for commonly consumed food commodities, animal feed items, and edible fats and oils will be recodified in the newly created paragraph (g) in a different format. Restructuring to this new format will provide greater clarification in defining a minimal risk pesticide chemical as well as increasing the number of substances that are currently considered to be minimal risk. In the future, EPA will propose other minimal risk pesticide chemicals for inclusion in paragraph (g). These regulatory actions are part of the tolerance reassessment requirements of the Federal Food, Drug, and Cosmetic Act (FFDCA) section 408(q), as amended by the Food Quality Protection Act (FQPA) of 1996. By law, EPA is required to reassess 66% of the tolerances in existence on August 2, 1996, by August 2002, or about 6,400 tolerances. The regulatory actions proposed in this document, the proposed revocation of 39 tolerance exemptions, would be counted toward the August 2002 deadline.

DATES: Comments, identified by docket control number OPP–301189, must be received on or before March 18, 2002.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I.C. of the **SUPPLEMENTARY INFORMATION**. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–301189 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: Kathryn Boyle, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: 703–305–6304; fax number: 703–305–0599; e-mail address: boyle.kathryn@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you formulate or market pesticide products. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS	Examples of Potentially Affected Entities
Industry	111	Crop production
	112	Animal production
	311	Food manufacturing
	32532	Pesticide manufacturing

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this table could also be affected. The North American Industrial Classification System (NAICS) codes are provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically*. You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select ''Laws and Regulations,'' ''Regulations and Proposed Rules,'' and then look up the entry for this document under the ''**Federal Register**—Environmental Documents.'' You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/. A frequently updated electronic version of 40 CFR part 180 is available at http://www.access.gpo.gov/nara/cfr/cfrhtml_180/Title_40/40cfr180_00.html, a beta site currently under development.

2. *In person*. The Agency has established an official record for this action under docket control number OPP–301189. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is

imperative that you identify docket control number OPP–301189 in the subject line on the first page of your response.

1. *By mail.* Submit your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically.* You may submit your comments electronically by e-mail to: opp-docket@epa.gov, or you can submit a computer disk as described above. Do not submit any information electronically that you consider to be CBI. Avoid the use of special characters and any form of encryption. Electronic submissions will be accepted in WordPerfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket control number OPP–301189. Electronic comments may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI that I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI 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. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Provide specific examples to illustrate your concerns.
6. Offer alternative ways to improve the proposed rule or collection activity.
7. Make sure to submit your comments by the deadline in this document.
8. To ensure proper receipt by EPA, be sure to identify the docket control number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. What Action is the Agency Taking?

The Agency is proposing to create a new paragraph (g) in 40 CFR 180.1001, that specifies the pesticide chemicals that are exempt from the requirement of a tolerance under section 408 of Federal Food, Drug, and Cosmetic Act (''FFDCA''). This paragraph will contain a listing of pesticide chemicals that are considered to be of minimal risk. The tolerance exemption in 40 CFR 180.1164(d) (which was established post-FQPA) as well as existing tolerance exemptions in 40 CFR 180.1001(c), (d) and (e) will be recodified in the newly established 40 CFR 180.1001(g), albeit in a different format that will include additional clarification. The effect of these changes will be that all commonly consumed food items (as a reference, there is the Food and Feed Commodity Vocabulary on the Agency's website: see http://www.epa.gov/pesticides/foodfeed/), with the exception of the exclusions noted below, will be exempt from the requirement of a tolerance under the newly established 40 CFR 180.1001(g).

The Agency is also proposing to establish in 40 CFR 180.1001(g) an exemption from the requirement of a tolerance for various animal feed items. The Agency is proposing that 40 CFR 180.1001 be amended by deleting the existing exemptions for various feed items, such as pomaces, corn cobs, peanuts shells, and oat hulls in 40 CFR 180.1001(c) and (d). These will be recodified in 40 CFR 180.1001(g) albeit in a different format that will include additional clarification. All feed items whether or not previously exempted from the requirement of a tolerance with the exception of the exclusions noted below, will be exempt from the requirement of a tolerance under the newly established 40 CFR 180.1001(g).

The Agency is proposing to place expiration dates on seven existing tolerance exemptions for known allergen-containing food commodities. At this time, the Agency cannot consolidate the overlapping and duplicative tolerance exemptions for allergen-containing commodities that currently exist in 40 CFR part 180.

This proposed rule begins the process of harmonizing the regulation of certain pesticide chemicals whether used as inert or active ingredients. At the completion of this process there will be a single consistent approach for all food and feed commodities used as pesticide chemicals.

III. What is the Agency's Authority for Taking these Actions?

This proposed rule is issued under section 408 of FFDCA, 21 U.S.C. 346a, as amended by the Food Quality Protection Act of 1996 (FQPA) (Public Law 104–170). Section 408(e) of FFDCA authorizes EPA to establish, modify, or revoke tolerances, or exemptions from the requirement of a tolerance for residues of pesticide chemicals in or on raw agricultural commodities and processed foods.

IV. Why is the Agency Proposing These Actions?

A. Why is a ''Minimal Risk'' Paragraph Being Created?

The term ''minimal risk'' has been used by EPA for over 10 years, and has generally meant List 4A inert ingredient chemicals. On April 22, 1987 (52 FR 13305), EPA created a series of four lists as part of an initiative to address the risks potentially posed by inert ingredients in pesticides. List 1 inert ingredients are ''inerts of toxicological concern''. List 1 inert ingredients are classified on the basis of peer reviewed studies which demonstrated carcinogenicity, adverse reproductive effects, neurotoxicity or other chronic effects, developmental toxicity (birth defects), ecological effects and the potential for bioaccumulation. List 2 inert ingredients are ''potentially toxic inerts/high priority for testing.'' Many of these inert ingredients are structurally similar to chemicals known to be toxic; some have data suggesting a concern. List 3 inert ingredients are ''unknown

toxicity.'' An inert ingredient was placed on List 3 if there was no basis for listing it on any of the other lists. At that time all List 4 inert ingredients were classified as ''inerts of minimal concern''.

The 4A Inert Ingredient List was created on November 22, 1989 (54 FR 48314) by subdividing List 4 into Lists 4A and 4B. List 4B inert ingredients are ''inerts for which EPA has sufficient information to reasonably conclude that the current use pattern in pesticide products will not adversely affect public health or the environment.'' List 4A inert ingredients are ''minimal risk inert ingredients.'' Examples of List 4A inert ingredients are salt, and sugar.

The September 28, 1994, **Federal Register** Notice (FRL 4872–5) was the last time that the Agency added new substances to and issued the 4A List. Classification as a List 4A inert ingredient is critical to those products that are exempted from Federal regulation under the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) section 25(b). The substances on List 4A are the only inert ingredients that can be used in 25(b) deregulated products (see 40 CFR 152.25(g)(2)).

Minimal risk does not imply no risk under any circumstances. Every substance, even for example water, presents some risk in certain circumstances. Minimal risk is used to indicate a substance for which there is no information to indicate that there is a basis for concern. Minimal risk or List 4A substances are mostly naturally occurring substances to which some refinement has occurred, such as beeswax, salt, sugar, limestone, and red cedar chips. The determination that a chemical is minimal risk would be based on a recognition of the overall safety of the chemical (such as very low toxicity or practically non-toxic) considering the widely available information on the chemical's known properties, and a history of safe use under reasonable circumstances. Minimal risk (List 4A) substances are recognized as safe for use in all pesticide products subject only to good agricultural practices or good manufacturing practices. Classification as a List 4A, minimal risk, substance is a high standard to meet. As an example, substances of high acute toxicity are usually not considered for classification to List 4A. The critical distinction between List 4A minimal risk substances and other substances, is that the Agency does not define how, where, when or in what manner the substance can be used. Any reasonably foreseeable use of these substances is not expected to present a risk to humans. Accordingly, there should not be any unreasonable adverse effects from the inclusion of a List 4A substance in a pesticide product to the person applying a pesticide product in and around their home, to a child in a day-care center, or when ingesting a food commodity that has been treated. A List 4A substance used as an inert ingredient, incorporated into a 25(b) product (meeting all the appropriate exemption criteria) is subject to no Federal regulation. Therefore, unless a substance can meet and continues to meet this high standard, it will not be classified as minimal risk.

B. Why Are Uses as Both an Inert or Active Ingredient Being Included?

Active ingredients are defined in 40 CFR 153.125 as having the capability at the proposed use dilution to function as a pesticide, that is to kill, repel, or mitigate the pest. Inert ingredients are defined as all ingredients that are not active ingredients. However, it is possible for a chemical to be an active ingredient in one pesticide product and an inert ingredient in another pesticide product. Determining whether an ingredient in a pesticide product is inert or active requires information on the purpose of the ingredient in the formulation. As an example, citric acid can be used as a disinfectant, sanitizer, and fungicide (an active ingredient). However, citric acid can also perform as a sequestration agent or to lower the pH, thus functioning as an inert ingredient. To determine whether an ingredient is inert or active requires an understanding of the purpose of the ingredient in the formulation.

Thus, the toxicity of a chemical does not depend on whether it is used as either an inert ingredient or active ingredient, but on its impact to human health and the environment. Establishment of a tolerance exemption under 40 CFR 180.1001(g) indicates that the substance may be used as either an inert or an active ingredient (as appropriate, based on its use in the formulation) in pesticide formulations applied to food crops.

C. Why Are Commonly Consumed Foods Being Included in this New Paragraph?

It is unlikely that a commonly consumed food commodity could be used to control a pest via a toxic mode of action. Generally, when used as an active ingredient, food commodities have been used to either attract or repel pests. Canola oil is a refined vegetable oil that can be used as an active ingredient to control insects in a wide variety of crops. Scientists believe that canola oil repels insects by altering the outer layer of the leaf surface or by acting as an insect irritant. Oils such as canola, however, can also be used as a surfactant in pesticide formulations. Surfactants are used to modify the nature of a surface, such as reducing the surface tension of water. Surfactants can be used as wetting agents, detergents, penetrants, and emulsifiers. When used in this capacity, canola oil would be an inert, rather than an active, ingredient. Other food commodities also are used as inert ingredients. For example, oats can be used as a carrier, i.e., the active ingredient is coated onto the oats, which is then consumed by the pest.

In the September 28, 1994, **Federal Register** Notice titled ''Inert Ingredients in Pesticide Products; List of Minimal Risk Inerts'' the Agency established a policy of considering all commonly consumed foods as acceptable for use in all pesticide products. The Notice specifically stated that a specific exemption from tolerance would not be required for foods used as inert ingredients because foods were generally recognized as safe (GRAS). However, the above GRAS determination was superceded, on December 4, 1998, in the **Federal Register** (63 FR 37307) (FRL 6039–5) by EPA's establishment of a tolerance exemption for all edible food commodities. That exemption excepted certain foods known to have allergenic properties.

D. Why Are the Tolerance Exemptions for Known Food Allergens Being Time-Limited?

As noted above, EPA has previously established an exemption from tolerance for all edible food commodities with the exception of peanuts, tree nuts, milk, soybeans, eggs, fish, crustacea, and wheat due to the allergenic properties of these foods. (40 CFR 180.1164(d)). The comment received by EPA in this 1998 rulemaking proceeding indicated a concern that the proposed exclusions for allergen-containing food commodities were not sufficient, given that tolerance exemptions existed for some of the same commodities when used as inert ingredients.

The following tolerance exemptions are currently listed in 40 CFR 180.1071 and 40 CFR 180.1001(c), (d), and (e), for the eight known allergen food or food groups and their processed commodities:

40 CFR	Tolerance Exemption
180.1001(c)	casein
180.1001(c)	fish meal
180.1001(c)	soy protein, isolated

40 CFR	Tolerance Exemption
180.1001(c)	soybean flour
180.1001(c)	starch (potato, tapioca, wheat)
180.1001(c)	wheat bran
180.1001(d)	sodium caseinate
180.1001(d)	wheat
180.1001(d)	wheat flour
180.1001(e)	soy protein, isolated
180.1001(e)	wheat shorts
180.1071	egg solids (whole)

The Agency has investigated the post-harvest uses of these eight allergen food or food groups, and has determined that such uses do exist. An example would be a formulation, that contains wheat as a carrier, which is then applied to stored grain other than wheat. Thus, some of the above tolerance exemptions are necessary to cover the use of these existing products. The 12 tolerance exemptions overlap to some degree and therefore EPA is proposing to amend them to reduce duplication. The result will be that the 12 tolerances will be reduced to 8.

More importantly, the Agency is proposing to place 3–year expiration dates on the eight tolerance exemptions that will remain. This will give the Agency a period of 3 years to continue its examination of the uses of these food commodities, and discuss product re-formulation with affected registrants. The Agency recognizes that various factors such as restrictions on post-harvest applications or information on the environmental degradation/metabolism of the allergen may enable the Agency, at a future date, to (1) make a determination of safety, (2) reassess these tolerances, and (3) establish tolerance exemptions with limitations on the use pattern, that would not be time-limited.

E. Why Are Animal Feed Exemptions Being Included in this New Paragraph?

Like commonly-consumed human food, animal feed items are of minimal risk to humans who consume animal products (such as meat, milk, poultry or eggs), or to the animals. They are therefore being included in proposed 40 CFR 180.1001(g). Feed items are occasionally used as pesticides. For example, a feed item, such as corn cobs, can be used as a carrier. For such a use, the corn cobs would be ground, and then an active ingredient coated onto the ground feed item, is then consumed by the pest. Or a feed item could be used as a carrier for a lawn and garden product, with the added advantage of degrading over a period of time in the natural environment. Again, there is a long history of safe use of animals consuming these feed items, and then producing meat, milk, poultry, and eggs that are in turn consumed by humans.

Feed items can also include items derived from known allergen-containing foods, such as almond hulls and peanut shells. These by-products of allergen-containing foods are not likely to cause an allergic reaction due to the separation of the hull or shell from the protein allergen.

There are a large variety of feed items. Most agricultural crops and their corresponding raw agricultural and processed commodities can be, and are, fed to livestock. Due to differences in their metabolisms, animals can obtain nutrition from parts of plants that are not digested by humans such as hays, forages, seeds, leaves, hulls and shells, and stovers. Animals also consume plants, such as sorghum, that are not consumed by humans. As a reference, the significant feed items consumed by animals are contained in Table 1 (''Raw Agricultural and Processed Commodities and Feedstuffs Derived From Crops''), OPPTS Test Guidelines, *Residue Chemistry*, Guideline 860.1000, Background. (see http://www.epa.gov/docs/OPPTS—Harmonized/860—Residue—Chemistry—Test—Guidelines/Series/). There are also other feed items not listed in Table 1 such as pineapple forage and fodder, or sugarcane forage and fodder that are consumed by animals, but not in amounts considered to be significant feed items on a national basis.

F. Why Are Edible Fats and Oils Being Included in the New Paragraph?

As previously explained on December 4, 1998, EPA established an exemption from tolerance for all edible food commodities with the exception of peanuts, tree nuts, milk, soybeans, eggs, fish, crustacea, and wheat due to the allergenic properties of these foods. (40 CFR 180.1164(d)) The exception included all processed forms of the allergen-containing food commodities including oils. EPA is proposing to no longer exclude highly refined edible oils derived from peanuts, tree nuts, soybeans, fish, crustacea, and wheat. Most oils are highly refined. The information available to the Agency does not indicate the presence of the protein allergens in the oils. The production process is generally believed to remove or destroy the allergen, which would cause the allergic reaction.

G. Why is Lactose Being Included?

It is also proposed to include lactose (milk sugar) in the to-be-established 40 CFR 180.1001(g) tolerance exemptions. Lactose intolerance occurs when the body does not produce a sufficient amount of lactase, the enzyme that digests lactose. The presence of undigested lactose in the large intestine can cause gas or diarrhea; however, this is not life-threatening, as allergic reactions can be. Many lactose-intolerant individuals are capable of consuming small amounts of lactose with few or no symptoms. EPA can only regulate the use of lactose in pesticide formulations. Given the wide-spread nature of lactose in the food supply, the amount of lactose that can be applied to food as a result of its use in a pesticide product should not significantly increase the existing amounts in the food supply. Additionally, given the nature of plant metabolism it is unlikely that lactose would be directly absorbed or actually present in plant tissues. Lactose can be hydrolyzed to glucose, which is a natural plant compound and is, in fact, the sugar produced by photosynthesis. In plants, glucose is converted into starch or sucrose.

H. Conclusions

All of the substances considered in this proposed rule for inclusion in 40 CFR 180.1001(g) can be grouped into and included in three major categories. These are: (1) Commonly consumed food commodities; (2) animal feed items; and (3) edible fats and oils. All of the revoked tolerances will be recodifed in 40 CFR 180.1001(g), albeit in a different format. In fact, the amendments and revisions to the tolerance exemptions will be beneficial to the regulated community by increasing the number of minimal risk inert ingredients for use in pesticide formulations.

EPA believes that the proposed tolerance exemptions in 40 CFR 180.1001(g) will be safe for humans including infants and children. EPA also is not aware of any data submitted pursuant to Section 6(a)2 of FIFRA showing significant adverse effects to humans from use of commonly consumed food commodities, animal feed items, or fats and oils. Because of the above, EPA has not assessed the risk of these substances using a safety factor approach. Accordingly, application of an additional l0X safety factor analysis or quantitative risk assessment is not necessary to protect infants and children.

V. What is the Contribution to Tolerance Reassessment

By law, EPA is required to reassess 66% or about 6,400 of the tolerances in existence on August 2, 1996, by August 2002. This proposed rule proposes to revoke 39 tolerance exemptions which will be counted toward the August 2002

review deadline of FFDCA section 408(q), as amended by FQPA in 1996.

VI. Future Issues

As previously stated, this proposed rule only considers commonly consumed foods, animal feed commodities, and refined, edible oils and fats. The Agency intends (in future proposed and final rules) to expand beyond these three categories and propose additional minimal risk chemicals for inclusion in 40 CFR 180.1001(g). Possible categories could include naturally occurring organic chemicals (such as fatty acids), common substances derived from weathered rocks and minerals, or some animal feed components.

The eight allergen food or food groups tolerance exemptions mentioned earlier in this preamble cannot be reassessed at this time. The Agency will examine the use patterns of these eight and determine the appropriate actions that would allow the Agency to make the safety finding. As explained earlier, restrictions on post-harvest applications or information on the environmental degradation/metabolism of the allergen could enable the Agency, at a future date, to make a determination of safety. Since use restrictions will be necessary, these allergens will no longer meet the criteria of List 4A classification and therefore these eight food or food groups will be transferred from the Agency's 4A list to the 4B list.

VII. Regulatory Assessment Requirements

The Agency is acting on its own initiative under FFDCA section 408(e) in establishing new tolerance exemptions that will consolidate the existing, overlapping and duplicative tolerance exemptions. Under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' subject to review by the Office of Management and Budget (OMB). Because the proposed rule has been exempted from review under Executive Order 12866 due to its lack of significance, this proposed rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001).

This proposed rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 et seq., or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4).

Nor does it require any special considerations as required by Executive Order 12898 entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994) or require OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note).

This proposed rule would establish a new paragraph in 40 CFR 180.1001. Creating a new paragraph does not have a substantive effect and hence causes no impact. This proposed rule would place expiration dates on seven existing tolerance exemptions for various known allergen-containing food commodities. Currently, the Agency's regulatory approach as written in various CFR paragraphs and sections is inconsistent. This 3–year transition period will allow sufficient time to examine the uses of these food commodities, and discuss product re-formulation with affected registrants. At the completion of this process there will be a single consistent approach for all food commodities used as pesticide chemicals.

This proposed rule would also revoke 39 tolerance exemptions, thus (1) revoking duplicative and overlapping tolerance exemptions for commonly consumed (non-allergen) food commodities, (2) revoking and consolidating the existing tolerance exemptions for animal feed items and allowing additional minimal risk animal feed items not previously exempted for use in pesticide products, and (3) establishing the use of edible oils derived from allergens since the available information indicates that the use of these oils is not of concern.

Pursuant to the section 605(b) of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 et seq.), the Agency hereby certifies that these proposed actions will not have significant negative economic impact on a substantial number of small entities. By contrast, the amendments and revisions to the tolerance exemptions will be beneficial to the regulated community by increasing the number of minimal risk inert ingredients for use in pesticide formulations.

Pursuant to the RFA the Agency previously assessed whether revocations of tolerances or tolerance exemptions might significantly impact a substantial number of small entities and concluded that, as a general matter, these actions do impose a significant economic impact on a substantial number of small entities. This analysis was published on December 17, 1997 (62 FR 66020) (FRL–5753–1), and was provided to the Chief Counsel for Advocacy of the Small Business Administration. Taking into account this analysis, the available information concerning the pesticide chemicals listed in this rule, the transition time for the known allergen containing commodities and considering that all of the to-be-revoked tolerance exemptions will be covered in the to-be-established 40 CFR 180.1001(g), the Agency knows of no extraordinary circumstances that exist as to the present revocation that would change EPA's previous analysis.

In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' This proposed rule does not affect States directly, but does directly regulate growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4).

For these same reasons, the Agency has determined that this rule does not have any ''tribal implications'' as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of

regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes.'' This rule will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practices and procedures, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: December 21, 2001.

James Jones,

Director, Office of Pesticide Programs.

Therefore, it is proposed that 40 CFR chapter I be amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 would continue to read as follows:

Authority: 21 U.S.C. 321(q), 346(a) and 371.

§ 180.1001 [Amended]

2. Section 180.1001 is amended as follows:

A. In paragraph (c) remove the entries for: almond shells; apple pomace; citrus meal; cocoa shells; coconut oil; corn cobs; corn meal; corn oil; cornstarch; corn syrup; cottonseed oil; dextrose; fish oil; grape pomace, dried; lactose; lard; molasses; oatmeal; oats; orange pomace; peanut shells; rice bran; soybean, oil; starch (potato, tapioca, wheat); and sucrose.

B. In paragraph (d) remove the entries for: cinnamon; clove; coffee; corn; corn gluten meal, hydrolized; fenugreek; low erucic acid rapeseed oil, conforming to 21 CFR 184.1555(c) (CAS Reg. No. none); oat hulls; wheat; and wheat flour.

C. In paragraph (e) remove the entries for: corn syrup; dextrose; and sucrose.

3. Section 180.1001 is further amended by revising the following entries in the tables to paragraphs (c), (d), and (e), by adding the entry ''wheat, including flour, bran, and starch'' to the table in paragraph (c), by adding and reserving paragraph (f) and by adding paragraph (g) to read as follows.

§ 180.1001 Exemptions from the requirement of a tolerance.

(c) * * *

Inert ingredients	Limits	Uses
* * * * * *		*
Casein	expires [*insert date 3 years from date of publication of the final rule in the* FEDERAL REGISTER].	Surfactant, emulsifier, wetting agent
* * * * * *		*
Fish meal	expires [*insert date 3 years from date of publication of the final rule in the* FEDERAL REGISTER].	Solid diluent, carrier
* * * * * *		*
Soy protein, isolated	expires [*insert date 3 years from date of publication of the final rule in the* FEDERAL REGISTER].	Adhesive
Soybean flour	expires [*insert date 3 years from date of publication of the final rule in the* FEDERAL REGISTER].	Surfactant
* * * * * *		*
Wheat, including flour, bran, and starch.	expires [*insert date 3 years from date of publication of the final rule in the* FEDERAL REGISTER].	Solid diluent, carrier, attractant
* * * * * *		*

(d) * * *

Inert ingredients	Limits	Uses
* * * * * *		*
Sodium caseinate	expires [*insert date 3 years from date of publication of the final rule in the* FEDERAL REGISTER].	Suspending agent and binder
* * * * * *		*

(e) * * *

Inert ingredients	Limits	Uses
* * * * * *		*
Soy protein, isolated	expires [*insert date 3 years from date of publication of the final rule in the* FEDERAL REGISTER].	Adhesive
* * * * * *		*
Wheat shorts	expires [*insert date 3 years from date of publication of the final rule in the* FEDERAL REGISTER].	Solid diluent
* * * * * *		*

(f) [Reserved]

(g) *Minimal risk substances.* Unless specifically excluded, residues resulting from the use of the following substances as either an inert or an active ingredient in a pesticide chemical formulation, including antimicrobial pesticide chemicals, are exempted from the requirement of a tolerance under section

408 of the FFDCA if such use is in accordance with good agricultural or manufacturing practices.

(1) *Commonly-consumed food commodities.*''Commonly-consumed food commodities'' means foods that are commonly consumed for their nutrient properties. The term ''commonly-consumed food commodities'' shall only apply to food commodities, whether a raw agricultural commodity or a processed commodity, in the form the commodity is sold or distributed to the public for consumption.

(i) Included within the term ''commonly-consumed food commodities'' are:

(A) Sugars such as sucrose, lactose, dextrose and fructose, and invert sugar and syrup.

(B) Spices such as cinnamon, cloves, and red pepper.

(C) Herbs such as basil, anise, or fenugreek.

(ii) Excluded from the term ''commonly-consumed food commodities'' are:

(A) Any food commodity that is adulterated under 21 U.S.C. 342.

(B) Both the raw and processed forms of peanuts, tree nuts, milk, soybeans, eggs, fish, crustacea, and wheat.

(C) Alcoholic beverages.

(D) Dietary supplements.

(2) *Animal feed items.* ''Animal feed items'' means all items derived from field crops that are fed to livestock, and meat meal. Meat meal is an animal feed composed of dried animal fat and protein that has been sterilized. Other than meat meal, the term ''animal feed item'' does not extend to any item designed to be fed to animals that contains, to any extent, components of animals.

(i) Included within the term ''animal feed items'' are:

(A) The hulls and shells of the commodities specified in paragraph (g)(1)(ii)(B) of this section, and cocoa beans.

(B) Bird feed such as canary seed.

(C) Any feed component of a medicated feed meeting the definition of an animal feed item.

(ii) Excluded from the term animal feed item are both the raw and processed forms of peanuts, tree nuts, milk, soybeans, eggs, fish, crustacea, and wheat.

(3) *Edible fats and oils.* Edible fats and oils means all edible (food or feed) fats and oils, derived from either plants or animals, whether or not commonly consumed, including products derived from hydrogenating (food or feed) oils, or liquefying (food or feed) fats. Excluded from the term edible fats and oils are plant oils used in the pesticide chemical formulation for their characteristic smell and/or taste and oils derived from the commodities specified in paragraph (g)(1)(ii)(B) of this section except to the extent such oils are highly refined.

4. Section 180.1071 is revised to read as follows:

§ 180.1071 Egg solids (whole); exemption from the requirement of a tolerance.

A time-limited tolerance exemption expiring [*insert date 3 years from date of publication of the final rule in the* **Federal Register**] is established for residues of whole egg solids (of at least feed grade quality) when used as an animal repellent in or on almonds and applied to the growing crop in accordance with good agricultural practices.

§ 180.1164 [Removed]

5. Section 180.1164 is removed.

§ 180.1194 [Removed]

6. Section 180.1194 is removed.

[FR Doc. 02–699 Filed 1–14–02; 8:45 a.m.]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[FRL–7127–6]

Washington: Proposed Authorization of State Hazardous Waste Management Program Revision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: Washington has applied to EPA for final authorization of changes to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). EPA has reviewed Washington's application and made the preliminary decision that these changes satisfy all requirements needed to qualify for final authorization, and is proposing to authorize the State's changes.

DATES: EPA will accept written comments on the Agency's preliminary decision to authorize changes to the State of Washington's hazardous waste management program which are received at the address below on or before February 14, 2002.

ADDRESSES: Send written comments to Nina Kocourek, U.S. EPA, Region 10, Office of Waste and Chemicals Management, 1200 Sixth Avenue, Mail Stop WCM–122, Seattle, WA 98101, phone, (206) 553–6502. You can examine copies of the materials submitted by Washington during normal business hours at the following locations: EPA Region 10 Library, 1200 Sixth Avenue, Seattle WA 98101, phone, (206) 553–1289; and at the Washington Department of Ecology, 300 Desmond Drive, WA 98503; Ecology contact is Patricia Hervieux at (360) 407–6756.

FOR FURTHER INFORMATION CONTACT: Nina Kocourek, U.S. EPA Region 10, Office of Waste and Chemicals Management, 1200 Sixth Avenue, Mail Stop WCM–122, Seattle, WA, 98101; (206) 553–6502. For general information available on the authorization process, see EPA's website at: *http://www.epa.gov/epaoswer/hazwaste/state/rcra.*

SUPPLEMENTARY INFORMATION:

A. Why Are Revisions to State Programs Necessary?

States which have received final authorization from EPA under RCRA section 3006(b), 42 U.S.C. 6926(b), must maintain a hazardous waste program that is equivalent to and consistent with the Federal program. States are required to have enforcement authority which is adequate to enforce compliance with the requirements of the hazardous waste program. Under RCRA section 3009, States are not allowed to impose any requirements which are less stringent than the Federal program. As the Federal program changes, States must change their programs and ask EPA to authorize the changes. Changes to State programs may be necessary when Federal or State statutory or regulatory authority is modified or when certain other changes occur. Most commonly, States must change their programs because of changes to EPA's regulations in Title 40 of the Code of Federal Regulations (CFR) parts 124, 260 through 266, 268, 270, 273 and 279.

B. What Decisions Have We Made in This Rule?

EPA has made the preliminary determination that Washington's program, as revised, meets the statutory and regulatory requirements established by RCRA. Therefore, we are proposing to grant Washington final authorization to operate its hazardous waste program with the changes described in the authorization application and as described in this proposed rule. Regulatory revisions which are less stringent than Federal program requirements and those regulatory revisions which are broader in scope than Federal program requirements will not be authorized.

Washington's authorized program will be responsible for carrying out the aspects of the RCRA program described in its revised program application, subject to the limitations of the Hazardous and Solid Waste Amendments of 1984 (HSWA) and the limitation of this authorization. Washington's authorized program does not extend to Indian country, except that Washington does have jurisdiction over non-trust lands within the 1873 Survey Area of the Puyallup Reservation as defined in the Settlement Agreement between the Puyallup Tribe, Federal, State and local governments dated August 27, 1988. EPA retains jurisdiction and authority to implement RCRA over Indian country and over trust lands, Indians and Indian activities within the 1873 Survey Area.

New Federal requirements and prohibitions imposed by Federal regulations that EPA promulgates under the authority of HSWA are implementable by EPA and take effect in States with authorized programs before such programs are authorized for the requirements. Thus, EPA will implement those HSWA requirements and prohibitions in Washington, including issuing permits, until the State is granted authorization to do so.

C. What Will Be the Effect if Washington Is Authorized for These Changes?

If Washington is authorized for these changes, a facility in Washington subject to RCRA will have to comply with the authorized State program requirements and with the federal HSWA provisions for which the State is not authorized in order to comply with RCRA. Washington has enforcement responsibilities under its State hazardous waste program for violations of its currently authorized program and will have enforcement responsibilities for the revisions which are the subject of this proposed rule once a final rulemaking becomes effective. EPA continues to have independent enforcement authority under RCRA sections 3007, 3008, 3013, and 7003, which include, among others, authority to:

- Do inspections and require monitoring, tests, analyses, or reports;
- Enforce RCRA requirements, including State program requirements that are authorized by EPA and any applicable Federally-issued statutes and regulations, and suspend or revoke permits; and
- Take enforcement actions regardless of whether the State has taken its own actions.

The action to approve these revisions will not impose additional requirements on the regulated community because the regulations for which Washington's program will be authorized are already effective under State law.

D. What Happens if EPA Receives Comments That Oppose This Action?

If the EPA receives significant written comments on this authorization, we will address those comments in a later final rule. You may not have another opportunity to comment. If you want to comment on this authorization, you must do so at this time.

E. What Has Washington Previously Been Authorized for?

Washington initially received final authorization on January 30, 1986, effective January 31, 1986 (51 FR 3782), to implement the State's dangerous waste management program. EPA granted authorization for changes to Washington's program on September 22, 1987, effective on November 23, 1987 (52 FR 35556); August 17, 1990, effective October 16, 1990 (55 FR 33695); November 4, 1994, effective November 4, 1994 (59 FR 55322); February 29, 1996, effective April 29, 1996 (61 FR 7736); September 22, 1998, effective October 22, 1998 (63 FR 50531) and on October 12, 1999 effective January 11, 2000 (64 FR 55142).

F. What Changes Are We Proposing to Washington's Authorized Program?

EPA is proposing to authorize revisions to Washington's authorized program described in Washington's official program revision application, submitted to EPA on August 2, 2001, and deemed complete by EPA on September 19, 2001. We have made a preliminary determination that Washington's hazardous waste program revisions, as described in this proposed rule, satisfy the requirements necessary to qualify for final authorization. Regulatory revisions which are less stringent than Federal program requirements and those regulatory revisions which are broader in scope than Federal program requirements will not be authorized.

The following table, Table 1, identifies equivalent and more stringent analogues to the Federal regulations for those regulatory revisions Washington is seeking authorization for. All of the referenced analogous state authorities were legally adopted and effective as of June 10, 2000.

TABLE 1.—EQUIVALENT AND MORE STRINGENT ANALOGUES TO THE FEDERAL REGULATIONS [1]

Checklist	Federal requirements	Federal Register	Analogous State authority (WAC 173–303–* * *)
17P [2]	Interim Status	50 FR 28702, 7/15/85	803(1), 803(2); 806(2)(a) 806(2)(b); 806(8); 803(2)(a), 803(2)(b); 810(11)(c), 810(11)(e); 805(1)(b), 805(1)(c), 805(8)(f)(i), 805(8)(f)(ii), 805(8)(g), 805(8)(h), 805(8)(i), 805(8)(j).
144	Removal of Legally Obsolete Rules.	60 FR 33912, 06/29/95	803(2)(b), 803(4)(b), 803(5)(a)(i), 803(5)(a)(i)(A), 803(5)(a)(i)(B), 803(5)(a)(i)(C).
148 [2]	RCRA Expanded Public Participation.	60 FR 63417, 12/11/95	281(4) and 281(4)(a), 281(4)(b), 281(4)(c), 281(4)(d), 281(4)(d)(i), 281(4)(d)(i)(A), 281(4)(d)(i)(B), 281(4)(d)(i)(C), 281(4)(d)(i)(D), 281(4)(d)(ii), 281(4)(d)(ii)(A), 281(4)(d)(ii)(B), 281(4)(d)(ii)(C), 281(4)(d)(ii)(D), 281(4)(d)(ii)(E); 281(5), 281(5)(a), 281(5)(b), 281(5)(b)(i), 281(5)(b)(ii), 281(5)(b)(ii)(A), 281(5)(b)(ii)(B), 281(5)(b)(ii)(C), 281(5)(b)(ii)(D), 281(5)(b)(ii)(E), 281(5)(b)(ii)(F), 281(5)(b)(iii), 281(6) and 281(6)(a), 281(6)(b), 281(6)(c), 281(6)(d), 281(6)(e), 281(6)(f); 040; 806(4)(a)(xxv); 810(16); 804(6)(a); 807(6), 807(6)(a), 807(6)(b), 807(6)(b)(i), 807(6)(b)(ii), 807(6)(b)(iii), 807(6)(b)(iv), 807(7), 807(8)-(11), 807 (14).

TABLE 1.—EQUIVALENT AND MORE STRINGENT ANALOGUES TO THE FEDERAL REGULATIONS [1]—Continued

Checklist	Federal requirements	Federal Register	Analogous State authority (WAC 173–303–* * *)
151	Land Disposal Phase III—Decharacterized Wastewaters, Carbamate Wastes, and Spent Potliners.	61 FR 15566, 04/08/96; 61 FR 15660,04/08/96; 61 FR 19117, 04/30/96; 61 FR 33680, 06/28/96; 61 FR 36421, 07/10/96; 61 FR 43924, 08/26/96; 62 FR 7502, 02/19/97.	140 (2)(a).
153	Conditionally Exempt Small Quantity Generator Disposal Options Under Subtitle D.	61 FR 34252, 07/01/96	070(8)(b), 070(8)(b)(iii), 070(8)(b)(iii)(A), 070(8)(b)(iii)(B), 070(8)(b)(iii)(E), 070(8)(b)(iii)(F), 070(8)(b)(iii)(D), 070(8)(b)(iii)(H).
154 [2]	Consolidated Organic Air Emission Standards for Tanks, Surface Impoundments, and Containers: (Includes CC and the 300 hour BB exemption).	59 FR 62896, 12/06/94; 60 FR 26828, 05/19/95; 60 FR 50426, 09/29/95; 60 FR 56952, 11/13/95; 61 FR 4903, 02/09/96; 61 FR 28508, 06/05/96; 61 FR 59932, 11/25/96.	692(3); 110(3)(g)(ix),110(3)(g)(x); 120(4)(d), 120(4)(e); 200(1)(b)(i), 200(1)(b)(ii); 201(e); 300(5)(f), 300(5)(i), 300(5)(i)(A), 300(5)(i)(B); 320(2)(c); 380(1)(c), 380(1)(f), 390(3)(d); 630(11); 640(11); 650(12); 680(2); 690(1)(b), 690(1)(b)(i), 690(1)(b)(ii), 690(1)(b)(iii), 690(1)(c), 690(2); 691(1)(b), 691(1)(b)(i), 691(1)(b)(ii), 691(1)(b)(iii), 691(1)(f), 691/note at end of (1), 691(2); 692(1)(a), 692(1)(b), 692(1)(b)(i), 692(1)(b)(ii), 692(1)(b)(iii), 692(1)(b)(iv), 692(1)(b)(v), 692(1)(b)(vi), 692(1)(b)(vii), 692(1)(b)(viii), 692(1)(c), 692(1)(d), 692(1)(d)(i), 692(1)(d)(ii), 692(1)(d)(iii); 692(2); 400(2)(a); 300(5)(f), 300(5)(i), 300(5)(i)A), 300(5)(i)(B); 320(2)(c); 380(1)(c), 380(1)(f); 390(3)(d); 400(3)(a); 810(8)(a)(ii), 810(8)(a)(iii), 810(8)(a)(iv); 806(4)(a)(v), 806(4)(b)(vi), 806(4)(c)(xiii), 806(4)(d)(xi), 806(4)(m).
156 [2]	Military Munitions Rule Hazardous Waste Identification and Management; Explosives Emergencies; Manifest Exemption for Transport of Hazardous Waste on Right-of-Ways on Contiguous Properties.	62 FR 6622, 02/12/97	040; 016(3)(b)(iii), 016(3)(b)(iv); 170(5); 180(6); 240 (10); 600(3)(p), 600(3)(p)(i)(D), 600(3)(p)(iv), 600(3)(q); 693(l), 693(2)(a), 693(2)(a)(i), 693(2)(a)(ii), 693(2)(a)(iii), 693(2)(a)(iv), 693(2)(a)(v), 693(2)(b), 693(2)(b)(i), 693(2)(b)(i)(A), 693(2)(b)(i)(B), 693(2)(b)(i)(B)(I)-(III), 693(2)(b)(i)(C), 693(2)(b)(ii), 693(2)(b)(iii), 693(2)(c), 693(2)(d), 693(2)(e), 693(2)(f); 693(3)(a , 693(3)(b); 400(2)(c)(xiii)(A)(IV), 400(2)(c)(xiii)(D), 400(2)(c))(xii), 400(3)(b); 400(3)(c)(xii); 578(1)(a), 578(1)(b), 578(2)(a), 578(2)(a)(i), 578(2)(a)(i)(A), 578(2)(a)(i)(B), 578(2)(a)(i)(C), 578(2)(a)(ii), 578(2)(b), 578(2)(b)(i), 578(2)(b)(ii), 578(2)(b)(iii), 578(2)(b)(iv), 578(2)(c), 578(2)(c)(i), 578(2)(c)(ii), 578(2)(d), 578(3), 578(4)(a), 578(4)(a)(i), 578(4)(a)(i)(A), 578(4)(a)(i)(B), 578(4)(a)(i)(C), 578(4)(a)(i)(D), 578(4)(a)(i)(E), 578(4)(a)(i)(F), 578(4)(a)(i)(G), 578(4)(a)(ii), 578(4)(a)(iii), 578(4)(b), 578(4)(c); 578(5); 800(7)(c)(i)(D), 800(7)(c)(i)(E); 830(4)(h), 830(4)(h)(i), 830(4)(h)(ii), 830(4)(h)(iii), 830(4)(i).
157	Land Disposal Restrictions Phase IV—Treatment Standards for Wood Preserving Wastes, Paperwork Reduction and Streamlining, Exemptions From RCRA for Certain Processed Materials; and Miscellaneous Hazardous Waste Provisions.	62 FR 25998, 05/12/97	040; 016(2)(l), 016(2)(m), 016(2)(n), 016(2)(o); 016(5) Table 1; 071(3)(ff), 071(3)(gg), 071(3)(gg)(i), 071(3)(gg)(ii); 120(2)(a)(iv); 140(2)(a).
158	Testing Monitoring Activities Amendment III.	62 FR 32452, 06/13/97	110(1); 110(3)(h)(v), 110(3)(h)(vi), 110(3)(g)(i), 110(3)(g) (ii), 110(3)(g)(iii), 110(3)(g)(iv), 110(3)(g)(v), 110(3)(g)(vi), 110(3)(g)(viii), 110(3)(h)(i), 110(3)(a), 110(3)(h)(ii), 110(3)(h)(iii), 110(3)(h)(vii), 110(3)(g)(x); 690(2); 691(2); 645(4)(a); 400(3)(a).
162	Clarification of Standards for Hazardous Waste LDR Treatment Variances.	62 FR 64504, 12/05/97	140 (2)(a).

TABLE 1.—EQUIVALENT AND MORE STRINGENT ANALOGUES TO THE FEDERAL REGULATIONS [1]—Continued

Checklist	Federal requirements	Federal Register	Analogous State authority (WAC 173–303–* * *)
163	Organic Air Emission Standards for Tanks, Surface Impoundments, and Containers; Clarification and Technical Amendment: (AA, BB, CC).	62 FR 64636, 12/08/97	320(2)(c); 380(1)(f); 690(1)(b)(iii), 690(1)(c), 690(1)(d); 690(2); 691(1)(b)(iii), 691(1)(c), 691(1)(f), 691(2); 692(1)(b)(i), 692(1)(c), 692(2); 320(2)(c); 400(3)(a); 806(4)(a)(v).
164	Kraft Mill Steam Stripper Condensate Exclusion.	62 FR 18504, 04/15/98	071(3)(mm).
167A	Land Disposal Restriction Phase IV—Treatment Standards for Metal Wastes and Mineral Processing Wastes.	63 FR 28556, 05/26/98	140(2)(a).
167B	Land Disposal Restriction Phase IV—Hazardous Soils Treatment Standards and Exclusions.	63 FR 28556, 05/28/98	140(2)(a).
167C	Land Disposal Restrictions Phase IV—Corrections.	63 FR 28556, 05/26/98	140(2)(a).
167F	Exclusion of Recycled Wood Preserving Wastewater.	63 FR 28556, 05/26/98	071(3)(w)(iii), 071(3)(w)(iii)(A), 071(3)(w)(iii)(B), 071(3)(w)(iii)(C), 071(3)(w)(iii)(D), 071(3)(w)(iii)(E).
169 [2]	Petroleum Refining Process Wastes.	63 FR 42110, 08/06/98	071(3)(p), 071(3)(jj); 071(3)(cc)(i), 071(3)(cc)(ii), 071(3)(hh), 071(3)(hh)(i), 071(3)(hh)(ii), 071(3)(ii); 016(5)(d)(ii); 120 (2)(a)(viii)(c); 9904; 082(4); 140(2)(a).
170	Land Disposal Restrictions Phase IV—Zinc Micro nutrient Fertilizers, Amendment.	63 FR 46332, 08/31/98	140(2)(a).
171	Emergency Revision of the Land Disposal Restrictions (LDR) Treatment Standards for Listed Hazardous Wastes from carbamate Production.	63 FR 47410, 09/04/98	140(2)(a).
172	Land Disposal Restriction Phase IV—Extension of Compliance Date for Characteristic Slags.	63 FR 48124, 09/09/98	140(2)(a).
173	Land Disposal Restrictions; Treatment Standards for Spent Potliners from Primary Aluminum Reduction Rule (K088); Final Rule.	63 FR 51254, 09/24/98	140(2)(a).
174 [3]	Post Closure Permit Requirement and Closure Process: Requirements for alternative groundwater monitoring requirements for regulated units colocated with SWMU's where both types of units have released to the environment..	63 FR 56710, 10/22/98	645(1)(e), 645(1)(e)(i), 645(1)(e)(ii); 610(1)(d), 610(1)(d)(i), 610(1)(d)(ii); 610(3)(a)(ix), 610(3)(b)(ii)(D); 610(8)(b)(iv), 610(8)(d)(ii)(D); 620(1)(d), 620(1)(d)(i), 620(1)(d)(ii); 400(3)(a).
175 [2]	HWIR-Media	63 FR 65874, 11/30/98	040; 071(3)(11) first line, 071(3)(11)(i) through (iii); 280(5); 280(6), 280(6)(a), 280(6)(b), 280(6)(c), 280(6)(d), 280(6)(e), 280(6)(f), 280(6)(g), 280(6)(h), 280(6)(i), 280(6)(j), 280(6)(k); 646(1)(c); 646(4)(a), 646(7)(a), 646(8); 400(2)(a); 140(2)(a); 810(13)(a); 830 Appendix 1, D.3.g.; 830, Appendix 1, N.3.
176	Universal Waste Rule—Technical Amendments.	63 FR 71225, 12/24/98	520(1), 520(2), 520(2)(a), 520(2)(b), 520(2)(c); 040.
177	Organic Air Emission Standards Clarification and Technical Amendments: (AA, BB, CC).	64 FR 3382, 01/21/99	200(1)(b)(i), 200(1)(b)(ii); 690(2); 692(1)(v), 692(2); 400(3), 400(3)(a).

TABLE 1.—EQUIVALENT AND MORE STRINGENT ANALOGUES TO THE FEDERAL REGULATIONS [1]—Continued

Checklist	Federal requirements	Federal Register	Analogous State authority (WAC 173–303–* * *)
178	Petroleum Refining Process Wastes—Leachate Exemption.	64 FR 6806, 02/11/99	071(3)(kk), 071(3)(kk)(i), 071(3)(kk)(ii), 071(3)(kk)(iii), 071(3)(kk)(vi), 071(3)(kk)(v).
179 [2]	Land Disposal Phase IV—Technical Corrections and Clarifications to Treatment Standards.	64 FR 25408, 05/11/99	016(5)(c); 016 Table 1; 017(2)(a)(iii); 201(2); 140(2)(a).
180	Test Procedures for Analysis of Oil and Grease and Non-Polar Material.	64 FR 26315, 05/14/99	110(3)(a), 110(3)(h)(iv).
181 [2]	Universal Waste Rule Specific Provisions for Hazardous Waste Lamps.	64 FR 36466, 07/09/99	040; 077(2), 077(3); 600(3)(o)(ii), 600(3)(o)(iii); 400(2)(c)(xi)(B), 400(2)(c)(xi)(C); 140(2)(a); 800(7)(c)(iii)(B), 800(7)(c)(iii)(C); 573(1)(a)(ii), 573(1)(a)(iii), 573(2)(a)(i), 573(2)(b)(ii), 573(2)(b)(iii), 573(3)(a); 573(5)(a), 573(5)(b), 573(5)(b)(i), 573(5)(b)(ii), 573(5)(c), 573(5)(c)(i), 573(5)(c)(ii), 573(4)(a), 573(4)(a)(i), 573(4)(a)(ii), 573(4)(b), 573(6), 573(9)(c), 573(9)(c)(i), 573(9)(c)(ii), 573(9)(c)(iii), 573(10)(c), 573(17), 573(19)(b)(iv), 573(19)(b)(v), 573(20)(c), 573(20)(c)(i), 573(20)(c)(ii), 573(20)(c)(iii), 573(21)c), 573(28), 573(35)(a), 573(40)(a).
112, 122, 130, 166 (Special Consolidated Checklist [2]).	Recycled Used Oil Management Standards as of June 30, 1999.	57 FR 41566, 09/10/92; 58 FR 26420, 05/03/93; 58 FR 33341, 06/17/93; 59 FR 10550, 03/04/94; 63 FR 24963, 05/06/98; 63 FR 37780, 07/14/98.	040; 515(4); 071(3)(z), 071(3)(kk); 120(3); 120(3)(g), 120(3)(f); 120(2)(v), 120(2)(a)(viii)(A), 120(2)(a)(viii)(B), 120(2)(a)(viii)(C), 120(5); 600(5); 510(1)(b)(i); 515(2), 515(3), 515(4), 515(5), 515(6), 515(6)(c), 515(7), 515(8), 515(9), 515(9)(a), 515(9)(b), 515(10), 515(11), 515(12).

[1] For further discussion on where the revised state rules differ from the Federal rules refer to Section G. below, the authorization revision application, and the administrative record for this proposed rule.
[2] State rule contains some more stringent provisions. For identification of more stringent state provisions refer to the authorization revision application and the administrative record for this decision.
[3] State does not seek authorization for enforceable mechanisms in lieu of post-closure permits.

G. Where Are the Revised State Rules Different From the Federal Rules?

This section discusses some of the differences between the revisions Washington proposed to its authorized program and the Federal regulations. Not all program differences are discussed in this section because Washington writes its own version of the federal hazardous waste rules. This section discusses certain rules where EPA is making a finding that the state program is more stringent and will be authorized, rules where the state program is broader in scope and will not be authorized, and rules where the state program is less stringent than the federal requirements. The state will not be authorized for the less stringent rules. Less stringent state rules do not supplant federal regulations. Persons must consult the table referenced above for the specific state regulations which EPA proposes to authorize.

Certain portions of the federal program are not delegable to the states because of the Federal government's special role in foreign policy matters and because of national concerns that arise with certain decisions. EPA does not delegate import/export functions. Under the RCRA regulations found in 40 CFR part 262 EPA will continue to implement requirements for import/export functions. EPA does not delegate sections of 40 CFR part 268 because of the national concerns that must be examined when decisions are made under the following Federal Land Disposal Restriction requirements: 40 CFR 268.5—Procedures for case-by-case effective date extensions; 40 CFR 268.6—''No migration'' petitions; 40 CFR 268.42(b)—applications for alternate treatment methods; and 40 CFR 268.44(a)-(g)—general treatment standard variances. Washington's program has excluded these requirements from its state regulations and EPA will continue to implement these requirements. EPA will continue to implement these requirements under EPA's HSWA authority. The State is seeking authorization for 40 CFR 268.44(h) through (m), which are provisions for which states may receive authorization.

States are allowed to seek authorization for state requirements that are more stringent than federal requirements. EPA has authority to authorize and enforce those parts of a state's program EPA finds to be more stringent than the federal program. This section does not discuss each more stringent finding made by EPA, but persons can locate such sections by consulting the Table, referenced above, as well as by reviewing the docket for this rule.

The State program does not provide generators with an exemption from the manifest requirements as found in the federal regulations at 40 CFR 262.20(f) or transporters as found at 40 CFR 263.10(f). Generators and transporters in Washington will have to comply with the more stringent state paperwork requirements. The State program is more stringent than the federal program because the State regulations do not allow Remedial Action Plans as found in the federal requirements at 40 CFR part 270, subpart H. The State's program is more stringent than the federal program at 40 CFR 261.5(j) because the State has not adopted this provision. Conditionally exempt small quantity generator hazardous waste mixed with used oil is subject to full regulation as a hazardous waste mixture. The State program is also more stringent than the federal requirements at 40 CFR 273.9 because the State's definition of universal waste does not allow

pesticides to be managed as universal waste.

The State program is more stringent in certain places than the federal military munitions rule. The State did not adopt the alternative requirements for transportation of waste military munitions between military installations as is found in the federal program at 40 CFR 266.203(a)-(c) and is therefore more stringent than the federal program. With respect to chemical agents and chemical munitions slated for destruction pursuant to international treaties or agreements, the State identifies such chemical agents and chemical munitions as characteristic and/or listed hazardous waste. In the Military Munitions Rule, at 62 FR 6633, EPA said that states could be more stringent than the federal program for chemical munitions. EPA finds the State program to be more stringent than the federal program in this area because the State rules do not contain a provision that differentiates between wastes that must be designated and waste chemical munitions or chemical munitions that are not considered wastes because they are scheduled for destruction pursuant to treaty or agreement. The State's regulations at WAC 173–303–693(3)(a) are found to be more stringent than the federal regulation at 40 CFR 264.1202(a) and WAC 173–303–400(3)(b), (c)(xii) is found to be more stringent than the federal regulation at 40 CFR 265.1202(a). EPA also said, at 62 FR 6649 in the Military Munitions Rule, that states did not have to include a conditional exemption for waste munitions storage in their programs. EPA also finds that the State's lack of a conditional exemption for waste munition storage, which is found in the federal regulations at 40 CFR 266.205(d), (d)(2), is more stringent than the federal program. Neither the federal regulations, nor the State program conditionally exempt chemical munitions and chemical agents from storage requirements.

The State is not seeking authorization for the Standards for the Management of Waste Fuel and Used Oil for the Burning of these Materials in Boilers and Industrial Furnaces, 40 CFR 266.102 through 40 CFR 266.111. The State did not adopt these federal provisions as state law. EPA is implementing these BIF requirements in Washington State under EPA's HSWA authority.

States are not allowed to seek authorization for state requirements that are broader in scope than federal requirements. EPA does not have authority to authorize and enforce those parts of a state's program EPA finds to be broader in scope than the federal program. Because the State has not adopted an analog to 40 CFR 261.4(b)(7)—exclusions for solid waste from the extraction, beneficiation, and processing of ores and minerals, the State's lack of an analog for the federal exclusion of mixtures of solid waste and hazardous waste which are hazardous based solely on a hazardous characteristic imparted to the waste as a result of a Bevill characteristic, 40 CFR 261.3(a)(2)(iii), is broader in scope than the federal program. EPA also finds the State's regulation at WAC 173–303–578(2)(e) to be broader in scope than the federal regulation at 40 CFR 266.202(a) because the State added a requirement for when munitions at closed and transferred ranges are considered solid wastes. EPA's final Military Munitions Rule did not include this requirement. This requirement in the State program is found to be broader in scope than the federal program.

Although State programs can be authorized where they are more stringent than the federal program, state programs cannot be authorized where they are less stringent. EPA finds the State's additional regulation at WAC 173–303–515(6) for generators of used oil who self-transport greater than 55 gallons per vehicle trip to a used oil collection center, without also designating as a used oil transporter, are less stringent than the federal provisions which limit generator self-transport of used oil to less than or equal to 55 gallons of used oil per vehicle trip. EPA also finds the State's additional regulation at WAC 171–303–515(7) for used oil collection centers to be less stringent because the regulation allows used oil collection centers to accept greater than 55 gallons of used oil from a generator who self-transports used oil to a used oil collection center. The direct impact of EPA's finding to generators and used oil collection centers in Washington is that generators and used oil collection centers will not be exempted from the State's federally authorized requirements which limit self-transport by generators to less than or equal to 55 gallons and used oil collection from a self-transporting generator to less than or equal to 55 gallons.

States sometimes make changes to their previously authorized programs for which they need to seek reauthorization. In Washington, the Permit by Rule provision at WAC 173–303–802(5) is broader in scope than the federal permit by rule regulations where it applies to state-only wastes. However, the state program is more stringent where the rule applies to federally regulated hazardous wastes generated on-site. The federal regulations at 40 CFR 270.1(c)(2)(iv) and (v) exempt owners and operators of totally enclosed treatment facilities, elementary neutralization units or wastewater treatment units, as defined at 40 CFR 260.10, from RCRA permitting requirements. The State is seeking reauthorization for these changes and will be authorized for the more stringent portion of the rule. The State will not be authorized for the broader in scope provision.

The State is not seeking authorization for the entire Post-Closure rule. While the state will be authorized for the portions of the rule that concern alternative requirements for colocated regulated units and solid waste management units which have commingled releases, the State is not seeking, and will not be authorized for the portions of the rule that allow for the use of alternate authorities in lieu of post closure permits. Although the state did incorporate 40 CFR 265.118(c)(4) by reference into its regulations, the state is not seeking authorization for this provision.

H. Who Handles Permits After This Authorization Takes Effect?

Washington will issue permits for all the provisions for which it is authorized and will administer the permits it issues. All permits issued by EPA Region 10 prior to final authorization of this revision will continue to be administered by EPA Region 10 until the issuance or re-issuance after modification of a State RCRA permit and until EPA takes action on its permit. HSWA provisions for which the State is not authorized will continue in effect under the EPA-issued permit. EPA will continue to issue permits for HSWA requirements for which Washington is not yet authorized.

I. How Does Today's Action Affect Indian Country (18 U.S.C. 1151) in Washington?

EPA's decision to authorize the Washington hazardous waste program does not include any land that is, or becomes after the date of this authorization, ''Indian Country,'' as defined in 18 U.S.C. 1151, with the exception of the non-trust lands within the exterior boundaries of the Puyallup Indian Reservation (also referred to as the ''1873 Survey Area'' or ''Survey Area'') located in Tacoma, Washington. EPA retains jurisdiction over ''Indian Country'' as defined in 18 U.S.C. 1151.

J. Administrative Requirements

The Office of Management and Budget has exempted this action from the requirements of Executive Order 12866 (58 FR 51735, October 4, 1993), and therefore this action is not subject to review by OMB. This action authorizes State requirements for the purpose of RCRA 3006 and imposes no additional requirements beyond those imposed by State law. Accordingly, I certify that this action will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this action authorizes pre-existing requirements under State law and does not impose any additional enforceable duty beyond that required by State law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). For the same reason, this action also does not have Tribal implications within the meaning of Executive Order 13175 (65 FR 67249, November 6, 2000). It does not have substantial direct effects on tribal governments, on the relationships between the Federal government and the Indian Tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. This action will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely authorizes State requirements as part of the State RCRA hazardous waste program without altering the relationship or the distribution of power and responsibilities established by RCRA. This action also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant and it does not make decisions based on environmental health or safety risks. This rule is not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply Distribution or Use'' (66 FR 28344, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866. The proposed rule does not include environmental justice issues that require consideration under Executive Order 12898 (59 FR 7629, February 16, 1994).

Under RCRA 3006(b), EPA grants a State's application for authorization as long as the State meets the criteria required by RCRA. It would thus be inconsistent with applicable law for EPA, when it reviews a State authorization application, to require the use of any particular voluntary consensus standard in place of another standard that otherwise satisfies the requirements of RCRA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the ''Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings' issued under the executive order. This proposed rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 40 CFR Part 271

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous waste, Hazardous waste transportation, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements.

Authority: This action is issued under the authority of sections 2002(a), 3006 and 7004(b) of the Solid Waste Disposal Act as amended 42 U.S.C. 6912(a), 6926, 6974(b).

Dated: January 2, 2002.

L. John Iani,

Regional Administrator, Region 10.

[FR Doc. 02–626 Filed 1–14–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 721

[OPPTS–50640; FRL–6745–7]

RIN 2070–AB27

Proposed Significant New Uses of Certain Chemical Substances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing this significant new use rule (SNUR) under section 5(a)(2) of the Toxic Substances Control Act (TSCA) for the following six chemical substances: C.I. Pigment Orange 20 (CAS No. 12656–57–4); Chromic Acid, Lead(2+) Salt (1:1) (CAS No. 7758–97–6); Chromium Lead Molybdenum Oxide (CAS No. 12709–98–7); Lead Molybdenum Oxide (CAS No. 10190–55–3); Sulfuric Acid, Lead(2+) Salt (1:1) (CAS No. 7446–14–2); and C.I. Pigment Red 104 (CAS No. 12656–85–8). This action proposes to require persons who intend to manufacture, import, or process any of these chemical substances for use in aerosol spray paint for non-industrial, indoor spray application to notify EPA at least 90 days before commencing such activities. The required notification would provide EPA with the opportunity to evaluate the intended use, and if necessary, prohibit or limit that activity before it occurs.

DATES: Comments, identified by the docket control number OPPTS–50640, must be received by EPA on or before March 18, 2002.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I. of the **SUPPLEMENTARY INFORMATION**. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPPTS–50640 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: *For general information contact*: Barbara Cunningham, Acting Director, Environmental Assistance Division, Office of Pollution Prevention and Toxics (7401), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 554–1404; e-mail address: TSCA-Hotline@epa.gov.

For technical information contact: Joe B. Boyd, Chemical Control Division, (7405), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 260–3563 or (540) 778–4609; e-mail address: boyd.joe@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action, if finalized, if you manufacture, import, or process the chemical substances addressed in this proposed rule. In addition, these are

reporting requirements for exporters of these substances. Potentially affected categories and entities may include, but are not limited to:

TABLE 1.—ENTITIES POTENTIALLY AFFECTED BY THE SNUR REQUIREMENTS

Categories	NAICS codes	Examples of potentially affected entities
Chemical manufacturers, importers, or processors	325	Persons who manufacture, defined by statute to include import or process, one or more of the subject chemical substances
Chemical exporters	325	Persons who export, or intend to export, one or more of the subject chemical substances

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in Table 1 of this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action applies to certain entities. To determine whether you or your business could be affected by this action, you should carefully examine the proposed rule and the applicability provisions in 40 CFR 721.5. If you have any questions regarding the applicability of this action to a particular entity, consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically*. You may obtain copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access these documents, on the Home Page select ''Laws and Regulations,'' ''Regulations and Proposed Rules,'' and then look up the entry for this document under the ''**Federal Register**—Environmental Documents.'' You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/. A frequently updated electronic version of 40 CFR part 721 is available at http://www.access.gpo.gov/nara/ cfr/cfrhtml_00/Title_ 40/40cfr721_00.html, a beta site currently under development.

2. *In person*. The Agency has established an official record for this action under docket control number OPPTS–50640. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the TSCA Nonconfidential Information Center, North East Mall Rm. B–607, Waterside Mall, 401 M St., SW., Washington, DC. The Center is open from noon to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Center is (202) 260–7099.

C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPPTS–50640 in the subject line on the first page of your response.

1. *By mail*. Submit your comments to: Document Control Office (7407), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier*. Deliver your comments to: OPPT Document Control Office (DCO) in East Tower Rm. G–099, Waterside Mall, 401 M St., SW., Washington, DC. The DCO is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the DCO is (202) 260–7093.

3. *Electronically*. You may submit your comments electronically by e-mail to: oppt.ncic@epa.gov, or mail your computer disk to the address identified above. Do not submit any information electronically that you consider to be CBI. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments will also be accepted on standard disks in WordPerfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket control number OPPTS–50640. Electronic comments may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI That I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI 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. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

E. What Should I Consider as I Prepare My Comments for EPA?

We invite you to provide your views on the various options we propose, new approaches we haven't considered, the potential impacts of the various options (including possible unintended consequences), and any data or information that you would like the Agency to consider during the development of the final action. You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Offer alternative ways to improve the proposed rule.

7. Make sure to submit your comments by the deadline in this document.

8. To ensure proper receipt by EPA, be sure to identify the docket control numberassigned to this action in the subject line on the first page of your response. You mayalso provide the name, date, and **Federal Register** citation.

II. Background

A. What Action is the Agency Taking?

This proposed SNUR would require persons to notify EPA at least 90 days before commencing the manufacturing, importing, or processing of any amount of one or more of the six chemical substances listed in Table 2 of Unit III. for use in aerosol spray paint for non-industrial, indoor spray application.

B. What is the Agency's Authority for Taking this Action?

Section 5(a)(2) of TSCA (15 U.S.C. 2604(a)(2)) authorizes EPA to determine that a use of a chemical substance is a ''significant new use.'' EPA must make this determination by rule after considering all relevant factors, including those listed in TSCA section 5(a)(2). Once EPA determines that a use of a chemical substance is a significant new use, TSCA section 5(a)(1)(B) requires persons to submit notification to EPA at least 90 days before they manufacture, import, or process the substance for that use.

C. Applicability of General Provisions

General provisions for SNURs appear under subpart A of 40 CFR part 721. These provisions describe persons subject to the rule, reporting and recordkeeping requirements, and exemptions. Provisions relating to user fees appear at 40 CFR part 700. Persons subject to a SNUR must comply with the same notification requirements and EPA regulatory procedures as submitters of Premanufacture Notices (PMNs) under TSCA section 5(a)(1)(A). In particular, these requirements include the information submission requirements of TSCA section 5(b) and 5(d)(1), the exemptions authorized by TSCA section 5 (h)(1), (h)(2), (h)(3), and (h)(5), and the regulations at 40 CFR part 720. Once the Agency receives notification under a SNUR, EPA may, if warranted, take regulatory action under TSCA section 5(e), 5(f), 6, or 7 to control the activities on which it has received the SNUR notification. If EPA does not take action, EPA is required under TSCA section 5(g) to explain in the **Federal Register** its reasons for not taking action.

Persons who intend to export a chemical substance identified in a proposed or final SNUR are subject to the export notification provisions of TSCA section 12(b) (15 U.S.C. 2611 (b)). The regulations that implement TSCA section 12(b) appear at 40 CFR part 707, subpart D. Additionally, persons who intend to import any chemical substance are subject to the TSCA section 13 (15 U.S.C. 2612) import certification requirements, and to the United States Customs Service regulations codified at 19 CFR 12.118 through 12.127 and 127.28. Importers would need to certify that their import shipments are in compliance with the final SNUR requirements among any other TSCA requirements. The EPA policy in support of import certification appears at 40 CFR 707.20.

III. Summary of this Proposed Rule

The chemical substances which are the subjects of this proposed SNUR are listed in Table 2 of this unit. EPA is proposing to designate as a significant new use the use of any of these six chemical substances in aerosol spray paints for non-industrial, indoor spray application. EPA is proposing that ''aerosol spray paint'' be defined as ''a liquid mixture, usually of a solid pigment in a liquid medium, sold in pressurized containers and applied to a surface to form a decorative or protective coating. Aerosol spray paints are sold in individual containers the contents of which are applied without the aid of an air compressor or other external aspirating device.'' EPA is also proposing a definition for ''indoor spray application'' as ''any application of a liquid from a pressurized container within a confined space, including but not limited to inside a building, tank, vessel, motor vehicle, or other structure. Indoor application to objects intended for outdoor use, e.g., painting lawn furniture in a basement for outdoor use, is included within the meaning of indoor spray application.'' ''Non-industrial use'' is already defined in the regulations governing SNURs at 40 CFR 721.3 as a ''use other than at a facility (also defined in § 721.3) where chemical substances or mixtures are manufactured, imported or processed,'' and EPA is not proposing to change the definition for this action. This proposed SNUR would require persons to notify EPA at least 90 days before commencing the manufacture, import, or processing of any of these chemical substances for use in aerosol spray paints intended for non-industrial, indoor spray application.

TABLE 2.—CHEMICAL SUBSTANCES CONTAINING LEAD, CHROMIUM, AND/OR CADMIUM WHICH ARE COVERED BY THIS PROPOSED RULE

Chemical substance	CAS No.
C.I. Pigment Orange 20 (*)	12656–57–4
Chromic Acid, Lead(2+) Salt (1:1) (**) (***)	7758–97–6
Chromium Lead Molybdenum Oxide (**) (***)	12709–98–7
C.I. Pigment Red 104 (**) (***)	12656–85–8
Lead Molybdenum Oxide (***)	10190–55–3
Sulfuric Acid, Lead(2+) Salt (1:1) (***)	7446–14–2

(*) Contains cadmium
(**) Contains chromium
(***) Contains lead

IV. Objectives and Rationale for this Proposed SNUR

EPA is concerned about the potential risks related to the toxicity and potential exposures which could result from non-industrial, indoor spray application of aerosol spray paints containing one of more of the chemical substances listed in Table 2 of this unit. The Agency is proposing definitions for indoor spray application and aerosol spray paint. The terms of these definitions convey the technical framework for what is included in the significant new use. In addition, EPA believes that use of the subject substances for the proposed significant new use has a high potential to increase both the magnitude and

duration of exposure to these substances beyond existing levels.

At this time, the six chemical substances covered by this proposed rule are the only specific compounds containing lead, chromium, and/or cadmium that are known to have been formulated in aerosol spray paints with the potential for non-industrial, indoor spray application. If EPA identifies other chemical substances of concern with similar potential uses, it may propose SNURs to cover such additional chemical substances.

EPA believes that there is no ongoing manufacture, import, or processing of these chemical substances for use in aerosol spray paints except for those intended for industrial and/or outdoor uses. If EPA receives information through comments on this proposed rule or otherwise that indicates that indoor non-industrial uses are ongoing, EPA would consider modifying the proposed significant new use accordingly, to exclude particular ongoing uses, in developing a final rule. The Agency would assess whether separate regulatory or voluntary action may be appropriate for any such ongoing uses.

In determining what would constitute a significant new use for the six chemical substances that are subjects of this proposed SNUR, EPA considered relevant information on the toxicity of the chemical substances, likely exposures associated with potential uses, information provided by industry sources (Ref. 5), and the four factors listed in TSCA section 5(a)(2).

Based on these considerations, EPA wishes to achieve the following objectives with regard to the significant new use that is designated in this proposed SNUR. EPA wants to ensure that:

1. The Agency would receive notification of any company's intent to manufacture, import, or process the subject chemical substances for use in aerosol spray paints intended for non-industrial, indoor spray application.

2. The Agency would have an opportunity to review and evaluate data submitted in a Significant New Use Notice (SNUN) before the notice submitter begins manufacturing, importing, or processing the subject chemical substances for use in aerosol spray paints for non-industrial, indoor spray application.

3. The Agency would be able to regulate prospective manufacturers, importers, or processors of the subject chemical substances before a significant new use occurs provided that the degree of potential risk, or uncertainty about the risks, is sufficient to warrant such regulation.

V. Information on the Subject Lead, Chromium, and/or Cadmium Containing Compounds

A. Health Effects

EPA reviewed health hazard data associated with a wide range of chemical components of aerosol spray paints including the six chemical substances listed in Table 2 of Unit III. (Ref. 1). When inhaled, the six chemical substances covered under this proposed rule may be absorbed through the lungs or retained in the lungs and cause a variety of chronic toxicities. In particular, hexavalent chromium compounds, including chromate pigments such as those listed in Table 2 of Unit III., are recognized human carcinogens (Refs. 9, 13). In addition, dermal exposure to hexavalent chromium compounds has been associated with irritant and allergic contact dermatitis (Ref. 9). There is adequate evidence that cadmium compounds are carcinogenic in animals and some epidemiologic evidence suggests that they may also be carcinogenic in humans. These data caused EPA to list cadmium compounds as probable human carcinogens following inhalation exposure (Ref. 10), while the International Agency for Research on Cancer listed cadmium compounds as carcinogenic in humans (Ref. 14). Also, long-term human exposure to low levels of cadmium compounds has been associated with a variety of toxic effects such as osteomalacia, osteoporosis, obstructive lung diseases, and kidney dysfunction (Refs. 8, 16). In addition, there is adequate evidence that some lead compounds are carcinogenic in animals but inadequate evidence to assess their carcinogenic potential in humans. EPA has listed lead compounds as probable human carcinogens (Ref. 11) while the International Agency for Research on Cancer has considered lead compounds as possibly carcinogenic in humans (Ref. 12). Finally, exposure of developing fetuses and young children to lead containing substances can result in damage to the brain and central nervous system, slow growth, hyperactivity, and learning problems. Adults exposed to lead may develop symptoms indicative of nervous disorders and anemia as well as memory and concentration problems (Refs. 14, 15).

B. Exposure Data

Assessments for consumer exposures to components of aerosol spray paints are described in the ''Indoor Air Cluster Report: Consumer Exposure to Components of Aerosol Spray Paint'' (Ref. 2). Those analyses include estimates of amounts of nonvolatile pigments in the spray paint and the amounts of aerosolized spray paint not deposited on the target and available for inhalation and inadvertent ingestion. Consumer exposure assessments using a multi chamber exposure assessment model were performed in order to estimate user exposures from indoor spray applications in a residential kitchen, basement and garage. One assessment indicated that the exposure to an adult spraying paint in a kitchen (e.g., spray painting metal cabinets, air plane models, etc.) a couple times a year could be toxicologically significant. This and other exposure scenarios showed that nonvolatile pigments, as components of paint sprayed indoors, were both respirable and ingestible. These routes of exposure were the basis of risk screening concerns (Ref. 3). Based on data from a usage survey and the Census Bureau EPA believes that 68.2 million U.S. consumers have potential annual exposure to components of aerosol spray paints (Ref. 3). Specific exposure to individual consumers who spray paint indoors is dependent on many factors, especially on the amount of air that flows through the building and into and out of the immediate vicinity of application. People who spray paint indoors with windows and doors open and use a fan to direct contaminated air out-of-doors are less likely to have significant exposures than those who spray paint without increasing their work area ventilation.

EPA believes that, generally, indoor spray application of aerosol paints containing lead, chromium or cadmium in industrial settings, where protective measures are required should not result in exposure levels as high as those of consumers or other non-industrial indoor users. Industrial workers who use aerosol spray paints in industrial settings are protected by applicable safeguards and controls under the Occupational Health and Safety Administration's hazard communication standard (29 CFR 1910.1200). For example, carcinogenic chemical substances in the workplace must be addressed in a hazard communication program and listed on the material safety data sheet (MSDS).

Exposures from outdoor spray applications of aerosol spray paint products by consumers, e.g., painting lawn furniture out-of-doors, are usually much lower. This is due to the large volume of air available for dilution out-

of-doors and removal of over spray away from the user's breathing zone by natural air circulation.

C. Consumer Product Safety Commission's Related Action on Lead Paint

Effective February 27, 1978, the Consumer Product Safety Commission (CPSC) banned most paint and similar surface coating materials with 0.06% or more of lead content by weight from consumer use (42 FR 44199, September 1, 1977) (codified at 16 CFR part 1303). This action was taken under the hazardous products provisions of sections 8 and 9 of the Consumer Product Safety Act (CPSA) (15 U.S.C. 2057 and 2058). The determination was based on a two-part finding:

1. There was an unreasonable risk of lead poisoning in children associated with lead content of more than 0.06% in paints and coatings to which children have access.

2. No feasible consumer product safety standard under the CPSA would adequately protect the public from this risk, 16 CFR 1303.1(c).

The lead containing chemical substances addressed in this proposed SNUR were once associated with several commercial automotive uses (Table 3 of this Unit). Such uses of lead containing products were excluded from CPSC's ban because the ban was issued under the CPSA, and the CPSA specifically excludes ''motor vehicles and motor vehicle equipment'' from the scope of the Act (15 U.S.C. 2052(a)(1)(c)).

Certain lead paint products are exempted from the CPSC ban, with the provision that certain cautionary labeling requirements be followed (16 CFR 1303.3(b)) including:

1. Agricultural and industrial equipment refinish coatings.

2. Industrial (and commercial) building and equipment maintenance coatings, including traffic and safety marking coatings.

3. Graphic art coatings (i.e., products marketed solely for applications on billboards, road signs, and similar uses and for identification marking in industrial buildings).

4. Touch up coatings for agricultural equipment, lawn and garden equipment, and appliances.

5. Catalyzed coatings marketed solely for use on radio-controlled model powered aircraft.

In addition, three product categories are exempted from CPSC's ban with no cautionary labeling requirements (16 CFR 1303.3(c)):

1. Mirrors with lead containing backing paint when part of furniture articles.

2. Artist paint and related materials.[1]

3. Metal furniture articles (but not metal children's furniture) bearing factory applied coatings that contain lead.

Altogether in 1978, the CPSC determined that the eight product categories of exemption met public needs, and although some industrial products contained more than 0.06% lead, there were no effective substitutes, and such products were unlikely to be accessed by children. Activities associated with certain of the use categories exempted under the CPSC rule may be covered by this proposed SNUR. For example, touch up by consumers of appliances in the home.

D. Applicable OSHA Standards and Recommendations from the ACGIH

Under the OSHA Hazard Communication Standard (29 CFR 1910.1200), employees who engage in industrial, indoor spray application of aerosol spray paints containing lead, cadmium, or chromium must be informed of the hazards of exposure to these compounds. This standard requires a written hazard communication program, appropriate hazard labeling and warnings, employee training, and the availability of material safety data sheets. In addition to the Hazard Communication Standard, OSHA has established Permissible Exposure Limits (PELs) for lead, chromium, and cadmium. These values are listed in 29 CFR 1910.1000 in Tables Z-1 (http://www.osha-slc.gov/OshStd_data/1910_1000_TABLE_Z-1.html) and Z-2 (http://www.osha-slc.gov/OshStd_data/1910_1000_TABLE_Z-2.html). Lead and cadmium are found in Table Z-1 of 29 CFR 1910.1000, which lists applicable PELs in workplace air of 0.05 mg/cubic meter for lead and 0.005 mg/cubic meter for cadmium (each averaged over an 8-hour, time-weighted average (TWA)). Chromium can have a PEL ranging from 0.1 to 0.5 mg/cubic meter (also determined over an 8-hour TWA), depending upon the specific type of chromium compound. The lower value of 0.1 mg/cubic applies to hexavalent chromium compounds, while 0.5 mg/cubic meter applies to other chromium compounds. Hexavalent chromium compounds are listed in Table Z-2 of 29 CFR 1910.1000, while other chromium compounds are listed in Table Z-1 of 29 CFR 1910.1000. Lead and cadmium are also covered under substance-specific standards found in 29 CFR part 1910, Subpart Z—Toxic and Hazardous Substances, at 29 CFR 1910.1025 and 29 CFR 1910.1027, respectively, which contain particular guidance and requirements on exposure limits, workplace sampling, and medical monitoring requirements.

Recommended occupational exposure guidelines have also been published for lead, cadmium, and chromium by the American Conference of Governmental Industrial Hygienists (ACGIH) (Ref.17). These exposure guidelines for airborne contaminants are known as threshold limit values (TLVs). These values are often based on very recent data, and can provide information that is supplementary to that provided by PELs so reliance on TLVs may further limit workplace exposure to certain hazardous substances. The TLVs include 0.01 mg/cubic meter for cadmium metal, 0.002 mg/cubic meter for all cadmium compounds, 0.05 mg/cubic meter for lead, 0.5 mg/cubic meter for all non-hexavalent chromium compounds, 0.05 mg/cubic meter for water-soluble hexavalent chromium compounds, and 0.01 for insoluble hexavalent chromium compounds.

The protections available in occupational settings are not available for non-industrial, indoor spray applicators of the substances covered by this proposed rule.

E. Available Use Data (Ref. 4)

Table 3 of this unit shows what were once aerosol spray applications of the pigments of concern. No production volume data for paints containing these pigments are available; however, an industry survey (Ref. 5) found that most uses were discontinued by 1994. The only exceptions were products intended for high temperature applications with pigments of cadmium or chromium and as a chromate component in primer of a specialized market. In addition, the survey provider, the National Paint and Coatings Association (NPCA), reported a lengthy history of manufacturing phase-outs for aerosol products containing lead, chromium, and cadmium. The overwhelming majority of NPCA member manufacturers responded that products containing the heavy metal pigments were no longer produced. As previously stated and based on the available data, EPA has tentatively

[1] More recently, following enactment of the Labeling of Hazardous Art Materials Act (LHAMA), 15 U.S.C. 1277 (Public Law 100–695, enacted November 18, 1988), the CPSC has issued regulations in the **Federal Register** of October 9 1992 (57 FR 46626) regarding the labeling of craft materials that present a chronic hazard. These products include solvents, spray paints, silk-screen inks, adhesives, and any other substance marketed or represented as suitable for use in the creation of any work of visual or graphic art of any medium. CPSC's regulatory enforcement policy for these regulations was set forth in the **Federal Register** of February 13, 1995 (60 FR 8188).

concluded that no non-industrial, indoor spray applications of these paints are ongoing (Ref. 4). The Agency seeks comment on this tentative conclusion.

TABLE 3.—AEROSOL SPRAY PAINTS CONTAINING PIGMENTS OF LEAD, CHROMIUM, OR CADMIUM WHICH WERE ONCE IN COMMERCIAL USE AS NON-INDUSTRIAL, INDOOR APPLICATIONS

Chemical name	CAS No.	Use in aerosol spray paints
C.I. Pigment Orange 20	12656–57–4	Retouching auto finishes, and for engine enamels, high temperature applications*
Chromic Acid, Lead(2+) Salt (1:1)	7758–97–6	Retouching auto finishes, rust-inhibitive primers, traffic marking, engine enamels, and high-temperature applications *
Chromium Lead Molybdenum Oxide	12709–98–7	Retouching auto finishes, engine enamels, and high-temperature applications applications*
C.I. Pigment Red 104 (Also known as Molybdate Orange)	12656–85–8	Retouching machinery equipment and automotive finishes, engine enamels, and high-temperature applications*
Lead Molybdenum Oxide	10190–55–3	Retouching auto finishes, engine enamels and high temperature applications*
Sulfuric Acid, Lead (2+) Salt	7446–14–2	Component of molybdate orange and used as a white pigment

* *High temperature applications*, are applications of paint on automotive parts (such as exhaust manifolds or machinery equipment) while hot due to normal operation conditions.

VI. Test Data and Other Information

EPA recognizes that under TSCA section 5, persons are not required to develop any particular test data before submitting a SNUN. Rather, persons are required only to submit test data in their possession or control and to describe any other data known to, or reasonably ascertainable by them (15 U.S.C. 2604(d)). However, a SNUN submitted without accompanying test data may increase the likelihood that EPA will take action under TSCA section 5(e).

Should EPA finalize this proposed rule, the Agency would encourage persons to consult with it before submitting a SNUN or before selecting a protocol for testing of any of the chemical substances listed in Table 2 of Unit III. As part of this optional pre-notification consultation, EPA would discuss specific test data it believes are necessary to evaluate a significant new use of these chemical substances and advise the submitter on the selection of test protocols. The Agency would request that all test data be developed according to TSCA Good Laboratory Practice Standards set forth in 40 CFR part 792. Failure to do so could result in EPA's finding that submitted data are insufficient to reasonably evaluate the health effects of these chemical substances.

Should EPA finalize this proposed rule, it would urge SNUN submitters to provide detailed information on human exposure that may result from the significant new use of the chemical substances listed in Table 2 of Unit III. and at § 721.4583 of the proposed regulation. In addition, EPA would encourage persons to submit information on potential benefits of these chemical substances and information on risks posed by the chemical substances compared to risks posed by possible substitutes.

VII. Applicability to Uses Occurring After the Date of Publication of this Proposed SNUR

EPA believes that the intent of TSCA section 5(a)(1)(B) is best served by designating a use as a significant new use if it occurs after the date of the proposed SNUR rather than after the effective date of the final rule. Otherwise, uses commenced during the proposed SNUR period would be considered ongoing, rather than new, and it would be difficult for EPA to establish final SNUR notification requirements, because any person could defeat the SNUR rulemaking by initiating the proposed significant new use before the rule became final and then argue that such a use was ongoing.

Persons who begin commercial manufacture, import, or processing of the six compounds listed in Table 2 of Unit III. for the significant new use listed in this proposed SNUR after the date of publication of the proposed SNUR must stop that activity before the effective date of the final rule. Persons who ceased those activities will have to meet all final SNUR notification requirements and wait until the end of the notification review period, including all extensions, before recommencing their activities. If, however, persons who begin commercial manufacture, import, or processing of these chemical substances between the date of publication of the proposed SNUR and the effective date of the final SNUR meet the conditions of advance compliance as codified at 40 CFR 721.45(h), those persons will be considered to have met the final SNUR requirements for those activities.

VIII. Alternatives

A. Promulgate a Chemical Specific TSCA Section 8(a) Reporting Rule for the Chemical Substances Listed in Table 2 of Unit III.

Under TSCA section 8(a), EPA could require persons to report information to the Agency when they intend to manufacture, import, or process the chemical substances listed in Table 2 of Unit III. for non-industrial, indoor spray application. However, the use of TSCA section 8(a) rather than SNUR authority would not provide the opportunity for EPA to take immediate regulatory action under TSCA section 5(e) or section 5(f) to prohibit or limit the activity before it begins. In addition, EPA may not receive important information from small businesses, because those firms generally are exempt from TSCA section 8(a) reporting requirements. In view of EPA's concerns about these chemical substances and its interest in having the opportunity to regulate these substances further as needed, pending the development of exposure and/or hazard information should a significant new use be initiated, the Agency believes that a TSCA section 8(a) rule for those chemical substances would not meet all of EPA's regulatory objectives.

B. Regulate the Chemical Substances Listed in Table 2 of Unit III. Under TSCA Section 6

EPA may regulate under TSCA section 6 (15 U.S.C. 2605) if there is a reasonable basis to conclude that the manufacture, import, processing, distribution in commerce, use, or disposal of a chemical substance or

mixture ''presents or will present'' an unreasonable risk of injury to human health or the environment. There is insufficient information about prospective manufacture, import, or processing operations at this time to enable EPA to make a reasoned determination of risk. Therefore, EPA is not able to take action under TSCA section 6 to regulate the subject compounds at this time. The final SNUR would facilitate the Agency's consideration of potential risks associated with any intended significant new use of these chemical substances.

IX. Economic Analysis

EPA evaluated the potential costs of establishing a final SNUR on the substances listed in Table 2 of Unit III. If this proposal becomes final, the manufacture, import or processing of any amount of one or more of the six chemical substances listed in Table 2 of Unit III. in aerosol spray paint for non-industrial, indoor spray application would be reportable. While there is no precise way to calculate the total annual cost of compliance with this proposed SNUR, EPA estimates that the reporting cost for submission of a SNUN ranges from $8,457 to $9,692 which includes a $2,500 user fee. The corresponding time burden to complete a SNUN would average 119.92 hours. EPA believes that there would be few, if any, SNUNs submitted. Furthermore, while the expense of a notification and the uncertainty of possible EPA regulation may discourage certain innovations, the impact would be limited because those factors are unlikely to deter an innovation that has high potential value. The Agency's economic analysis is available in the public record for this proposed SNUR (Ref. 6).

X. References

These references have been placed in the official record that was established under docket control number OPPTS–50640 for this rulemaking as indicated in Unit I.B.2. Reference documents identified with an administrative record number (AR) are cross-indexed to non-regulatory, publically accessible information files maintained in the TSCA Nonconfidential Information Center. Copies of the documents can be obtained as described in Unit I.B.2.

1. (AR098–07) OPPT Structure Activity Team (SAT) Health Assessment of the Aerosol Spray Paint Cluster. pp. 48, 51, 56, 58, 59, and 60. April 16, 1992.

2. (AR098–06) Indoor Air Cluster Report: Consumer Exposure to Components of Aerosol Spray Paint. November 10, 1992.

3. (AR098–02) OPPT RM1 Dossier: Aerosol Spray Paints Indoor Air Screen Cluster. December 28, 1992.

4. (AR098–029) RM2 Use Cluster for Aerosol Spray Paints Draft Final Report Preliminary Screening, Sherry Wise, USEPA/OPPT/EETD/RIB. November 1994.

5. (AR098–026) Letter and attachment from Stephen R. Sides, Director, Health and Safety Affairs National Paint and Coatings Association, to Christina Cinalli. EPA. June 7, 1994.

6. (AR098–032) Memorandum and attachment of Economic Assessment for the Proposed SNUR on Certain Chemical Substances Used in Aerosol Spray Paint Intended for Non-industrial, Indoor Spray Application from Timothy S. Lehman. EPA. February 27, 2001.

7. (AR098–033) Toxicological Profile for Lead (Update). Agency for Toxic Substances and Disease Registry. Atlanta, GA, 1993.

8. (AR098–034)Toxicological Profile for Cadmium (Update). Agency for Toxic Substances and Disease Registry. Atlanta, GA, 1999. Available in EPA Headquarters Library.

9. (AR098–035) Integrated Risk Information System Toxicological Review on Chromium (VI). EPA. Washington, DC, 1998.

10. (AR098–036) Integrated Risk Information System Toxicological Review on Cadmium, EPA. Washington, DC, 1998.

11. (AR098–037) Integrated Risk Information System Toxicological Review on Lead and Compounds (inorganic). EPA. Washington, DC, 1998.

12. (AR098–038) Monographs on the Evaluation of Carcinogenic Risk to Humans. Supplement 7. International Agency for Research on Cancer. Lyon, France, 1986.

13. (AR098–039) Monographs on the Evaluation of Carcinogenic Risk to Humans. Volume 49. International Agency for Research on Cancer. Lyon, France, 1990.

14. (AR098–040) Monographs on the Evaluation of Carcinogenic Risk to Humans. Volume 58. International Agency for Research on Cancer. Lyon, France, 1993.

15. (AR098–041) Tsuchiya, R., 1986. Lead. *Handbook on the Toxicology of Metals.* Volume II. L. Friberg, G.F. Nordberg, and V.B. Vouk, Eds. Elsevier, Amsterdam. Chapter 14, p. 298.

16. (AR098–042) Friberg, L., Kjellstrom, T., and Nordberg, G.F., 1986. Cadmium. *Handbook on the Toxicology of Metals.* Volume II. L. Friberg, G.F. Nordberg, and V.B. Vouk, Eds. Elsevier, Amsterdam. Chapter 7, p. 130.

17.(AR098–043) ACGIH Worldwide. 2001 TLVs and BEIs: Threshold Limit Values for Chemical Substances and Physical Agents and Biological Exposure Indices. Cincinnati, OH. http://www.acgih.org.

XI. Regulatory Assessment Requirements

Under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993), the Office of Management and Budget (OMB) has determined that SNURs are not significant regulatory actions subject to review by OMB, because they do not meet the criteria in section 3(f) of the Executive Order.

Based on EPA's experience with SNURs, State, local, and tribal governments have not been impacted by these rulemakings, and EPA does not have any reason to believe that any State, local, or tribal government would be impacted by this rulemaking. As such, EPA has determined that this regulatory action would not impose any enforceable duty, contain any unfunded mandate, or otherwise have any affect on small governments subject to the requirements of sections 202, 203, 204, or 205 of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Similarly, this action is not expected to have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999).

This rule, if finalized, would not have tribal implications because it is not expected to have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000).

However, in the spirit of Executive Orders 13132 and 13175, and consistent with EPA policy to promote communications among EPA, State and Tribal governments, EPA specifically solicits additional comment on this proposed rule from State and Tribal officials.

EPA has complied with Executive Order 12630, entitled *Governmental Actions and Interference with Constitutionally Protected Property Rights* (53 FR 8859, March 15, 1988), and the ''Attorney General's Supplemental Guidelines for the

Evaluation of Risk and Avoidance of Unanticipated Takings'' in the preparation of this proposed rule.

This action does not involve special considerations of environmental justice related issues which would be addressed under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994).

This action is not subject to Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997), because this is not an economically significant regulatory action as defined by Executive Order 12866, and this action does not address environmental health or safety risks disproportionately affecting children.

In addition, since this action does not involve any technical standards, section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note), does not apply to this action.

Pursuant to section 605(b) of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), the Agency has determined and hereby certifies that promulgation of this SNUR would not have a significant adverse economic impact on a substantial number of small entities. The rationale supporting this conclusion is as follows. A SNUR applies to any person (including small or large entities) who intends to engage in any activity described in the rule as a ''significant new use.'' By definition of the word ''new,'' and based on all information currently available to EPA, it appears that no small or large entities presently engage in such activity. Since a SNUR only requires that any person who intends to engage in such activity in the future must first notify EPA (by submitting a SNUN), no significant economic impact will even occur until someone decides to engage in those activities. Although some small entities may decide to conduct such activities in the future, EPA cannot presently determine how many, if any, there may be. However, EPA's experience to date is that, in response to the promulgation of over 530 SNURs, the Agency has received fewer than 15 SNUNs. Of those SNUNs submitted, none appear to be from small entities. In addition, the estimated reporting cost for submission of a SNUN (see Unit IX.), are minimal regardless of the size of the firm. Therefore, EPA believes that the potential economic impact of complying with this SNUR are not expected to be significant or adversely impact a substantial number of small entities. In a SNUR that was published on June 2, 1997 (62 FR 29684) (FRL–5597–1), the Agency presented its general determination that proposed and final SNURs are not expected to have a significant economic impact on a substantial number of small entities, which was provided to the Chief Counsel for Advocacy of the Small Business Administration.

According to the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), an Agency may not conduct or sponsor, and a person is not required to respond to a collection of information that requires OMB approval under the PRA, unless it has been approved by OMB and displays a currently valid OMB control number. The OMB control numbers for EPA's regulations, after initial display in the preamble of the final rule and in addition to its display on any related collection instrument, are listed in 40 CFR part 9.

The information collection requirements related to this action have already been approved by OMB pursuant to the PRA under OMB control number 2070–0038 (EPA ICR No. 1188.06). This action would not impose any burden requiring additional OMB approval. If an entity were to submit a SNUN to the Agency, the annual burden is estimated to average 119.92 hours per response and to cost ranged from $8,457 to $9,692 including the $2,500 EPA user fee (set at $100 for businesses with annual sales of less than $40 million). This burden estimate includes the time needed to review instructions, search existing data sources, gather and maintain the data needed, and complete, review and submit the required significant new use notice, and maintain the required records.

Send any comments about the accuracy of the burden estimate, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques, as instructed in Unit I.C. or to the Director, Collection Strategies Division, Office of Environmental Information, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. Please remember to include the OMB control number in any correspondence, but do not submit any information collection forms to this address.

This rule is not subject to Executive Order 13211, entitled *Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution or Use* (66 FR 28355, May 21, 2001), because this action is not a significant regulatory action under Executive Order 12866, nor is it expected to adversely affect energy supply, distribution, or use.

List of Subjects in 40 CFR Part 721

Environmental protection, Chemicals, Hazardous substances, Reporting and recordkeeping requirements.

Dated: December 21, 2001.

William H. Sanders III,

Director, Office of Pollution Prevention and Toxics.

Therefore, 40 CFR chapter I is proposed to be amended as follows:

PART 721—[AMENDED]

1. The authority citation for part 721 would continue to read as follows:

Authority: 15 U.S.C. 2604, 2607, and 2625(c).

2. By adding two new definitions in alphabetical order in § 721.3 to read as follows:

§ 721.3 Definitions.

* * * * *

Aerosol spray paint means a liquid mixture, usually of a solid pigment in a liquid medium, sold in pressurized containers and applied to a surface to form a decorative or protective coating. Aerosol spray paints are sold in individual containers whose contents are applied without aid of an air compressor or other external aspirating device.

* * * * *

Indoor spray application means any application as a liquid from a pressurized container within a confined space including but not limited to inside a building, tank, vessel, motor vehicle, or other structure. Indoor application to objects intended for outdoor use, e.g., spray painting lawn furniture in a basement for outdoor use, is included within the meaning of indoor spray application.

* * * * *

3. By adding a new § 721.4583 to read as follows:

§ 721.4583 Certain compounds of lead, chromium, and cadmium.

(a) *Chemical substances and significant new uses subject to reporting.* (1) The chemical substances, C.I. Pigment Orange 20 (CAS No. 12656–57–4); Chromic Acid, Lead(2+) Salt (1:1) (CAS No. 7758–97–6); Chromium Lead Molybdenum Oxide (CAS No. 12709–98–7); Lead Molybdenum Oxide (CAS No. 10190–55–3); Sulfuric Acid, Lead(2+) Salt (1:1) (CAS No. 7446–14–2); and C.I. Pigment Red 104 (CAS No. 12656–85–8) are subject to reporting under this section for the significant

new uses described in the paragraph (a)(2) of this section.

(2) The significant new use is use of any of the six chemical substances listed in paragraph (a)(1) of this section in aerosol spray paint for non-industrial, indoor spray application.

(b) [Reserved]

[FR Doc. 02–963 Filed 1–14–02; 8:45 am]

BILLING CODE 6560–50–S

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 51

[CC Docket No. 01–337, FCC 01–360]

Review of Regulatory Requirements for Incumbent LEC Broadband Telecommunications Services

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document seeks comment on changes, if any, the Commission should make to its traditional regulatory requirements for incumbent local exchange carriers' (LECs) broadband service. In particular, it asks: What the relevant product and geographic markets should be for broadband services; whether incumbent LECs possess market power in any relevant market; and whether dominant carrier safeguards or other regulatory requirements should govern incumbent LECs provision of broadband service.

DATES: Comments are due March 1, 2002 and Reply Comments are due April 1, 2002.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rulemaking (NPRM) in CC Docket No. 01–337, FCC 01–360, adopted December 12, 2001, and released December 20, 2001. The complete text of this NPRM is available for inspection and copying during normal business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. This document may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail qualexint@aol.com. It is also available on the Commission's Web site at *http://www.fcc.gov.*

Synopsis of the Notice of Proposed Rulemaking (NPRM)

1. In this proceeding, the Commission initiates an examination of appropriate regulatory requirements for incumbent LECs' provision of domestic broadband telecommunications services (broadband services). The NPRM focuses on traditional Title II common carrier regulation, arising largely out of sections 201 and 202 of the Communications Act of 1934, as amended, as applied to incumbent LEC provision of broadband services. In particular, the Commission seeks comment on what regulatory safeguards and carrier obligations, if any, should apply when a carrier that is dominant in the provision of traditional local exchange and exchange access services provides broadband service.

2. The Commission asks for comments on the nature and scope of the market for domestic broadband services. It also seeks comment on the relevant market dynamics—including intermodal competition and the nascent stage of market development for residential broadband services—affecting the provision of domestic broadband services. The Commission requests comment on the appropriate regulatory requirements under Title II of the Act for the provision of broadband services by incumbent LECs given current market conditions.

3. In particular, the Commission asks interested parties to address how the Commission can best balance the goals of encouraging broadband investment and deployment, fostering competition in the provision of broadband services, promoting innovation, and eliminating unnecessary regulation. As part of this proceeding, the Commission also invites comment on the Petition filed by SBC Communications on October 3, 2001, requesting an expedited ruling that it is non-dominant in the provision of broadband services, and asking the Commission to forbear from dominant carrier regulation of those services.

4. Background. The NPRM summarizes the various regulatory requirements the Commission has developed in the past, which involve streamlining regulation of firms in increasingly competitive markets, and competitive safeguards to ensure competition in related markets.

5. Identification of Incumbent LEC-Provided Broadband Services Markets. The Commission asks for comment aimed at defining and analyzing the relevant markets in which incumbent LECs provide these broadband services. Consistent with Commission precedent, our regulatory response should be guided by a full understanding of the existing market dynamics for broadband services. The Commission begins its analysis by asking questions about the relevant product and geographic markets for incumbent LEC-provided broadband services. It then analyzes what, if any, market power the incumbent LECs may possess in the relevant markets for broadband services.

6. Appropriate Regulatory Requirements. Once the Commission has defined the relevant product and geographic markets for broadband services, it can use this information to determine what regulatory requirements, if any, should govern the provision of broadband services. The Commission begins by briefly describing relevant portions of the existing regulatory structure for broadband services provided by incumbent LECs. Then it invites interested parties to propose alternative requirements for these broadband services in light of existing market and technological developments. The Commission encourages interested parties to develop proposals for new or modified regulatory requirements for broadband services.

I. Initial Regulatory Flexibility Analysis

7. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), the Commission has prepared the present Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities by the policies and rules proposed in this NPRM. Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the NPRM provided in section V.B. The Commission will send a copy of the NPRM, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration. In addition, the Notice and IRFA (or summaries thereof) will be published in the **Federal Register**.

II. Need for, and Objectives of, the Proposed Rules

8. In this proceeding, the Commission seeks comment on: (1) The nature and scope of the market for domestic broadband services; (2) the relevant market dynamics affecting the provision of domestic broadband services; and (3) the appropriate regulatory requirements for the provision of broadband services by incumbent LECs, given current market conditions. The basic elements of the existing regulatory requirements for incumbent LEC-provided broadband services were initially developed in an era of circuit-switched, analog voice services, and may no longer serve the public interest. Thus, the Commission asks interested parties to address how it can best balance the goals of

encouraging advanced telecommunications investment and deployment, fostering competition in the provision of broadband services, promoting innovation, and eliminating unnecessary regulation. This proceeding also invites comment on the Petition filed by SBC Communications on October 3, 2001, requesting an expedited ruling that it is non-dominant in the provision of advanced services, and asking the Commission to forebear from dominant carrier regulation of those services.

III. Legal Basis

9. The legal basis for any action that may be taken pursuant to the NPRM is contained in sections 4, 10, 201–202, 214, 303 and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 154, 160, 201–204, 214, 303, and 403, section 706 of the Telecommunications Act of 1996, and sections 1.1, 1.48, 1.411, 1.412, 1.415, 1.419, and 1.1200–1.1216, of the Commission's rules, 47 CFR §§ 1.1, 1.48, 1.411, 1.412, 1.415, 1.419, and 1.1200–1.1216.

IV. Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply

10. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that will be affected by the proposed rules. The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act. A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).

11. The Commission has included small incumbent LECs in this present RFA analysis. As noted above, a ''small business'' under the RFA is one that, *inter alia,* meets the pertinent small business size standard (e.g., a telephone communications business having 1,500 or fewer employees), and ''is not dominant in its field of operation.'' The SBA's Office of Advocacy contends that, for RFA purposes, small incumbent LECs are not dominant in their field of operation because any such dominance is not ''national'' in scope. The Commission has therefore included small incumbent LECs in this RFA analysis, although it emphasizes that this RFA action has no effect on FCC analyses and determinations in other, non-RFA contexts.

12. *Local Exchange Carriers.* Neither the Commission nor the SBA has developed a definition for small local exchange carriers. The closest applicable definitions for this type of carrier under SBA rules is for telephone communications companies other than radiotelephone (wireless) companies. The most reliable source of information regarding the number of LECs nationwide appears To be the data that we collect annually in connection with the Telecommunications Relay Service (TRS). According to our most recent data, there are 1,335 incumbent LECs. Although some of these carriers may not be independently owned and operated, or have more than 1,500 employees, the Commission is unable at this time to estimate with greater precision the number of LECs that would qualify as small business concerns under the SBA's definition. Consequently, the Commission estimates that there are no more than 1,335 small entity incumbent LECs that may be affected by the proposals in the NPRM.

V. Description of Projected Reporting, Recordkeeping and Other Compliance Requirements

13. The Commission expects that any proposal we may adopt pursuant this NPRM will decrease existing reporting, recordkeeping or other compliance requirements. As noted above, dominant carriers are currently subject to a broad range of regulatory requirements that are generally intended to protect consumers from unjust and unreasonable rates, terms, and conditions and unreasonable discrimination in the provision of communications services. The Commission's dominant carrier regulation includes rate regulation and tariff filing requirements, and also requires supporting information, which in some cases includes detailed cost data, to be filed by dominant carriers with their tariff filings. Incumbent LECs are subject to rate level regulation in the provision of their interstate access services. The BOCs and GTE are subject to mandatory price cap regulation, and several other incumbent LECs have entered price caps on an elective basis, while smaller incumbent LECs are regulated under rate-of-return regulation. In addition, in markets where carriers may have the incentive and ability to leverage control over bottleneck facilities to disadvantage competitors in related markets, the Commission has developed various safeguards to neutralize that ability. This NPRM seeks comment on what relevance, if any, these types of regulations have for broadband services provided by incumbent LECs, and asks whether it would be appropriate to streamline the traditional dominant carrier regulations of incumbent LECs' provision of broadband services.

VI. Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

14. The RFA requires an agency to describe any significant, specifically small business, alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.

15. The overall objective of this proceeding is to reduce existing regulatory burdens on incumbent LECs to the extent consistent with the public interest. The NPRM seeks specific proposals as to which existing regulations might be removed or streamlined in their application to broadband services, and asks parties to comment on whether incumbent LECs should be reclassified as non-dominant in the provision of broadband services. The NPRM further asks parties to discuss the extent to which different categories of broadband services face different levels of competition, warranting different regulatory treatment, and to address the extent to which the markets for different broadband services are at different stages in their development and thus should be treated differently for regulatory purposes. It asks what forms of regulation or de-regulation would best spur deployment of alternative technologies and facilities by existing and potential competitors, and seeks comment on whether existing regulation inhibits or stimulates the deployment of broadband services.

VII. Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules

16. None.

Ordering Clauses

17. Accordingly, pursuant to the authority contained in sections 2, 4(i)–

4(j), 201, and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 152, 154(i)–4(j), 201, 303(r), this NPRM is adopted.

18. The Commission's Consumer Information Bureau, Reference Information Center, shall send a copy of this NPRM, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

Federal Communications Commission.

William F. Caton,

Deputy Secretary.

[FR Doc. 02–903 Filed 1–14–02; 8:45 am]

BILLING CODE 6712–02–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 51

[CC Docket No. 01–338, CC Docket No. 96–98, CC Docket No. 98–147, FCC 01–361]

Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers; Implementation of the Local Competition Provisions of the Telecommunications Act of 1996; Deployment of Wireline Services Offering Advanced Telecommunications Capability

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document seeks comment on whether the Commission should adopt a more granular approach to its unbundling analysis under section 251 of the Communications Act of 1934 (the Act) and on the identification of specific unbundling requirements for incumbent local exchange carriers (LECs). In particular, the Commission seeks comment on whether it should consider application of its unbundling requirements on the basis of service, geographic, facility, customer or other factors. In addition, the Commission seeks comment on whether to retain, modify or eliminate its existing definitions and requirements for network elements. The Commission also seeks comment on the role of state commissions and whether to retain or modify the existing triennial review process for examination of its unbundling requirements.

DATES: Comments are due March 18, 2002 and Reply Comments are due April 30, 2002.

FOR FURTHER INFORMATION CONTACT: Jeremy Miller, Attorney Advisor, Policy and Program Planning Division, Common Carrier Bureau, telephone (202) 418–1580.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rulemaking (NPRM) in CC Docket No. 01–338, FCC 01–361, adopted December 12, 2001, and released December 20, 2001. The complete text of this NPRM is available for inspection and copying during normal business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. This document may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone (202) 863–2893, facsimile (202) 863–2898, or via email *qualexint@aol.com.* It is also available on the Commission's website at *http://www.fcc.gov.*

Synopsis of the Notice of Proposed Rulemaking

1. Background. In the Third Local Competition Report and Order, (65 FR 19334, April 11, 2000) the Commission stated that it would reexamine its network element unbundling requirements every three years. In addition, the Commission intends to address a number of outstanding issues concerning the unbundling obligations of incumbent LECs raised by parties in the last several years.

2. The Commission seeks comment on how it should apply section 251(d)(2). In particular, the Commission seeks comment on how to align more directly its unbundling requirements with the multiple stated goals of the Act, such as the directive to encourage the deployment of advanced telecommunications capability. The Commission also seeks comment on whether and how to apply a more granular approach to its existing unbundling analysis by incorporating such refinements as considering for each network element the specific service to be provided, the geographic location, the facility to be unbundled, or the customer to be served. The Commission also seeks comment on what triggers might be adopted to limit or sunset unbundling requirements over time.

3. The Commission seeks comment on its existing rules for network elements. The Commission seeks comment on how to apply a more refined unbundling analysis to its existing unbundling requirements and whether it should retain, modify or eliminate any of these requirements. In addition, the Commission seeks comment on parties' practical experience with the current unbundling requirements. The Commission also seeks comment on a number of general issues including (1) application of the ''just, reasonable and nondiscriminatory'' standard of section 251(c)(3); (2) the relationship between services as governed by sections 251(c)(4) and 251(b)(1) and network elements as governed by sections 251(d)(2) and 251(c)(3); (3) the Commission's existing co-mingling restrictions; (4) the Commission's safe harbor provisions for ''significant local usage;'' (5) the relationship between section 271(c)(2)(B) and sections 251(d)(2) and 251(c)(3); (6) the applicability of sections 201, 202 or other sections of the Act to incumbent LEC wholesale services in the absence of a section 251 unbundling obligation; and (7) clarification of the term ''superior'' as used in the now invalidated rule 47 CFR 51.311(c).

4. State Role. The Commission seeks comment on the role of states in adoption and implementation of unbundling requirements. Among other alternatives, the Commission offers for comment a proposal to adopt national standards for unbundling that would leave specific implementation to the states.

5. Procedural Issues. The Commission seeks comment on whether to retain or modify the existing triennial review process for the examination of its unbundling requirements. The Commission also seeks comment on the use of a sunset period for unbundling obligations and whether it needs to consider transitional mechanisms to address the potential financial impact that would be created by changes to unbundling obligations.

I. Initial Regulatory Flexibility Analysis

6. As required by the Regulatory Flexibility Act (RFA), as amended, the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities by the policies and rules proposed in this document. Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the document provided above. The Commission will send a copy of the document, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA). In addition, this document will be published in the **Federal Register**.

II. Need for, and Objectives of, the Proposed Rules

7. In the Third Local Competition Report and Order, the Commission stated that it would reexamine its network element requirements within a three-year period. In this document, the Commission seeks comment on its unbundling analysis under sections 251(d)(2) and 251(c)(3) and whether it should retain, modify or eliminate any of the current unbundling requirements for network elements. Moreover, the Commission seeks comment on the role of the states and whether, in the future, it should retain a triennial review process.

III. Legal Basis

8. The legal basis for any action that may be taken pursuant to this document is contained in sections 1–4, 157, 201–05, 251, 252, 254, 256, 271, 303(r), and 332 of the Communications Act of 1934, as amended, 47 U.S.C. 151–54, 157, 201–05, 251, 252, 254, 256, 271, 303(r), and 332.

IV. Description and Estimate of the Number of Small Entities To Which the Proposed Rules Will Apply

9. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that will be affected by the proposed rules. The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act. A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).

10. In this section, the Commission further describes and estimates the number of small entity licensees and regulatees that may be affected by rules adopted pursuant to this NPRM. The most reliable source of information regarding the total numbers of certain common carrier and related providers nationwide, as well as the number of commercial wireless entities, appears to be the data that the Commission publishes in its *Trends in Telephone Service* report. In a news release, the Commission indicated that there are 4,822 interstate carriers. These carriers include, *inter alia,* local exchange carriers, wireline carriers and service providers, interexchange carriers, competitive access providers, operator service providers, pay telephone operators, providers of telephone service, providers of telephone exchange service, and resellers.

11. The SBA has defined establishments engaged in providing ''Radiotelephone Communications'' and ''Telephone Communications, Except Radiotelephone'' to be small businesses when they have no more than 1,500 employees. Below, we discuss the total estimated number of telephone companies falling within the two categories, and the number of small businesses in each. The Commission then attempts to further refine those estimates to correspond with the categories of telephone companies that are commonly used under our rules.

12. The Commission has included small incumbent LECs in this present RFA analysis. As noted above, a ''small business'' under the RFA is one that, *inter alia,* meets the pertinent small business size standard (*e.g.,* a telephone communications business having 1,500 or fewer employees), and ''is not dominant in its field of operation.'' The SBA's Office of Advocacy contends that, for RFA purposes, small incumbent LECs are not dominant in their field of operation because any such dominance is not ''national'' in scope. The Commission has therefore included small incumbent LECs in this RFA analysis, although it emphasizes that this RFA action has no effect on Commission analyses and determinations in other, non-RFA contexts.

13. *Total Number of Telephone Companies Affected.* The U.S. Bureau of the Census (''Census Bureau'') reports that, at the end of 1992, there were 3,497 firms engaged in providing telephone services, as defined therein, for at least one year. This number contains a variety of different categories of carriers, including local exchange carriers, interexchange carriers, competitive access providers, cellular carriers, mobile service carriers, operator service providers, pay telephone operators, covered specialized mobile radio providers, and resellers. It seems certain that some of these 3,497 telephone service firms may not qualify as small entities because they are not ''independently owned and operated.'' For example, a PCS provider that is affiliated with an interexchange carrier having more than 1,500 employees would not meet the definition of a small business. It is reasonable to conclude that fewer than 3,497 telephone service firms are small entity telephone service firms that may be affected by the new rules.

14. *Wireline Carriers and Service Providers.* The SBA has developed a definition of small entities for telephone communications companies except radiotelephone (*i.e.,* wireless) companies. The Census Bureau reports that there were 2,321 such telephone companies in operation for at least one year at the end of 1992. According to the SBA's definition, a small business telephone company other than a radiotelephone company is one employing no more than 1,500 persons. All but 26 of the 2,321 non-radiotelephone companies listed by the Census Bureau were reported to have fewer than 1,000 employees. Thus, even if all 26 of those companies had more than 1,500 employees, there would still be 2,295 non-radiotelephone companies that might qualify as small entities. The Commission does not have data specifying the number of these carriers that are not independently owned and operated, and thus are unable at this time to estimate with greater precision the number of wireline carriers and service providers that would qualify as small business concerns under the SBA's definition. Consequently, the Commission estimates 2,295 or fewer small telephone communications companies other than radiotelephone companies are small entities that may be affected by rules adopted pursuant to this NPRM.

15. *Local Exchange Carriers.* Neither the Commission nor the SBA has developed a definition for small providers of local exchange services. The closest applicable definition under the SBA rules is for telephone communications companies other than radiotelephone (*i.e.,* wireless) companies. According to the most recent *Telecommunications Industry Revenue* data, 1,335 incumbent carriers reported that they were engaged in the provision of local exchange services. The Commission does not have data specifying the number of these carriers that are either dominant in their field of operations, are not independently owned and operated, or have more than 1,500 employees, and thus it is unable at this time to estimate with greater precision the number of LECs that would qualify as small business concerns under the SBA's definition. Consequently, the Commission estimates that 1,335 or fewer providers of local exchange service are small entities or small incumbent LECs that may be affected by the new rules.

16. *Interexchange Carriers.* Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to providers of interexchange services (IXCs). The

closest applicable definition under the SBA rules is for telephone communications companies other than radiotelephone (*i.e.,* wireless) companies. According to the most recent *Trends in Telephone Service* data, 204 carriers reported that they were engaged in the provision of interexchange services. We do not have data specifying the number of these carriers that are not independently owned and operated or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of IXCs that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are 204 or fewer small-entity IXCs that may be affected by rules adopted pursuant to this NPRM.

17. *Competitive Access Providers.* Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to competitive access services providers (CAPs). The closest applicable definition under the SBA rules is for telephone communications companies other than radiotelephone (*i.e.*, wireless) companies. According to the most recent *Trends in Telephone Service* data, 349 CAP/CLEC carriers and 60 other LECs reported that they were engaged in the provision of competitive local exchange services. The Commission does not have data specifying the number of these carriers that are not independently owned and operated, or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of CAPs that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are 349 or fewer small-entity CAPs and 60 or fewer other LECs that may be affected by rules adopted pursuant to this NPRM.

18. *Operator Service Providers.* Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to providers of operator services. The closest applicable definition under the SBA rules is for telephone communications companies other than radiotelephone (*i.e.*, wireless) companies. According to the most recent *Trends in Telephone Service* data, 21 carriers reported that they were engaged in the provision of operator services. The Commission does not have data specifying the number of these carriers that are not independently owned and operated or have more than 1,500 employees, and thus it is unable at this time to estimate with greater precision the number of operator service providers that would qualify as small business concerns under the SBA's definition. Consequently, the Commission estimates that there are 21 or fewer small-entity operator service providers that may be affected by rules adopted pursuant to this NPRM.

19. *Pay Telephone Operators.* Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to pay telephone operators. The closest applicable definition under SBA rules is for telephone communications companies other than radiotelephone (*i.e.*, wireless) companies. According to the most recent *Trends in Telephone Service* data, 758 carriers reported that they were engaged in the provision of pay telephone services. The Commission does not have data specifying the number of these carriers that are not independently owned and operated or have more than 1,500 employees, and thus it is unable at this time to estimate with greater precision the number of pay telephone operators that would qualify as small business concerns under the SBA's definition. Consequently, the Commission estimates that there are 758 or fewer small-entity pay telephone operators that may be affected by rules adopted pursuant to this NPRM.

20. *Resellers (including debit card providers).* Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to resellers. The closest applicable SBA definition for a reseller is a telephone communications company other than radiotelephone (*i.e.*, wireless) companies. According to the most recent *Trends in Telephone Service* data, 454 toll and 87 local entities reported that they were engaged in the resale of telephone service. The Commission does not have data specifying the number of these carriers that are not independently owned and operated or have more than 1,500 employees, and thus it is unable at this time to estimate with greater precision the number of resellers that would qualify as small business concerns under the SBA's definition. Consequently, the Commission estimates that there are 454 or fewer small-toll-entity resellers and 87 or fewer small-local-entity resellers that may be affected by rules adopted pursuant to this NPRM.

21. *Toll-Free 800 and 800-Like Service Subscribers.* Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to 800 and 800-like service (''toll free'') subscribers. The most reliable source of information regarding the number of these service subscribers appears to be data the Commission collects on the 800, 888, and 877 numbers in use. According to the Commission's most recent data, at the end of January 1999, the number of 800 numbers assigned was 7,692,955; the number of 888 numbers that had been assigned was 7,706,393; and the number of 877 numbers assigned was 1,946,538. The Commission does not have data specifying the number of these subscribers that are not independently owned and operated or have more than 1,500 employees, and thus it is unable at this time to estimate with greater precision the number of toll free subscribers that would qualify as small business concerns under the SBA's definition. Consequently, the Commission estimates that there are 7,692,955 or fewer small-entity 800 subscribers, 7,706,393 or fewer small-entity 888 subscribers, and 1,946,538 or fewer small-entity 877 subscribers that may be affected by rules adopted pursuant to this NPRM.

22. *Cellular Licensees.* Neither the Commission nor the SBA has developed a definition of small entities applicable to cellular licensees. Therefore, the applicable definition of small entity is the definition under the SBA rules applicable to radiotelephone (*i.e.*, wireless) companies. This definition provides that a small entity is a radiotelephone company employing no more than 1,500 persons. According to the Bureau of the Census, only 12 radiotelephone firms out of a total of 1,178 such firms that operated during 1992 had 1,000 or more employees. Therefore, even if all 12 of these firms were cellular telephone companies, nearly all cellular carriers were small businesses under the SBA's definition. In addition, the Commission notes that there are 1,758 cellular licenses; however, it does not know the number of cellular licensees, since a cellular licensee may own several licenses. The most reliable source of information regarding the number of cellular service providers nationwide appears to be data the Commission publishes annually in its *Telecommunications Industry Revenue* report, regarding the Telecommunications Relay Service (TRS). The report places cellular licensees and Personal Communications Service (PCS) licensees in one group. According to recent data, 808 carriers reported that they were engaged in the provision of either cellular or PCS services. The Commission does not have data specifying the number of these carriers that are not independently owned and operated or have more than

1,500 employees, and thus it is unable at this time to estimate with greater precision the number of cellular service carriers that would qualify as small business concerns under the SBA's definition. Consequently, the Commission estimates that there are no more than 808 small cellular service carriers.

23. *220 MHz Radio Service—Phase I Licensees.* The 220 MHz service has both Phase I and Phase II licenses. Phase I licensing was conducted by lotteries in 1992 and 1993. There are approximately 1,515 such non-nationwide licensees and 4 nationwide licensees currently authorized to operate in the 220 MHz band. The Commission has not developed a definition of small entities specifically applicable to such incumbent 220 MHz Phase I licensees. To estimate the number of such licensees that are small businesses, the Commission applies the definition under the SBA rules applicable to radiotelephone communications companies. This definition provides that a small entity is a radiotelephone company employing no more than 1,500 persons. According to a 1995 estimate by the Bureau of the Census, only 12 radiotelephone firms out of a total of 1,178 such firms that operated during 1992 had 1,000 or more employees. Therefore, assuming that this general ratio has not changed significantly in recent years in the context of Phase I 220 MHz licensees, we estimate that nearly all such licensees are small businesses under the SBA's definition.

24. *220 MHz Radio Service—Phase II Licensees.* The Phase II 220 MHz service is a new service, and is subject to spectrum auctions. In the *220 MHz Third Report and Order* (63 FR 2976, January 20, 1998), the Commission adopted criteria for defining small businesses and very small businesses for purposes of determining their eligibility for special provisions such as bidding credits and installment payments. The Commission has defined a small business as an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $15 million for the preceding three years. Additionally, a very small business is defined as an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than $3 million for the preceding three years. The SBA has approved these definitions. An auction of Phase II licenses commenced on September 15, 1998, and closed on October 22, 1998. Nine hundred and eight (908) licenses were auctioned in three different-sized geographic areas: 3 nationwide licenses, 30 Regional Economic Area Group (REAG) licenses, and 875 Economic Area (EA) licenses. Of the 908 licenses auctioned, 693 were sold. Companies claiming small business status won: 1 of the Nationwide licenses, 67% of the Regional licenses, 47% of the REAG licenses and 54% of the EA licenses. As of January 22, 1999, the Commission announced that it was prepared to grant 654 of the Phase II licenses won at auction. A second 220 MHz Radio Service auction began on June 8, 1999 and closed on June 30, 1999. This auction offered 225 licenses in 87 EAs and 4 REAGs. (A total of 9 REAG licenses and 216 EA licenses. No nationwide licenses were available in this auction.) Of the 215 EA licenses won, 153 EA licenses (71%) were won by bidders claiming small business status. Of the 7 REAG licenses won, 5 REAG licenses (71%) were won by bidders claiming small business status.

25. *Private and Common Carrier Paging.* The Commission has adopted a two-tier definition of small businesses in the context of auctioning licenses in the Common Carrier Paging and exclusive Private Carrier Paging services. A small business will be defined as either: (1) An entity that, together with its affiliates and controlling principals, has average gross revenues for the three preceding years of not more than $3 million; or (2) an entity that, together with affiliates and controlling principals, has average gross revenues for the three preceding calendar years of not more than $15 million. Because the SBA has not yet approved this definition for paging services, we will utilize the SBA's definition applicable to radiotelephone companies, *i.e.*, an entity employing no more than 1,500 persons. At present, there are approximately 24,000 Private Paging licenses and 74,000 Common Carrier Paging licenses. According to recent data, 172 carriers reported that they were engaged in the provision of either paging or ''other mobile'' services, which are placed together in the data. The Commission does not have data specifying the number of these carriers that are not independently owned and operated or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of paging carriers that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are no more than 172 small paging carriers. We estimate that the majority of private and common carrier paging providers would qualify as small entities under the SBA definition.

26. *Mobile Service Carriers.* Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to mobile service carriers, such as paging companies. As noted above in the section concerning paging service carriers, the closest applicable definition under the SBA rules is that for radiotelephone (*i.e.*, wireless) companies, and recent data show that 172 carriers reported that they were engaged in the provision of either paging or ''other mobile'' services. Consequently, the Commission estimates that there are no more than 172 small mobile service carriers.

27. *Broadband Personal Communications Service (PCS).* The broadband PCS spectrum is divided into six frequency blocks designated A through F, and the Commission has held auctions for each block. The Commission defined ''small entity'' for blocks C and F as an entity that has average gross revenues of less than $40 million in the three previous calendar years. For block F, an additional classification for ''very small business'' was added and is defined as an entity that, together with affiliates, has average gross revenues of not more than $15 million for the preceding three calendar years. These regulations defining ''small entity'' in the context of broadband PCS auctions have been approved by the SBA. No small businesses within the SBA-approved definition bid successfully for licenses in blocks A and B. There were 90 winning bidders that qualified as small entities in the C block auctions. A total of 93 small and very small business bidders won approximately 40% of the 1,479 licenses for blocks D, E and F. On March 23, 1999, the Commission held another auction (Auction No. 22) of C, D, E and F block licenses for PCS spectrum returned to the Commission by previous license holders. In that auction, 48 bidders claiming small business, very small business or entrepreneurial status won 272 of the 341 licenses (80%) offered. Based on this information, we conclude that the number of small broadband PCS licensees includes the 90 winning C block bidders, the 93 qualifying bidders in the D, E and F blocks, and the 48 winning bidders from Auction No. 22, for a total of 231 small-entity PCS providers as defined by the SBA and the Commission's auction rules.

28. *Narrowband PCS.* The Commission has auctioned nationwide and regional licenses for narrowband PCS. There are 11 nationwide and 30 regional licensees for narrowband PCS. The Commission does not have sufficient information to determine

whether any of these licensees are small businesses within the SBA-approved definition for radiotelephone companies. At present, there have been no auctions held for the major trading area (MTA) and basic trading area (BTA) narrowband PCS licenses. The Commission anticipates a total of 561 MTA licenses and 2,958 BTA licenses will be awarded by auction. Such auctions, however, have not yet been scheduled. Given that nearly all radiotelephone companies have no more than 1,500 employees, and no reliable estimate of the number of prospective MTA and BTA narrowband licensees can be made, we assume, for our purposes here, that all of the licenses will be awarded to small entities, as that term is defined by the SBA.

29. *Rural Radiotelephone Service.* The Commission has not adopted a definition of small entity specific to the Rural Radiotelephone Service. A significant subset of the Rural Radiotelephone Service is the Basic Exchange Telephone Radio Systems (BETRS). The Commission will use the SBA's definition applicable to radiotelephone companies, *i.e.*, an entity employing no more than 1,500 persons. There are approximately 1,000 licensees in the Rural Radiotelephone Service, and we estimate that almost all of them qualify as small entities under the SBA's definition.

30. *Air-Ground Radiotelephone Service.* The Commission has not adopted a definition of small entity specific to the Air-Ground Radiotelephone Service. Accordingly, we will use the SBA's definition applicable to radiotelephone companies, *i.e.*, an entity employing no more than 1,500 persons. There are approximately 100 licensees in the Air-Ground Radiotelephone Service, and the Commission estimates that almost all of them qualify as small under the SBA definition.

31. *Specialized Mobile Radio (SMR).* The Commission awards bidding credits in auctions for geographic area 800 MHz and 900 MHz SMR licenses to two tiers of firms: (1) ''Small entities,'' those with revenues of no more than $15 million in each of the three previous calendar years; and (2) ''very small entities,'' those with revenues of no more than $3 million in each of the three previous calendar years. The regulations defining ''small entity'' and ''very small entity'' in the context of 800 MHz SMR (upper 10 MHz and lower 230 channels) and 900 MHz SMR have been approved by the SBA. The Commission does not know how many firms provide 800 MHz or 900 MHz geographic area SMR service pursuant to extended implementation authorizations, nor how many of these providers have annual revenues of no more than $15 million. One firm has over $15 million in revenues. The Commission assumes, for its purposes here, that all of the remaining existing extended implementation authorizations are held by small entities, as that term is defined by the SBA. The Commission has held auctions for geographic area licenses in the 800 MHz (upper 10 MHz) and 900 MHz SMR bands. There were 60 winning bidders that qualified as small and very small entities in the 900 MHz auction. Of the 1,020 licenses won in the 900 MHz auction, 263 licenses were won by bidders qualifying as small and very small entities. In the 800 MHz SMR auction, 38 of the 524 licenses won were won by small and very small entities.

32. *Marine Coast Service.* Between December 3, 1998 and December 14, 1998, the Commission held an auction of 42 VHF Public Coast licenses in the 157.1875–157.4500 MHz (ship transmit) and 161.775–162.0125 MHz (coast transmit) bands. For purposes of this auction, and for future public coast auctions, the Commission defines a ''small'' business as an entity that, together with controlling interests and affiliates, has average gross revenues for the preceding three years not to exceed $15 million dollars. A ''very small'' business is one that, together with controlling interests and affiliates, has average gross revenues for the preceding three years not to exceed $3 million dollars. There are approximately 10,672 licensees in the Marine Coast Service, and the Commission estimates that almost all of them qualify as ''small'' businesses under the Commission's definition, which has been approved by the SBA.

33. *Fixed Microwave Services.* Microwave services include common carrier, private-operational fixed, and broadcast auxiliary radio services. At present, there are approximately 22,015 common carrier fixed licensees and 61,670 private operational-fixed licensees and broadcast auxiliary radio licensees in the microwave services. The Commission has not yet defined a small business with respect to microwave services. For the Commission's purposes here, it will utilize the SBA's definition applicable to radiotelephone companies'*i.e.*, an entity with no more than 1,500 persons. Under this definition, the Commission estimates that all of the Fixed Microwave licensees (excluding broadcast auxiliary licensees) would qualify as small entities.

34. *Local Multipoint Distribution Service.* The Commission held two auctions for licenses in the Local Multipoint Distribution Services (LMDS) (Auction No. 17 and Auction No. 23). For both of these auctions, the Commission defined a small business as an entity, together with its affiliates and controlling principals, having average gross revenues for the three preceding years of not more than $40 million. A very small business was defined as an entity, together with affiliates and controlling principals, having average gross revenues for the three preceding years of not more than $15 million. Of the 144 winning bidders in Auction Nos. 17 and 23, 125 bidders (87%) were small or very small businesses.

35. *24 GHz—Incumbent 24 GHz Licensees.* The rules that the Commission may later adopt could affect incumbent licensees who were relocated to the 24 GHz band from the 18 GHz band, and applicants who wish to provide services in the 24 GHz band. The Commission has not developed a definition of small entities applicable to licensees in the 24 GHz band. Therefore, the applicable definition of small entity is the definition under the SBA rules for the radiotelephone industry, providing that a small entity is a radiotelephone company employing fewer than 1,500 persons. The 1992 Census of Transportation, Communications and Utilities, conducted by the Bureau of the Census, which is the most recent information available, shows that only 12 radiotelephone firms out of a total of 1,178 such firms that operated during 1992 had 1,000 or more employees. This information notwithstanding, the Commission believes that there are only two licensees in the 24 GHz band that were relocated from the 18 GHz band, Teligent and TRW, Inc. Both Teligent and TRW, Inc. appear to have more than 1,500 employees. Therefore, it appears that no incumbent licensee in the 24 GHz band is a small business entity.

36. *Future 24 GHz Licensees.* The rules that the Commission may later adopt could also affect potential new licensees on the 24 GHz band. Pursuant to 47 CFR 24.720(b), the Commission has defined ''small business'' for Blocks C and F broadband PCS licensees as firms that had average gross revenues of less than $40 million in the three previous calendar years. This regulation defining ''small business'' in the context of broadband PCS auctions has been approved by the SBA. With respect to new applicants in the 24 GHz band, we shall use this definition of ''small business'' and apply it to the 24 GHz band under the name ''entrepreneur.'' With regard to ''small business,'' we shall adopt the definition of ''very small business'' used for 39 GHz licenses and

PCS C and F block licenses: businesses with average annual gross revenues for the three preceding years not in excess of $15 million. Finally, ''very small business'' in the 24 GHz band shall be defined as an entity with average gross revenues not to exceed $3 million for the preceding three years. The Commission will not know how many licensees will be small or very small businesses until the auction, if required, is held. Even after that, the Commission will not know how many licensees will partition their license areas or disaggregate their spectrum blocks, if partitioning and disaggregation are allowed.

37. *39 GHz*. The Commission held an auction (Auction No. 30) for fixed point-to-point microwave licenses in the 38.6 to 40.0 GHz band (39 GHz Band). For this auction, the Commission defined a small business as an entity, together with affiliates and controlling interests, having average gross revenues for the three preceding years of not more than $40 million. A very small business was defined as an entity, together with affiliates and controlling principals, having average gross revenues for the three preceding years of not more than $15 million. The SBA has approved these definitions. Of the 29 winning bidders in Auction No. 30, 18 bidders (62%) were small business participants.

38. *Multipoint Distribution Service (MDS)*. This service involves a variety of transmitters, which are used to relay data and programming to the home or office, similar to that provided by cable television systems. In connection with the 1996 MDS auction, the Commission defined small businesses as entities that had annual average gross revenues for the three preceding years not in excess of $40 million. This definition of a small entity in the context of MDS auctions has been approved by the SBA. These stations were licensed prior to implementation of Section 309(j) of the Communications Act of 1934, as amended. Licenses for new MDS facilities are now awarded to auction winners in Basic Trading Areas (BTAs) and BTA-like areas. The MDS auctions resulted in 67 successful bidders obtaining licensing opportunities for 493 BTAs. Of the 67 auction winners, 61 meet the definition of a small business.

39. MDS is also heavily encumbered with licensees of stations authorized prior to the MDS auction. SBA has developed a definition of small entities for pay television services, which includes all such companies generating $11 million or less in annual receipts. This definition includes MDS systems, and thus applies to incumbent MDS licensees and wireless cable operators which may not have participated or been successful in the MDS auction. Information available to us indicates that there are 832 of these licensees and operators that do not generate revenue in excess of $11 million annually. Therefore, for purposes of this analysis, the Commission finds there are approximately 892 small MDS providers as defined by the SBA and the Commission's auction rules.

40. *Offshore Radiotelephone Service*. This service operates on several UHF TV broadcast channels that are not used for TV broadcasting in the coastal area of the states bordering the Gulf of Mexico. At present, there are approximately 55 licensees in this service. The Commission is unable at this time to estimate the number of licensees that would qualify as small under the SBA's definition for radiotelephone communications.

41. *Wireless Communications Services (WCS)*. This service can be used for fixed, mobile, radio-location and digital audio broadcasting satellite uses. The Commission defined ''small business'' for the WCS auction as an entity with average gross revenues of $40 million for each of the three preceding years, and a ''very small business'' as an entity with average gross revenues of $15 million for each of the three preceding years. The Commission auctioned geographic area licenses in the WCS service. In the auction, there were seven winning bidders that qualified as very small business entities, and one winning bidder that qualified as a small business entity. We conclude that the number of geographic area WCS licensees affected includes these eight entities.

42. *General Wireless Communication Service (GWCS)*. This service was created by the Commission on July 31, 1995 by transferring 25 MHz of spectrum in the 4660–4685 MHz band from the federal government to private sector use. The Commission sought and obtained SBA approval of a refined definition of ''small business'' for GWCS in this band. According to this definition, a small business is any entity, together with its affiliates and entities holding controlling interests in the entity, that has average annual gross revenues over the three preceding years that are not more than $40 million. By letter dated March 30, 1999, NTIA reclaimed the spectrum allocated to GWCS and identified alternative spectrum at 4940–4990 MHz. On February 23, 2000, the Commission released its *Notice of Proposed Rulemaking* (65 FR 14230) in WT Docket No. 00–32 proposing to allocate and establish licensing and service rules for the 4.9 GHz band.

V. Description of Projected Reporting, Recordkeeping and Other Compliance Requirements

43. In this NPRM, we seek comment on crafting unbundling rules that promote the goals of the Act and on a more granular approach to unbundling. In addition, the Commission asks for comment on how to involve the experience and expertise of state commissions. As a result, our unbundling regulations may require incumbent LECs to unbundle their networks by facility, service, or geography, rather than on a national basis for an entire element as they currently do. However, to identify which factors advancing the goals of the Act are relevant to an unbundling analysis, the Commission asks about the weight to assign to reducing regulatory obligations as alternatives to the incumbent's network becomes available, and whether the unbundling obligations are administratively practical.

VI. Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

44. The RFA requires an agency to describe any significant small business, alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.

45. In this NPRM, we seek comment on refining our unbundling rules by examining whether we should consider the type of customer that a requesting carrier seeks to serve. In particular, the Commission asks whether the availability of UNEs should differ on the basis of whether the requesting carrier serves business or residential customers, and whether to have different rules for facilities serving larger business customers. The Commission asks questions in considerable depth with regard to the carve-out for the residential market for local switching, and seek comment on the practical experience of the carve-out has worked in practice and whether a substantially

revised approach is warranted. The size of the entity as a subscriber to telecommunications services is therefore an important component of our unbundling analysis.

46. In addition to examining the economic impact on customers, the Commission also examines the economic impact on carriers. It especially seeks comment from small entities on these issues. As the Commission considers undertaking a more granular approach, it recognizes that the resulting rules could be more administratively burdensome on carriers because it would be more difficult to keep track of where and under what circumstances certain elements must be unbundled. Accordingly, the Commission asks for comment about balancing any administrative burden against the benefits of a refined approach to unbundling. Particularly with regard to definitions of different network elements, the Commission asks whether there are less burdensome alternatives available to achieve the goals of the Act.

VII. Federal Rules that May Duplicate, Overlap, or Conflict With the Proposed Rules

47. None.

Ordering Clauses

48. Pursuant to the authority contained in sections 1–4, 157, 201–05, 251, 252, 254, 256, 271, 303(r), and 332 of the Communications Act of 1934, as amended, 47 U.S.C. 151–54, 157, 201–05, 251, 252, 254, 256, 271, 303(r), and 332, this NPRM *Is adopted*.

49. The Commission's Consumer Information Bureau, Reference Information Center, *Shall send* a copy of this document, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

Federal Communications Commission.

William F. Caton,

Deputy Secretary.

[FR Doc. 02–902 Filed 1–14–02; 8:45 am]

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Notices

Federal Register

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Tuesday, January 15, 2002

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

Forest Service

Metolius Basin Forest Management Project, Deschutes National Forest, Jefferson County, OR

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The USDA, Forest Service will prepare an environmental impact statement (EIS) to evaluate options for addressing forest health concerns in the southern half of the Metolius Basin. The main objectives of the project will be to reduce the risk of losing important forest habitats to catastrophic wildfire, insects and disease; reduce the risk of impacts from wildfire on residents, visitors and tribal resources; enhance late-successional habitats; protect and restore riparian areas; to evaluate the road network. The project area is located approximately 15 miles northwest of Sisters, Oregon.

The Forest Service Proposed Action would include combinations of thinning forest stands, mowing brush, and controlled burning of forest fuels on approximately 10,000 acres of the 17,000-acre project area. Approximately, 1,400 acres of thinning would occur within pre-existing tree plantations. Of the 1,800 acres of riparian reserves, an estimated 25% (450 acres) may be treated through thinning or prescribed burning using low impact methods (primarily implemented by hand crews). In addition, the Proposed Action would evaluate the current road network in the project area to identify a more efficient and environmentally sensitive road system. Options for managing the road system may include closing roads that are in excess of public needs, and improving maintenance on remaining roads to reduce resource impacts. No construction of permanent roads is proposed.

DATES: Issues and comments concerning the Proposed Action should be received by February 21, 2002.

ADDRESSES: Submit written comments regarding the Proposed Action to Kris Martinson, Project Team Leader, P.O. Box 249, Sisters, Oregon 97759.

FOR FURTHER INFORMATION CONTACT: Direct questions about the Proposed Action and EIS to Kris Martinson, Attention: Metolius Basin Forest Management Project, P.O. Box 249, Sisters, Oregon 97759, phone 541–549–7730.

SUPPLEMENTARY INFORMATION: The Metolius Basin is an important place for the many people who reside in, or visit the area. The community of Camp Sherman, 5 tracts of summer homes, and 9 popular recreation sites are located in the project area. The Metolius Basin also has important values for the Confederated Tribes of Warm Springs, whose reservation lies just north of the Sisters Ranger District, and through which a portion of the Metolius River flows. The Metolius Basin is also a place of very high ecological significance. It is a Late-Successional Reserve, and provides habitat for many rare plants and animals, including northern spotted owl, goshawk, white-headed woodpecker, bull trout, and Peck's penstemon.

Alternatives to be considered will include deferring any actions at this time (No Action) and several action alternatives that would include different methods for meeting the main objectives of the project. The selected alternative may result in an amendment to the LRMP (Forest Plan) standards and guidelines on visual quality due to the potential visibility of management activities (harvest debris, and scorched and blackened trees) beyond the one-year limit.

Preliminary issues that relate to the Proposed Action include: (1) The upper diameter limit of the trees that should be removed to meet project objectives, (2) potential effects on water quality in the Metolius Wild and Scenic River and its tributaries from thinning, (3) potential effects of the proposed action on late-successional species that are associated with dense, interior forests (the proposed actions will open up portions of the forest), (4) debate about the best actions to help reduce the risk of catastrophic wildfire, and (5) concern about changes in road access within the project area (some roads may be closed).

A scoping notice was sent out locally on October 10, 2001 indicating the Forest's intent to plan and implement actions in the Metolius Basin to address forest health and risk concerns. The scoping letter and additional information about this project is posted on the Deschutes National Forest website (www.fs.fed.us/r6/centraloregon). Future public participation opportunities will be available throughout the planning process.

The public is invited to offer suggestions and comments in writing. Comments received in response to this notice, including the names and addresses of those who comment, will be considered part of the public record on this proposal and will be available to public inspection. Comments submitted anonymously will be accepted and considered; however, those who submit anonymous comments will not have standing to appeal the subsequent decision under 36 CFR part 215. Additionally, pursuant to 7 CFR 1.27(d), any person may request the agency to withhold a submission from the public record by showing how the Freedom of Information Act (FOIA) permits such confidentiality. Persons requesting such confidentiality should be aware that under the FOIA, confidentiality may be granted in only very limited circumstances, such as to protect trade secrets. The Forest Service will inform the requester of the agency's decision regarding the request for confidentiality, and where the request is denied, the agency will return the submission and notify the requester that the comments may be resubmitted with or without name and address within a specified number of days.

The draft EIS is expected to be completed in October 2002. The comment period on the draft EIS will be 45 days from the date the Environmental Protection agency publishes the notice of availability in the **Federal Register**.

The Forest Service believes it is important to give reviewers notice at this early stage of several court rulings related to public participation in the environmental review process. First, reviewers of a draft EIS must structure their participation in the environmental review of the proposal so that it is

meaningful and alerts an agency to the reviewer's position and contentions. [*Vermont Yankee Nuclear Power Corp.* v. *NRDC,* 435 U.S. 519, 553 (1978)]. Also, environmental objections that could be raised at the draft EIS stage but that are not raised until after completion of the final EIS may be waived or dismissed by the courts [*City of Angoon* v. *Hodel,* 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris,* 490 F. Supp. 1334, 1338 (E.D. Wis. 1980)]. Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45 day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final EIS.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft EIS should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft EIS or the merits of the alternatives formulated and discussed in the statement. (Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.)

The final EIS is scheduled to be completed by February 2003. In the final EIS, the Forest Service is required to respond to comments and responses received during the comment period that pertain to the environmental consequences discussed in the draft EIS and applicable laws, regulations, and policies considered in making the decision regarding the Metolius Basin Forest Management Project.

The Forest Service is the lead agency. Leslie Weldon, Forest Supervisor, is the Responsible Official. The Responsible Official will determine which alternative best meets the purpose and need for this project and addresses the key issues raised about this project. The decision and rationale will be documented in the Record of Decision. That decision will be subject to Forest Service Appeal Regulations (36 CFR part 215).

Dated: January 3, 2002.

Leslie Weldon,

Forest Supervisor.

[FR Doc. 02–922 Filed 1–14–02; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Palmer Quarry Expansion, Mt. Hood National Forest, Clackamas County, OR

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Forest Service, USDA, will prepare an environmental impact statement (EIS) on a proposal to expand an existing rock quarry. The Proposed Action will be in compliance with the 1990 Mt. Hood National Forest Land and Resource Management Plan (Forest Plan) as amended by the Northwest Forest Plan, which provides the overall guidance for management of this area. The Proposed Action is within the Salmon River watershed on the Zigzag Ranger District and scheduled for implementation in fiscal year 2003. The Mt. Hood National Forest invites written comments and suggestions on the scope of the analysis. The agency will give notice of the full environmental analysis and decision-making process so interested and affected people may be able to participate and contribute in the final decision.

DATES: Comments concerning the scope of the analysis should be postmarked by March 1, 2002.

ADDRESSES: Send written comments and suggestions concerning the Proposed Action in this area to Jim Tierney, Project Coordinator, 595 NW Industrial Ways, Estacada, Oregon 97023 (phone: 503–630–8751). Comments may also be sent by FAX (503–630–2299). Include your name and mailing address with your comments so documents pertaining to this project may be mailed to you.

FOR FURTHER INFORMATION CONTACT: Questions about the Proposed Action and EIS should be directed to Jim Tierney (address and phone number listed above), or to Mike Redmond, Environmental Coordination, 16400 Champion Way, Sandy, Oregon 97055–7248 (phone: 503–668–1776).

SUPPLEMENTARY INFORMATION: The Proposed Action includes expansion of the existing Palmer rock quarry on approximately 60 acres of National Forest system land. The proposal may also include road improvements on the access to the quarry. The excavated material from the quarry would be used by the Forest Service and the Oregon Department of Transportation of maintenance and reconstruction of roads, including State Highways 26 and 35.

The project area is located approximately 4 miles south of Government Camp, in Section 2, T.4S., R.8–½E., Willamette Meridian, Clackamas County, Oregon. This analysis will evaluate a range of alternatives for implementation of the project activities including a no-action alternative. The project area does not include any wilderness, roadless areas, wild and scenic rivers, late successional reserves, or riparian reserves.

Some of the preliminary issues that have been identified include: Visual quality as seen from key view points on the Forest, and traffic management conflict between commercial use and recreation.

The scoping process will include the following: Identify and clarify issues; identify key issues to be analyzed in depth; explore alternatives based on themes which will be derived from issues recognized during scoping activities; and identify potential environmental effects of the Proposed Action and alternatives.

The draft EIS is planned to be filed with the Environmental Protection Agency (EPA) and available for public review by September 2002. The EPA will publish a Notice of Availability (NOA) of the draft EIS in the **Federal Register**. The comment period on the draft EIS will be 45 days from the date the NOA appears in the **Federal Register**. Copies of the draft EIS will be distributed to interested and affected agencies, organizations, Indian Tribes, and members of the public for their review and comment. It is important that those interested in this proposal on the Mt. Hood National Forest participate at that time.

Comments received in response to this Proposed Action, including names and addresses of those who comment, will be considered part of the public record on this Proposed Action and will be available for public inspection. Comments submitted anonymously will be accepted and considered; however, those who submit anonymous comments will not have standing to appeal the subsequent decision under 36 CFR parts 215 or 217. Additionally, pursuant to 7 CFR 1.27(d), any person may request the agency to withhold a submission from the public record by showing how the Freedom of Information Act (FOIA) permits such confidentiality. Persons requesting such confidentiality should be aware that, under the FOIA, confidentiality may be granted in only very limited circumstances, such as to protect trade secrets. The Forest Service will inform the requestor of the agency's decision regarding the request for confidentiality,

and where the request is denied, the agency will return the submission and notify the requestor that the comments may be resubmitted with or without names and addresses within thirty days.

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First reviewers of draft EIS must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC,* 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft EIS stage but are not raised until after completion of the final EIS may be waived or dismissed by the courts. *City of Angoon* v. *Hodel,* 803 f. 2d 1016, 1022 (9th Cir, 1986) and *Wisconsin Heritages, Inc.* v. *Harris,* 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this Proposed Action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final EIS.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft EIS should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft EIS. Comments may also address the adequacy of the draft EIS or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

The final EIS is scheduled to be available by March 2003. In the final EIS, the Forest Service is required to respond to substantive comments received during the comment period for the draft EIS. The responsible official is Gary Larsen, Mt. Hood National Forest Supervisor. The responsible official will decide which, if any, of the alternatives will be implemented. The Palmer Quarry Expansion decision and rationale will be documented in a Record of Decision, which will be subject to Forest Service Appeal Regulations (36 CFR part 215).

Dated: December 28, 2001.

Kathryn J. Silverman,

Acting Forest Supervisor.

[FR Doc. 02–921 Filed 1–14–02; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Red Knight Restoration Project, Winema National Forest, Klamath County, OR

AGENCY: Forest Service, USDA.

ACTION: Cancellation notice.

SUMMARY: On August 16, 1999, a Notice of Intent (NOI) to prepare an environmental impact statement for the Red Knight Restoration Project was published in the **Federal Register** (64 FR 44477). Since the project proposed action has been postponed and the date for any further environmental analysis is unknown, the 1999 NOI is hereby rescinded.

FOR FURTHER INFORMATION CONTACT: Jayne Goodwin, Red Knight Project Leader, Chemult Ranger District, P.O. Box 150, Chemult, Oregon 97731, telephone 541–365–7072 or e-mail at: *jgoodwin/r6pnw_winema@fs.fed.us.*

Dated: December 28, 2001.

Jack B. Sheehan,

Acting Forest Supervisor.

[FR Doc. 02–923 Filed 1–14–02; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Winema and Fremont National Forests Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Winema and Fremont Resource Advisory Committee will hold its first meeting on January 31–February 1, 2002. The meeting will be held in Room 20 at the Klamath County Courthouse, 316 Main Street, in Klamath Falls, Oregon. The meeting will begin at 9:30 AM and end at approximately 4:30 PM. both days. Day 1 agenda topics are: (1) Introductions; (2) Federal Advisory Committee Act (FACA) overview; (3) Resource Advisory Committee (RAC) Roles and Responsibilities; (4) RAC Rules and Bylaws; (5) RAC Guidebook Review; (6) RAC Communication; (7) Future meetings and agendas; (8) Project Process for submission; (9) County Update on Title III Projects; (10) Election of RAC Chairperson; and (11) Public comments. Day 2 will be devoted to a review of Title II projects submitted by the National Forests and making funding recommendations to the Secretary of Agriculture for fiscal year 2002 projects.

All Winema and Fremont Resource Advisory Committee Meetings are open to the public. Interested citizens are encouraged to attend.

FOR FURTHER INFORMATION CONTACT: Direct questions regarding this meeting to Bill Aney, Designated Federal Official, USDA, Paisley Ranger District, Fremont National Forest, PO Box 67, Paisley OR 97636 (541) 943–4401 or Chuck Graham, Forest Supervisor at (541) 947–2151 or 883–6714.

Dated: January 3, 2002.

Charles Graham,

Forest Supervisor, Winema and Fremont National Forests.

[FR Doc. 02–949 Filed 1–14–02; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Central Closed/Estancia Basin (Torrance, Lincoln, and Socorro Counties, *et al*), EQIP for GPAs, New Mexico

AGENCY: Natural Resources Conservation Service, USDA.

ACTION: Notice of a finding of no significant impact.

SUMMARY: Pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Regulations (40 CFR part 1500); and the Natural Resources Conservation Service Regulations (7 CFR part 650); the U.S. Department of Agriculture, Natural Resources Conservation Service, in New Mexico, gives notice that an environmental impact statement is not being prepared for:

Central Closed/Estancia Basin (Torrance, Lincoln and Socorro Counties)

Lower Rio Grande (Sierra and Socorro Counties)

Irrigated Cropland of the Southwest Closed Basins (Dona Ana and Luna Counties)

Lesser Prairie Chicken (Roosevelt, Lea, Chaves and Curry Counties)

Macho/Gallo Watershed (Lincoln County)

Tramperos Creek Watershed (Union and Harding Counties)

Upper Tularosa Basin Watershed Treatment (Lincoln and Socorro Counties)

Zuni River Watershed (Cibola and McKinley Counties)

Eastern NM Conservation Buffer Initiative (Union, Mora, Harding, San Miguel, Quay, Curry, Roosevelt and Lea Counties)

Cougar/Torrance Watershed (Torrance County)

Estancia Closed Underground Watershed (Torrance, Santa Fe and Bernallilo Counties)

Black River/Delaware River (Eddy County)

Abo Arroyo Watershed (Torrance, Socorro and Valencia Counties)

Rio Hondo Watershed Treatment (Lincoln and Otero Counties)

Yellow Dog Canyon (Socorro County)

Irrigated Cropland of Hidalgo (Hidalgo County)

Upper Canadian River Watershed (Union, Colfax, Harding, Mora and San Miguel Counties)

Pecos River Watershed Aquifer Brush Control (Chaves County)

Eastern Sangre De Cristo Mountain Watershed (Mora, San Miguel and Taos Counties)

FOR FURTHER INFORMATION CONTACT: Rosendo Trevino III, State Conservationist, Natural Resources Conservation Service, 6200 Jefferson, NE, Albuquerque, NM 87109–3734, Telephone (505)761–4400.

Copies of these environmental assessements are available from NRCS in Albuquerque, NM and are also available electronically on the NRCS New Mexico Internet Homepage at: *http://www.nm.nrfcs.usda.gov/techserv/ea.htm.*

SUPPLEMENTARY INFORMATION: The environmental assessments of these federally assisted actions indicate that the projects will not cause significant local, regional, or national effects on the human environment. As a result of these findings, Rosendo Trevino III, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for these projects. Basic data developed during the environmental assessment is on file and may be reviewed by contacting Rosendo Trevino III.

No administrative action on implementation of the proposed action will be taken until 30 days after the date of this publication in the **Federal Register**.

Dated: December 20, 2001.

Rosendo Trevino III,

State Conservationist.

[FR Doc. 02–913 Filed 1–14–02; 8:45 am]

BILLING CODE 3410–16–P

DEPARTMENT OF AGRICULTURE

Natural Resources Conservaiton Service

TV–13a Oaks/Avery Canal Hydrologic Restoration Project, Iberia and Vermilion Parishes, LA

AGENCY: Natural Resources Conservation Service, USDA.

ACTION: Notice of finding of no significant impact.

SUMMARY: Pursuant to Section 102 (2) (C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR part 1500); and the Natural Resources Conservation Service Guidelines (7 CFR part 650); the Natural Resources Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Oaks/Avery Canal Hydrologic Restoration Project, Iberia and Vermilion Parishes, Louisiana.

FOR FURTHER INFORMATION, CONTACT: Donald W. Gohmert, State Conservationist, Natural Resources Conservation Service, 3737 Government Street, Alexandria, Louisiana 71302; telephone (318) 473–7751.

SUPPLEMENTARY INFORMATION: The environmental assessment of the federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Donald W. Gohmert, State Conservationist, has determined that preparation and review of an environmental impact statement is not needed for this project.

TV–13a Oaks/Avery Canal Hydrologic Restoration Project Notice of Finding of No Significant Impact

The project will minimize marsh loss which is attributed to saltwater intrusion, shoreline deterioration, and bankline erosion within the project area. This will be accomplished by the installation of 800 linear feet of bankline stabilization on Oaks Canal, 6,500 linear feet of bankline stabilization along the Gulf Intracoastal Waterway (GIWW), one (1) low sill weir structure at the ''cowpath'' and approximately 900 linear feet of bankline stabilization in a manmade channel east of Oaks Canal and north of GIWW, one (1) armored plug in a breach in the north bank of the Union Oil Canal, and 1,100 linear feet of spoilbank refurbishment on the Union Oil Canal.

The Notice of Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various federal, state, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data collected during the environmental assessment are on file and may be reviewed by contacting Donald W. Gohmert.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register**.

Donald W. Gohmert,

State Conservationist.

[FR Doc. 02–911 Filed 1–14–02; 8:45 am]

BILLING CODE 3410–16–P

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Notice of Proposed Changes to Section IV of the Field Office Technical Guide (FOTG) of the Natural Resources Conservation Service in Indiana

AGENCY: Natural Resources Conservation Service (NRCS), USDA.

ACTION: Notice of availability of proposed changes in Section IV of the FOTG of the NRCS in Indiana for review and comment.

SUMMARY: It is the intention of NRCS in Indiana to issue two revised conservation practice standards in Section IV of the FOTG. The revised standards are: Land Smoothing (466); and Wetland Wildlife Habitat Management (644). These practices may be used in conservation systems that treat highly erodible land and/or wetlands.

DATES: Comments will be received for a 30-day period commencing with this date of publication.

ADDRESSES: Address all requests and comments to Jane E. Hardisty, State Conservationist, Natural Resources Conservation Service (NRCS), 6013 Lakeside Blvd., Indianapolis, Indiana 46278. Copies of this standard will be made available upon written request. You may submit your electronic requests and comments to *darrell.brown@in.usda.gov.*

FOR FURTHER INFORMATION CONTACT: Jane E. Hardisty, 317–290–3200.

SUPPLEMENTARY INFORMATION: Section 343 of the Federal Agriculture Improvement and Reform Act of 1996 states that after enactment of the law, revisions made to NRCS state technical guides used to carry out highly erodible land and wetland provisions of the law, shall be made available for public review and comment. For the next 30 days, the NRCS in Indiana will receive comments relative to the proposed changes. Following that period, a determination will be made by the NRCS in Indiana regarding disposition of those comments and a final determination of changes will be made.

Dated: December 10, 2001.

Jane E. Hardisty,

State Conservationist, Indianapolis, Indiana.

[FR Doc. 02–912 Filed 1–14–02; 8:45 am]

BILLING CODE 3410–16–P

DEPARTMENT OF COMMERCE

Bureau of Export Administration

Sensors and Instrumentation Technical Advisory Committee; Notice of Partially Closed Meeting

The Sensors and Instrumentation Technical Advisory Committee will meet on February 12, 2002, 9:30 a.m., in the Herbert C. Hoover Building, Room 3884, 14th Street between Constitution and Pennsylvania Avenues, NW., Washington, DC. The Committee advises the Office of the Assistant Secretary for Export Administration on technical questions that affect the level of export controls applicable to sensors and instrumentation equipment and technology.

Agenda

Public Session

1. Opening remarks and introductions.
2. Committee Annual Report for 2001.
3. Goals for 2002.
4. Status on Wassenaar Arrangement proposals.
5. Update on implementation of regulations.
6. Committee's proposed change to 6A002 (Optical sensors).
7. Update on Wassenaar Arrangement negotiating cycle.
8. Review of status on Uncooled IR licensing.

Closed Session

9. Discussion of matters properly classified under Executive Order 12958, dealing with the U.S. export control program and strategic criteria related thereto.

A limited number of seats will be available during the public session of the meeting. Reservations are not accepted. To the extent that time permits, members of the public may present oral statements to the Committee. The public may submit written statements at any time before or after the meeting. However, to facilitate distribution of public presentation materials to the Committee members, the Committee suggests that presenters forward the public presentation materials prior to the meeting date to the following address: Ms. Lee Ann Carpenter, OSIES/EA/BXA MS: 3876, U.S. Department of Commerce, 14th St. & Constitution Ave., NW., Washington, DC 20230.

The Assistant Secretary for Administration, with the concurrence of the General Counsel, formally determined on November 29, 2001, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, that the series of meetings of the Committee and of any Subcommittees thereof, dealing with the classified materials listed in 5 U.S.C., 552b(c)(1) shall be exempt from the provisions relating to public meetings found in section 10(a)(1) and 10(a)(3), of the Federal Advisory Committee Act. The remaining series of meetings or portions thereof will be open to the public.

A copy of the Notice of Determination to close meetings or portions of meetings of the Committee is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6020, U.S. Department of Commerce, Washington, DC 20230. For more information contact Lee Ann Carpenter on (202) 482–2583.

Dated: January 9, 2002.

Lee Ann Carpenter,

Committee Liaison Officer.

[FR Doc. 02–1016 Filed 1–14–02; 8:45 am]

BILLING CODE 3510–JT–M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

[Docket No. 010412092–1296–04]

Report on the Effect of Imports of Iron Ore and Semi-Finished Steel on the National Security

AGENCY: Bureau of Export Administration, Department of Commerce.

ACTION: Publication of Executive Summary of Report from the Secretary of Commerce to the President on the Effect of Imports of Iron Ore and Semi-Finished Steel on the National Security/ Notice of availability of full report.

SUMMARY: On October 29, 2001, the Secretary of Commerce (''Secretary'') submitted a report to the President summarizing the findings of an investigation conducted by the Department pursuant to Section 232 of the Trade Expansion Act of 1962, into the effect of imports of iron ore and semi-finished steel on the national security of the United States. Based on the evidence gathered in that investigation, the Secretary was unable to conclude that imports of iron ore and semi-finished steel threaten to impair the national security of the United States, or to recommend to the President that he take action under Section 232 to adjust the level of imports of these items. Included herein is the Executive Summary of the Secretary's report to the President.

ADDRESSES: Copies of the Secretary's report and certain records related to this investigation (with any business confidential information redacted) are accessible in accordance with the regulations published in part 4 of title 15 of the Code of Federal Regulations (15 CFR 4.1 *et seq.*). Specifically, the above documents are maintained on the Bureau of Export Administration's Web page, which can be found at *http://www.bxa.doc.gov* (*see* Freedom of Information Act (''FOIA'') heading). Alternatively, any person may request that a copy of the Secretary's report be sent to him by calling (202) 482–0500.

FOR FURTHER INFORMATION CONTACT: Daniel O. Hill, Director, Office of Strategic Industries and Economic Security, Bureau of Export Administration, U.S. Department of Commerce, (202) 482–4506.

SUPPLEMENTARY INFORMATION:

On February 1, 2001, the Secretary initiated an investigation under Section 232 to determine the effects on the national security of imports of iron ore and semi-finished steel. This investigation was conducted at the request of Representative James Oberstar of Minnesota and Representative Bart Stupak of Michigan. For further details on this investigation, see the **Federal Register** notices of February 6, 2001 (66 FR 9067), April 18, 2001 (66 FR 19917), June 14, 2001 (66 FR 32315), and July 10, 2001 (66 FR 35927).

On October 29, 2001, the Secretary concluded his investigation and submitted a report to the President. Based on the evidence gathered in that investigation, the Secretary was unable to conclude that imports of iron ore and semi-finished steel threaten to impair the national security of the United States, or to recommend to the President that he take action under Section 232 to adjust the level of imports of these items. The Executive Summary of the Secretary's October 2001 report to the President, titled ''The Effect of Imports of Iron Ore and Semi-Finished Steel on the National Security,'' is reproduced below in accordance with 15 CFR 705.10.

Dated: January 10, 2002.

James J. Jochum,

Assistant Secretary for Export Administration.

I. Executive Summary

This report summarizes the findings of an investigation conducted by the Secretary of Commerce (''Secretary'') pursuant to Section 232 of the Trade Expansion Act of 1962, as amended, 19 U.S.C. 1862 (''Section 232''), into the effects of imports of iron ore and semi-finished steel on the national security of the United States. The conclusions of this report are as follows:

(1) Iron ore and semi-finished steel are important to U.S. national security. Specifically, iron ore and semi-finished steel— as raw and semi-finished materials consumed by certain segments of the steel industry in the production of finished steel products—are needed to satisfy the requirements for finished steel products of (i) the U.S. Department of Defense (''DoD''), and (ii) certain industries that are critical to the minimum operations of the U.S. economy and government.

(2) Imports of iron ore and semi-finished steel could threaten to impair U.S. national security in either of two ways: (i) through excessive domestic dependency on unreliable foreign suppliers, or (ii) if such imports fundamentally threaten to impair the capability of the U.S. iron ore and semi-finished steel industries to satisfy national security requirements.

(3) In fact, however, there is no probative evidence that imports of iron ore or semi-finished steel threaten to impair U.S. national security. There is neither evidence showing that the United States is dependent on imports of iron ore or semi-finished steel, nor evidence showing that such imports fundamentally threaten the ability of domestic producers to satisfy national security requirements. Specific findings supporting this conclusion include the following:

- National defense requirements, as communicated to the Department of Commerce (''Department'') by DoD, for finished steel—and thus for iron ore and semi-finished steel as inputs—are very low and likely to remain flat over the next five years. DoD's current and projected demand for iron ore and steel can be readily satisfied by domestic production. Moreover, DoD already has established domestic preferences that apply to essentially all of the steel used in weapons systems; accordingly, no weapons system is dependent upon foreign steel. DoD has concluded that ''imports of iron ore and semi-finished steel do not currently affect the national security when assessed in terms of the ability to meet defense demands.''
- The demand of critical industries for iron ore and semi-finished steel can be readily satisfied by domestic production, even assuming that all such demand were necessary to preserve the national security (which is not the case).
- Consideration of other relevant factors, as dictated by Section 232, does not demonstrate that imports of iron ore or semi-finished steel threaten to impair U.S. national security. U.S. industry currently has, and anticipates continuing to have in the future, sufficient human resources, products, raw materials, and other supplies and services needed for the production of iron ore and semi-finished steel.
- Imports of iron ore and semi-finished steel are from diverse and ''safe'' foreign suppliers, with the largest suppliers of these products being U.S. allies in the Western Hemisphere (Canada, Mexico, and Brazil).
- Although domestic manufacturers of iron ore and semi-finished steel clearly are enduring substantial economic hardship, there is no evidence that imports of these items (which account for approximately 20 and 7 percent of U.S. iron ore and semi-finished steel consumption, respectively) fundamentally threaten to impair the capability of U.S. industry to produce the quantities of iron ore and semi-finished steel needed to satisfy national security requirements, a modest proportion of total U.S. consumption.
- These conclusions take into account the campaign against terrorism resulting from the events of September 11, 2001, and the requirements of related military operations.

Accordingly, the Department is unable to conclude that imports of iron ore and semi-finished steel threaten to impair the national security of the United States, or to recommend to the President that he take action under Section 232 to adjust the level of imports.

[FR Doc. 02–977 Filed 1–14–02; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 2–2002]

Foreign-Trade Zone 143—Sacramento, California, Area Application for Expansion

An application has been submitted to the Foreign-Trade Zones (FTZ) Board (the Board), by the Sacramento-Yolo Port District, grantee of Foreign-Trade Zone 143, requesting authority to expand its zone to include an additional site in the Sacramento, California, area, adjacent to the San Francisco Customs port of entry. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on January 7, 2002.

FTZ 143 was approved on August 6, 1987 (Board Order 360, 52 FR 30698, 8/17/87) and expanded on December 15, 1997 (Board Order 944, 62 FR 67043, 12/23/97) and January 18, 2000 (Board Order 1074, 65 FR 5495, 2/4/00). The general-purpose zone project currently consists of the following sites: *Site 1* (686 acres)—within the Port of Sacramento, Industrial Blvd. and Boatman Ave., W. Sacramento; *Site 2* (1,280 acres)—Lincoln Airport Business Park, Aviation Blvd, Lincoln, some 25 miles northeast of Sacramento; and, *Site 3* (1,574 acres)—Chico Municipal Airport complex and adjacent industrial development area, Chico.

The applicant is now requesting authority to expand the general-purpose zone to include an additional site (Proposed Site 4) in Sacramento County. *Proposed Site 4* (976 acres)—McClellan Park (the former site of the McClellan Air Force Base), 3140 Peacekeeper Way, McClellan, California. The site is located in an unincorporated area of the County of Sacramento. The County of Sacramento selected McClellan Business Park, LLC to redevelop and manage the former 2,856-acre McClellan Air Force Base. The area to be included in the proposed zone is currently owned by the U.S. Air Force, but ownership is in the process of being conveyed to the County of Sacramento and McClellan Business Park LLC. (The property is currently leased to the County of Sacramento and McClellan Business Park, LLC as part of the conveyance process.) A variety of businesses are already established on the site performing activities including services, manufacturing and processing, and warehousing and distribution. No specific manufacturing requests are being made at this time. Such requests would be made to the Board on a case-by-case basis. The site contains certain historic properties which will be managed in accordance with the agreement between the United States Air Force and the California State Historic Preservation Officer.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to

investigate the application and report to the Board.

Public comment on the application is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at one of the addresses:

1. Submissions via Express/Package Delivery Services: Foreign-Trade Zones Board, U.S. Department of Commerce, Franklin Court Building-Suite 4100W, 1099—14th Street NW., Washington, DC 20005; or

2. Submissions via the U.S. Postal Service: Foreign-Trade Zones Board, U.S. Department of Commerce, FCB—Suite 4100W, 1401 Constitution Avenue NW, Washington, DC 20230.

The closing period for their receipt is March 18, 2002. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to April 1, 2002).

A copy of the application and accompanying exhibits will be available for public inspection at the Office of the Foreign-Trade Zones Board's Executive Secretary at the first address listed above, and at the Office of the Port Director, Sacramento-Yolo Port District, 3251 Beacon Boulevard, Suite 210, W. Sacramento, CA 95798.

Dated: January 7, 2002.

Dennis Puccinelli,

Executive Secretary.

[FR Doc. 02–974 Filed 1–14–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 3–2002]

Foreign-Trade Zone 124—LaPlace, Louisiana, Application for Expansion—Subzone 124H; Bollinger Shipyards Lockport, LLC; (Shipbuilding), LaFourche, Louisiana

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the South Louisiana Port Commission, grantee of FTZ 124, requesting authority to expand Subzone 124H, at the Bollinger Shipyards Lockport, LLC (Bollinger) shipbuilding facility located in Lockport, Louisiana, to include six new sites in Lafourche, Jefferson and Orleans Parishes. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on January 8, 2002.

Subzone 124H was approved on July 10, 1998 (Board Order 993, 63 FR 39069, 7–21–98). The subzone currently consists of five sites: *Site 1* (250 acres)—Bollinger Lockport, 8365 LA Hwy. 308, Lockport; *Site 2* (168 acres)—Bollinger Larose, LLC, 1515 Highway 24, Larose; *Site 3* (67 acres)—Bollinger Marine Fabricators, LLC, 816 Bollinger Lane, Amelia; *Site 4* (101 acres)—Bollinger Morgan City, LLC, 806 Bollinger Lane, Amelia; and, *Site 5* (50 acres)—Bollinger Amelia Repair, LLC, 606 Ford Industrial Road, Amelia. The applicant is now requesting authority to expand the subzone to include six additional sites: proposed *Site 6* (3 acres)—Bollinger Algiers, LLC, 434 Powder St., New Orleans; proposed *Site 7* (40 acres)—Bollinger Gretna, 4640 Peters Rd., Harvey; proposed *Site 8* (58 acres)—Bollinger Gulf Repair, 3900 Jourdan Road W, New Orleans; proposed *Site 9* (30 acres) Bollinger Quick Repair, 615 Destrehan Ave., Harvey; proposed *Site 10* (4 acres) Bollinger Fourchon, LLC, 106 Norman Doucet Dr., Golden Meadow; and, proposed *Site 11* (21 acres)—Chand, LLC, 157 Highway 654, Matthews. The Bollinger facilities are used for the construction and repair of commercial and government vessels for domestic and international customers.

This proposal does not request any new authority under FTZ procedures in terms of products or components, but it does involve a potential increase in the facility's level of production under FTZ procedures. Bollinger will operate the proposed sites as an integral part of Subzone 124H.

The proposed expanded manufacturing activity conducted under FTZ procedures would be subject to the ''standard shipyard restriction'' applicable to foreign-origin steel mill products (e.g., angles, pipe, plate), which requires that Customs duties be paid on such items.

Public comment is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at one of the following addresses:

1. Submissions Via Express/Package Delivery Services: Foreign-Trade-Zones Board, U.S. Department of Commerce, Franklin Court Building—Suite 4100W, 1099 14th St. NW., Washington, DC 20005; or

2. Submissions Via the U.S. Postal Service: Foreign-Trade-Zones Board, U.S. Department of Commerce, FCB—Suite 4100W, 1401 Constitution Ave. NW., Washington, DC 20230. The closing period for their receipt is March 18, 2002. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to April 1, 2002).

A copy of the application and accompanying exhibits will be available for public inspection at the Office of the Foreign-Trade Zones Board's Executive Secretary at the first address listed above, and at the U.S. Department of Commerce Export Assistance Center, One Canal Place, 365 Canal Street, Suite 1170, New Orleans, LA 70130.

Dated: January 8, 2002.

Dennis Puccinelli,

Executive Secretary.

[FR Doc. 02–975 Filed 1–14–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–475–703]

Notice of Final Results of Antidumping Duty Administrative Review: Granular Polytetrafluoroethylene Resin From Italy

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

SUMMARY: On September 10, 2001, the Department of Commerce (the Department) published the preliminary results of its twelfth administrative review of the antidumping duty order on Granular Polytetrafluoroethylene Resin from Italy. The review covers one producer/exporter of the subject merchandise, Ausimont SpA, and its U.S. affiliate, Ausimont USA (Ausimont). The period of review (POR) is August 1, 1999, through July 31, 2000. Based on our analysis of comments received, these final results differ from the preliminary results. The final results are listed below in the *Final Results of Review* section.

EFFECTIVE DATE: January 15, 2002.

FOR FURTHER INFORMATION CONTACT: Vicki Schepker or Amber Musser, at (202) 482–1756 or (202) 482–1777, respectively; AD/CVD Enforcement, Office V, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street & Constitution Avenue, NW., Washington, D.C. 20230.

SUPPLEMENTARY INFORMATION:

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (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 to 19 CFR part 351 (April 2001).

Background

On September 10, 2001, the Department published in the **Federal Register** the preliminary results of the twelfth administrative review of the antidumping duty order on Granular Polytetrafluoroethylene Resin from Italy. *See Notice of Preliminary Results of Antidumping Duty Administrative Review: Granular Polytetrafluoroethylene Resin from Italy,* 66 FR 46996 (September 10, 2001) (*Preliminary Results*).

We invited parties to comment on the *Preliminary Results*. On October 10, 2001, we received a case brief from the petitioner, E.I. Dupont de Nemours & Company (Dupont). We did not receive a case brief from the respondent, Ausimont. On October 17, 2001, we received a rebuttal brief from Ausimont. No other interested parties filed case or rebuttal briefs.

Scope of the Review

The product covered by this review is granular PTFE resin, filled or unfilled. This order also covers PTFE wet raw polymer exported from Italy to the United States. *See Final Affirmative Determination; Granular Polytetrafluoroethylene Resin from Italy,* 58 FR 26100 (April 30, 1993). This order excludes PTFE dispersions in water and fine powders. During the period covered by this review, such merchandise was classified under item number 3904.61.00 of the Harmonized Tariff Schedule of the United States (HTS). We are providing this HTS number for convenience and U.S. Customs purposes only. The written description of the scope remains dispositive.

Analysis of Comments Received

All issues raised in the case briefs by parties to this administrative review are addressed in the ''Issues and Decision Memorandum'' (*Decision Memorandum*) from Bernard T. Carreau, Deputy Assistant Secretary, Import Administration, to Faryar Shirzad, Assistant Secretary for Import Administration, dated January 8, 2002, which is hereby adopted by this notice. Attached to this notice, as an appendix, is a list of the issues which parties have raised and to which we have responded in the *Decision Memorandum*. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in the public version of this memorandum, which is on file in Room B–099 of the main Commerce building. In addition, a complete version of the public version of the *Decision Memorandum* can be accessed directly on the Web at *ia.ita.doc.gov.* The paper copy and electronic version of the *Decision Memorandum* are identical in content.

Changes Since the Preliminary Determination

Based on our analysis of comments received, we have made an adjustment to the calculation methodology in determining the final dumping margins in the proceeding. For the final determination, we disallowed gains on the sale of securities as an offset to financial expense and recalculated the respondent's interest expense ratio. This adjustment is discussed in the *Decision Memorandum.*

As a result of our review, we determine that the following weighted-average margin exists for the period of August 1, 1999, through July 31, 2000:

Exporter/Manufacturer	Weighted-Average
Ausimont SpA	2.15

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. In accordance with 19 CFR 351.212(b)(1), we have calculated importer-specific assessment rates based on the ratio of the total amount of antidumping duties calculated for the importer-specific sales to the total entered value of the same sales. Where the assessment rate is above *de minimis,* we will instruct the Customs Service to assess duties on all entries of subject merchandise by that importer. The Department will issue appraisement instructions directly to the Customs Service.

Furthermore, the following deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of these final results of administrative review, as provided by section 751(a) of the Act: (1) For the exporter/manufacturer covered by this review, the cash deposit rate will be the rate listed above; (2) for merchandise exported by producers or exporters not covered in this review but covered in a previous segment of this proceeding, the cash deposit rate will continue to be the company-specific rate published in the most recent final results in which that producer or exporter participated; (3) if the exporter is not a firm covered in this review or in any previous segment of this proceeding, but the producer is, the cash deposit rate will be that established for the producer of the merchandise in these final results of review or in the most recent final results in which that producer participated; and (4) if neither the exporter nor the producer is a firm covered in this review or in any previous segment of this proceeding, the cash deposit rate will be 46.46 percent, the ''All Others'' rate established in the less-than-fair-value investigation (53 FR 26096, July 11, 1988). These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402 (f) 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 in the subsequent assessment of double antidumping duties.

This notice also is the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return/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.

We are issuing and publishing these results and notice in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: January 8, 2002.

Faryar Shirzad,

Assistant Secretary for Import Administration.

APPENDIX

1. Financial Expense Calculation.
2. Application of the Special Rule.
3. Calculation of Constructed Export Price Profit Ratio.
4. Scope of the Review.

[FR Doc. 02–970 Filed 1–14–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–201–802]

Gray Portland Cement and Clinker From Mexico; Notice of Extension of Final Results of Antidumping Duty Administrative Review

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

ACTION: Notice of extension of time limits for final results of antidumping duty administrative review.

SUMMARY: The Department of Commerce is extending the time limit for the final results of the administrative review of the antidumping duty order on gray portland cement and clinker from Mexico. The review covers one manufacturer/exporter, CEMEX, S.A. de C.V, and its affiliate, GCC Cemento, S.A. de C.V. The period of review is August 1, 1999, through July 31, 2000.

EFFECTIVE DATE: January 15, 2002.

FOR FURTHER INFORMATION CONTACT: Hermes Pinilla, AD/CVD Enforcement Group I, Office 3, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–3477.

The Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (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.

Extension of Time Limit for Final Results

The Department of Commerce (the Department) published the preliminary results of this administrative review on September 13, 2001 (66 FR 47632). The deadline for completing the final results of the review is January 11, 2002. 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. Due to the complexity of the issues, such as product matching and whether certain sales are outside the ordinary course of trade, the Department determines that it is not practicable to complete the final results of this review within the statutory time limit. Therefore, the Department is extending the time limit for the final results in this review to March 12, 2002.

Dated: January 9, 2002.

Susan Kuhbach,

Acting, Deputy Assistant Secretary, for AD/CVD Enforcement I.

[FR Doc. 02–973 Filed 1–14–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–815]

Sulfanilic Acid From the People's Republic of China; Final Results and Final Partial Rescission of Antidumping Duty Administrative Review

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

EFFECTIVE DATE: January 15, 2002.

SUMMARY: On September 10, 2001, the Department of Commerce (the Department) published the preliminary results of its administrative review of the antidumping duty order on sulfanilic acid from the People's Republic of China. The review covers exports of this merchandise to the United States for the period August 1, 1999, through July 31, 2000, and three firms: Zhenxing Chemical Industry Company (Zhenxing), Yude Chemical Industry Company (Yude), and Baoding Chemical Industry Import and Export Corporation (Baoding). The final results of this review indicate that there are dumping margins only for Zhenxing and the ''PRC enterprise.''

We find that Baoding acted as Zhenxing's shipping agent in preparing Zhenxing's export documents and coordinating its shipments of subject merchandise to the United States during the POR. Therefore, we are rescinding the review of Baoding since we did not find Baoding to be involved in any sales of sulfanilic acid to the United States other than those reported by Zhenxing. In addition, we are rescinding the review with respect to Yude because Yude did not export the subject merchandise to the United States during the period of review (POR). We have made changes in the margin calculations for these final results which are listed below in the ''Final Results of the Review'' section of this notice.

FOR FURTHER INFORMATION CONTACT: Sean Carey or Dana Mermelstein, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230 at (202) 482–3964 or (202) 482–1391, respectively.

SUPPLEMENTARY INFORMATION:

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the Tariff Act of 1930 (the Act), as amended. In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations codified at 19 CFR part 351 (2001).

Background

On September 10, 2001, the Department published the preliminary results of the administrative review of the antidumping duty order on sulfanilic acid. *See Sulfanilic Acid from the People's Republic of China; Preliminary Results of Antidumping Duty Administrative Review (Preliminary Results*), 66 FR 47003 (September 10, 2001). Petitioner filed a supplemental submission on September 28, 2001, of additional publicly available information (PAI) to value factors of production. On October 1, 2001, respondents also submitted, on a timely basis, PAI for the Department's consideration in the instant administrative review. Petitioner filed additional factual information in rebuttal to respondents PAI on October 10, 2001. On November 2, 2001, the Department issued the verification report discussing our on-site inspection of relevant sales and financial records. Respondents filed a case brief with the Department on November 16, 2001, and petitioner submitted a rebuttal brief to the Department on November 21, 2001. Finally, at respondents' request, a hearing was held at the Department on November 29, 2001. The hearing was attended by both respondents and petitioner.

Scope of Review

Imports covered by this review are all grades of sulfanilic acid, which include technical (or crude) sulfanilic acid, refined (or purified) sulfanilic acid and sodium salt of sulfanilic acid.

Sulfanilic acid is a synthetic organic chemical produced from the direct sulfonation of aniline with sulfuric acid. Sulfanilic acid is used as a raw material in the production of optical brighteners, food colors, specialty dyes, and concrete additives. The principal differences between the grades are the undesirable quantities of residual aniline and alkali insoluble materials present in the sulfanilic acid. All grades are available as dry, free flowing powders.

Technical sulfanilic acid, classifiable under the subheading 2921.42.22 of the

Harmonized Tariff Schedule (HTS), contains 96 percent minimum sulfanilic acid, 1.0 percent maximum aniline, and 1.0 percent maximum alkali insoluble materials. Refined sulfanilic acid, also classifiable under the subheading 2921.42.22 of the HTS, contains 98 percent minimum sulfanilic acid, 0.5 percent maximum aniline and 0.25 percent maximum alkali insoluble materials.

Sodium salt (sodium sulfanilate), classifiable under the HTS subheading 2921.42.90, is a powder, granular or crystalline material which contains 75 percent minimum equivalent sulfanilic acid, 0.5 percent maximum aniline based on the equivalent sulfanilic acid content, and 0.25 percent maximum alkali insoluble materials based on the equivalent sulfanilic acid content.

Although the HTS subheadings are provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

Period of Review

The review period is August 1, 1999 through July 31, 2000.

Verification

As provided in section 782(i) of the Act, we verified information provided by the respondents using standard verification procedures, including on-site inspection of the manufacturer's facilities, and the examination of relevant sales and financial records. The results of our verification are discussed in the verification report, a public version of which is on file in the Central Records Unit (CRU), room B–099 of the Main Commerce Building.

Final Rescission of Review with Respect to Yude

In the last administrative review, the Department did not reach the issue of whether to collapse Zhenxing and Yude due to our determination to assign the PRC-wide rate to Yude and Zhenxing as adverse facts available. *See Sulfanilic Acid from the People's Republic of China; Final Results of Administrative Review,* 66 FR 15837 (March 21, 2001) and accompanying Decision Memo at Comment 10, on file in the CRU. For purposes of this review, the Department did not analyze the issue of whether to collapse Yude and Zhenxing because we are rescinding the review with respect to Yude, as Yude did not export the subject merchandise to the United States during the POR.

Separate Rate Analysis for Zhenxing

It is the Department's standard policy to assign to all exporters of the merchandise subject to review in non-market economy countries a single rate, unless an exporter can affirmatively demonstrate an absence of government control, both in law (*de jure*) and in fact (*de facto*), with respect to exports. *See Mitsubishi Heavy Industries, Ltd.,* v. *U.S.,* 54 F.Supp 2d 1183, (CIT 1999). Based on our findings at verification and our analysis of comments received from the interested parties, we continue to find an absence of government control, both in law and in fact, over Zhenxing's export activities, and determine that a separate rate should be applied to Zhenxing. For further discussion of the Department's preliminary determination regarding the issuance of separate rates, *see* Separate Rates Decision Memorandum for Barbara Tillman, Director, Office of AD/CVD Enforcement VII, dated August 31, 2001. A public version of this memorandum is on file in the CRU.

Analysis of Comments Received

As noted above, specific issues and comments raised in the respondents' case brief and petitioner's rebuttal brief are addressed in the Decision Memorandum, which is hereby adopted by this notice. A list of issues which parties have raised and to which we have responded, all of which are in the Decision Memorandum, is attached to this notice as Appendix I. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in this public memorandum which is on file in the Department's CRU. In addition, a complete version of the Decision Memorandum can be accessed directly on the Internet at *http://ia.ita.doc.gov.*

Changes Since the Preliminary Results

Based on our analysis of comments received, we have made certain changes in the margin calculations. For a discussion of the issues and changes in the margin calculation for Zhenxing, refer to the Decision Memorandum and the Department's Final Results Analysis Memorandum for Barbara Tillman, Director, Office of AD/CVD Enforcement VII, dated January 8, 2002. A public version of these memoranda are on file in the CRU.

Final Results of Review

We determine the weighted average dumping margin for Zhenxing for the period August 1, 1999 through July 31, 2000 to be 54.40 percent. Pursuant to 19 CFR 351.224(b), the Department will disclose to parties to the proceeding any calculations performed in connection with these final results within five days after the date of publication of this notice.

Duty Assessments and Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of this notice of final results of administrative review for all shipments of sulfanilic acid from the PRC entered, or withdrawn from warehouse, for consumption on or after the date of publication, as provided by section 751(a)(2)(C) of the Act: (1) The cash deposit rate for the reviewed company listed above will be the rate for that firm established in the final results of this review; (2) for companies previously found to be entitled to a separate rate and for which no review was requested, the cash deposit rate will be the rate established in the most recent review of that company; (3) for all other PRC exporters of subject merchandise, the cash deposit rate will be the PRC-wide rate of 85.20 percent; and (4) the cash deposit rate for non-PRC exporters of subject merchandise from the PRC will be the rate applicable to the PRC supplier of that exporter. These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

Notification of Interested Parties

This notice serves as a final reminder to importers of their responsibility under section 351.402(f)(2) of the Department's regulations 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 notice also 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 section 351.305(a)(3) of the Department's regulations. Timely written notification of the return/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 administrative review and notice are in accordance with sections 751(a)(1) and 777 (i)(1) of the Act.

Dated: January 8, 2002.

Faryar Shirzad,

Assistant Secretary for Import Administration.,

Appendix I: Issues Discussed in Decision Memorandum

(*See* Web address *http://ia.ita.doc.gov*)

Comments and Responses

1. Surrogate Value for Aniline.
2. Calculation of Indirect Selling Expenses.
3. Calculation of Packing Expenses.
4. Calculation of Overhead used for the Constructed Export Price.
5. Deduction of Duties from U.S. Sales Price.

[FR Doc. 02–971 Filed 1–14–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–580–835]

Final Results and Partial Rescission of Countervailing Duty Administrative Review: Stainless Steel Sheet and Strip in Coils From the Republic of Korea

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

ACTION: Notice of final results of countervailing duty administrative review.

SUMMARY: On September 10, 2001, the Department of Commerce (the Department) published in the **Federal Register** its preliminary results and partial rescission of administrative review of the countervailing duty order on stainless steel sheet and strip from the Republic of Korea for the period November 17, 1998 through December 31, 1999 (66 FR 47008). The Department has now completed this administrative review in accordance with section 751(a) of the Tariff Act of 1930, as amended (the Act).

Based on information received since the preliminary results and our analysis of the comments received, the Department has revised the net subsidy rate for Inchon Iron and Steel Co. (Inchon). Therefore, the final results differ from the preliminary results. The final net subsidy rate for the reviewed company is listed below in the section entitled ''Final Results of Review.''

EFFECTIVE DATE: January 15, 2002.

FOR FURTHER INFORMATION CONTACT: Tipten Troidl or Darla Brown, Office of AD/CVD Enforcement VI, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: 202–482–2786.

SUPPLEMENTARY INFORMATION:

Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the provisions of the Act as amended by the Uruguay Round Agreements Act (URAA) effective January 1, 1995. The Department conducted this administrative review in accordance with section 751(a) of the Act. All citations to the Department's regulations reference 19 CFR part 351 (2001) (CVD Regulations), unless otherwise indicated.

Background

Pursuant to 19 CFR 351.213(b), this review covers only those producers or exporters of the subject merchandise for which a review was specifically requested. Accordingly, this review covers Inchon. This review covers the period November 17, 1998 through December 31, 1999 and fourteen (14) programs.

On August 6, 1999, the Department published in the **Federal Register** the countervailing duty order on stainless steel sheet and strip in coils from the Republic of Korea. *See Amended Final Determination: Stainless Steel Sheet and Strip in Coils from the Republic of Korea; and Notice of Countervailing Duty Orders: Stainless Steel Sheet and Strip from France, Italy and the Republic of Korea,* 64 FR 42923 (August 6, 1999).

We published the preliminary results of the instant administrative review in the **Federal Resister** on September 10, 2001 (66 FR 47008). We invited interested parties to comment on the results. On October 17, 2001, we received case briefs from petitioners and respondents. On October 22, 2001, we received rebuttal briefs from petitioners and respondents.

Scope of the Review

For purposes of this review, the products covered are certain stainless steel sheet and strip in coils. Stainless steel is an alloy steel containing, by weight, 1.2 percent or less of carbon and 10.5 percent or more of chromium, with or without other elements. The subject sheet and strip is a flat-rolled product in coils that is greater than 9.5 mm in width and less than 4.75 mm in thickness, and that is annealed or otherwise heat treated and pickled or otherwise descaled. The subject sheet and strip may also be further processed (*e.g.,* cold-rolled, polished, aluminized, coated, *etc.*) provided that it maintains the specific dimensions of sheet and strip following such processing.

The merchandise subject to this review is classified in the *Harmonized Tariff Schedule of the United States* (HTSUS) at subheadings: 7219.13.00.30, 7219.13.00.50, 7219.13.00.70, 7219.13.00.80, 7219.14.00.30, 7219.14.00.65, 7219.14.00.90, 7219.32.00.05, 7219.32.00.20, 7219.32.00.25, 7219.32.00.35, 7219.32.00.36, 7219.32.00.38, 7219.32.00.42, 7219.32.00.44, 7219.33.00.05, 7219.33.00.20, 7219.33.00.25, 7219.33.00.35, 7219.33.00.36, 7219.33.00.38, 7219.33.00.42, 7219.33.00.44, 7219.34.00.05, 7219.34.00.20, 7219.34.00.25, 7219.34.00.30, 7219.34.00.35, 7219.35.00.05, 7219.35.00.15, 7219.35.00.30, 7219.35.00.35, 7219.90.00.10, 7219.90.00.20, 7219.90.00.25, 7219.90.00.60, 7219.90.00.80, 7220.12.10.00, 7220.12.50.00, 7220.20.10.10, 7220.20.10.15, 7220.20.10.60, 7220.20.10.80, 7220.20.60.05, 7220.20.60.10, 7220.20.60.15, 7220.20.60.60, 7220.20.60.80, 7220.20.70.05, 7220.20.70.10, 7220.20.70.15, 7220.20.70.60, 7220.20.70.80, 7220.20.80.00, 7220.20.90.30, 7220.20.90.60, 7220.90.00.10, 7220.90.00.15, 7220.90.00.60, and 7220.90.00.80. Although the HTS subheadings are provided for convenience and Customs purposes, the Department's written description of the merchandise is dispositive.

Excluded from the scope of this order are the following: (1) Sheet and strip that is not annealed or otherwise heat treated and pickled or otherwise descaled, (2) sheet and strip that is cut to length, (3) plate (*i.e.,* flat-rolled stainless steel products of a thickness of 4.75 mm or more), (4) flat wire (*i.e.,* cold-rolled sections, with a prepared edge, rectangular in shape, of a width of not more than 9.5 mm), and (5) razor blade steel. Razor blade steel is a flat rolled product of stainless steel, not further worked than cold-rolled (cold-reduced), in coils, of a width of not more than 23 mm and a thickness of 0.266 mm or less, containing, by weight, 12.5 to 14.5 percent chromium, and certified at the time of entry to be used in the manufacture of razor blades. *See* Chapter 72 of the HTSUS, ''Additional U.S. Note'' 1(d).

The Department has determined that certain specialty stainless steel products are also excluded from the scope of this order. These excluded products are described below:

Flapper valve steel is defined as stainless steel strip in coils containing,

by weight, between 0.37 and 0.43 percent carbon, between 1.15 and 1.35 percent molybdenum, and between 0.20 and 0.80 percent manganese. This steel also contains, by weight, phosphorus of 0.025 percent or less, silicon of between 0.20 and 0.50 percent, and sulfur of 0.020 percent or less. The product is manufactured by means of vacuum arc remelting, with inclusion controls for sulphide of no more than 0.04 percent and for oxide of no more than 0.05 percent. Flapper valve steel has a tensile strength of between 210 and 300 ksi, yield strength of between 170 and 270 ksi, plus or minus 8 ksi, and a hardness (Hv) of between 460 and 590. Flapper valve steel is most commonly used to produce specialty flapper valves in compressors.

Also excluded is a product referred to as suspension foil, a specialty steel product used in the manufacture of suspension assemblies for computer disk drives. Suspension foil is described as 302/304 grade or 202 grade stainless steel of a thickness between 14 and 127 microns, with a thickness tolerance of plus-or-minus 2.01 microns, and surface glossiness of 200 to 700 percent Gs. Suspension foil must be supplied in coil widths of not more than 407 mm, and with a mass of 225 kg or less. Roll marks may only be visible on one side, with no scratches of measurable depth. The material must exhibit residual stresses of 2 mm maximum deflection, and flatness of 1.6 mm over 685 mm length.

Certain stainless steel foil for automotive catalytic converters is also excluded from the scope of this order. This stainless steel strip in coils is a specialty foil with a thickness of between 20 and 110 microns used to produce a metallic substrate with a honeycomb structure for use in automotive catalytic converters. The steel contains, by weight, carbon of no more than 0.030 percent, silicon of no more than 1.0 percent, manganese of no more than 1.0 percent, chromium of between 19 and 22 percent, aluminum of no less than 5.0 percent, phosphorus of no more than 0.045 percent, sulfur of no more than 0.03 percent, lanthanum of between 0.002 and 0.05 percent, and total rare earth elements of more than 0.06 percent, with the balance iron.

Permanent magnet iron-chromium-cobalt alloy stainless strip is also excluded from the scope of this order. This ductile stainless steel strip contains, by weight, 26 to 30 percent chromium, and 7 to 10 percent cobalt, with the remainder of iron, in widths 228.6 mm or less, and a thickness between 0.127 and 1.270 mm. It exhibits magnetic remanence between 9,000 and 12,000 gauss, and a coercivity of between 50 and 300 oersteds. This product is most commonly used in electronic sensors and is currently available under proprietary trade names such as ''Arnokrome III.'' [1]

Certain electrical resistance alloy steel is also excluded from the scope of this order. This product is defined as a non-magnetic stainless steel manufactured to American Society of Testing and Materials (ASTM) specification B344 and containing, by weight, 36 percent nickel, 18 percent chromium, and 46 percent iron, and is most notable for its resistance to high temperature corrosion. It has a melting point of 1390 degrees Celsius and displays a creep rupture limit of 4 kilograms per square millimeter at 1000 degrees Celsius. This steel is most commonly used in the production of heating ribbons for circuit breakers and industrial furnaces, and in rheostats for railway locomotives. The product is currently available under proprietary trade names such as ''Gilphy 36.'' [2]

Certain martensitic precipitation-hardenable stainless steel is also excluded from the scope of this order. This high-strength, ductile stainless steel product is designated under the Unified Numbering System (UNS) as S45500-grade steel, and contains, by weight, 11 to 13 percent chromium, and 7 to 10 percent nickel. Carbon, manganese, silicon and molybdenum each comprise, by weight, 0.05 percent or less, with phosphorus and sulfur each comprising, by weight, 0.03 percent or less. This steel has copper, niobium, and titanium added to achieve aging, and will exhibit yield strengths as high as 1700 Mpa and ultimate tensile strengths as high as 1750 Mpa after aging, with elongation percentages of 3 percent or less in 50 mm. It is generally provided in thicknesses between 0.635 and 0.787 mm, and in widths of 25.4 mm. This product is most commonly used in the manufacture of television tubes and is currently available under proprietary trade names such as ''Durphynox 17.''[3]

Finally, three specialty stainless steels typically used in certain industrial blades and surgical and medical instruments are also excluded from the scope of this order. These include stainless steel strip in coils used in the production of textile cutting tools (*e.g.,* carpet knives).[4] This steel is similar to ASTM grade 440F, but containing, by weight, 0.5 to 0.7 percent of molybdenum. The steel also contains, by weight, carbon of between 1.0 and 1.1 percent, sulfur of 0.020 percent or less, and includes between 0.20 and 0.30 percent copper and between 0.20 and 0.50 percent cobalt. This steel is sold under proprietary names such as ''GIN4 HI–C.'' The second excluded stainless steel strip in coils is similar to AISI 420–J2 and contains, by weight, carbon of between 0.62 and 0.70 percent, silicon of between 0.20 and 0.50 percent, manganese of between 0.45 and 0.80 percent, phosphorus of no more than 0.025 percent and sulfur of no more than 0.020 percent. This steel has a carbide density on average of 100 carbide particles per square micron. An example of this product is ''GIN5'' steel. The third specialty steel has a chemical composition similar to AISI 420 F, with carbon of between 0.37 and 0.43 percent, molybdenum of between 1.15 and 1.35 percent, but lower manganese of between 0.20 and 0.80 percent, phosphorus of no more than 0.025 percent, silicon of between 0.20 and 0.50 percent, and sulfur of no more than 0.020 percent. This product is supplied with a hardness of more than Hv 500 guaranteed after customer processing, and is supplied as, for example, ''GIN6.''

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this review are addressed in the ''Issues and Decision Memorandum'' (Decision Memorandum) dated January 8, 2002, which is hereby adopted by this notice. A list of issues which parties have raised and to which we have responded, all of which are in the Decision Memorandum, is attached to this notice as Appendix I. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in this public memorandum, which is on file in room B–099 of the Main Commerce Building. In addition, a complete version of the Decision Memorandum can be accessed directly on the World Wide Web at *http://ia.ita.doc.gov,* under the heading ''**Federal Register** notices.'' The paper copy and electronic version of the Decision Memorandum are identical in content.

Final Results of Review

In accordance with section 705(c)(1)(B)(i) of the Act, we calculated an *ad valorem* subsidy rate for Inchon. For the period November 17, 1998 through December 31, 1999, we determine the net subsidy for Inchon to be 4.21 percent *ad valorem.*

[1] ''Arnokrome III'' is a trademark of the Arnold Engineering Company.

[2] ''Gilphy 36'' is a trademark of Imphy, S.A.

[3] ''Durphynox 17'' is a trademark of Imphy, S.A.

[4] This list of uses is illustrative and provided for descriptive purposes only.

We will instruct the Customs Service (''Customs'') to assess countervailing duties as indicated above. The Department will also instruct Customs to collect cash deposits of estimated countervailing duties in the percentage detailed above of the f.o.b. invoice prices on all shipments of the subject merchandise from the producers/exporters under review, entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review.

Because the URAA replaced the general rule in favor of a country-wide rate with a general rule in favor of individual rates for investigated and reviewed companies, the procedures for establishing countervailing duty rates, including those for non-reviewed companies, are now essentially the same as those in antidumping cases, except as provided for in section 777A(e)(2) of the Act. The requested review will normally cover only those companies specifically named. *See* 19 CFR 351.213(b). Pursuant to 19 CFR 351.212(c), for all companies for which a review was not requested, duties must be assessed at the cash deposit rate, and cash deposits must continue to be collected, at the rate previously ordered. As such, the countervailing duty cash deposit rate applicable to a company can no longer change, except pursuant to a request for a review of that company. *See Federal-Mogul Corporation and The Torrington Company* v. *United States,* 822 F. Supp. 782 (CIT 1993) and *Floral Trade Council* v. *United States*, 822 F. Supp. 766 (CIT 1993). Therefore, the cash deposit rates for all companies except those covered by this review will be unchanged by the results of this review.

We will instruct Customs to continue to collect cash deposits for non-reviewed companies at the most recent company-specific or country-wide rate applicable to the company. Accordingly, the cash deposit rates that will be applied to non-reviewed companies covered by this order will be the rate for that company established in the most recently completed administrative proceeding conducted under the URAA. If such a review has not been conducted, the rate established in the most recently completed administrative proceeding pursuant to the statutory provisions that were in effect prior to the URAA amendments is applicable. *See Certain Carbon Steel Products from Sweden; Final Results of Countervailing Duty Administrative Review,* 62 FR 16549 (April 7, 1997). This rate shall apply to all non-reviewed companies until a review of a company assigned this rate is requested. In addition, for the period November 17, 1998 through December 31, 1999, the assessment rates applicable to all non-reviewed companies covered by this order are the cash deposit rates in effect at the time of entry.

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of duties prior to liquidation of the relevant entries during this review period.

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 351.305(a)(3). Timely written notification of return/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 administrative review and notice are issued and published in accordance with section 751(a)(1) of the Act.

Dated: January 8, 2002.

Faryar Shirzad,

Assistant Secretary for Import Administration.

Appendix I—Issues and Decision Memorandum

Summary

Methodology and Background Information

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III. Analysis of Comments
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[FR Doc. 02–972 Filed 1–14–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Government owned inventions available for licensing

AGENCY: National Institute of Standards and Technology Commerce.

ACTION: Notice of Government owned inventions available for licensing.

SUMMARY: The inventions listed below are owned in whole or in part by the U.S. Government, as represented by the Department of Commerce, and are available for licensing in accordance with 35 U.S.C. 207 and 37 CFR part 404 to achieve expeditious commercialization of results of federally funded research and development.

FOR FURTHER INFORMATION CONTACT: Technical and licensing information on these inventions may be obtained by writing to: National Institute of Standards and Technology, Office of Technology Partnerships, Building 820, Room 213, Gaithersburg, MD 20899; Fax 301–869–2751. Any request for information should include the NIST Docket No. and Title for the relevant invention as indicated below.

SUPPLEMENTARY INFORMATION: NIST may enter into a Cooperative Research and Development Agreement (''CRADA') with the licensee to perform further research on the inventions for purposes of commercialization. The inventions available for licensing are:

NIST Docket Number: 99–039US.

Title: Fiber Optic Tomographic Plasma Uniformity Monitor.

Abstract: The tomographic plasma uniformity monitor simultaneously measures the optical emissions of a plasma from many different directions through two small windows in order to determine the plasma distribution within a vacuum chamber. This accomplished with two lens arrays coupling the light from the plasma into fiber optic cables. The light transmitted through each fiber optic cable is simultaneously recorded with a CCD camera. An appropriate tomographic

inversion program can then be used to convert the measured intensities into a two dimensional map of the plasma density. This technology is available only for non-exclusive licensing.

NIST Docket Number: 99–002US.

Title: Three Degree-Of-Freedom Telescoping Geometry Scanner.

Abstract: The invention relates to a three-dimensional measuring device, comprising a rotating 360 degree sensor head, a laser scanner and an extendable mast system. The sensor head contains a 360 degree rotating multi-faceted mirror, which determines total path distance from the laser scanner to a particular target. Angular orientations on both the scanner and the faceted mirrors are calculated by a precision encoding system. The measured total path distance, mast system extension, scanner head rotation, mirror rotation angles, and mast deflection are all used to calculate the location of a target point in 3–D space relative to the scanner. The sensing device can be utilized in the construction and nuclear power areas. In the nuclear power area, the mast system can be extended into a contaminated area which the sensor remains outside the contaminated area, thereby avoiding contamination problems.

NIST Docket Number: 98–001US.

Title: Electrophoresis Gels.

Abstract: The present invention provides electrophoresis apparatus and electroporesis methods employing the present invention provides electrophoresis apparatus and electrophoresis methods employing gellan gum based gels employing divalent metal cation and diamine cross-linking agents. The gels are reversible under conditions that do not damage the biomolecules separated using the gels. The present invention also provides novel gellan gum-based gels which are cross-linked which employ a diamine cross-linking agent.

NIST Docket Number: 00–002US.

Title: Crosslinked Micellar Gel Composition.

Abstract: A crosslinked micellar gel composition is comprised of a polymer formed by a reaction between (a) ionic surfactant units which include ionic surfactant molecules, each of which includes a counterion which has a first polymerizable functional group, (b) crosslinking agent molecules, each of which includes two second polymerizable functional groups, and (c) a reaction initiator selected from the group consisting of reaction initiator molecules and ultraviolet light radiation, wherein the reaction initiator initiates a reaction between a plurality of the ionic surfactant units with each other and a plurality of the ionic surfactant units with the second polymerizable functional groups. The ionic surfactant molecules are rodlike in shape. The ionic surfactant units can consist essentially of ionic surfactant molecules or, alternatively, can also include co-monomer molecules. The polymer compositions formed from the reactions are crosslinked micellar gels which include a network structure of rodlike micelles forming a soft gel material which retains features and utility of rodlike micelles and benefits from the structural stability of a crosslinked ploymer matrix. Dilute hydrophobic solutes can be solubilized and concentrated in the micellar gel, removing the containants from solution. The gel which contains the absorbed solute can then be physically separated from the solution. The crosslinked micellar gel composition is not limited to aqueous solutions and can also be used as a delivery vehicle for solutes.

Dated: January 3, 2002.

Karen H. Brown,

Deputy Director.

[FR Doc. 02–997 Filed 1–14–02; 8:45 am]

BILLING CODE 3510–13–M

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Advanced Technology Program Advisory Committee; Meeting

AGENCY: National Institute of Standards and Technology, Department of Commerce.

ACTION: Notice of partially closed meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, 5 U.S.C. app. 2, notice is hereby given that the Advanced Technology Program Advisory Committee, National Institute of Standards and Technology (NIST), will meet Wednesday, January 30, 2002, from 8:45 a.m. to 3:45 p.m. The Advanced Technology Program Advisory Committee is composed of seven members appointed by the Director of NIST; who are eminent in such fields as business, research, new product development, engineering, education, and management consulting. The purpose of this meeting is to review and make recommendations regarding general policy for the Advanced Technology Program (ATP), its organization, its budget, and its programs within the framework of applicable national policies as set forth by the President and the Congress. The agenda will include an update on the ATP competition, an overview of the NIST Industrial Liaison Office, a presentation from the National Governors Association on efforts to assist states develop innovative strategies for science and technology, a presentation from Harvard University on the funding gap as it relates to states and universities, and a presentation from the State Science and Technology Institute on existing state S&T strategies. Discussions scheduled to begin at 8:45 a.m. and to end at 9:50 a.m. and to begin at 3:00 p.m. and to end at 3:45 p.m. on January 30, 2002 on the ATP budget issues and staffing of positions will be closed.

DATES: The meeting will convene January 30, 2002, at 8:45 a.m. and will adjourn at 3:45 p.m. on January 30, 2002.

ADDRESSES: The meeting will be held at the National Institute of Standards and Technology, Administration Building, Employees' Lounge, Gaithersburg, Maryland 20899.

FOR FURTHER INFORMATION CONTACT: Janet R. Russell, National Institute of Standards and Technology, Gaithersburg, MD 20899–1004, telephone number (301) 975–2107.

SUPPLEMENTARY INFORMATION: The Assistant Secretary for Administration, with the concurrence of the General Counsel, formally determined on January 3, 2002 that portions of the meeting of the Advanced Technology Program Advisory Committee which involve discussion of proposed funding of the Advanced Technology Program may be closed in accordance with 5 U.S.C. 552b(c)(9)(B), because those portions of the meetings will divulge matters the premature disclosure of which would be likely to significantly frustrate implementation of proposed agency actions; and that portions of meetings which involve discussion of staffing of positions in ATP may be closed in accordance with 5 U.S.C. 552b(c)(6), because divulging information discussed in those portions of the meetings is likely to reveal information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy.

Dated: January 9, 2002.

Karen H. Brown,

Deputy Director.

[FR Doc. 02–929 Filed 1–14–02; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Technical Information Service

National Technical Information Service Advisory Board

AGENCY: National Technical Information Service, Commerce.

ACTION: Notice; solicitation of applications for NTIS Advisory Board membership.

SUMMARY: The National Technical Information Service (NTIS) is seeking qualified Candidates to serve as members of the NTIS Advisory Board (Board). The Board will meet at least semiannually to advise the Secretary of Commerce, the Under Secretary for Technology, and the Director of NTIS on NTIS's mission, general policies and fee structure.

DATES: Applications must be received no later than February 14, 2002.

ADDRESSES: Applications should be submitted to Ronald E. Lawson, Director, NTIS, 5285 Port Royal Road, Springfield, Virginia 22161.

FOR FURTHER INFORMATION CONTACT: Walter L. Finch, (703) 605–6507.

SUPPLEMENTARY INFORMATION: The National Technical Information Service (NTIS) is seeking five qualified candidates to serve as members of its Advisory Board, one of whom will also be designated chairperson. The Board was established pursuant to section 3704b(c) of Title 15, United States Code. It will meet at least semiannually to advise the Secretary of Commerce, the Under Secretary for Technology, and the Director of NTIS on NTIS's mission, general policies and fee structure. Members will be appointed by the Secretary and will serve for three-year terms. They will receive no compensation but will be authorized travel and per diem expenses. NTIS is seeking candidates who can provide guidance on trends in the information industry and changes in the way NTIS's customers acquire and use its products and services. Interested candidates should submit a resume and a statement explaining their interest in serving on the Board.

Dated: January 3, 2002.

Ronald E. Lawson,

Director.

[FR Doc. 02–998 Filed 1–14–02; 8:45 am]

BILLING CODE 3510–04–M

PATENT AND TRADEMARK OFFICE

Submission for OMB Review; Comment Request

The United States Patent and Trademark Office (USPTO) 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: United States Patent and Trademark Office (USPTO).

Title: Trademark Processing (proposed rulemaking, Electronic Submission of Applications for Registration and Other Documents).

Form Number(s): PTO Form 4.8/4.9/4.16/1478/1478(a)/1553/1581/1583/1963/2000, PTO/TM/4.16/1583.

Agency Approval Number: 0651–0009.

Type of Request: Revision of a currently approved collection.

Burden: 137,030 hours annually.

Number of Respondents: 677,151 responses per year.

Avg. Hours Per Response: The time needed to respond is estimated to range from 3 to 30 minutes. It is estimated that the time needed to complete the electronic forms ranges from 4 to 21 minutes, and the time needed to complete the paper forms with the declaration ranges from 6 to 24 minutes. The information collection also includes four items, namely, powers of attorney, designations of domestic representatives, trademark amendments/corrections/surrenders, and petitions to revive abandoned applications, for which forms have not been created and which are not subject to the proposed mandatory electronic filing rule. The USPTO estimates that completing these items ranges from 3 to 30 minutes. The time estimates include time to gather the necessary information, create the documents, and submit the completed requests.

Needs and Uses: This collection is being submitted as a proposed addition in support of a proposed rulemaking, RIN 0651–AB31, ''Electronic Submission of Applications for Registration and Other Documents.'' The USPTO proposes to amend the Rules of Practice in Trademark Cases (37 CFR) to require electronic filing of all documents for which forms are currently available through the Trademark Electronic Application System (TEAS). Subject to certain exceptions for parties who lack access to TEAS or the technical capability to use TEAS, and for certain other parties, all documents for which an electronic form is available in TEAS must be filed through TEAS.

The USPTO proposes to amend §§ 1.4, 1.10, 2.21, 2.56, 2.76, 2.88, 2.89, 2.161, 2.166, 2.167 and 2.168 of 37 CFR parts 1 and 2 to make electronic filing through the TEAS system mandatory.

This rulemaking would add an additional requirement to this collection, namely an affidavit or declaration, if appropriate, that verifies that the applicant or registrant or the attorney, if any, for that applicant or registrant, lacks access to TEAS or the technical capability to use TEAS. Under the proposed rule, submissions that are made on paper but that could be made by TEAS and that are not accompanied by such an affidavit or declaration will be returned unless the party who made the submission is within the exception provided for certain foreign applicants and registrants.

Affected Public: Individuals or households; business or other for-profit; not-for-profit institutions; farms; the federal Government; and state, local or tribal Government.

Frequency: On occasion.

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

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Susan K. Brown, Records Officer, Office of Data Management, Data Administration Division, (703) 308–7400, USPTO, Suite 310, 2231 Crystal Drive, Washington, DC 20231, or by e-mail at *susan.brown@uspto.gov.*

Written comments and recommendations for the proposed collection should be sent on or before February 14, 2002 to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20503.

Dated: January 9, 2002.

Susan K. Brown,

Records Officer, USPTO, Office of Data Management, Data Administration Division.

[FR Doc. 02–950 Filed 1–14–02; 8:45 am]

BILLING CODE 3510–16–P

PATENT AND TRADEMARK OFFICE

Submission for OMB Review; Comment Request

The United States Patent and Trademark Office (USPTO) 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: United States Patent and Trademark Office (USPTO).

Title: Disclosure Document Program.

Form Number(s): PTO/SB/95.

Agency Approval Number: 0651–0030.

Type of Request: Extension of a currently approved collection.

Burden: 4,050 hours annually.

Number of Respondents: 20,250 responses per year.

Avg. Hours Per Response: The USPTO estimates that it will take 12 minutes to submit a Disclosure Document Deposit Request. This includes time to gather the necessary information, create the documents, and submit the completed request.

Needs and Uses: An applicant files a disclosure document to establish a date of conception for an invention. When the USPTO receives a request for disclosure document deposit, an identifying number is assigned and stamped on the document. The document is then filed. The information is used by the USPTO to establish the date of conception for an invention. The USPTO keeps a disclosure document for only two years, unless it is referred to in a related provisional or nonprovisional patent application filed within the two-year period. The disclosure document is not a patent application, and the date of its receipt in the USPTO will not become the effective filing date of any patent application subsequently filed.

Affected Public: Individuals or households; business or other for-profit; not-for-profit institutions; and the Federal Government.

Frequency: On occasion.

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

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Susan K. Brown, Records Officer, Office of Data Management, Data Administration Division, (703) 308–7400, USPTO, Suite 310, 2231 Crystal Drive, Washington, DC 20231, or by e-mail at *susan.brown@uspto.gov.*

Written comments and recommendations for the proposed information collection should be sent on or before February 14, 2002 to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20503.

Dated: January 2, 2002.

Susan K. Brown,

Records Officer, USPTO, Office of Data Management, Data Administration Division.

[FR Doc. 02–951 Filed 1–14–02; 8:45 am]

BILLING CODE 3510–16–P

DEPARTMENT OF ENERGY

National Nuclear Security Administration; National Ignition Facility

AGENCY: National Nuclear Security Administration, Department of Energy.

ACTION: Notice.

SUMMARY: On March 13, 1998, the Office of Defense Programs within the Department of Energy (''DOE'' or ''the Department''), issued a Supplement Analysis (SA) for the National Ignition Facility (NIF) to assist the Department in determining whether or not to prepare a Supplemental Programmatic Environmental Impact Statement for the Stockpile Stewardship and Management Program (SSM PEIS). The preparation of an SA for this purpose is provided for in DOE's regulations implementing the National Environmental Policy Act (NEPA), 10 CFR 1021.314. The SA was prepared to address certain allegations made by the plaintiffs in *NRDC* v. *Pena,* Civ. No. 97–936 (SS) (D.D.C.), a lawsuit challenging the adequacy of the SSM PEIS. The SA specifically addressed the issue of using hazardous materials in NIF experiments. In the SA the Department concluded: (1) That the only proposed use of fissile or fissionable materials in the NIF experiments is subgram quantities of uranium-238 in non-fusion yield experiments, and (2) that the impacts from using uranium-238 for this purpose are bounded by the analysis in the SSM PEIS. DOE therefore concluded that a supplement to the existing SSM PEIS was not required. However, DOE was aware that circumstances could change, and committed in the SA to prepare further NEPA analysis if the Department decides to propose experiments outside the bounds of the SSM PEIS. The SA indicated that this review would be conducted within 5 years after the SSM PEIS Record of Decision, and would be conducted in the form of an SA. The Record of Decision was issued on December 19, 1996.

DOE has reviewed the current status of planned activities for the NIF and has determined that the circumstances with regard for the proposed use of hazardous materials in NIF experiments remain unchanged from those at the time of the preparation of the 1998 SA. Therefore, the Department has concluded that there are no substantial changes or significant new circumstances or information that would justify preparing a new SA at this time. However, DOE is continuing to examine the question of use of certain materials in NIF experiments, consistent with the requirements of the court decision resolving *NRDC* v. *Pena.* Pursuant to Paragraph 6 of the District Court's Memorandum Opinion and Order, dated August 19, 1998, in *NRDC* v. *Pena,* DOE, no later than January 1, 2004, will (1) determine that experiments using materials listed in the Order will not be conducted in the NIF, or (2) prepare a Supplemental SSM PEIS analyzing the reasonably foreseeable environmental impacts of such experiments. DOE has in place a process to make that determination. However, at the present time there are no DOE proposals to use any of these materials in experiments in the NIF.

FOR FURTHER INFORMATION CONTACT: Jay Rose, Office of Defense Programs, National Nuclear Security Administration, (202) 586–5484.

Issued in Washington, DC, on January 8, 2002.

John Gordon,

Administrator.

[FR Doc. 02–936 Filed 1–14–02; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP02–55–000]

CMS Trunkline Gas Company, LLC; Notice of Application

January 9, 2002.

Take notice that on December 26, 2001, CMS Trunkline Gas Company, LLC (Trunkline Gas), P.O. Box 4967, Houston, Texas 77210–4967, filed an application in the above-referenced docket number pursuant to section 7(c) of the Natural Gas Act (NGA) and part 157 of the Commission's Rules and Regulations, for a certificate of public convenience and necessity authorizing it to increase the maximum capacity of its LNG metering facilities in Calcasieu Parish, Louisiana. Also, Trunkline Gas requests permission and approval to operate its pipeline system downstream of the LNG metering facilities to accommodate the increased LNG receipt. This proceeding is in conjunction with a filing by CMS Trunkline LNG Company, LLC (Trunkline LNG) in Docket No. CP02–60–000. The application is on file with the Commission and open to public inspection. This filing may be viewed on the web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (please call (202) 208–2222 for assistance).

In order to meet the contractual obligations with BG LNG Services, Inc. (BG LNG), Trunkline LNG has requested Trunkline Gas to perform modifications to its metering facilities located at the tailgate of the Trunkline LNG Terminal. The requested facility modification will increase the maximum capacity of the LNG metering facilities from 1.0 Bcf/d to 1.3 Bcf/d and allow Trunkline Gas to operate its 30-inch pipeline, along with other paralleling pipelines, to transport up to 1.3 Bcf/d of LNG on its South Louisiana pipeline system. In order to accommodate Trunkline LNG's request, Trunkline Gas is proposing to increase the maximum capacity of its metering facilities at the tailgate of LNG's terminal to 1.3 Bcf/d by replacing two existing 16-inch orifice meter runs with two 16-inch ultrasonic meter runs and associated facilities. This replacement will allow increased deliverability from the LNG Terminal to Trunkline Gas. The remaining three 16-inch orifice meter runs will remain in place.

By modifying the existing metering facilities, the maximum LNG receipt capability of the Trunkline Gas system in Louisiana will increase from 0.7 Bcf/d to 1.2 Bcf/d on a sustained basis and from 1.0 Bcf/d to 1.3 Bcf/d on a peak day basis. All construction will be performed aboveground solely within Trunkline Gas' existing right-of-way easement at the LNG plant. No ground will be disturbed as a result of this replacement, nor will there be an increase in noise or air emissions from the proposed metering facilities. The cost of the proposed project is estimated at $275,000.

Any questions regarding the application be directed to William W. Grygar, Vice President, Rates and Regulatory Affairs, CMS Trunkline LNG Company, LLC, P. O. Box 4967, Houston, Texas 77210–4967 at (713) 989–7000.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before January 30, 2002, file with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, D.C. 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR part 385.214 or 385.211) and the Regulations under the NGA (18 CFR part 157.10). A person obtaining party 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 all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission may issue a preliminary determination on non-environmental issues prior to the completion of its review of the environmental aspects of the project. This preliminary determination typically considers such issues as the need for the project and its economic effect on existing customers of the applicant, on other pipelines in the area, and on landowners and communities. For example, the Commission considers the extent to which the applicant may need to exercise eminent domain to obtain rights-of-way for the proposed project and balances that against the non-environmental benefits to be provided by the project. Therefore, if a person has comments on community and landowner impacts from this proposal, it is important either to file comments or to intervene as early in the process as possible.

Comments, protests, and interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR part 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

If the Commission decides to set the application for a formal hearing before an Administrative Law Judge, the Commission will issue another notice describing that process. At the end of the Commission's review process, a final Commission order approving or denying a certificate will be issued.

C.B. Spencer,

Acting Secretary.

[FR Doc. 02–907 Filed 1–14–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP02–60–000]

CMS Trunkline LNG Company, LLC; Notice of Application

January 9, 2002.

Take notice that on December 26, 2001, and supplemented on January 7, 2002, CMS Trunkline LNG Company, LLC (Trunkline LNG), P.O. Box 4967, Houston, Texas 77210–4967, filed an application in the above-referenced docket number pursuant to section 7(c) of the Natural Gas Act (NGA) and part 157 of the Commission's Rules and Regulations, for a certificate of public convenience and necessity authorizing the construction, operation and maintenance of additional facilities at its LNG Terminal located in Calcasieu Parish, Louisiana. The application is on file with the Commission and open to public inspection. This filing may be viewed on the web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (please call (202) 208–2222 for assistance).

Trunkline LNG proposes (1) to expand the storage capacity of its terminal by constructing and operating a fourth cryogenic storage tank with a capacity of 140,000 cubic meters; (2) to increase its sustainable daily sendout capability from 630 MMcf per day to 1,200 MMcf per day by constructing and operating additional LNG pumps and LNG vaporizers; (3) to construct and operate a second marine unloading dock; and (4) appurtenant supporting facilities. Currently, all re-gasified LNG is transported from Trunkline LNG's

terminal by CMS Trunkline Gas Company, LLC's pipeline facilities (Trunkline Gas) which have a certificated capacity of 1.0 Bcf per day. Concurrently, Trunkline Gas is filing an application, Docket No. CP02–55–000, requesting a certificate of public convenience and necessity authorizing Trunkline Gas to modify its existing metering facilities to accommodate the proposed increased LNG deliveries.

Trunkline LNG conducted an open season for the future use and potential expansion of its terminal, from December 15, 2000 to February 15, 2001. As a consequence, Trunkline LNG entered into the contracts with BG LNG Services, Inc. (BG LNG). In May 2001, Trunkline LNG and BG LNG entered into a firm service agreement (Base Agreement) for all the current uncommitted capacity at the Terminal. The 22-year contract, which begins in January 2002, gives BG LNG the firm service rights to all of the Terminal's current uncommitted vaporization and storage capacity of approximately 5.1 Bcf at the currently effective maximum tariff rate under Rate Schedule FTS. The contract storage capacity will increase to 6.3 Bcf after the existing contract with Trunkline LNG's existing customer, Duke Energy LNG, expires in August 2005. In addition to the Base Agreement, Trunkline LNG and BG LNG entered into an agreement (Precedent Agreement) that sets the parameters for a second firm service agreement (Expansion Agreement) utilizing the capacity associated with the Expansion Project. In essence, the Precedent Agreement provides for BG LNG to obtain additional firm storage capacity of 2.7 MMDt and daily sendout capability of 570,000 Dt per day at the Terminal from January 1, 2005 until December 31, 2023.

The proposed construction will take place entirely on Trunkline LNG's property already dedicated to its terminal. No new land or rights-of-way are required for the proposed expansion.

Trunkline LNG estimates that the total capital cost of constructing its proposed expansion will be approximately $149.1 million, excluding AFUDC. Trunkline LNG estimates that AFUDC will total $28.1 million. The total capital cost including AFUDC will be approximately $177.2 million. The total Cost of Service associated with the expansion project will be approximately $54.2 million. The initial incremental recourse rates proposed by Trunkline LNG for service utilizing the expansion facilities are traditional cost-of-service based rates, using the straight-fixed variable rate design methodology. The incremental recourse rates have been designed on 100% of the costs associated with the Expansion Project. The incremental recourse reservation rate will be $0.5208 per Dt for service under proposed Rate Schedule FTS–2, using design units based on the incremental storage capacity associated with the Expansion Project.

Any questions regarding the application be directed to William W. Grygar, Vice President, Rates and Regulatory Affairs, CMS Trunkline LNG Company, LLC, P.O. Box 4967, Houston, Texas 77210–4967 at (713) 989–7000.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before January 30, 2002, file with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR parts 385.214 or 385.211) and the Regulations under the NGA (18 CFR part 157.10). A person obtaining party 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 all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

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The Commission may issue a preliminary determination on non-environmental issues prior to the completion of its review of the environmental aspects of the project. This preliminary determination typically considers such issues as the need for the project and its economic effect on existing customers of the applicant, on other pipelines in the area, and on landowners and communities. For example, the Commission considers the extent to which the applicant may need to exercise eminent domain to obtain rights-of-way for the proposed project and balances that against the non-environmental benefits to be provided by the project. Therefore, if a person has comments on community and landowner impacts from this proposal, it is important either to file comments or to intervene as early in the process as possible.

Comments, protests, and interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR part 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

If the Commission decides to set the application for a formal hearing before an Administrative Law Judge, the Commission will issue another notice describing that process. At the end of the Commission's review process, a final Commission order approving or denying a certificate will be issued.

C.B. Spencer,

Acting Secretary.

[FR Doc. 02–908 Filed 1–14–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. AD02–6–000]

Northeast Energy Infrastructure Conference; Notice of Technical Conference and Agenda

January 8, 2002.

As announced in the Notice of Conference issued on December 11,

2001, the Federal Energy Regulatory Commission will hold a conference on January 31, 2002 to discuss issues regarding energy infrastructure in the northeastern states. This one-day conference will begin at 8:30 a.m.[1] and end approximately at 4 p.m., and will be held at the Helmsley Park Lane Hotel, 36 Central Park South, New York, New York. All interested persons are invited to attend.

The conference will discuss the adequacy of the electric, gas and hydropower infrastructure in the Northeast, and related matters. The FERC Commissioners will attend and the Governors of the northeastern states have been invited to participate. The goal of this conference is to identify present infrastructure conditions, needs, investment and other barriers to expansion, and environmental and landowner concerns. We look forward to an informative discussion of the issues to clarify how the FERC can facilitate and enhance a comprehensive collaborative approach to energy infrastructure development and reliability for the northeastern states. It is our firm belief that an adequate, well-functioning energy infrastructure is a keystone of workable, competitive energy markets.

The conference Agenda is appended to this Notice. As the attached Agenda and this Notice indicate, the purpose of the conference is to discuss regional infrastructure issues. The conference is not intended to deal with issues pending in individually docketed cases before the Commission, such as applications involving hydropower, natural gas certificates, or the formation of Regional Transmission Organizations (RTOs). Therefore, all participants are requested to focus on the agenda topics and avoid discussing the merits of individual cases.

Opportunities for Listening to and Obtaining Transcripts of the Conference

The Capitol Connection will offer this meeting live via telephone coverage for a fee. There will not be live video coverage or videotapes of the conference. To find out more about the Capitol Connection's phone bridge, contact David Reininger or Julia Morelli (703–993–3100), or go to *www.capitolconnection.gmu.edu.*

Audio tapes of the meeting will be available from VISCOM (703–715–7999).

Additionally, transcripts of the conference will be available from Ace Reporting Company (202–347–3700), for a fee. The transcript will be available on the Commission's RIMS system two weeks after the conference.

As indicated in the December 11, 2001 notice, hotel rooms have been blocked at the Helmsley Park Lane Hotel (212–371–4000) under the name of the Federal Energy Regulatory Commission for any attending guests to reserve a one- or two-night stay, but unreserved rooms will be released by January 15, 2002.

Questions about the conference program should be directed to: Carol Connors, Office of External Affairs, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, 202–208–0870, *carol.connors@ferc.gov.*

C.B. Spencer,

Acting Secretary.

Agenda for FERC's Northeast Energy Infrastructure Conference

Helmsley Park Lane Hotel, New York, NY.

January 31, 2002.

I. Opening Remarks and Introductions—8:30 a.m. to 9 a.m.

Chairman Pat Wood, Commissioner Nora Mead Brownell, Commissioner William Massey and Commissioner Linda Breathitt

II. Overview of Current Energy Infrastructure—9 a.m. to 9:30 a.m.

• Jeff Wright, Office of Energy Projects, FERC

III. Forecasts for Future Energy Use and Economic Impacts of Energy—9:30 to 10 a.m.

What is the Northeast region's economic and demographic outlook over the coming decade?

What is the forecasted growth in energy needs?

How much energy is available and at what prices?

Where is additional energy needed?

• Mary Novak, Managing Director-Energy Consulting, DRI–WEFA

• Scott Sitzer, Acting Director, EIA

Break—10 a.m. to 10:15 a.m.

IV. Near-term Energy Infrastructure Needs and Adequacy of Supplies—10:15 a.m. to 12 p.m.

What are the high priority infrastructure needs for today?

What happens if these are not built?

Roundtable discussion on infrastructure improvements needed in electric, hydroelectric, and natural gas facilities.

• Steve Whitley, Senior V.P., New England ISO

• Craig Frew, President, New England Gas Association

• Andre Caille, President/CEO, Hydro Quebec

• Eric Gustafson, V.P.—Transportation & Technology, Buckeye Pipeline

• Douglas M. Logan, Principal, Platt's RDI Consulting

• Representative from U.S. EPA

Lunch Break—12 p.m. to 1 p.m.

V. Identifying Factors Affecting Adequate Energy Infrastructure, Investment, and Alternative Actions—1:15 p.m. to 3 p.m.

Why is needed infrastructure delayed or not being built?

What barriers have to be overcome?

What can state and federal governments do to overcome these barriers?

Do alternatives exist to new infrastructure projects?

Roundtable discussion of energy infrastructure barriers (e.g., to siting, construction, or investment) and alternatives to construction.

• Pete Dunbar, Director, Maryland Power Plant Research Program

• Richard Kruse, Senior V.P., Duke Energy Gas Transmission

• Ron Erd, Mirant Corp.

• Richard Cowart, Director, Regulatory Assistance Project

• Eugene R. McGrath, Chairman/CEO/Pres., Consolidated Edison Co. NY

• Ashok Gupta, Director—Air/Energy, Natural Resources Defense Council

• Sonny Popowsky, Pennsylvania Consumer Advocate

• Debra Coy, V.P. & Utilities Analyst, Charles Schwab & Co.

VI. Discussion by State and Federal Officials of Next Steps and Closing Remarks by FERC Commissioners—3 p.m. to 4 p.m.

• Glenn Booth, Chief Economist, Canadian National Energy Board

• Maureen Helmer, Chairwoman, NY Public Service Commission

• Invited Governors and State Commissioners

[FR Doc. 02–909 Filed 1–14–02; 8:45 am]

BILLING CODE 6717–01–P

[1] This reflects a change in starting time from the December 11, 2001 notice.

ENVIRONMENTAL PROTECTION AGENCY

[OPPTS–00329; FRL–6814–9]

National Advisory Committee for Acute Exposure Guideline Levels for Hazardous Substances; Notice of Charter Renewal

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The charter for EPA's National Advisory Committee for Acute Exposure Guideline Levels for Hazardous Substances (NAC/AEGL Committee) is renewed for an additional 2-year period. EPA has determined that the NAC/AEGL Committee is necessary and finds that it is in the public's interest that the NAC/AEGL Committee be continued.

FOR FURTHER INFORMATION CONTACT: *For general information contact*: Barbara Cunningham, Acting Director, Environmental Assistance Division (7401), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 554–1404; e-mail address: TSCA-Hotline@epa.gov.

For technical information contact: Paul S. Tobin, Economics, Exposure, and Technology Division (7406M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 564–8557; e-mail address: tobin.paul@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. This action may be of particular interest to anyone who may be affected if AEGL values are adopted by government agencies for emergency planning, prevention, or response programs, such as EPA's Risk Management Program under the Clean Air Act and Amendments Section 112r. It is possible that other Federal agencies besides EPA, as well as State agencies and private organizations, may adopt AEGL values for their programs. As such, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Additional Information, Including Copies of this Document or Other Related Documents?

1. *Electronically*. You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select ''Laws and Regulations,'' ''Regulations and Proposed Rules,'' and then look up the entry for this document under the ''**Federal Register**—Environmental Documents.'' You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person*. The Agency has established an official record for this action under docket control number OPPTS–00329. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the TSCA Nonconfidential Information Center, North East Mall Rm. B–607, Waterside Mall, 401 M St., SW., Washington, DC. The Center is open from noon to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Center is (202) 260–7099.

II. Background

A. What Action is the Agency Taking?

EPA is renewing the charter for the NAC/AEGL Committee for an additional 2-year period.

The NAC/AEGL Committee provides advice and recommendations to the Administrator of EPA on issues associated with the development of acute exposure guideline levels for hazardous substances. Acute exposure guideline levels for hazardous substances are used by other Federal agencies, State and local governments, and private organizations for exposure limits in chemical emergency programs.

It is determined that the NAC/AEGL Committee is in the public's interest and is related to the performance of duties imposed on the Agency by law.

B. What is the Agency's Authority for Taking this Action?

The charter for the NAC/AEGL Committee is in accordance with the provisions of FACA, 5 U.S.C. App., section 9(c).

List of Subjects

Environmental protection, Acute exposure guideline levels, Hazardous substances, Public health, Safety, Worker protection.

Dated: January 3, 2002.

Stephen L. Johnson,

Assistant Administrator for the Office of Prevention, Pesticides, and Toxic Substances.

[FR Doc. 02–961 Filed 1–14–02; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP;–00756;FRL–6820–1]

FIFRA Scientific Advisory Panel; Notice of Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: There will be a 4–day meeting of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and Food Quality Protection Act (FQPA) Scientific Advisory Panel (SAP) to review a set of issues being considered by the Agency pertaining to methods used to conduct a preliminary cumulative risk assessment for organophosphorous pesticides. Seating at the meeting will be on a first-come basis. Individuals requiring special accommodations at this meeting, including wheelchair access, should contact Paul Lewis at the address listed under **FOR FURTHER INFORMATION CONTACT** at least 5 business days prior to the meeting so that appropriate arrangements can be made.

DATES: The meeting will be held on February 5th–8th, 2002 from 8:30 a.m. to 5 p.m.

ADDRESSES: The meeting will be held at the Sheraton Crystal City Hotel, 1800 Jefferson Davis Highway, Arlington, VA 22202. The telephone number for the Sheraton Crystal City Hotel is (703) 486–1111.

Requests to participate may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I. of the

SUPPLEMENTARY INFORMATION: To ensure proper receipt by EPA, your request must identify docket control number

OPP–00756 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: Paul Lewis, Designated Federal Official, Office of Science Coordination and Policy, (7201M), Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 564–8450; fax number: (202) 564–8382; e-mail address: lewis.paul@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. This action may, however, be of interest to persons who are or may be required to conduct testing of chemical substances under the Federal Food, Drug, and Cosmetic Act (FFDCA), FIFRA and FQPA. Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically*. A meeting agenda and background documents relevant to this meeting are now available. The EPA's position paper and questions to the FIFRA SAP, and Panel composition (i.e. SAP members and consultants) will be available as soon as possible, but no later than mid January. In addition, the Agency may provide additional background documents as the material becomes available. You may obtain electronic copies of these documents, and certain other related documents that might be available electronically, from the FIFRA SAP Internet Home Page at http://www.epa.gov/scipoly/sap. To access this document on the Home Page select **Federal Register** notice announcing this meeting. You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person*. The Agency has established an administrative record for this meeting under docket control number OPP–00756. The administrative record consists of the documents specifically referenced in this notice, any public comments received during an applicable comment period, and other material information, including any information claimed as Confidential Business Information (CBI). This administrative record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. In addition, the Agency may provide additional background documents as the material becomes available. The public version of the administrative record, which includes printed, paper versions of any electronic comments that may be submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

C. How Can I Request to Participate in this Meeting?

You may submit a request to participate in this meeting through the mail, in person, or electronically. Do not submit any information in your request that is considered CBI. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–00756 in the subject line on the first page of your request. Public statements presented at the meetings should not be repetitive of previously submitted oral or written statements.

Oral comments: Although requests for oral comments are accepted until the date of the meeting (unless otherwise stated), to the extent that time permits, interested persons may be permitted by the Chair of the FIFRA SAP to present oral statements at the meeting. Each individual or group wishing to make a brief oral presentation to the SAP is strongly advised to submit their request to the person listed under **FOR FURTHER INFORMATION CONTACT** no later than noon Eastern Standard Time, Thursday, January 31, 2002 in order to be included on the meeting agenda. The request should identify the name of the individual making the presentation, the organization (if any) the individual will represent, and any requirements for audiovisual equipment (e.g., overhead projector, 35 mm projector, chalkboard). Oral statements before the Panel are limited to approximately 5 minutes unless prior arrangements have been made. In addition, the speaker should bring to the meeting 30 copies of their comments and presentation slides for distribution to the Panel at the meeting.

Written comments: Although requests for written comment are accepted until the date of the meeting (unless otherwise stated), the Agency encourages that written statements be submitted no later than noon Eastern Standard Time, Thursday, January 31, 2002 to provide Panel members the time necessary to consider and review the comments. There is no limit on the extent of written comments for consideration by the Panel. Persons wishing to submit written comments at the meeting should contact the person listed under **FOR FURTHER INFORMATION CONTACT** and submit 30 copies.

1. *By mail*. You may submit a request to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier*. Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically*. You may submit your request electronically by e-mail to: opp-docket@epa.gov. Do not submit any information electronically that you consider to be CBI. Use WordPerfect 6.1/8.0 or ASCII file format and avoid the use of special characters and any form of encryption. Be sure to identify by docket control number OPP–00756. You may also file a request online at many Federal Depository Libraries.

II. Background

A. Purpose of the Meeting

The Food Quality Protection Act of 1996 amended the FIFRA and the FFDCA. One of the major changes is the requirement that EPA consider risk posed by pesticides acting by common mechanism of toxicity. For such groups of pesticides, EPA's Office of Pesticide Programs (OPP) has treated cumulative risk, under FQPA, as the risk of a common toxic effect associated with concurrent exposure by all relevant pathways and routes.

Organophosphorous pesticides were assigned priority for tolerance reassessment early during the process of FQPA implementation. OPP considered whether this group of pesticides caused common toxic effects by a common mechanism of toxicity using EPA's ''guidance for identifying pesticide chemicals and other substances that have a common mechanism of toxicity.'' The inhibition of acetylcholinesterase was a focal point given that most

organophosphorous pesticides cause this response as their critical and common effect. When acetylcholinesterase is inhibited, acetylcholine accumulates and cholinergic toxicity results due to continuous stimulation of cholinergic receptors throughout the central and peripheral nervous systems which innervate virtually every organ in the body. Cholinergic effects associated with exposures to OP pesticides have been found in both humans and animals.

OPP proceeded with the methodology and risk assessment development in a step by step process. The approach to the risk assessment was evaluated using a case study of 3 organophosphorous pesticides. That assessment was reviewed by the SAP (September and December, 1999), who recommended that OPP proceed with a more comprehensive case study. OPP developed the hazard, dose-response and exposure assessment for twenty four OP pesticides and brought it to the SAP for comment in September and December of 2000. Based on the comments, the hazard and dose-response assessment was revised and again reviewed by the SAP in September, 2001.

The exposure assessment of the OP pesticides presented here incorporates probabilistic approaches in all pathways considered: Food, drinking water, and residential/non-occupational. The methodology for conducting a preliminary cumulative risk assessment for the organophosphorous pesticides presented here is a first time that the Agency has assessed risk combining multiple sources of exposure for multiple chemicals acting via a common mechanism of toxicity. The general methodology and the specific approach have been under development for 5 years and have been subject to extensive peer review and public comment.

B. Panel Report

The Panel will prepare a report of its recommendations to the Agency in approximately 60 days. The report will be posted on the FIFRA SAP web site or may be obtained by contacting the Public Information and Records Integrity Branch at the address or telephone number listed in Unit I. of this document.

List of Subjects

Environmental protection.

Dated: January 8, 2002.

Vanessa Vu,

Director, Office of Science Coordination and Policy

[FR Doc. 02–960 Filed 1–14–02; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7128–9]

Notice of the Eighth Meeting of the Mississippi River/Gulf of Mexico Watershed Nutrient Task Force

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; announcement meeting.

SUMMARY: This notice announces the Eighth Meeting of the Mississippi River/Gulf of Mexico Watershed Nutrient Task Force. The purpose of this Task Force, consisting of federal, state, and tribal members, is to lead efforts to coordinate and support nutrient management and hypoxia-related activities in the Mississippi River and Gulf of Mexico watersheds. The major matter to be discussed at the meeting is the implementation of the Action Plan for Reducing, Mitigating, and Controlling Hypoxia in the Northern Gulf of Mexico. The Plan was developed in fulfillment of a requirement of section 604(b) of the Harmful Algal Blooms and Hypoxia Research Control Act (Pub. L. 105–383—Coast Guard Authorization Act of 1998) and was submitted as a Report to Congress on January 18, 2001. The public will be afforded an opportunity to provide input to the Task Force during open discussion periods. The meeting coincides with a meeting of the Ohio River Valley Water Sanitation Commission in the vicinity, and will afford opportunities for exchange between the participants of both meetings. The meeting room accommodates approximately 125 people.

DATES: The two-day meeting will be held from 2 p.m.–5:30 p.m., February 7, 2002 and from 8 a.m.–3:30 p.m., February 8, 2002.

ADDRESSES: The meeting will be held at the Radisson Hotel and Suites Downtown, 200 North Fourth Street, St. Louis, MO 63102. A block of rooms has been reserved at the hotel. For reservations, call (314) 621–8200 or 1–800–925–1395. When making room reservations, use the group name ''EPA Mississippi River/Gulf of Mexico Meeting.'' (Internet: *http://www.radisson.com/stlouismo*)

FOR FURTHER INFORMATION CONTACT: Dr. Mary Belefski, U.S. EPA, Assessment and Watershed Protection Division (AWPD), Mail Code 4503F, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; Phone (202)–260–7061; E-mail: *belefski.mary@epa.gov.* For additional information on logistics and accommodations, contact Ansu John, Tetra Tech, Inc., 10306 Eaton Place, Suite 340, Fairfax, VA 22030; Phone: (703) 385–6000; E-mail: *ansu.john@tetratech-ffx.com.*

Dated: January 8, 2002.

Robert Wayland III,

Director, Office of Wetlands, Oceans, and Watersheds.

[FR Doc. 02–956 Filed 1–14–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENT PROTECTION AGENCY

[FRL–7129–1]

Notice of Public Meeting of the National Environmental Education Advisory Council

Notice is hereby given that the National Environmental Education Advisory Council, established under section 9 of the National Environmental Education Act of 1990 (the Act), will hold a public meeting on January 31 and February 01, 2002. The meeting will take place at the Four Seasons Hotel, 411 University Street, Seattle, WA, 98101 from 9 am to 5 pm on Thursday, January 31st and Friday, February 1st. The purpose of this meeting is to provide the Council with an opportunity to advise EPA's Office of Communications, Education and Media Relations (OCEMR) and the Office of Environmental Education (OEE) on its implementation of the Act. Members of the public are invited to attend and to submit written comments to EPA following the meeting.

For additional information regarding the Council's upcoming meeting, please contact Ginger Keho, Office of Environmental Education (1704), Office of Communications, Education and Media Relations, U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460 or call (202) 564–0453.

Dated: January 8, 2002.

Ginger Keho,

Designated Federal Official, National Environmental Education Advisory Council.

[FR Doc. 02–957 Filed 1–14–02; 8:45 am]

BILLING CODE 6560–50–N

ENVIRONMENTAL PROTECTION AGENCY

[OPP–66295A; FRL–6817–7]

Benomyl; Cancellation Order

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces a cancellation order for product cancellations requested by the American Mushroom Institute, Amvac Chemical Corp., Pursell Industries, Inc., the Scotts Company, Value Garden Supply LLC, and Voluntary Purchasing Groups, Inc. for their registrations of pesticide products containing methyl 1-(butylcarbamoyl)-2-benzimidazole carbamate, or benomyl, and accepted by EPA, pursuant to section 6(f) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). This order follows up an October 12, 2001, notice of receipt of request for the above-mentioned voluntary registration cancellations. In that notice, EPA requested comments on the proposed cancellations and indicated that it would issue an order confirming the cancellations. Any distribution, sale, or use of canceled benomyl products is only permitted in accordance with the terms of the existing stocks provisions of this cancellation order.

DATES: The cancellations are effective January 15, 2002.

FOR FURTHER INFORMATION CONTACT: Demson Fuller, Special Review and Reregistration Division (7508C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460, telephone number: (703) 308–8062; fax number: (703) 308–7042; e-mail address: fuller.demson@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. You may be potentially affected by this action if you manufacture, sell, distribute, or use benomyl products. The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, does not apply because this action is not a rule, for purposes of 5 U.S.C. 804(3). Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically*. You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select ''Laws and Regulations,'' ''Regulations and Proposed Rules,'' and then look up the entry for this document under the ''**Federal Register**—Environmental Documents.'' You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person*. The Agency has established an official record for this action under docket control number OPP–66295A. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

II. Receipt of Request to Cancel Registrations

A. Background

Benomyl is a benzimidazole carbamate and systemic foliar fungicide registered for use on a variety of fruit and vegetable crops.

The technical registrant, E.I. duPont de Nemours and Company (DuPont), met with the Agency on April 18, 2001, and requested a voluntary cancellation of all their registrations for products containing benomyl. DuPont stated that this decision was based on business reasons. Following a public comment period on the proposed cancellations and consideration of comments received, the cancellation order was published in the **Federal Register** and became effective on August 8, 2001.

The Agency also received letters from the following registrants requesting voluntary cancellation of all their products containing benomyl: American Mushroom Institute, Amvac Chemical Corp., Pursell Industries, Inc., the Scotts Company, Value Garden Supply LLC, and Voluntary Purchasing Groups, Inc.

In their letters, Pursell and Amvac stated that they no longer manufacture or distribute end use products that contain benomyl and therefore, no end use products should be in the channels of trade. Likewise, in their letter, Value Garden Supply noted that their benomyl products are no longer being sold and they are not aware of any stocks of the products in the channels of trade. The American Mushroom Institute requested cancellation of its 24(c) registration due to the cancellation of DuPont's registrations. The Scotts Company and Voluntary Purchasing Groups, Inc. had end-use products that were suspended on April 13, 1994, and May 20, 1998, respectively. Both registrants failed to comply with a Data Call-In that was issued on June 16, 1992. The Agency contacted both The Scotts Company and Voluntary Purchasing Groups, Inc. to notify them that DuPont canceled all its benomyl registrations, and both registrants subsequently submitted letters requesting voluntary cancellations.

Pursuant to section 6(f)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), EPA announced receipt of these requests from the American Mushroom Institute, Amvac Chemical Corp., Pursell Industries, Inc., The Scotts Company, Value Garden Supply LLC, and Voluntary Purchasing Groups, Inc., in a **Federal Register** Notice published on October 12, 2001 (66 FR 52132) (FRL–6805–3). In that Notice, EPA provided a 30–day comment period. All of the registrants requested the Administrator waive the 180–day comment period provided under FIFRA section 6(f)(1)(c), and EPA granted this request. No public comments were received during the 30–day comment period.

B. Requests for Voluntary Cancellation of Products

Pursuant to FIFRA section 6(f)(1)(A), American Mushroom Institute, Amvac Chemical Corp., Pursell Industries Inc., the Scotts Company, Value Garden Supply LLC, and Voluntary Purchasing Groups, Inc., have submitted requests for voluntary cancellation of registrations for their products containing benomyl. The registrations

for which cancellations were requested are identified in the following table.

PRODUCT REGISTRATION CANCELLATION REQUESTS

Company	Registration No.	Product
American Mushroom Institute	PA–97000200	Dupont Benlate® SP Fungicide
Amvac Chemical Corp.	5481–138	ALCO® Systemic Fungicide
Pursell Industries Inc.	8660–75	VertaGreen Systemic Disease Control
The Scotts Company	538–66 538–132	Scotts Proturf 28 – 0 – 7 Fertilizer Plus Fungicide DSB Scotts Proturf DSB Fungicide
Value Garden Supply LLC	769–874 769–921	Pratt Benomyl 50W Systemic Fungicide Science Benomyl 50W Systemic Fungicide
Voluntary Purchasing Groups, Inc.	7401–225 7401–407	Fertilome® Systemic Fungicide with Benomyl American Brand® Benomyl Systemic Fungicide

III. Cancellation Order

Pursuant to section 6(f)(1)(A) of FIFRA, EPA is approving the requested cancellations. Accordingly, EPA orders that the registrations identified in Table 1, are hereby canceled. Any distribution, sale, or use of existing stocks of the products identified in the table above in a manner inconsistent with the terms of this Order or the Existing Stock Provisions in Unit IV. of this **Federal Register** Notice will be considered a violation of section 12(a)(2)(K) of FIFRA and/or section 12(a)(1)(A) of FIFRA.

IV. Existing Stocks Provisions

For purposes of this Order, the term ''existing stocks'' is defined, pursuant to EPA's existing stocks policy June 26, 1991 (56 FR 29362) (FRL–3846–4), as those stocks of a registered pesticide product which are currently in the United States and which have been packaged, labeled, and released for shipment prior to the effective date of cancellation.

A. Distribution or Sale by the Registrant

Cancellation orders generally permit a registrant to sell or distribute existing stocks for 1 year after the date the cancellation request was received. However, the registrants have stated that they no longer manufacture or distribute end use products that contain benomyl. Therefore, the distribution or sale of existing stocks by registrants will not be lawful under FIFRA after January 15, 2002 except for the purposes of returns and relabeling, shipping such stocks for export consistent with the requirements of section 17 of FIFRA, or for proper disposal.

B. Distribution and Sale by Other Persons

Sale or distribution by any person of existing stocks of any products identified in the table above will not be lawful under FIFRA after December 31, 2002.

V. Notification of Intent to Revoke Tolerances

This Notice also serves as an advance notification that the Agency intends to revoke the related tolerances for the canceled registrations listed in this Notice unless there is a request from the public to support the tolerances for import purposes. EPA believes that production of technical benomyl ended in April 2001, and use of any remaining existing stocks of these products will likely end in 2003 given that the sale and distribution of benomyl products will end on December 31, 2002. EPA will determine how long treated food containing residues of benomyl could remain in the channels of trade assuming that the last treatment occurred on December 31, 2003, and will set the expiration date accordingly.

It is EPA's general practice to propose revocation of tolerances for residues of pesticide active ingredients for which FIFRA registrations no longer exist, to protect the food supply of the U.S. and to discourage the misuse of pesticides within the United States. In many cases the cancellation of a food use in the U.S. indicates that there are insufficient domestic residue data or other information to support the continuation of the tolerance and an uncertain amount of relevant data concerning residues on imported food. In the absence of relevant data, EPA is unable to make a safety finding regarding the treated food entering the U.S. Upon request, EPA will provide interested parties with its import tolerance policy and data requirements, explaining how an interested party should go about seeking to retain a tolerance for import purposes.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: January 3, 2002.

Lois A. Rossi,

Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. 02–958 Filed 1–14–02; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7128–8]

Workshop Report on the Application of 2,3,7,8-TCDD Toxicity Equivalence Factors to Fish and Wildlife

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability of a final report.

SUMMARY: The U.S. Environmental Protection Agency's (EPA) Risk Assessment Forum (RAF) announces the availability of a final report, *Workshop Report on the Application of 2,3,7,8-TCDD Toxicity Equivalence Factors to Fish and Wildlife* (EPA/630/R–01/002, August 2001). It is the report of a January 20–22, 1998, workshop sponsored by EPA and the U.S. Department of the Interior (DOI). The Eastern Research Group, Inc. (ERG), an EPA contractor, organized, convened, and conducted the workshop on EPA's behalf. Workshop participants concluded that the toxicity equivalence methodology is appropriate for

evaluating risks to fish, birds, and mammals from mixtures of dioxins, furans, and PCBs.

ADDRESSES: The document will be made available electronically through the Risk Assessment Forum's Web site (*www.epa.gov/ncea/raf/rafpub.htm*). A limited number of paper copies will be available from the EPA's National Service Center for Environmental Publications (NSCEP), PO Box 42419, Cincinnati, OH 45242; telephone: 1–800–490–9198 or 513–489–8190; facsimile: 513–489–8695. Please provide your name and mailing address and the title and EPA number of the requested publication.

FOR FURTHER INFORMATION CONTACT: Scott Schwenk, Risk Assessment Forum Staff (8601D), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington DC 20460; telephone: 202–564–6667; facsimile: 202–565–0062; e-mail: *schwenk.scott@epa.gov.*

SUPPLEMENTARY INFORMATION: In January 1998, a planning committee of EPA and the U.S. Department of the Interior (DOI) sponsored a workshop on the application of 2,3,7,8–TCDD toxicity equivalence factors (TEFs) to fish and wildlife. TEFs are tools for estimating the combined risks from exposure to complex mixtures of polychlorinated dioxins (PCDDs), furans (PCDFs), and biphenyls (PCBs). The primary objective of the workshop was to identify, document, and compare uncertainties in TEF development and their impact in ecological risk assessments. The 20 invited workshop participants, seven of whom were from other countries, came from academia, industry, public interest groups, and government. In addition, eight EPA and four DOI planning committee members participated. Major conclusions included:

—The toxicity equivalence methodology is technically appropriate for evaluating risks to fish, birds, and mammals.

—The toxicity equivalence methodology reduces uncertainties and is less likely to underestimate risks than are methods based on a single compound (e.g., 2,3,7,8–TCDD) or a class of compounds (e.g., total PCBs).

—The uncertainties associated with using relative potencies (RePs) or TEFs are not thought to be larger than other uncertainties within the risk assessment process, but they should be better quantified.

The planning committee concluded that the results of the workshop support the use of the toxicity equivalence methodology in ecological risk assessment. The committee also suggested the development of additional tools and data to improve the methodology's implementation.

The final workshop report consists of (1) an overview and set of conclusions prepared by EPA and DOI and (2) a complete set of workshop materials, including case studies discussed at the workshop, workshop proceedings, pre-meeting comments from the invited experts, and written observer comments.

Dated: December 20, 2001.

George W. Alapas,

Acting Director, National Center for Environmental Assessment.

[FR Doc. 02–954 Filed 1–14–02; 8:45 am]

BILLING CODE 6560–50–P

FARM CREDIT ADMINISTRATION

Farm Credit Administration Board; Amendment to Sunshine Act Meeting

AGENCY: Farm Credit Administration.

SUMMARY: Pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), the Farm Credit Administration gave notice on January 9, 2002 (67 FR 1217) of the regular meeting of the Farm Credit Administration Board (Board) scheduled for January 10, 2002. This notice is to amend the agenda by moving an item from the open session to the closed session of that meeting.

ADDRESSES: Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090.

FOR FURTHER INFORMATION CONTACT: Kelly Mikel Williams, Secretary to the Farm Credit Administration Board, (703) 883–4025, TDD (703) 883–4444.

SUPPLEMENTARY INFORMATION: Parts of this meeting of the Board were open to the public (limited space available), and parts of this meeting were closed to the public. In order to increase the accessibility to Board meetings, persons requiring assistance should make arrangements in advance. The agenda for January 10, 2002, is amended by moving an item to the closed session to read as follows:

Closed Session*

- 2001 Financial Statement Audit Report

Dated: January 10, 2002.

Kelly Mikel Williams,

Secretary, Farm Credit Administration Board.

[FR Doc. 02–1067 Filed 1–11–02; 10:58 am]

BILLING CODE 6705–01–P

* Session Closed—Exempt pursuant to 5 U.S.C. 552b(c)(8) and (9).

FEDERAL COMMUNICATIONS COMMISSION

Sunshine Act Meeting; Open Commission Meeting

January 10, 2002.

The Federal Communications Commission will hold in Open Meeting on Thursday, January 17, 2002, at 9:30 a.m. in Room TW–C305; at 445 12th Street, SW., Washington, DC. The meeting will focus on a comprehensive review of FCC policies and procedures by the Commissioners and senior agency officials.

Presentations will be made in three panels:

Panel One consisting of the Chiefs of the Mass Media Bureau, the Cable Service Bureau and the Common Carrier Bureau.

Panel Two consisting of the Chiefs of the Consumer Information Bureau and the Enforcement Bureau.

Panel Three consisting of the Chiefs of the Office of Engineering and Technology, the International Bureau, and the Wireless Telecommunications Bureau.

Additional information concerning this meeting may be obtained from Maureen Peratino or David Fiske, Office of Media Relations, telephone number (202) 418–0500; TTY 1–888–835–5322.

Copies of materials presented at this meeting can be purchased from the FCC's duplicating contractor, Qualex International at (202) 863–2893; fax (202) 863–2898; TTY (202) 863–2897. These copies are available in paper format and alternative media, including large print/type, digital disk, and audio tape. Qualex International may be reached by e-mail at *qualexint@aol.com*

This meeting can be viewed over George Mason University's Capitol Connection. The Capitol Connection also will carry the meeting live via the Internet. For information on these services call (703) 993–3100. The audio. portion of the meeting will be broadcast live on the Internet via the FCC's Internet audio broadcast page at *http://www.fcc.gov/realaudio/*>. The meeting can also be heard via telephone, for a fee, from National Narrowcast Network, telephone (202) 966–2211 or fax (202) 966–1770. Audio and video tapes of this meeting can be purchased from Infocus, 341 Victory Drive, Herndon, VA 20170, telephone (703) 834–1470, Ext. 10; fax number (703) 834–0111.

Federal Communication Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 02–1091 Filed 1–11–02; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than January 29, 2002.

A. Federal Reserve Bank of Boston (Richard Walker, Community Affairs Officer) 600 Atlantic Avenue, Boston, Massachusetts 02106-2204:

1. Dorothy M. Mawn,Woburn, Massachusetts; James Lawrence Mawn, Malden, Massachusetts; Russell A. Mawn, Vestavia Hills, Alabama; the Thomas M. Mawn, Jr., Trust Fund B, Woburn, Massachusetts; and Mary Elizabeth Mawn-Ferullo, Woburn, Massachusetts; acting in concert; to acquire voting shares of Northern Bancorp, Inc., Woburn, Massachusetts, and thereby indirectly acquire Northern Bank and Trust Company, Woburn, Massachusetts.

2. James J. Mawn, Gloucester, Massachusetts; Rita M. Mawn, Naples, Florida; Rita M. Barger, Manlius, New York; Sheila E. Carpenter, San Antonio, Texas; James J. Mawn, Jr., Charlestown, Massachusetts; Alicia J. Mawn-Mahlau, and Sam A. Mawn-Mahlau, both of Winchester, Massachusetts; Louise S. McDonough, Woburn, Massachusetts; Mary E. Negri, Woburn, Massachusetts; Mary Catherine Riley, Princeton, New Jersey; and the Mawn Family Limited Partnership, Woburn, Massachusetts; acting in concert; to acquire voting shares of Northern Bancorp, Inc., Woburn, Massachusetts, and thereby indirectly acquire Northern Bank and Trust Company, Woburn, Massachusetts.

Board of Governors of the Federal Reserve System, January 9, 2002.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 02–915 Filed 1–14–02; 8:45 am]

BILLING CODE 6210–02–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than February 8, 2002.

A. Federal Reserve Bank of Cleveland (Stephen J. Ong, Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101–2566:

1. Charter One Financial, Inc., and Charter-Michigan Bancorp, Inc., both of Cleveland, Ohio; to acquire 100 percent of the voting shares of Charter One Bank, National Association, Cleveland, Ohio (in formation). In connection with this application, Charter-Michigan has applied to become a bank holding company.

B. Federal Reserve Bank of Chicago (Phillip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. Central Bancshares, Inc., Muscatine, Iowa; to acquire 100 percent of the voting shares of Marquette Bank Illinois, Galesburg, Illinois.

Board of Governors of the Federal Reserve System, January 9, 2002.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 02–914 Filed 1–14–02; 8:45 am]

BILLING CODE 6210–02–S

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than January 29, 2002.

A. Federal Reserve Bank of Cleveland (Stephen J. Ong, Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101–2566:

1. National Bancshares Corporation, Orrville, Ohio; to acquire Peoples Financial Corporation, Massillon, Ohio, and thereby indirectly acquire Peoples Federal Savings and Loan Assocation, Massillon, Ohio, and engage in operating a savings association, pursuant to § 225.28(b)(4)(ii) of Regulation Y. Comments regarding this application must be received not later than February 8, 2002.

B. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166–2034:

1. Concord EFS, Inc., Memphis, Tennessee; to acquire Logix Companies, LLC, Longmont, Colorado, and thereby engage in data processing activities, pursuant to § 225.28(b)(14) of Regulation Y.

Board of Governors of the Federal Reserve System, January 9, 2002.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc.02–916 Filed 1–14–02; 8:45 am]

BILLING CODE 6210–02–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Statement of Organization, Functions and Delegations of Authority

Part A, Office of the Secretary, Statement of Organization, Functions, and Delegations of Authority of the Department of Health and Human Services (HHS) is being amended at Chapter AA, Immediate Office of the Secretary, as last amended at 44 FR 31045, May 30, 1979. This reorganization is to establish a new Chapter AAB, ''Office of Public Health Preparedness (OPHP)'' to direct activities of the Department of Health and Human Services relating to protecting the civilian population from acts of bioterrorism and other public health emergencies. The changes are as follows: Under Part A, Office of the Secretary, Chapter AA, make the following changes:

A. Under Section AA.10 ''Organization,'' add the following new component: Office of Public Health Preparedness.

B. Establish a new chapter AAB, ''Office of Public Preparedness (OPHP)'' to read as follows:

Office of Public Health Preparedness

AAB.00 MISSION
AAB.10 ORGANIZATION
AAB.20 FUNCTIONS

Section AAB.00 Mission. The Office of Public Health Preparedness (OPHP) shall direct the Department of Health and Human Services' efforts to prepare for, protect against, respond to, and recover from all acts of bioterrorism and other public health emergencies that affect the civilian population; and shall serve as the focal point within HHS for these activities.

Section AAB.10 Organization: The Office of Public Health Preparedness (OPHP) is headed by a Director, who reports directly to the Secretary, and serves as the Secretary's principal advisor on HHS activities relating to protecting the civilian population from acts of bioterrorism and other public health emergencies.

Section AAB.20 Functions: The Office of Public Health Preparedness (OPHP) includes the following responsibilities:

1. Serves as the Secretary's principal advisor on matters relating to bioterrorism and public health emergencies.
2. Acts as the Department's liaison with the Office of Homeland Security.
3. Serves as the principal representative of the Department to other Federal agencies and the private sector in all matters related to bioterrorism, and other public health emergencies.
4. Directs HHS Operating and Staff Division implementation of a comprehensive HHS strategy to protect the civilian population from acts of bioterrorism and other public health emergencies. The OPHP will work with the OPDIVS and STAFFDIVs to ensure the adequacy of HHS strategy for preparing, preventing, responding to, and recovering from acts of bioterrorism and other public health emergencies.

Dated: December 14, 2001.

Tommy G. Thompson,

Secretary.

[FR Doc. 02–900 Filed 1–14–02; 8:45 am]

BILLING CODE 4150–03–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket Nos. 01M–0271, 01M–0255, 01M–0210, 01M–0173, 01M–0254, 01M–0227, 01M–0226, and 01M–0270]

Medical Devices; Availability of Safety and Effectiveness Summaries for Premarket Approval Applications

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is publishing a list of premarket approval applications (PMAs) that have been approved. This list is intended to inform the public of the availability of safety and effectiveness summaries of approved PMAs through the Internet and the agency's Dockets Management Branch.

ADDRESSES: Submit written requests for copies of summaries of safety and effectiveness to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Please cite the appropriate docket number as listed in table 1 of this document when submitting a written request. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the summaries of safety and effectiveness.

FOR FURTHER INFORMATION CONTACT: Thinh Nguyen, 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 the **Federal Register** of January 30, 1998 (63 FR 4571), FDA published a final rule to revise §§ 814.44(d) and 814.45(d) (21 CFR 814.44(d) and 814.45(d)) to discontinue publication of individual PMA approvals and denials in the **Federal Register**. Instead, revised §§ 814.44(d) and 814.45(d) state that FDA will notify the public of PMA approvals and denials by posting them on FDA's home page on the Internet at http://www.fda.gov, by placing the summaries of safety and effectiveness on the Internet and in FDA's Dockets Management Branch, and by publishing in the **Federal Register** after each quarter a list of available safety and effectiveness summaries of approved PMAs and denials announced in that quarter.

FDA believes that this procedure expedites public notification of these actions because announcements can be placed on the Internet more quickly than they can be published in the **Federal Register**, and FDA believes that the Internet is accessible to more people than the **Federal Register**.

In accordance with section 515(d)(4) and (e)(2) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360e(d)(4) and (e)(2)), notification of an order approving, denying, or withdrawing approval of a PMA will continue to include a notice of opportunity to request review of the order under section 515(g) of the act. The 30-day period for requesting reconsideration of an FDA action under § 10.33(b) (21 CFR 10.33(b)) for notices announcing approval of a PMA begins on the day the notice is placed on the Internet. Section 10.33(b) provides that FDA may, for good cause, extend this 30-day period. Reconsideration of a denial or withdrawal of approval of a PMA may be sought only by the applicant; in these cases, the 30-day period will begin when the applicant is notified by FDA in writing of its decision.

The following is a list of approved PMAs for which summaries of safety

and effectiveness were placed on the Internet in accordance with the procedure explained previously from April 1, 2001, through June 30, 2001. There were no denial actions during this period. The list provides the manufacturer's name, the product's generic name or the trade name, and the approval date.

TABLE 1.—LIST OF SAFETY AND EFFECTIVENESS SUMMARIES FOR APPROVED PMAS MADE AVAILABLE APRIL 1, 2001, THROUGH JUNE 30, 2001

PMA Number/Docket No.	Applicant	Trade Name	Approval Date
P990086/01M–0271	HealthTronics, Inc.	HealthTronics OssaTron®	October 12, 2000
P000023/01M–0255	TMJ Implants, Inc.	TMJ Fossa-Eminence/Condylar Prosthesis System™	January 5, 2001
P000035/01M–0210	TMJ Implants, Inc.	TMJ Fossa-Eminence Prosthesis™	February 27, 2001
P990080/01M–0173	Pharmacia & Upjohn Co.	CeeOn™ Edge Foldable Ultraviolet Light-Absorbing Posterior Chamber Intraocular Lens, Model 911A	April 5, 2001
P980050(S1)/01M–0254	Medtronic, Inc.	Medtronic® Model 7350 Jewel® AF Implantable Cardioverter Defibrillator System, Medtronic Model 9465 InCheck™ Patient Assistant, and Medtronic Transvene® CS/SVC Model 6937A Lead	April 6, 2001
P000046/01M–0227	Anika Therapeutics, Inc.	Staar Surgical Co. STAARVISC™ II Sodium Hyaluronate	April 18, 2001
P000044/01M–0226	Ortho-Clinical Diagnostics, Inc.	Vitros Immunodiagnostic Products HBsAg Reagent Pack, HBsAg Confirmatory Kit, and HBsAg Calibrator	April 27, 2001
P000037/01M–0270	Medical Carbon Research Institute, LLC.	ON–X® Prosthetic Heart Valve, Model ONXA	May 30, 2001

II. Electronic Access

Persons with access to the Internet may obtain the documents at http://www.fda.gov/cdrh/pmapage.html.

Dated: December 31, 2001.

Linda S. Kahan,

Deputy Director, Center for Devices and Radiological Health.

[FR Doc. 02–901 Filed 1–14–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF THE INTERIOR

Fish & Wildlife Service

Hanford Reach National Monument Federal Advisory Committee; Meeting Notice

AGENCY: Fish and Wildlife Service.

ACTION: Notice; FACA meeting.

SUMMARY: The Hanford Reach National Monument Federal Advisory Committee will conduct a meeting on Wednesday, February 6, 2002 from 8:30 am to 12:30 pm in the Consolidated Information Center (CIC)/Library, rooms 120 and 120A on the Washington State University, Tri-Cities campus, 2770 University Dr., Richland, WA. The meeting is open to the public and media.

DATES: Verbal comments will be considered during the course of the meeting and written comments will be accepted that are submitted by the close of the meeting.

ADDRESSES: Any member of the public wishing to submit written comments should send those to Mr. Greg Hughes, Designated Federal Officer for the Hanford Reach National Monument (HRNM) Federal Advisory Committee, Hanford Reach National Monument/Saddle Mountain National Wildlife Refuge, 3250 Port of Benton Blvd., Richland, WA 99352; fax (509) 375–0196. Copies of the draft meeting agenda can be obtained from the Designated Federal Officer.

FOR FURTHER INFORMATION CONTACT: Any member of the public wishing further information concerning the meeting should contact Mr. Greg Hughes, Designated Federal Official for the Hanford Reach National Monument (HRNM) FAC; phone (509) 371–1801, fax (509) 375–0196.

SUPPLEMENTARY INFORMATION: The Hanford Reach National Monument Federal Advisory Committee will review and augment their issues grouping topics as well as identify subcommittees and formulate rules to focus on specific areas.

Dated: January 8, 2002.

Greg Hughes,

Project Leader, Hanford Reach National Monument.

[FR Doc. 02–952 Filed 1–14–02; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Indian Gaming

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of approved tribal-state compact.

SUMMARY: Pursuant to Section 11 of the Indian Gaming Regulatory Act of 1988 (IGRA), Pub. L. 100–497, 25 U.S.C. 2710, the Secretary of the Interior shall publish, in the **Federal Register**, notice of approved Tribal-State Compacts for the purpose of engaging in Class III gaming activities on Indian lands. The Assistant Secretary—Indian Affairs, Department of the Interior, through his delegated authority, has approved the Tribal-State Compact between the Jicarilla Apache Nation and the State of New Mexico, which was executed on November 7, 2001.

DATES: This action is effective January 15, 2002.

FOR FURTHER INFORMATION CONTACT: George T. Skibine, Director, Office of Indian Gaming Management, Bureau of Indian Affairs, Washington, DC 20240, (202) 219–4066.

Dated: December 21, 2001.

Neal A. McCaleb,

Assistant Secretary—Indian Affairs.

[FR Doc. 02–904 Filed 1–14–02; 8:45 am]

BILLING CODE 4310–4N–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[UT–912–02–1120–PG–24–1A]

Extension of Due Date for Nomination on Utah Resource Advisory Council (RAC)

AGENCY: Bureau of Land Management, Department of Interior.

ACTION: Extension of Due Date for Nomination on Utah Resource Advisory Council (RAC).

SUMMARY: The purpose of this notice is to extend the due date for nominations, due to a vacancy on Utah's Resource Advisory Council, from January 4, 2002 to February 15, 2002.

Utah residents with an interest and background in commercial recreation or oil and gas development are being sought to fill this vacancy on the 15-person Council, which has occurred due to the resignation of one of its members. The person selected will serve out the remaining balance of a 3-year term that will continue through September 2003.

FOR FURTHER INFORMATION: Anyone interested in requesting a nomination form should inquire at the Bureau of Land Management, Utah State Office, Attention: Sherry Foot, 324 South State Street, Salt Lake City, Utah, 84111; phone (801) 539–4195. Nominations must be received no later than close of business February 15, 2002.

Dated: December 17, 2001.

Sally Wisely,

State Director.

[FR Doc. 02–983 Filed 1–14–02; 8:45 am]

BILLING CODE 4310–$$–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK–910–07–1310–AG]

Extension of Scoping Period on an Integrated Activity Plan (IAP)/ Environmental Impact Statement (EIS) for the Northwest Area of the National Petroleum Reserve-Alaska (NPR–A)

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of extension of scoping period.

SUMMARY: The Bureau of Land Management (BLM) is announcing the extension of the scoping period for planning its future management of approximately 9.4 million acres in northwestern NPR–A. A Notice of Intent published in the **Federal Register** on November 15, 2001, indicates scoping information and comments are to be received by December 15, 2001 or 45 days after publication of the original notice. The BLM is extending the time for receiving these comments until February 15, 2002. The closing date for nominations of areas of interest to oil and gas companies remains December 31, 2001.

FOR MORE INFORMATION CONTACT: For further information, contact Curtis Wilson (907) 271–5546 at BLM's Alaska State Office, 222 West 7th Avenue, Anchorage, Alaska 99513.

Francis R. Cherry, Jr.,

State Director.

[FR Doc. 02–982 Filed 1–14–02; 8:45 am]

BILLING CODE 4310–JA–P

DEPARTMENT OF THE INTERIOR

The Bureau of Land Management

[NM–910–01–1020–PG]

New Mexico Resource Advisory Council Meeting

AGENCY: The Bureau of Land Management, Department of the Interior.

ACTION: Notice of Council meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act and the Federal Advisory Committee Act of 1972 (FACA), 5 U.S.C. Appendix 1, The Department of the Interior, Bureau of Land Management (BLM), announces a meeting of the New Mexico Resource Advisory Council (RAC). New Mexico Resource Advisory Council Meetings are planned in conjunction with the representative of the Governor of the State of New Mexico; the Office of the Lieutenant Governor.

DATES: The meeting will be held on February 28 and March 1, 2002, with an optional Field Trip preceding on Wednesday, February 27. The meeting will begin at 8 a.m. and end by 5 p.m. both days.

ADDRESSES: The meeting will take place at the Crowne Plaza Pyramid, 5151 San Francisco Road NE, Albuquerque, NM.

Agenda: The draft agenda for the RAC meeting on Thursday, February 28, includes agreement on the meeting agenda, any RAC comments on the draft minutes of the last RAC meeting which was held on December 13 and 14, 2001, in Las Cruces, New Mexico, and a check-in from the RAC members.

Main topics will be to finalize draft Recommendations for Off-Highway Vehicle (OHV) Use on public lands, discussions on NEPA 101 and implementation of the Standards and Guidelines for Grazing, and an overview of Otero Mesa oil and gas leasing issues.

Reports from the seven Field Offices and from the three established subcommittees will be presented at various times throughout the two day meeting. The three established RAC subcommittees may have late afternoon or evening meetings on Wednesday, February 27 or on Thursday, February 28. The exact time and location of possible subcommittee meetings will be established by the chairperson of each subcommittee and be available to the public at the front desk of the hotel on those two days. The subcommittee meetings may be attended by the public. The Energy Subcommittee has established that they will meet after the Field Trip, at the hotel, on Wednesday, February 27. If there is unfinished business, they will continue at breakfast Thursday morning, before the meeting. The meeting is open to the public, and starting at 2:45 p.m. on Thursday, February 28, 2001, there will be an additional 15 minute Public Comment Period for members of the public who are not able to be present to address the RAC during the regular two hour Public Comment Period on Friday, March 1, from 10 a.m to 12 noon. The RAC may reduce or extend the end time of 12 noon depending on the number of people wishing to address the RAC.

A RAC assessment of the current meeting and development of draft agenda items and selection of a location for the next RAC meeting will take place Friday afternoon. On Friday, March 1, the ending time of the meeting may be changed depending on the work remaining for the RAC.

FOR FURTHER INFORMATION CONTACT: Mary White, New Mexico State Office, Office of External Affairs, Bureau of Land Management, 1474 Rodeo Road, P.O. Box 27115, Santa Fe, New Mexico 87502–0115, telephone (505) 438–7404.

SUPPLEMENTARY INFORMATION: The purpose of the Resource Advisory Council is to advise the Secretary of the Interior, through the BLM, on a variety of planning and management issues associated with the management of public lands. The Council's responsibilities include providing advice on long-range planning, establishing resource management priorities and assisting the BLM to identify State and regional standards for rangeland health and guidelines for grazing management.

Dated: December 17, 2001.

Carsten F. Goff,

Acting State Director.

[FR Doc. 02–980 Filed 1–14–02; 8:45 am]

BILLING CODE 4310–FB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ–910–0777–26–241A]

State of Arizona Resource Advisory Council Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Arizona Resource Advisory Council meeting notice.

SUMMARY: This notice announces a tour and meeting of the Arizona Resource Advisory Council (RAC). On February 28, 2002, the RAC and BLM staff will tour the Ironwood Forest National Monument and Asarco Mine site outside of the Tucson Metropolitan Area and discuss resource issues facing the Monument's management. The tour will depart from the Radisson Inn (Downtown) located at 181 W. Broadway at 8 a.m., and conclude approximately at 5 p.m.

On March 1, the business meeting will also be held at the Radisson Inn and will begin at 9 a.m. and conclude at approximately 4 p.m. The agenda items to be covered include: review of the December 6, 2001 meeting minutes; BLM State Director's Update on legislation, regulations and statewide planning efforts; Updates on the BLM National Mountain Biking Strategy and 3809 Surface Management Regulations for Locatable Mineral Operations; and Presentations on the Arizona Supreme Court Ruling on State Land Grazing Leases and BLM's International Programs; Update Proposed Field Office Rangeland Resource Teams; Reports from BLM Field Office Managers; Reports by the Standards and Guidelines, Recreation and Public Relations, Wild Horse and Burro Working Groups; Reports from RAC members; and Discussion of future meetings. A public comment period will be provided at 11:30 a.m. on March 1, 2002, for any interested publics who wish to address the Council.

FOR FURTHER INFORMATION CONTACT: Deborah Stevens, Bureau of Land Management, Arizona State Office, 222 North Central Avenue, Phoenix, Arizona 85004–2203, (602) 417–9215.

Denise P. Meridith,

Arizona State Director.

[FR Doc. 02–981 Filed 1–14–02; 8:45 am]

BILLING CODE 4310–32–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NM–910–02–1020–PG]

New Mexico Resource Advisory Council Meeting

AGENCY: The Bureau of Land Management, Department of the Interior.

ACTION: Notice of Council meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act and the Federal Advisory Committee Act of 1972 (FACA), 5 U.S.C. Appendix 1, The Department of the Interior, Bureau of Land Management (BLM), announces a meeting of the New Mexico Resource Advisory Council (RAC). New Mexico Resource Advisory Council Meetings are planned in conjunction with the representative of the Governor of the State of New Mexico; the Office of the Lieutenant Governor.

DATES: The meeting will be held on January 30, 2002. The meeting will be held at 10:00 a.m. and is not expected to be more than two hours in duration. Some members will be calling in to the meeting via conference phone.

ADDRESSES: The meeting will take place at the Bureau of Land Management State Office, State Director's Conference Room, located at 1474 Rodeo Road, Santa Fe, NM 87505.

Agenda: Members will draft, review and approve a letter to the Secretary of the Interior regarding implementation of the Standards and Guidelines for Grazing. Members of the public are invited and may address the RAC during the meeting.

FOR FURTHER INFORMATION CONTACT: Mary White, New Mexico State Office, Office of External Affairs, Bureau of Land Management, 1474 Rodeo Road, P.O. Box 27115, Santa Fe, New Mexico 87502–01115, Telephone: (505) 438–7404.

SUPPLEMENTARY INFORMATION: The purpose of the Resource Advisory Council is to advise the Secretary of the Interior, through the BLM, on a variety of planning and management issues associated with the management of public lands. The Council's responsibilities include providing advice on long-range planning, establishing resource management priorities and assisting the BLM to identify State and regional standards for rangeland health and guidelines for grazing management.

Dated: January 9, 2002.

Richard A. Whitley,

Associate State Director.

[FR Doc. 02–1093 Filed 1–14–02; 8:45 am]

BILLING CODE 4310–FB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–930–1430–ET; COC–17320]

Public Land Order No. 7508; Partial Revocation of the Executive Order Which Created Public Water Reserve No. 107; Colorado

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order partially revokes an Executive Order insofar as it affects 45.77 acres of public land withdrawn for Bureau of Land Management Public Water Reserve No. 107. This action will open 45.77 acres to surface entry under the public land laws and to nonmetalliferous location and entry under the United States mining laws. The land has been and will remain open to mineral leasing and to metalliferous mining.

EFFECTIVE DATE: February 14, 2002.

FOR FURTHER INFORMATION CONTACT: Doris E. Chelius, BLM Colorado State Office, 2850 Youngfield Street, Lakewood, Colorado 80215, 303–239–3706.

SUPPLEMENTARY INFORMATION: 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 Order dated April 17, 1926, which established Public Water Reserve No. 107, is hereby revoked insofar as it affects the following described land:

Sixth Principal Meridian

T. 5 N., R. 81 W.,
sec. 9, lot 13.

The area described contains 45.77 acres in Jackson County.

2. At 9 a.m. on February 14, 2002, the land described in Paragraph 1 will be opened to the operation of the public land laws generally, subject to valid

existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law. All valid applications received at or prior to 9 a.m. on February 14, 2002, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

3. At 9 a.m. on, February 14, 2002, the land described in Paragraph 1 will be opened to nonmetalliferous location and entry under the United States mining laws, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law. Appropriation of any of the land described in this order to nonmetalliferous mining under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. 38 (1994), shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law.

The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts.

Dated: December 13, 2001.

J. Steven Griles,

Deputy Secretary.

[FR Doc. 02–978 Filed 1–14–02; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–935–1430–ET; COC–28585; COC–28650; COC–0123825]

Public Land Order No. 7507; Partial Revocation of Waterpower Withdrawals and Opening of Public Lands Under Section 24 of the Federal Power Act; Colorado

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order revokes an Executive Order and a Secretarial Order insofar as they affect 439.24 acres of public lands withdrawn for two Bureau of Land Management waterpower withdrawals. This action will open the lands to surface entry. These lands have been open to mineral leasing, and, under the provisions of the Mining Claims Rights Restoration Act of 1955, to mining. These provisions are no longer required. This order opens 412.40 acres of public lands to disposal, subject to section 24 of the Federal Power Act. This order also opens 42.62 acres of lands withdrawn by Power Project 2035, subject to section 24 of the Federal Power Act to allow for disposal to the Power Project licensee. This action will allow for consummation of pending land disposals.

EFFECTIVE DATE: April 15, 2002.

FOR FURTHER INFORMATION CONTACT: Doris E. Chelius, BLM Colorado State Office, 2850 Youngfield Street, Lakewood, Colorado 80215–7093, 303–239–3706.

SUPPLEMENTARY INFORMATION: 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), and pursuant to the determination by the Federal Energy Regulatory Commission in DVCO–557–000, it is ordered as follows:

1(a). Executive Order dated July 2, 1910, which established Powersite Reserve No. 78, and Secretarial Order dated October 31, 1944, which established Powersite Classification No. 372, are hereby revoked insofar as they affect the following described public lands:

Sixth Principal Meridian

T. 1 S., R. 71 W., Tracts 53, 56, 57, 58, 59, 60, 61, 65, 139, 148, and 150.

The areas described aggregate 439.24 acres in Boulder County.

(b). At 9 a.m. on April 15, 2002, the lands described in paragraph 1(a), will be opened to operation of the public land laws generally subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable law. All valid applications received on or prior to 9 a.m on April 15, 2002, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

(c). The lands described in paragraph 1(a) have been open to mining under the provisions of the Mining Claims Rights Restoration Act of 1955, 30 U.S.C. 621 (1994), and these provisions are no longer required.

2. By virtue of the authority vested in the Secretary of the Interior by the Act of June 10, 1920, section 24, as amended, 16 U.S.C. 818 (1994), and pursuant to the determination by the Federal Energy Regulatory Commission in DVCO–557–000, it is ordered as follows:

(a) At 9 a.m. on April 15, 2002, the following described public lands withdrawn by Executive Order dated July 2, 1910, which established Powersite Reserve No. 78, and Secretarial Order dated October 31, 1944, which established Power Site Classification No. 372, will be opened to disposal, subject to the provisions of section 24 of the Federal Power Act. The opening is subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law:

Sixth Principal Meridian

T. 1 S., R. 71 W., Tracts 54, 127, 142, 143, 144, 145, 146, 147, 149, and 154.

The area described contains 412.40 acres of public lands in Boulder County.

(b). At 9 a.m. on April 15, 2002, Tract 49, T. 1 S., R.71 W., Sixth Principal Meridian, in Power Project No. 2035 is hereby open to disposal to the Power Project licensee only. The Commission imposed annual charges shall continue and any use not authorized by the License is prohibited without the consent of the Federal Energy Regulatory Commission. This parcel contains 42.62 acres in Boulder County.

3. The State of Colorado, with respect to the lands described in paragraph 1(a) and 2(a), has a preference right for public highway rights-of-way or material sites until April 15, 2002 and any location, entry, selection, or subsequent patent shall be subject to any rights granted the State as provided by the Act of June 10, 1920, section 24, as amended, 16 U.S.C. 818 (1994).

Dated: December 13, 2001.

J. Steven Griles,

Deputy Secretary.

[FR Doc. 02–979 Filed 1–14–02; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Environmental Documents Prepared for Proposed Oil and Gas Operations on the Gulf of Mexico Outer Continental Shelf (OCS)

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the availability of environmental documents. Prepared for OCS mineral proposals on the Gulf of Mexico OCS.

SUMMARY: Minerals Management Service (MMS), in accordance with Federal Regulations that implement the National Environmental Policy Act (NEPA), announces the availability of NEPA-related Site-Specific Environmental Assessments (SEA) and Findings of No Significant Impact (FONSI), prepared by

MMS for the following oil and gas activities proposed on the Gulf of Mexico OCS.

FOR FURTHER INFORMATION CONTACT: Public Information Unit, Information Services Section at the number below. Minerals Management Service, Gulf of Mexico OCS Region, Attention: Public Information Office (MS 5034), 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana 70123–2394, or by calling 1–800–200-GULF.

SUPPLEMENTARY INFORMATION: MMS prepares an SEA and FONSI for proposals that relate to exploration for and the development/production of oil and gas resources on the Gulf of Mexico OCS. The EA examines the potential environmental effects of activities described in the proposals and present MMS conclusions regarding the significance of those effects.

Environmental Assessments are used as a basis for determining whether or not approval of the proposals constitutes major Federal actions that significantly affect the quality of the human environment in the sense of NEPA section 102(2)(C). A FONSI is prepared in those instances where MMS finds that approval will not result in significant effects on the quality of the human environment. The FONSI briefly presents the basis for that finding and includes a summary or copy of the EA.

This notice constitutes the public notice of availability of environmental documents required under the NEPA Regulations.

This listing includes all proposals for which the Gulf of Mexico OCS Region prepared a FONSI in the period subsequent to publication of the preceding notice.

Activity/Operator	Location	Date
Murphy Exploration & Production Company, Supplemental Development Operations, SEA Nos. S–05676, P–13457 and P–13458.	South Timbalier Area, Block 86, Lease OCS–G 00605, 18 miles south of Lafourche Parish, Louisiana.	09/10/01
TotalFinaElf, Inc., Williams Field Services-Gulf Coast Company, L.P., Right-of-Use and Easement and Pipeline Activity, SEA Nos. P–13233–13260, 13355–13358 and RUE–1.	Canyon Express and Canyon Station Projects, Camden Hill, Aconcagua and King's Peak Field Development from Mississippi Canyon and DeSoto Canyon, through Viosca Knoll and Main Pass to Main Pass 261, 89 miles south of Mobile County Alabama, and 68 to 93 miles east and southeast of Plaquemines Parish, Louisiana.	09/13/01
Marathon Oil Company, Initial Exploration Plan, SEA No. N6974	Desoto Canyon Area, Block 927, Lease OCS–G 10480, 104 miles off the coast of Plaquemines Parish, Louisiana.	10/18/01
El Paso Production Oil & Gas Company, Pipeline Activity, SEA No. P–13114.	High Island Area, Block A–368, Lease OCS–G 02433, 118 miles off the coast of Texas, and 123 miles from Cameron, Louisiana.	12/06/01
Forest Oil Company, Structure Removal Activity, SEA No. ES/SR 00–038A.	West Cameron Area, Block 212, Lease OCS–G 04758, 39 miles south of Cameron, Louisiana, and 37 miles south of Cameron Parish, Louisiana.	09/07/01
RME Petroleum Company, Structure Removal Activity, SEA No. ES/SR 01–049A.	Ship Shoal Area, Block 204, Lease OCS–G 01520, 81 miles south of Morgan City, Louisiana, and 38 miles south-southwest of Terrebonne Parish, Louisiana.	09/05/01
Callon Petroleum Company, Structure Removal Activity, SEA No. ES/SR 01–070A.	Main Pass (South and East Addition) Area, Block 165, Lease OCS–G 05705, 26 miles southeast of Chandeleur Islands, Louisiana, and 66 miles south-southwest of Theodore, Alabama.	09/17/01
Hall-Houston Oil Company, Structure Removal Activity, SEA No. ES/SR 01–072.	West Delta Area, Block 94, Lease OCS–G 00839, 29 miles southeast of Fourchon, Louisiana, and 25 miles southeast of LaFourche Parish, Louisiana.	08/27/01
Agip Petroleum, Structure Removal Activity, SEA No. ES/SR 01–073A.	Grand Isle Area, Block 102, Lease OCS–G 05662, 46 miles south-southeast of LaFourche Parish, Louisiana, and 48 miles south-southeast of Fourchon, Louisiana.	08/29/01
Amerada Hess Corporation, Structure Removal Activity, SEA No. ES/SR 01–074.	East Cameron Area, Block 188, Lease OCS–G 13586, 73 miles south-southeast of Cameron, Louisiana, and 57 miles south-southwest of Cameron Parish, Louisiana.	08/24/01
Callon Petroleum Company, Structure Removal Activity, SEA No. ES/SR 01–071A.	Main Pass (South and East Addition) Area, Block 165, Lease OCS–G 05705, 26 miles east-southeast of Chandeleur Islands, Louisiana, and 64 miles south-southwest of Theodore, Alabama.	09/04/01
Energy Resource Technology, Inc., Structure Removal Activity, SEA No. ES/SR 01–077.	Eugene Island Area, Block 128A, Lease OCS–G 00442, 30 miles southwest of Terrebonne Parish, Louisiana, and 58 miles south-southwest of Morgan City, Louisiana.	09/17/01
El Paso Production GOM, Inc., Structure Removal Activity, SEA No. ES/SR 01–078.	West Cameron (South Addition) Area, Block 509, Lease OCS–G 15101, 95 miles south-southeast of Cameron, Louisiana, and 83 miles south-southwest of Cameron Parish, Louisiana.	09/26/01
Kelley Oil Company, Structure Removal Activity, SEA Nos. ES/SR 01–079 and 01—080.	Mobile Area, Blocks 822 and 865, Leases OCS–G 05056 and 06847, Platform B lies 7 miles south of Dauphin Island, Alabama, and 41 miles south-southwest of Mobile, Alabama. Platform A lies 6 miles south of Dauphin Island, Alabama, and 39 miles south-southwest of Mobile, Alabama.	10/04/01
Amerada Hess Corporation, Structure Removal Activity, SEA No. ES/SR 01–081.	Breton South Area, Block 55, Lease OCS–G 04492, 6 miles southeast of Breton Island, and 23 miles northeast of Venice, Louisiana.	10/04/01
Forest Oil Corporation, Structure Removal Activity, SEA No. ES/SR 01–082.	High Island Area, Block A20, Lease OCS–G 06178, 34 miles southeast of Galveston, Texas, and 76 miles southwest of Cameron, Louisiana.	10/17/01

Activity/Operator	Location	Date
Louis Dreyfus Natural Gas, Structure Removal Activity, SEA No. ES/SR 01–083.	West Cameron (West Addition) Area, Block 408, Lease OCS–G 10508, 64 miles south-southwest of Cameron Parish, Louisiana, and 83 miles southeast of Sabine Pass, Texas.	10/17/01
Texaco Exploration and Production, Inc., Structure Removal Activity, SEA Nos. ES/SR 01–084, 01–085, 01–086, 01–087 and 01–088.	South March Island (North Addition) Area, Blocks 217, 218, 238 and 239, Lease OCS 00310, between 8 to 11 miles southwest and 6 miles south-southwest of Iberia Parish, Louisiana, and 23 to 36 miles southeast of Intracoastal City, Louisiana.	11/14/01
Texaco Exploration and Production, Inc., Structure Removal Activity, SEA No. ES/SR 01–089.	Vermilion Area, Block 30, Lease OCS–G 04785, 7 miles south-southeast of Vermilion Parish, Louisiana, and 21 miles south of Intracoastal City, Louisiana.	11/27/01
Vastar Offshore, Inc., Structure Removal Activity, SEA No. ES/SR 01–090.	South Pelto Area, Block 11, Lease OCS–G 00071, 8 miles south of Terrebonne Parish, Louisiana, and 33 miles south-southwest of Fourchon, Louisiana.	11/08/01
Denbury Resources Inc., Structure Removal Activity, SEA No. ES/SR 01–091.	High Island (East Addition South Extension) Area, Block A–286, Lease OCS–G 03486, 91 miles south-southeast of Galveston County, Texas, and 105 miles south-southwest of Cameron, Louisiana.	11/15/01
Maritech Resources, Inc., Structure Removal Activity, SEA Nos. ES/SR 01–092, 01–093, 01–094, 01–095, 01–096, 01–097, 01–098, 01–099 and 01–100.	West Delta Area, Block 32, Leases OCS–G 00367 and 01332, 19 miles east-southeast of Grand Isle, Louisiana, and 10 miles south-southwest of Plaquemines Parish, Louisiana.	11/28/01
Seneca Resources Corporation, Structure Removal Activity, SEA No. ES/SR 01–101.	Vermilion Area (South Addition), Block 296, Lease OCS–G 09511, 114 miles southwest of Morgan City, Louisiana, and 78 miles south-southwest of Iberia Parish, Louisiana.	11/27/01
BP America, Inc., Structure Removal Activity, SEA No. ES/SR 01–102.	South Pelto Area, Block 11, Lease OCS–G 00071, 8 miles south of Terrebonne Parish, Louisiana, and 33 miles south-southwest of Fourchon, Louisiana.	11/16/01
Apex Oil & Gas, Inc., Structure Removal Activity, SEA No. ES/SR 01–103.	East Cameron Area, Block 24, Lease OCS–G 04098, 5 miles south-southwest of Cameron Parish, Louisiana, and 35 miles east-southeast of Cameron, Louisiana.	12/10/01

Persons interested in reviewing environmental documents for the proposals listed above or obtaining information about EAs and FONSIs prepared for activities on the Gulf of Mexico OCS are encouraged to contact MMS at the address or telephone listed in the **FOR FURTHER INFORMATION** section.

Dated: December 18, 2001.

Chris C. Oynes,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 02–976 Filed 1–4–02; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Review of Existing Coordinate Long Range Operating Criteria for Colorado River Reservoirs

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice.

SUMMARY: The Operating Criteria for Colorado River Reservoirs (Operating Criteria), promulgated pursuant to Public Law 90–537, were published in the **Federal Register** on June 10, 1970. The Operating Criteria state that the Secretary will sponsor a formal review of the Operation Criteria at least every 5 years. As part of that 5-year review process, the Bureau of Reclamation invites written comments regarding whether the Operating Criteria should be modified, and if so, how they should be modified. The existing Operating Criteria are included at the end of this notice.

DATES: Written comments must be received on or before March 18, 2002.

ADDRESSES: Written comments may be mailed to: Regional Director, Attn: BCOO–4600, Lower Colorado Region, Bureau of Reclamation, P.O. Box 61470, Boulder City, NV 89006–1470.

FOR FURTHER INFORMATION CONTACT: Jayne Harkins at (702) 293–8190 or in writing at Bureau of Reclamation, Lower Colorado Region, P.O. Box 61470, Boulder City, NV 89006–1470 or by faxogram at (702) 293–8042 or Tom Ryan at (801) 524–3732 or in writing at Bureau of Reclamation, Upper Colorado Region, 125 South State Street, Salt Lake City, Utah 84138–1102. E-mail can be sent to *LROC_Review@lc.usbr.gov.*

SUPPLEMENTARY INFORMATION: The Operating Criteria provided for the coordinated long-range operation of the reservoirs constructed and operated under the authority of the Colorado River Storage Project Act, the Boulder Canyon Project Act, and the Boulder Canyon Project Adjustment Act for the purposes of complying with and carrying out the provisions of the Colorado River Compact, the Upper Colorado River Basin Compact, and the Mexican Water Treaty.

The Operating Criteria provide for a review at least every 5 years with participation by Colorado River Basin state representatives as each Governor may designate and other parties and agencies as the Secretary of the Interior may deem appropriate. As provided in Public Law 102–575 (The Grand Canyon Protection Act of 1992), the Secretary also consults in this review process with the general public including representatives of academic and scientific communities, environmental organizations, the recreation industry, and contractors for the purchase of Federal power produced at Glen Canyon Dam. This will be the sixth 5-year review of the Operating Criteria since their initial promulgation in 1970. The Commissioner of the Bureau of Reclamation shall be the authorized agent of the Secretary of the Interior for the purposes of conducting and coordinating this review.

The Record of Decision, Colorado River Interim Surplus Guidelines Final Environmental Impact Statement (Interim Surplus Guidelines) states that 5-year reviews of the Interim Surplus Guidelines may be conducted and if so, such reviews would be coordinated with the Operating Criteria review. The Interim Surplus Guidelines were signed by former Secretary Bruce Babbit on January 16, 2001, became effective in

February 2001, and are to be applied in 2002. Accordingly, at this time, there is no need for a review of the Interim Surplus Guidelines.

Our practice is to make comments, including names and home addresses of respondents, available for public review. Individual respondents may request that we withhold their home address from public disclosure, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold a respondent's identity from public disclosure, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public disclosure in their entirety.

In addition to written comments, open public meetings will be conducted during calendar year 2002. Notification of dates, times, and locations for public meetings will be made through the **Federal Register**, media outlets, and to all respondents to this notice.

Dated: December 20, 2001.

John W. Keys, III,

Commissioner, Bureau of Reclamation.

Criteria for Coordinated Long-Range Operation of Colorado River Reservoirs Pursuant to the Colorado River Basin Project Act of September 30, 1968 (Pub. L. 90–537)

These Operating Criteria are promulgated in compliance with Section 602 of Public Law 90–537. They are to control the coordinated long-range operation of the storage reservoirs in the Colorado River Basin constructed under the authority of the Colorado River Storage Act (hereinafter ''Upper Basin Storage Reservoirs'') and the Boulder Canyon Project Act (Lake Mead). The Operating Criteria will be administered consistent with applicable Federal laws, the Mexican Water Treaty, interstate compacts, and decrees relating to the use of the waters of the Colorado River.

The Secretary of the Interior (hereinafter the ''Secretary'') may modify the Operating Criteria from time to time in accordance with Section 602(b) of Pub. L. 90–537. The Secretary will sponsor a formal review of the Operating Criteria at least every 5 years, with participation by State representatives as each Governor may designate and such other parties and agencies as the Secretary may deem appropriate.

I. Annual Report

(1) On January 1, 1972, and on January 1 of each year thereafter, the Secretary shall transmit to the Congress and to the Governors of the Colorado River Basin States a report describing the actual operation under the adopted criteria for the preceding compact water year and the projected plan of operation for the current year.

(2) The plan of operation shall include such detailed rules and quantities as may be necessary and consistent with the criteria contained herein, and shall reflect appropriate consideration of the uses of the reservoirs for purposes, including flood control, river regulation, beneficial consumptive uses, power production, water quality control, recreation, enhancement of fish and wildlife, and other environmental factors. The projected plan of operation may be revised to reflect the current hydrologic conditions, and the Congress and the Governors of the Colorado River Basin States be advised of any changes by June of each year.

II. Operation of Upper Basin Reservoirs

(1) The annual plan of operation shall include a determination by the Secretary of the quantity of water considered necessary as of September 30 of each year to be in storage as required by Section 602(a) of Pub. L. 90–537 (hereinafter ''602(a) Storage''). The quantity of 602(a) Storage shall be determined by the Secretary after consideration of all applicable laws and relevant factors, including, but not limited to, the following:

(a) Historic streamflows;

(b) The most critical period of record;

(c) Probabilities of water supply;

(d) Estimated future depletions of the upper basin, including the effects of recurrence of critical periods of water supply;

(e) The ''Report of the Committee on Probabilities and Test Studies to the Task Force on Operating Criteria for the Colorado River,'' dated October 30, 1969, and such additional studies as the Secretary deems necessary;

(f) The necessity to assure that upper basing consumptive uses not be impaired because of failure to store sufficient water to assure deliveries under Section 602(a)(1) and (2) of Pub. L. 90.537.

(2) If, in the plan of operation, either:

(a) The Upper Basin Storage Reservoirs active storage forecast for September 30 of the current year is less than the quantity of 602(a) Storage determined by the Secretary under Article II(1) hereof, for that date; or

(b) The Lake Powell active storage forecast for that date is less than the Lake Mead active storage forecast for that date:

the objective shall be to maintain a minimum release of water from Lake Powell of 8.23 million acre-feet for that year. However, for the years ending September 30, 1971 and 1972, the release may be greater than 8.23 million acre-feet if necessary to deliver 75,000,000 acre-feet at Lee Ferry for the 10-year period ending September 30, 1972.

(3) If, the plan of operation, the Upper Basin Storage Reservoirs active storage forecast for September 30 of the current water year is greater than the quantity of 602(a) Storage determination for that date, water shall be released annually from Lake Powell at a rate greater than 8.23 million acre-feet per year to the extent necessary to accomplish any or all of the following objectives:

(a) to the extent it can be reasonably applied in the States of the Lower Division to the uses specified in Article III(e) of the Colorado River Compact, but no such releases shall be made when the active storage in Lake Powell is less than the active storage in Lake Mead,

(b) to maintain, as nearly as practicable, active storage in Lake Mead equal to the active storage in Lake Powell, and

(c) to avoid anticipated spills from Lake Powell.

(4) In the application of Article II(3)(b) herein, the annual release will be made to the extent that it can be passed through Glen Canyon Powerplant when operated at the available capability of the powerplant. Any water thus retained in Lake Powell to avoid bypass of water at the Glen Canyon Powerplant will be released through the Glen Canyon Powerplant as soon as practicable to equalize the active storage in Lake Powell and Lake Mead.

(5) Releases from Lake Powell pursuant to these criteria shall not prejudice the position of either the upper or lower basin interests with respect to required deliveries at Lee Ferry pursuant to the Colorado River Compact.

III. Operation of Lake Mead

(1) Water released from Lake Powell, plus the tributary inflows between Lake Powell and Lake Mead, shall be regulated in Lake Mead and either pumped from Lake Mead or released to the Colorado River to meet requirements as follows:

(a) Mexican Treaty obligations;

(b) Reasonable consumptive use requirements of mainstream users in the Lower Basin;

(c) Net river losses;
(d) Net reservoir losses;
(e) Regulatory wastes.

(2) Until such time as mainstream water is delivered by means of the Central Arizona Project, the consumptive use requirements of Article III(1)(b) of these Operating Criteria will be met.

(3) After commencement of delivery of mainstream water by means of the Central Arizona Project, the consumptive use requirements of Article III(1)(b) of these Operating Criteria will be met to the following extent:

(a) Normal: The annual pumping and release from Lake Mead will be sufficient to satisfy 7,500 acre-feet of annual consumptive use in accordance with the decree in *Arizona* v. *California*, 376 U.S. 340 (1964).

Surplus: The Secretary shall determine from time to time when water in quantities greater than ''Normal'' is available for either pumping or release from Lake Mead pursuant to Article II(b)(2) of the decree in *Arizona* v. *California* after consideration of all relevant factors, including, but not limited to, the following:

(i) the requirements stated in Article III(1) of these Operating Criteria;

(ii) requests for water by holders of water delivery contracts with the United States, and of other rights recognized in the decree in *Arizona* v. *California*;

(iii) actual and forecast quantities of active storage in Lake Mead and the Upper Basin Storage Reservoirs; and

(iv) estimated net inflow to Lake Mead.

(c) Shortage: The Secretary shall determine from time to time when insufficient mainstream water is available to satisfy annual consumptive use requirements of 7,500,000 acre-feet after consideration of all relevant factors, including, but not limited to, the following:

(i) The requirements stated in Article III(1) of these Operating Criteria;

(ii) actual and forecast quantities of active storage in Lake Mead;

(iii) estimated of net inflow to Lake Mead for the current year;

(iv) historic streamflows, including the most critical period of record;

(v) priorities set forth in Article II(A) of the decree in *Arizona* v. *California*; and

(vi) the purposes stated in Article I(2) of these Operating Criteria.

The shortage provisions of Article II(B)(3) of the decree in *Arizona* v. *California* shall thereupon become effective and consumptive uses from the mainstream shall be restricted to the extent determined by the Secretary to be required Section 301(b) of Public Law 90–537.

IV. Definitions

(1) In addition to the definitions in Section 606 of Pub. L. 90–537, the following shall also apply:

(a) ''Spills,'' as used in Article II(3)(c) herein, means water released from Lake Powell which cannot be utilized for project purposes, including, but not limited to, the general of power and energy.

(b) ''Surplus,'' as used in Article III(3)(b) herein, is water which can be used to meet consumptive use demands in the three Lower Division States in excess of 7,500,000 acre-feet annually. The term ''surplus'' as used in these Operating Criteria is not be construed as applied to, being interpretive of, or in any manner having reference to the term ''surplus'' in the Colorado River Compact.

(c) ''Net inflow to Lake Mead,'' as used in Article III(3) (b)(iv) and (c)(iii) herein, represents the annual inflow to Lake Mead in excess of losses from Lake Mead.

(d) ''Available capability,'' used in Article II(4) herein, means that portion of the total capacity of the powerplant that is physically available for generation.

[FR Doc. 02–688 Filed 1–14–02; 8:45 am]
BILLING CODE 4310–MN–M

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

[Nevada, INT–DES 01–43]

Implementation Agreement, Inadvertent Overrun and Payback Policy and Related Federal Actions, Colorado River in the Lower Basin

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of availability of and public hearing for a draft environmental impact statement (DEIS).

SUMMARY: Pursuant to the National Environmental Policy Act (NEPA) of 1969, as amended, and the Council on Environmental Quality's Regulations for Implementing the Procedural Provisions of NEPA, the Bureau of Reclamation (Reclamation) has issued a DEIS on the proposed execution of an Implementation Agreement (IA) that would commit the Secretary of the Interior (Secretary) to make Colorado River water deliveries in accordance with the terms and conditions of the IA to enable certain southern California water agencies to implement the proposed Quantification Settlement Agreement (QSA). (The QSA is an agreement in principle among several southern California water agencies. It establishes a framework of conservation measures and water transfers within southern California for up to 75 years. It provides a substantial mechanism for California to reduce its diversions of Colorado River water in normal years to its 4.4 million acre-feet per year apportionment.) The proposed Federal action includes the following components: Execution of an IA, wherein the Secretary agrees to changes in the amount and/or location of deliveries of Colorado River water that are necessary to implement the QSA; adoption of an Inadvertent Overrun and Payback Policy (IOP), which establishes requirements for payback of inadvertent overuse of Colorado River water by Colorado River water users in Arizona, California, and Nevada; and implementation of biological conservation measures to offset potential impacts from the proposed action that could occur to federally listed fish and wildlife species. Information on public hearings may be found below in the **DATES** section.

DATES: A 60-day public review and comment period begins with the filing of the draft EIS with the Environmental Protection Agency. Written comments must be received no later than March 12, 2002 [*see* **ADDRESSES,** below].

Public hearings are scheduled to be held to receive written or verbal comments about the DEIS from interested organizations and individuals, on the adequacy with which the EIS identifies and describes the potential impacts associated with approving and implementing the proposed Federal action. The hearings will be held at the following times and locations:

- February 5, 2002, VFW Hall, 148 N. First St., Blythe, California, 6:30–9:30 p.m.
- February 6, 2002, Henderson Convention Center, 200 S. Water St., Henderson, Nevada, 2:00–5:00 p.m.
- February 7, 2002, Marriott Hotel (Downtown), 333 S. Figueroa St., Los Angeles, California, 2:00–5:00 p.m.

ADDRESSES: Send written comments to Mr. Bruce Ellis, Chief, Environmental Resources Management Division, Bureau of Reclamation, Phoenix Area Office (PXAO–1500), PO Box 81169, Phoenix, AZ 85069–1169; fax number (602) 216–4006.

A copy of the draft EIS is available upon request from Ms. Janice Kjesbo, Bureau of Reclamation, Phoenix Area Office (PXAO–1500), PO Box 81169,

Phoenix, AZ 85069–1169, telephone (602) 216–3864, faxogram (602) 216–4006. A copy of the draft EIS is also available for public inspection and review at the libraries listed under Supplementary Information below.

FOR FURTHER INFORMATION CONTACT: Questions regarding the draft EIS should be directed to Mr. Ellis, at the address provided above, telephone (602) 216–3854.

SUPPLEMENTARY INFORMATION: The Secretary, pursuant to the Boulder Canyon Project Act of 1928 and *Arizona* v. *California* 1964 Supreme Court Decree (376 U.S. 340), proposes to take Federal actions necessary to support the implementation of the QSA. The purpose of the Federal action is to facilitate implementation of the QSA, which incorporates contractual agreements necessary for California to reduce its use of Colorado River water. The need for the Federal action is to assist California's efforts to reduce its use of Colorado River water to its 4.4 million acre-feet apportionment in a normal year. This reduction in California's use of Colorado River water would benefit the entire Colorado River Basin.

The IA, IOP, and Related Federal Actions DEIS describes the potential environmental impacts of the three components that make up the proposed Federal action. Because the purpose of the proposed action is to provide Federal approval of an agreement negotiated among the California parties, no other action alternatives to the IA are considered in the DEIS. Similarly, the biological conservation measures proposed to be implemented under the proposed action relate specifically to the water transfers specified in the IA and QSA. These measures were developed and agreed to by Reclamation and the U.S. Fish and Wildlife Service (FWS) in response to an August 2000 Reclamation Biological Assessment, and were incorporated into a FWS January 2001 Biological Opinion; no alternatives to the biological conservation measures are considered in the DEIS. With regard to the IOP, in response to scoping comments received, Reclamation developed an alternative that would eliminate the forgiveness of payment aspect of the proposed policy. This alternative has been evaluated and is described in the DEIS.

Copies of the draft EIS are available for public inspection and review at the following locations:

- Department of the Interior, Natural Resources Library, 1849 C St., NW, Washington, DC 20240
- Bureau of Reclamation, Denver Office Library, Building 67, Room 167, Denver Federal Center, 6th and Kipling, Denver, CO 80225
- Bureau of Reclamation, Lower Colorado Regional Office, Nevada Highway and Park St., Boulder City, NV 89006
- Bureau of Reclamation, Phoenix Area Office, 2222 W. Dunlap Ave., Suite 100, Phoenix, AZ 85021
- Bureau of Reclamation, Southern California Area Office, 27710 Jefferson Ave., Suite 201, Temecula, CA 92590–2628
- Bureau of Reclamation, Yuma Area Office, 7301 Calle Agua Salada, Yuma, AZ 85364–9763
- Bureau of Reclamation, Upper Colorado Regional Office, 125 S. State St., Salt Lake City, UT 84138–1102
- Lake Havasu City Library, 1787 McCulloch Blvd. North, Lake Havasu City, AZ 86403
- Mohave County Library, 1170 Hancock Rd., Bullhead City, AZ 86442
- Parker Public Library, 1001 S. Navajo Ave., Parker, AZ 85344
- Phoenix Public Library (Burton Barr Central), 1221 N. Central Ave., AZ 85004
- Yuma County Library, 350 S. 3rd Ave., Yuma, AZ 85364
- Los Angeles Central Library, 630 W. 5th St., Los Angeles, CA 90071
- Palo Verde Valley Library, 125 W. Canslor Way, Blythe, CA 92225
- San Bernardino County Library, 1111 Bailey Ave., Needles, CA 92363
- San Diego Central Library, 820 E St., San Diego, CA 92101
- Henderson District Public Library, 280 South Water St., Henderson, NV 89015
- Salt Lake City Public Library, 209 E 500 S, Salt Lake City, UT 84111

Written comments received by Reclamation become part of the public record associated with this action. Accordingly, Reclamation makes these comments, including names and home addresses of respondents, available for public review. Individual respondents may request that we withhold their home address from public disclosure, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold a respondent's identity from public disclosure, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public disclosure in their entirety.

Dated: December 28, 2001.

Kenneth D. Naser,

Director, Office of Environmental, Policy and Compliance.

[FR Doc. 02–689 Filed 1–14–02; 8:45 am]

BILLING CODE 4310–MN–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Change in Discount Rate for Water Resources Planning

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of change.

SUMMARY: The Water Resources Planning Act of 1965 and the Water Resources Development Act of 1974 require an annual determination of a discount rate for Federal water resources planning. The discount rate for Federal water resources planning for fiscal year 2002 is 6.125 percent. Discounting is to be used to convert future monetary values to present values.

DATES: This discount rate is to be used for the period October 1, 2001, through and including September 30, 2002.

FOR FURTHER INFORMATION CONTACT: James Handlon, Economist, Office of Policy, Washington, DC 20240; telephone: (202) 513–0603.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the interest rate to be used by Federal agencies in the formulation and evaluation of plans for water and related land resources is 6.125 percent for fiscal year 2002.

This rate has been computed in accordance with section 80(a), Pub. L. 93–251 (88 Stat. 34) and 18 CFR 704.39, which: (1) Specify that the rate shall be based upon the average yield during the preceding fiscal year on interest-bearing marketable securities of the United States which, at the time the computation is made, have terms of 15 years or more remaining to maturity (average yield is rounded to nearest one-eighth percent); and (2) Provide that the rate shall not be raised or lowered more than one-quarter of 1 percent for any year. The Treasury Department calculated the specified average to be 5.654 percent. Rounding this average yield to the nearest one-eighth percent is 5.625 percent, which exceeds the permissible one-quarter of 1 percent change from fiscal year 2001 to 2002. Therefore, the change is limited to one-quarter of 1 percent.

The rate of 6.125 percent shall be used by all Federal agencies in the formulation and evaluation of water and

related land resources plans for the purpose of discounting future benefits and computing costs or otherwise converting benefits and costs to a common time basis.

Dated: December 13, 2001.

Elizabeth Cordova-Harrison,

Deputy Director, Office of Policy.

[FR Doc. 02–925 Filed 1–15–02; 8:45 am]

BILLING CODE 4310–MN–P

INTERNATIONAL TRADE COMMISSION

[USITC SE–02–002]

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: United States International Trade Commission.

TIME AND DATE: January 22, 2002 at 2 p.m.

PLACE: Room 101, 500 E Street SW., Washington, DC 20436, Telephone: (202) 205–2000.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. *Agenda for future meeting:* None.
2. Minutes.
3. Ratification List.
4. Inv. Nos. 701–TA–409–412 and 731–TA–909 (Final) (Low Enriched Uranium from France, Germany, the Netherlands, and the United Kingdom)—briefing and vote. (The Commission is currently scheduled to transmit its determination and Commissioners' opinions to the Secretary of Commerce on January 28, 2002.)
5. *Outstanding action jackets:* None.

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting. Earlier announcement of this meeting was not possible.

Issued: January 10, 2002.

By order of the Commission.

Marilyn R. Abbott,

Acting Secretary.

[FR Doc. 02–1108 Filed 1–11–02; 1:19 pm]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration

By Notice dated July 13, 2001, and published in the **Federal Register** on July 23, 2001 (66 FR 38323), Abbott Laboratories, DBA Knoll Pharmaceutical Company, 30 North Jefferson Road, Whippany, New Jersey 07981, made application to the Drug Enforcement Administration to be registered as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Dihydromorphine (9145)	I
Hydromorphone (9150)	II

The firm plans to produce bulk product and finished dosage units for distribution to its 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 Abbott Laboratories to manufacture the listed controlled substances is consistent with the public interest at this time. DEA has investigated Abbott Laboratories to ensure that the company's registration is consistent with the public interest. This investigation has included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 823 and 28 CFR 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 classes of controlled substances listed above is granted.

Dated: January 4, 2002.

Laura M. Nagel,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 02–935 Filed 1–14–02; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Office of Justice Programs

[OJP(OJP)–1340]

Notice of Intent To Prepare an Environmental Impact Statement (EIS) and Environmental Impact Report (EIR) for the Alameda County Government Center, Including a New Juvenile Justice Facility in the City of Dublin, Alameda County, California

AGENCY: Office of Justice Programs, Justice.

ACTION: Notice of intent (NOI).

SUMMARY: Alameda County (California) proposes to approve a master plan and develop a government center in the East County area, specifically in the City of Dublin, California. The government center is proposed to include a courthouse (15 adult courts), 250,000 square feet of County offices, parking facilities, related site improvements, and a new Juvenile Justice facility with 420 beds, juvenile courts, administration, and associated support facilities (approximately 400,000 square feet total). The Juvenile Justice Facility component of the government center is proposed in response to serious shortcomings in the capability of the existing facility located in San Leandro, California to serve existing and future needs of children in the County. The government center would be developed on a 40-acre County-owned site located at the northern terminus of Hacienda Drive, bounded by Gleason Drive on the south, Arnold Road on the west, Broder Blvd. on the north, and Madigan Avenue on the east. The proposed Alameda County Juvenile Justice project would be funded in part by federal grant monies disbursed by the California Board of Corrections. These funds total $33,165,000, and are part of the State's allocation from the Violent Offender Incarceration and Truth-in-Sentencing (VOI/TIS) Incentive Grant Program. The County would provide additional funding from bonds, certificates of participation, and the general fund. The total cost for the Juvenile Justice Facility is estimated to be approximately $177,000,000.

The Department of Justice, the California Board of Corrections and Alameda County are preparing a joint Environmental Impact Statement and Environmental Impact Review (EIS/EIR) document in order to satisfy the requirements of the National Environmental Policy Act (NEPA) and the California Environmental Quality Act (CEQA) concurrently. The U.S. Department of Justice is the lead federal agency under NEPA for the preparation of the EIS/EIR and the California Board of Corrections will be preparing the EIS/EIR under a provision of NEPA that allows an agency of statewide jurisdiction with responsibility for the proposed action (pursuant to the VOI/TIS grant) to prepare an EIS. Alameda County will be the lead agency under CEQA for the preparation of the EIS/EIR for the master plan for the government center as well as the Juvenile Justice Facility.

DATES: Public scoping meetings will be held in the City of Dublin, County of Alameda, California, within thirty days

of the date of this publication. In accordance with the U.S. Department of Justice, Office of Justice Programs, Corrections Programs Office, Program Guidance on Environmental Protection Requirements, a notice will be published in a non-legal section of at least two editions of a newspaper of general circulation in the area of the proposed action announcing the date, time, and location of the meeting as well as briefly summarizing its purpose.

The public, as well as Federal, State, and local agencies are encouraged to participate in the scoping meetings. Comments may also be submitted in writing, identifying relevant environmental and socioeconomic issues to be addressed in this environmental analysis. Comments and information should be mailed to Ms. Jill Young of the Department of Justice or Mr. Michael Houghtby of the California Board of Corrections at the addresses listed below. Requests to be placed on the mailing list for announcements and the Draft EIS/EIR should also be sent to Ms. Jill Young or Mr. Michael Houghtby.

FOR FURTHER INFORMATION CONTACT: Ms. Jill Young, Environmental Coordinator, Department of Justice, Office of Justice Programs, Corrections Programs Office, 810 7th Street, NW, Washington, DC 20531, Telephone (202) 353–7302, Fax (202) 307–2019, or contact Mr. Michael Houghtby, Field Representative, State of California Board of Corrections, Corrections Planning and Programs Division, 600 Bercut Dr, Sacramento, CA 95814, Telephone (916) 322–7085; Fax (916) 445–5796.

SUPPLEMENTARY INFORMATION: The proposed Juvenile Justice Facility is intended to replace the existing Alameda County Juvenile Hall, which is located in the hills of San Leandro, Alameda County, California. The existing facility was constructed in various phases with most structures dating from the 1950s to 1970s. It includes secure detention at the Juvenile Hall facility for 299 detainees, camps for low security detention, and the Chabot Community Day Center. The detention facility is constructed on a steep hillside in close proximity to the Hayward fault, an active earthquake fault with a potential for causing severe ground shaking with an estimated 32% chance of a major seismic event during the next 30 years. In addition, these facilities, which routinely are overcrowded, have or will soon exceed their useful, economic life and are in need of replacement, based on operational and architectural/engineering evaluations. Therefore, the facility does not meet the present or future needs of the residents, staff or community and must be replaced.

A juvenile justice system master plan completed in 1998 determined that the County needed to construct a new juvenile detention facility that would house up to 540 youth at any given time. The facility would respond to the approximately 10,000 annual referrals for intake, of which 6,000 are admitted for detention in a given year. The estimated total number of beds required for a new detention facility was based on historical trends and projections, multiplied by a factor of 1.2 to account for peaking, classification and operational needs, so that the County could house youth in a facility that reflects the detainees' gender, age, and security risk, to avoid crowding, and to provide for long-term planning. The County Board of Supervisors has since revised the project to include 420 beds, with a possible capacity of 450 beds. The environmental effects of this project and several alternatives will be evaluated in the EIS/EIR.

Alternatives: The EIS/EIR will consider the No Project/No Action Alternative, as required by CEQA and NEPA. Under such a scenario, the existing Juvenile Hall facility, courts, and County offices would remain in their present locations and no Master Plan would be approved for the Dublin site.

The EIS/EIR will also discuss and evaluate certain other alternatives, which may include: an alternative location for the Juvenile Justice Facility, including development of a replacement facility at the existing site in San Leandro; development of a split campus with part of the project in Dublin and part in San Leandro; or other locations to be determined during the environmental review process.

The EIS/EIR will also consider variations in the project size, such as a reduced or increased number of beds at the Juvenile Justice facility, or a reduced or increased number of courts at the East County Hall of Justice.

The EIS/EIR will also discuss policy alternatives that are under consideration, such as increased community placement and monitoring of youth offenders.

Dated: January 10, 2002.

Deborah Daniels,

Assistant Attorney General, Office of Justice Programs.

[FR Doc. 02–999 Filed 1–14–02; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF JUSTICE

Office of Justice Programs

[OJP(OJP)–1341]

Notice of Intent To Prepare an Environmental Impact Statement/Environmental Impact Report (EIS/EIR) for the Construction and Operation of a Juvenile Justice Campus in Fresno County, California

AGENCY: Office of Justice Programs, Justice.

ACTION: Notice of Intent (NOI).

SUMMARY: Pursuant to the requirements of the National Environmental Policy Act (NEPA), codified at 42 U.S.C. 4321 *et seq.*, the U.S. Department of Justice, Office of Justice Programs, Corrections Program Office (OJP/CPO) announces the Notice of Intent (NOI) for the preparation of an EIS/EIR for the Construction and Operation of a Juvenile Justice Campus (JJC) in Fresno County, California. The construction and operation of the JJC is being proposed by Fresno County which is applying for OJP/CPO grants funds obtained by the California Board of Corrections (BOC) through the Violent Offender Incarceration/Truth-in-Sentencing (VOI/TIS) Incentive Grants Program. This project is subject to NEPA review because it may be funded in part with federal funding available under the VOI/TIS Grant Program. The EIS/EIR is being prepared as a joint document so as to satisfy the requirements of the California Environmental Quality Act (CEQA) in addition to NEPA.

DATES: During the preparation of the draft EIS/EIR, there will be opportunities for public involvement in order to determine the issues to be examined. Public scoping meetings will be held at the Fresno County Plaza, 8th floor, Conference Room ''A'', 2220 Tulare Street, Fresno, CA 93721, within thirty days of the date of this publication, to solicit input on the scope of the EIS/EIR to be conducted, and to identify significant issues related to the proposed action. Although the purpose of the agency Scoping Meeting will be to gather comments from interested and affected agencies, the public is invited to attend. Maps and information on the proposed action will be available beginning at 6:00 PM immediately prior to the formal portion of the meeting. The meeting location, date, and time will be well publicized and arranged to allow for the public as well as interested agencies and organizations to attend. The scoping meeting is being held for individuals to formally express their views on the proposed action and to

identify those environmental issues or concerns with respect to the implementation of the proposed action and its alternatives so that these issues can be analyzed in depth in the draft EIS/EIR. Community input will be solicited throughout this process, and community comments will be incorporated into the decision-making process.

FOR FURTHER INFORMATION CONTACT: Public notice will be given concerning the availability of the draft EIS/EIR for public review and comment. Questions concerning the proposed action and the draft EIS/EIR may be directed to: Jill Young, Environmental Coordinator, Corrections Program Office, Office of Justice Programs, U.S. Department of Justice, 810 7th Street, NW, Washington, DC 20531, Telephone: 202.307–3914, Telefacsimile: 202.307–2019, or Michael A. Houghtby, Field Representative, State of California Board of Correction, Corrections Planning and Programs Division, 600 Bercut Drive, Sacramento, CA 95814, Telephone: 916.322.7085, Telefacsimile: 916.445.5796.

SUPPLEMENTARY INFORMATION:

Proposed Action

Fresno County is proposing to build and operate the JJC to better serve the community and the existing and future juvenile justice populations. The need for this action is based on the conditions of existing juvenile justice facilities, additional space requirements needed to accommodate projected growth rates in the youth population that will enter the juvenile justice system, and the County's desire to increase efficiency by concentrating all main functions of the juvenile justice system at a site close to downtown Fresno. The Proposed Action would include the acquisition of an approximately 210-acre site that would be capable of accommodating up to 1,400 beds in addition to the related functions that would be located on the campus. Related functions would include courts, offices, medical and mental health facilities, probation department offices, group homes, and related schooling, recreational, and community based programs. The Proposed Action would also include amending the Fresno County General Plan by redesignating the preferred site to Public Facility and rezoning to the AL–20 Zoning District.

Alternatives

The draft EIS/EIR will address the potential impacts of the ''no action'' alternative and the construction and operation of the JJC at alternative sites. Practicable alternative sites have been identified by Fresno County that include: Site #1b located at the northeast corner of W. Jensen and S. Grantland Avenues; Site #3 located at the northwest corner of the intersection of E. Jensen and S. Fowler Avenues; and Site #6 (the preferred site) located at the southwest quadrant of Highway 99 and E. American Avenue.

Dated: January 10, 2002.

Deborah J. Daniels,

Assistant Attorney General, Office of Justice Programs.

[FR Doc. 02–1000 Filed 1–14–02; 8:45 am]

BILLING CODE 4410–18–P

LEGAL SERVICES CORPORATION

Sunshine Act Meeting of the Board of Directors

TIME AND DATE: The Board of Directors of the Legal Services Corporation will meet on January 19, 2002. The meeting will begin at 10:15 a.m. and continue until conclusion of the Board's agenda.

LOCATION: Hilton Alexandria Mark Center, 5000 Seminary Road, Alexandria, Virginia.

STATUS OF MEETING: Open, except that a portion of the meeting may be closed pursuant to a vote of the Board of Directors to hold an executive session. At the closed session, the Corporation's General Counsel will report to the Board on litigation to which the Corporation is or may become a party, and the Board may act on the matters reported. The closing is authorized by the relevant provisions of the Government in the Sunshine Act [5 U.S.C. 552b(c) (10)] and the corresponding provisions of the Legal Services Corporation's implementing regulation [45 CFR 1622.5(h)]. A copy of the General Counsel's Certification that the closing is authorized by law will be available upon request.

MATTERS TO BE CONSIDERED:

Open Session

1. Approval of agenda.
2. Approval of the minutes of the Board's meeting of November 17, 2001.
3. Approval of the minutes of the Executive Session of the Board's meeting of November 17, 2001.
4. Chairman's Report.
5. Members' Reports.
6. Acting Inspector General's Report.
7. President's Report.
8. Consider and act on the report of the Board's Performance Review Committee.
9. Consider and act on the report of the Board's Committee on Provision for the Delivery of Legal Services.
10. Consider and act on the report of the Board's Operations and Regulations Committee.
11. Consider and act on the report of the Board's Finance Committee.
12. Panel presentation by the African American Project Directors discussing diversity issues within the LSC community and recognizing LSC for its diversity initiative.
13. Consider and act on changes to the Board's 2002 meeting schedule.

Closed Session

14. Briefing [1] by the Acting Inspector General on the activities of the Office of Inspector General.
15. Consider and act on the Office of Legal Affairs' report on potential and pending litigation involving LSC.

Open Session

16. Consider and act on other business.
17. Public Comment.

Contact Person for Information: Victor M. Fortuno, Vice President for Legal Affairs, General Counsel & Corporate Secretary, at (202) 336–8800.

Special Needs: Upon request, meeting notices will be made available in alternate formats to accommodate visual and hearing impairments. Individuals who have a disability and need an accommodation to attend the meeting may notify Elizabeth S. Cushing, at (202) 336–8800.

Dated: January 11, 2002.

Victor M. Fortuno,

Vice President for Legal Affairs, General Counsel & Corporate Secretary.

[FR Doc. 02–1179 Filed 1–11–02; 3:53 pm]

BILLING CODE 7050–01–P

LEGAL SERVICES CORPORATION

Sunshine Act Meeting of the Board of Directors Finance Committee

Time and Date: The Finance Committee of the Legal Services Corporation Board of Directors will meet on January 19, 2002 The meeting will begin at 9 a.m. and continue until the Committee concludes its agenda.

Location: Hilton Alexandria Mark Center, 5000 Seminary Road, Alexandria, Virginia.

Status of Meeting: Open.

Matters To Be Considered

1. Approval of agenda.

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[1] Any portion of the closed session consisting solely of staff briefings does not fall within the Sunshine Act's definition of the term ''meeting'' and, therefore, the requirements of the Sunshine Act do not apply to any such portion of the closed session. 5 U.S.C. 552(b)(a)(2) and (b). See also 45 C.F.R. 1622.2 & 1622.3.

2. Approval of the minutes of the Committee's meeting of September 8, 2001.
3. Office of Inspector General's presentation of the Corporation's FY '01 annual audit.
4. Review and adoption of FY '02 operating budget for the Corporation.
5. Review of expenses through November 30, 2001.
6. Consider and act on conforming amendments to LSC's 403(b) plan.
7. Consider and act on other business.
8. Public comment.

Contact Person for Information: Victor M. Fortuno, Vice President for Legal Affairs, General Counsel, & Corporate Secretary, at (202) 336–8800.

Special Needs: Upon request, meeting notices will be made available in alternate formats to accommodate visual and hearing impairments. Individuals who have a disability and need an accommodation to attend the meeting may notify Elizabeth S. Cushing, at (202) 336–8800.

Dated: January 11, 2002.

Victor M. Fortuno,

Vice President for Legal Affairs, General Counsel, & Corporate Secretary.

[FR Doc. 02–1180 Filed 1–11–02; 3:53 pm]

BILLING CODE 7050–01–P

LEGAL SERVICES CORPORATION

Sunshine Act Meeting of the Board of Directors Operations & Regulations Committee

Time and Date: The Operations and Regulations Committee of the Legal Services Corporation Board of Directors will meet on January 18, 2002. The meeting will begin at 2 p.m. and continue until the Committee concludes its agenda.

Location: Hilton Alexandria Mark Center, 5000 Seminary Road, Alexandria, Virginia.

Status of Meeting: Open.

Matters To Be Considered

1. Approval of agenda.
2. Approval of the minutes of the Committee's meeting of November 16, 2001.
3. Staff report on the status of Current Rulemaking: 45 CFR Part 1626 (Restrictions on Legal Assistance to Aliens); 45 CFR Part 1611 (Eligibility); and 45 CFR Part 1639 (Welfare Reform).
4. Staff report on the status of the activities of the Regulations Review Task Force.
5. A report by David de la Tour on the Office of Compliance & Enforcement's planned activities in 2002.
6. Consider and act on other business.
7. Public comment.

Contact Person for Information: Victor M. Fortuno, Vice President for Legal Affairs, General Counsel & Corporate Secretary, at (202) 336–8800.

Special Needs: Upon request, meeting notices will be made available in alternate formats to accommodate visual and hearing impairments. Individuals who have a disability and need an accommodation to attend the meeting may notify Elizabeth S. Cushing, at (202) 336–8800.

Dated: January 11, 2002.

Victor M. Fortuno,

Vice President for Legal Affairs, General Counsel & Corporate Secretary.

[FR Doc. 02–1181 Filed 1–11–02; 3:53 pm]

BILLING CODE 7050–01–P

LEGAL SERVICES CORPORATION

Sunshine Act Meeting of the Board of Directors Ad Hoc Committee on the Performance Review of the Acting Inspector General

Time and Date: The Ad Hoc Committee on Performance Review of the Acting Inspector General of the Legal Services Corporation's Board of Directors will meet on January 18, 2002. The meeting will begin at 9 a.m. and continue until conclusion of the committee's agenda.

Location: Hilton Alexandria Mark Center, 5000 Seminary Road, Alexandria, Virginia.

Status of Meeting: Except for approval of the committee's agenda and any miscellaneous business that may come before the committee, the meeting will be closed to the public. The closing is authorized by the relevant provisions of the Government in the Sunshine Act [5 U.S.C. 552b(c)(2) & (6)] and the corresponding provisions of the Legal Services Corporation's implementing regulation [45 CFR 1622.5(a) & (e)]. A copy of the General Counsel's Certification that the closing is authorized by law will be available upon request.

Matters To Be Considered

Open Session:

1. Approval of agenda.
2. Approval of the minutes of the Committee's meeting of November 17, 2001.

Closed Session:

3. Consider and act on recommendation to the Board of Directors on the annual evaluation of the Acting Inspector General for FY '01.

Open Session:

4. Consider and act on other business.
5. Public comment.

Contact Person for Information: Victor M. Fortuno, Vice President for Legal Affairs, General Counsel & Corporate Secretary, at (202) 336–8800.

Special Needs: Upon request, meeting notices will be made available in alternate formats to accommodate visual and hearing impairments. Individuals who have a disability and need an accommodation to attend the meeting may notify Elizabeth S. Cushing at (202) 336–8800.

Dated: January 11, 2002.

Victor M. Fortuno,

Vice President for Legal Affairs, General Counsel & Corporate Secretary.

[FR Doc. 02–1182 Filed 1–11–02; 3:54 pm]

BILLING CODE 7050–01–P

LEGAL SERVICES CORPORATION

Sunshine Act Meeting of the Board of Directors Committee on Provision for the Delivery of Legal Services

Time and Date: The Committee on Provision for the Delivery of Legal Services of the Legal Services Corporation Board of Directors will meet on January 18, 2002. The meeting will begin at 10 a.m. and continue until the Committee concludes its agenda.

Location: Hilton Alexandria Mark Center, 5000 Seminary Road, Alexandria, Virginia.

Status of Meeting: Open.

Matters To Be Considered

1. Approval of agenda.
2. Approval of the minutes of the Committee's meeting of September 7, 2001.
3. A Panel Presentation by Anh Tu, Michelle DeBord (Executive Director, Mid-Pennsylvania Legal Services), Larry Harley (Executive Director, Southwest Virginia Legal Aid Society), Martin Wegbreit (Managing Attorney, Southwest Virginia Legal Aid Society), Alma Jones (Executive Director, Legal Services of North Louisiana), and Ramon Arias (Executive Director, Bay Area Legal Aid) on the Problems Experienced by Programs and Executive Directors Once the Technical Aspects of ''Merger'' are Completed and the Real Work of Developing and Sustaining a High-Quality Legal Services Program Begins.
4. A report by Michael Genz and Robert Gross on the progress of the Programs Office's performance in terms of the goals outlined in the ''Strategic Directions.''

5. A report by Reginald Haley and Barbara Donnelly on the action agenda that LSC will pursue in 2002 as an outgrowth of the Hershey Client Conference.

6. A report by Patricia Hanrahan on the action agenda that LSC will pursue in 2002 as an outgrowth of our 2001 conversations on Diversity and Leadership.

7. Consider and act on other business.

8. Public comment.

Contact Person for Information: Victor M. Fortuno, Vice President for Legal Affairs, General Counsel & Secretary of the Corporation, at (202) 336–8800.

Special Needs: Upon request, meeting notices will be made available in alternate formats to accommodate visual and hearing impairments. Individuals who have a disability and need an accommodation to attend the meeting may notify Elizabeth S. Cushing, at (202) 336–8800.

Dated: January 11, 2002.

Victor M. Fortuno,

Vice President for Legal Affairs, General Counsel & Corporate Secretary.

[FR Doc. 02–1183 Filed 1–11–02; 3:54 pm]

BILLING CODE 7050–01–P

NATIONAL CREDIT UNION ADMINISTRATION

Notice of Meeting

TIME AND DATE: 10 a.m., Thursday, January 17, 2002.

PLACE: Board Room, 7th Floor, Room 7047, 1775 Duke Street, Alexandria, VA 22314–3428.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Quarterly Insurance Fund Report.

2. Requests from three (3) Federal Credit Unions to Convert to Community Charters.

3. Wisconsin Member Business Loan Rule.

4. Request from a Corporate Federal Credit Union for a Field of Membership Amendment.

FOR FURTHER INFORMATION CONTACT: Becky Baker, Secretary of the Board, telephone 703–518–6304.

Becky Baker,

Secretary of the Board.

[FR Doc. 02–1059 Filed 1–10–02; 4:43 pm]

BILLING CODE 7535–01–M

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Nuclear Regulatory Commission (NRC).

ACTION: Notice of pending NRC action to submit an information collection request to OMB and solicitation of public comment.

SUMMARY: The NRC is preparing a submittal to OMB for review of continued approval of information collections under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

Information pertaining to the requirement to be submitted:

1. *The title of the information collection:* 10 CFR part 36—Licenses and Radiation Safety Requirements for Large Irradiators.

2. *Current OMB approval number:* 3150–0158.

3. *How often the collection is required:* On occasion. It is estimated that there are approximately 3 NRC and 8 Agreement State reports submitted annually.

4. *Who is required or asked to report:* Irradiator licensees licensed by NRC or an Agreement State.

5. *The number of annual respondents:* 77 (22 NRC licensees and 55 Agreement State licensees).

6. *The number of hours needed annually to complete the requirement or request:* 35,975 (10,277 hours for NRC licensees [10,087 recordkeeping + 190 reporting] and 25,698 hours for Agreement State licensees [25,218 recordkeeping + 480 reporting]) or 467 hours per licensee.

7. *Abstract:* 10 CFR part 36 contains requirements for the issuance of a license authorizing the use of sealed sources containing radioactive materials in irradiators used to irradiate objects or materials for a variety of purposes in research, industry, and other fields. The subparts cover specific requirements for obtaining a license or license exemption, design and performance criteria for irradiators; and radiation safety requirements for operating irradiators, including requirements for operator training, written operating and emergency procedures, personnel monitoring, radiation surveys, inspection, and maintenance. Part 36 also contains the recordkeeping and reporting requirements that are necessary to ensure that the irradiator is being safely operated so that it poses no danger to the health and safety of the general public and the irradiator employees.

Submit, by March 18, 2002, comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?

2. Is the burden estimate accurate?

3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?

4. How can the burden of the information collection be minimized, including the use of automated collection techniques or other forms of information technology?

A copy of the draft supporting statement may be viewed free of charge at the NRC Public Document Room located at One White Flint North, 11555 Rockville Pike, Rockville, MD. OMB clearance requests are available at the NRC worldwide Web site, *http://www.nrc.gov/NRC/PUBLIC/OMB/index.html.* The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions about the information collection requirements may be directed to the NRC Clearance Officer, Brenda Jo. Shelton, U.S. Nuclear Regulatory Commission, T–6 E 6, Washington, DC 20555–0001, by telephone at (301) 415–7233, or by Internet electronic mail at *infocollects@NRC.GOV.*

Dated at Rockville, Maryland, this 8th day of January, 2002.

For the Nuclear Regulatory Commission.

Brenda Jo. Shelton,

NFR Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 02–928 Filed 1–14–02; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Sunshine Act Meeting

DATES: Weeks of January 14, 21, 28, February 4, 11, 18, 2002.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of January 14, 2002

Tuesday, January 15, 2002

9:30 a.m.

Briefing on Status of Nuclear Materials Safety (Public Meeting) (Contact: Claudia Seelig, 301–415–7243)

This meeting will be webcast live at the Web address—*www.nrc.gov.*

Wednesday, January 16, 2002

9:30 a.m.
Discussion of Security Issues (Closed—Ex. 1)

Week of January 21, 2002—Tentative

Wednesday, January 23, 2002

9:30 a.m.
Discussion of Intragovernmental Issues (Closed—Ex. 9)

Week of January 28, 2002—Tentative

Tuesday, January 29, 2002

9:30 a.m.
Briefing on Status of Nuclear Reactor Safety (Public Meeting) (Contact: Mike Case, 301–415–1134)

This meeting will be webcast live at the Web address—*www.nrc.gov.*

Wednesday, January 30, 2002

9:25 a.m.
Affirmation Session (Public Meeting) (If needed)
9:30 a.m.
Briefing on Status of Office of the Chief Information Officer (OCIO) Programs, Performance, and Plans (Public Meeting) (Contact: Jackie Silber, 301–415–7330)

This meeting will be webcast live at the Web address—*www.nrc.gov.*
2 p.m.
Discussion of Intragovernmental Issues (Closed—Ex. 1 & 9)

Week of February 4, 2002—Tentative

Wednesday, February 6, 2002

9:25 a.m.
Affirmation Session (Public Meeting) (If needed)
9:30 a.m.
Briefing on Equal Employment Opportunity (EEO) Program (Public Meeting) (Contact: Irene Little, 301–415–7380)

Week of February 11, 2002—Tentative

There are no meetings scheduled for the Week of February 11, 2002.

Week of February 18, 2002—Tentative

Tuesday, February 19, 2002

2 p.m.
Meeting with the Advisory Committee on the Medical Uses of Isotopes (ACMUI) (Public Meeting) (Contact: Angela Williamson, 301–415–5030)

This meeting will be webcast live at the Web address—*www.nrc.gov.*

Wednesday, February 20, 2002

2:55 p.m.
Affirmation Session (Public Meeting) (If needed)
3 p.m.
Briefing on Status of Nuclear Waste Safety (Public Meeting) (Contact: Claudia Seelig, 301–415–7243)

This meeting will be webcast live at the Web address—*www.nrc.gov.*

*–The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (recording)—(301) 415–1292. Contact person for more information: David Louis Gamberoni (301) 415–1651.

* * * * *

Additional Information:

By a vote of 5–0 on January 7 and 8, the Commission determined pursuant to U.S.C. 552b(e) and § 9.107(a) of the Commission's rules that ''Discussion of Intragovernmental and Security Issues (Closed—Ex. 1 & 9),'' be held on January 9, 2002, and on less than one week's notice to the public.

By a vote of 5–0 on January 8 and 9, the Commission determined pursuant to U.S.C. 552b(e) and § 9.107(a) of the Commission's rules that ''Discussion of Security Issues (Closed—Ex. 1),'' be held on January 16, 2002, and on less than one week's notice to the public.

* * * * *

The NRC Commission Meeting Schedule can be found on the Internet at: *www.nrc.gov.*

* * * * *

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 (301–415–1969). In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to dkw@nrc.gov.

Dated: January 10, 2002.

David Louis Gamberoni,

Technical Coordinator, Office of the Secretary.

[FR Doc. 02–1069 Filed 1–11–02; 10:58 am]

BILLING CODE 7590–01–M

NUCLEAR REGULATORY COMMISSION

Notice of Extension of the Public Comment Period for the Draft Supplement to the Final Generic Environmental Impact Statement on Decommissioning of Nuclear Facilities

Notice is hereby given that the U.S. Nuclear Regulatory Commission (the Commission) has extended the public comment period for draft Supplement 1 to NUREG–0586, ''Final Generic Environmental Impact Statement on Decommissioning of Nuclear Facilities [GEIS],'' dealing with decommissioning of nuclear power reactors. The public comment period is extended to January 30, 2002.

The draft supplement to the GEIS is available electronically through the NRC's Public Electronic Reading Room (PERR) found on the Internet at the following web address: *http://www.nrc.gov/reading-rm.html.* From this site, the public can gain access to the NRC's Agencywide Document Access and Management Systems (ADAMS), which provides text and image files of NRC's public documents. The draft report can also be examined, or copied for a fee, at the NRC's Public Document Room found at One White Flint North, 11555 Rockville Pike (first floor), Rockville, MD. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, or 301–415–4737, or by e-mail to *pdr@nrc.gov.*

Any interested party may submit comments on the draft supplement to the GEIS for consideration by the NRC staff. To be certain of consideration, comments on the draft supplement to the GEIS and the proposed action must be received by January 30, 2002. Comments received after the due date will be considered if it is practical to do so, but the NRC staff is able to assure consideration only for comments received on or before this date. Written comments on the draft supplement to the GEIS should be sent to: Chief, Rules and Directives Branch, Division of Administrative Services, Mailstop T 6 D 59, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

Comments may be hand-delivered to the NRC at 11545 Rockville Pike, Rockville, Maryland, between 7:45 a.m. and 4:15 p.m. on Federal workdays. Comments may be submitted electronically to the NRC to the e-mail address *dgeis@nrc.gov.* All comments received by the NRC, including those made by Federal, State, and local agencies; Indian tribes; or other interested persons, will be accessible electronically through NRC's PERR link listed above, and can be examined, or copied for a fee, at the NRC's Public Document Room in Rockville, Maryland.

To ensure timely receipt of comments, electronic submittal of comments is preferred because of the extended times now being routinely encountered for the

safe processing and delivery of first class mail to the NRC. If comments are sent via first class mail, commenters are requested to contact Dr. Michael T. Masnik by telephone at (301) 415–1191, or through the NRC operator at (800) 368–5642, to inform him that comments have been submitted by mail.

FOR FURTHER INFORMATION, CONTACT: Dr. Michael T. Masnik, Environmental Section, License Renewal and Environmental Impacts Program, Division of Regulatory Improvement Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Dr. Masnik may be contacted at the aforementioned telephone number or e-mail address.

Dated at Rockville, Maryland, this 11th day of January, 2002.

For the Nuclear Regulatory Commission.

Andrew J. Kugler,

Acting Chief, Environmental Section, License Renewal and Environmental Impacts Program, Division of Regulatory Improvement Programs, Office of Nuclear Reactor Regulation.

[FR Doc. 02–1070 Filed 1–14–02; 8:45 am]

BILLING CODE 7590–01–P

PENSION BENEFIT GUARANTY CORPORATION

Required Interest Rate Assumption for Determining Variable-Rate Premium; Interest on Late Premium Payments; Interest on Underpayments and Overpayments of Single-Employer Plan Termination Liability and Multiemployer Withdrawal Liability; Interest Assumptions for Multiemployer Plan Valuations Following Mass Withdrawal

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of interest rates and assumptions.

SUMMARY: This notice informs the public of the interest rates and assumptions to be used under certain Pension Benefit Guaranty Corporation regulations. These rates and assumptions are published elsewhere (or can be derived from rates published elsewhere), but are collected and published in this notice for the convenience of the public. Interest rates are also published on the PBGC's Web site *(http://www.pbgc.gov).*

DATES: The required interest rate for determining the variable-rate premium under part 4006 applies to premium payment years beginning in January 2002. The interest assumptions for performing multiemployer plan valuations following mass withdrawal under part 4281 apply to valuation dates occurring in February 2002. The interest rates for late premium payments under part 4007 and for underpayments and overpayments of single-employer plan termination liability under part 4062 and multiemployer withdrawal liability under part 4219 apply to interest accruing during the first quarter (January through March) of 2002.

FOR FURTHER INFORMATION CONTACT: Harold J. Ashner, Assistant General Counsel, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005, 202–326–4024. (TTY/TDD users may call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to 202–326–4024.)

SUPPLEMENTARY INFORMATION:

Variable-Rate Premiums

Section 4006(a)(3)(E)(iii)(II) of the Employee Retirement Income Security Act of 1974 (ERISA) and § 4006.4(b)(1) of the PBGC's regulation on Premium Rates (29 CFR part 4006) prescribe use of an assumed interest rate (the ''required interest rate'') in determining a single-employer plan's variable-rate premium. The required interest rate is the ''applicable percentage'' (currently 85 percent) of the annual yield on 30-year Treasury securities for the month preceding the beginning of the plan year for which premiums are being paid (the ''premium payment year''). The yield figure is reported in Federal Reserve Statistical Releases G.13 and H.15.

The required interest rate to be used in determining variable-rate premiums for premium payment years beginning in January 2002 is 4.66 percent (*i.e.,* 85 percent of the 5.48 percent yield figure for December 2001).

The following table lists the required interest rates to be used in determining variable-rate premiums for premium payment years beginning between February 2001 and January 2002.

For premium payment years beginning in:	The required interest rate is:
February 2001	4.71
March 2001	4.63
April 2001	4.54
May 2001	4.80
June 2001	4.91
July 2001	4.82
August 2001	4.77
September 2001	4.66
October 2001	4.66
November 2001	4.52
December 2001	4.35
January 2002	4.66

Late Premium Payments; Underpayments and Overpayments of Single-Employer Plan Termination Liability

Section 4007(b) of ERISA and § 4007.7(a) of the PBGC's regulation on Payment of Premiums (29 CFR part 4007) require the payment of interest on late premium payments at the rate established under section 6601 of the Internal Revenue Code. Similarly, § 4062.7 of the PBGC's regulation on Liability for Termination of Single-employer Plans (29 CFR part 4062) requires that interest be charged or credited at the section 6601 rate on underpayments and overpayments of employer liability under section 4062 of ERISA. The section 6601 rate is established periodically (currently quarterly) by the Internal Revenue Service. The rate applicable to the first quarter (January through March) of 2002, as announced by the IRS, is 6 percent.

The following table lists the late payment interest rates for premiums and employer liability for the specified time periods:

From	Through	Interest rate (percent)
7/1/95	3/31/96	9
4/1/96	6/30/96	8
7/1/96	3/31/98	9
4/1/98	12/31/98	8
1/1/99	3/31/99	7
4/1/99	3/31/00	8
4/1/00	3/31/01	9
4/1/01	6/30/01	8
7/1/01	12/31/01	7
1/1/02	3/31/02	6

Underpayments and Overpayments of Multiemployer Withdrawal Liability

Section 4219.32(b) of the PBGC's regulation on Notice, Collection, and Redetermination of Withdrawal Liability (29 CFR part 4219) specifies the rate at which a multiemployer plan is to charge or credit interest on underpayments and overpayments of withdrawal liability under section 4219 of ERISA unless an applicable plan provision provides otherwise. For interest accruing during any calendar quarter, the specified rate is the average quoted prime rate on short-term commercial loans for the fifteenth day (or the next business day if the fifteenth day is not a business day) of the month preceding the beginning of the quarter, as reported by the Board of Governors of the Federal Reserve System in Statistical Release H.15 (''Selected Interest Rates''). The rate for the first quarter (January through March) of 2002

(*i.e.,* the rate reported for December 17, 2001) is 4.75 percent.

The following table lists the withdrawal liability underpayment and overpayment interest rates for the specified time periods:

From	Through	Interest rate (percent)
10/1/95	3/31/96	8.75
4/1/96	6/30/97	8.25
7/1/97	12/31/98	8.50
1/1/99	9/30/99	7.75
10/1/99	12/31/99	8.25
1/1/00	3/31/00	8.50
4/1/00	6/30/00	8.75
7/1/00	3/31/01	9.50
4/1/01	6/30/01	8.50
7/1/01	9/30/01	7.00
10/1/01	12/31/01	6.50
1/1/02	3/31/02	4.75

Multiemployer Plan Valuations Following Mass Withdrawal

The PBGC's regulation on Duties of Plan Sponsor Following Mass Withdrawal (29 CFR part 4281) prescribes the use of interest assumptions under the PBGC's regulation on Allocation of Assets in Single-employer Plans (29 CFR part 4044). The interest assumptions applicable to valuation dates in February 2002 under part 4044 are contained in an amendment to part 4044 published elsewhere in today's **Federal Register**. Tables showing the assumptions applicable to prior periods are codified in appendix B to 29 CFR part 4044.

Issued in Washington, DC, on this 10th day of January 2002.

Steven A. Kandarian,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 02–1137 Filed 1–14–02; 8:45 am]

BILLING CODE 7708–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35–27489]

Filings Under the Public Utility Holding Company Act of 1935, as Amended (''Act'')

January 9, 2002.

Notice is hereby given that the following filing has been made with the Commission pursuant to provisions of the Act and rules promulgated under the Act. All interested persons are referred to the declaration for complete statements of the proposed transaction summarized below. The declaration is available for public inspection through the Commission's Branch of Public Reference.

Interested persons wishing to comment or request a hearing on the declaration should submit their views in writing by February 4, 2002, to the Secretary, Securities and Exchange Commission, Washington, DC 20549–0609, and serve a copy on the relevant declarant at the address specified below. Proof of service (by affidavit or, in the case of an attorney at law, by certificate) should be filed with the request. Any request for hearing should identify specifically the issues of facts or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After February 4, 2002, the declaration, as filed or as amended, may be granted and/or permitted to become effective.

American Electric Power Company, Inc. (70–10021)

American Electric Power Company, Inc. (''AEP''), a registered holding company, 1 Riverside Plaza, Columbus, Ohio 43215, has filed a declaration under sections 6(a), 7, 32, and 33 of the Act and rules 53 and 54 under the Act. The Commission issued a notice of the declaration on January 2, 2002 (HCAR No. 27488) (''Prior Notice''). This supplemental notice replaces in its entirety the Prior Notice.

AEP proposes to organize and acquire all of the common stock or other equity interests of one or more subsidiaries (''Financing Subsidiary'' or ''Financing Subsidiaries'') for the purpose of effecting various financing transactions from time to time through June 30, 2004 involving the issuance and sale of up to an aggregate of $3.0 billion (cash proceeds to AEP) in any combination of common stock, preferred securities, debt securities, stock purchase contracts and stock purchase units, as well as its common stock issuable under the stock purchase contracts and stock purchase units. AEP further proposes that it may effect directly (i.e., without Financing Subsidiary) any transaction involving common stock, preferred securities, debt securities, stock purchase contracts or stock purchase units described here, provided that AEP shall not issue any secured indebtedness. AEP will not publicly issue unsecured indebtedness or preferred securities in this file unless it has maintained at least an investment grade corporate or senior unsecured debt rating by at least one nationally recognized rating agency. No Financing Subsidiary or Special Purpose Subsidiary, as defined below, shall acquire or dispose of, directly or indirectly, any interest in any utility asset, as that term is defined under the Act. Additionally, AEP's forecasted cash flow analysis and capitalization forecast for the next two years, which forecasts assume the issuance of $1 billion of common stock out of the $3.0 billion total financing authority requested herein, indicate that it is expected that AEP's common equity will remain above 30% of its consolidated capitalization for each of the next three years.

I. Financing Subsidiaries

AEP will acquire all of the outstanding shares of common stock or other equity interests of the Financing Subsidiary for amounts (inclusive of capital contributions that may be made from time to time to the Financing Subsidiary by AEP) aggregating up to 35% of the total capitalization of the Financing Subsidiary (i.e., the aggregate of the equity accounts and indebtedness of the Financing Subsidiary). An investment by AEP will not in any event be less than the minimum required by any applicable law. The business of the Financing Subsidiary will be limited to effecting financing transactions for AEP and its affiliates. In connection with these financing transactions, AEP will enter into one or more guarantee or other credit support agreements in favor of the Financing Subsidiary.

II. Preferred Securities

In connection with the issuance of preferred securities, AEP or the Financing Subsidiary proposes to organize one or more separate special purpose subsidiaries (''Special Purpose Subsidiary'' or ''Special Purpose Subsidiaries'') as any one or any combination of (a) a limited liability company under the Limited Liability Company Act (the ''LLC Act'') of the State of Delaware or other jurisdiction considered advantageous by AEP, (b) a limited partnership under the Revised Uniform Limited Partnership Act of the State of Delaware or other jurisdiction considered advantageous by AEP, (c) a business trust under the laws of the State of Delaware or other jurisdiction considered advantageous by AEP, or (d) any other entity or structure, foreign or domestic, that is considered advantageous by AEP. In the event that any Special Purpose Subsidiary is organized as a limited liability company, AEP or the Financing Subsidiary may also organize a second special purpose wholly-owned subsidiary under the General Corporation Law of the State of Delaware or other jurisdiction (''Investment Sub'') for the purpose of acquiring and holding Special Purpose

Subsidiary membership interests so as to comply with any requirement under the applicable LLC Act that a limited liability company have at least two members. In the event that any Special Purpose Subsidiary is organized as a limited partnership, AEP or the Financing Subsidiary also may organize an Investment Sub for the purpose of acting as the general partner of the Special Purpose Subsidiary and may acquire, either directly or indirectly through the Investment Sub, a limited partnership interest in the Special Purpose Subsidiary to ensure that the Special Purpose Subsidiary will at all times have a limited partner to the extent required by applicable law.

The respective Special Purpose Subsidiaries then will issue and sell to public or private investors at any time or from time to time unsecured preferred securities described below (''Preferred Securities''), with a specified par or stated value or liquidation preference per security.

AEP, the Financing Subsidiary and/or an Investment Sub will acquire all of the common stock or all of the general partnership or other common equity interests, as the case may be, of any Special Purpose Subsidiary for an amount not less than the minimum required by any applicable law and not exceeding 21% of the total equity capitalization from time to time of the Special Purpose Subsidiary (i.e., the aggregate of the equity accounts of the Special Purpose Subsidiary) (the aggregate of the investment by AEP, the Financing Subsidiary and/or an Investment Sub is referred to as the ''Equity Contribution''). The Financing Subsidiary may issue and sell to any Special Purpose Subsidiary, at any time or from time to time in one or more series, unsecured subordinated debentures, unsecured promissory notes or other unsecured debt instruments (''Note'' or ''Notes'') governed by an indenture or other document, and the Special Purpose Subsidiary will apply both the equity contribution made to it and the proceeds from the sale of Preferred Securities by it from time to time to purchase Notes. Alternatively, the Financing Subsidiary may enter into a loan agreement or agreements with any Special Purpose Subsidiary under which the Special Purpose Subsidiary will loan to the Financing Subsidiary (''Loan'' or ''Loans'') both the equity contribution to the Special Purpose Subsidiary and the proceeds from the sale of the Preferred Securities by the Special Purpose Subsidiary from time to time, and the Financing Subsidiary will issue to the Special Purpose Subsidiary Notes evidencing the borrowings.

AEP or the Financing Subsidiary also proposes to guarantee (''Guaranty'' or ''Guaranties'') (a) payment of dividends or distributions on the Preferred Securities of any Special Purpose Subsidiary if and to the extent the Special Purpose Subsidiary has funds legally available, (b) payments to the Preferred Securities holders of amounts due upon liquidation of the Special Purpose Subsidiary or redemption of the Preferred Securities of the Special Purpose Subsidiary, and (c) certain additional amounts that may be payable in respect of the Preferred Securities. AEP's credit would support any Guaranty by the Financing Subsidiary.

Each Note will have a term of up to 50 years. Prior to maturity, the Financing Subsidiary will pay interest only on the Notes at a rate equal to the dividend or distribution rate on the related series of Preferred Securities, which dividend or distribution rate may be either a fixed rate or an adjustable rate which may be reset by auction, remarketing, put or call features, a formula or formulae based upon certain reference rates and/or by other predetermined methods. Interest payments will constitute each respective Special Purpose Subsidiary's only income and will be used by it to pay dividends or distributions on the Preferred Securities issued by it and dividends or distributions on the common stock or the general partnership or other common equity interests of the Special Purpose Subsidiary. Dividend payments or distributions on the Preferred Securities will be made on a monthly or other periodic basis and must be made to the extent that the Special Purpose Subsidiary issuing the Preferred Securities has legally available funds and cash sufficient for these purposes. However, the Financing Subsidiary may have the right to defer payment of interest on any issue of Notes for up to five or more years. Each Special Purpose Subsidiary will have the parallel right to defer dividend payments or distributions on the related series of Preferred Securities for up to five or more years, provided that if dividends or distributions on the Preferred Securities of any series are not paid for up to 18 or more consecutive months, then the holders of the Preferred Securities of the series may have the right to appoint a trustee, special general partner or other special representative to enforce the Special Purpose Subsidiary's rights under the related Note and Guaranty. The dividend or distribution rates, payment dates, redemption and other similar provisions of each series of Preferred Securities will be substantially identical to the interest rates, payment dates, redemption and other provisions of the Note issued by the Financing Subsidiary with respect thereto. The Preferred Securities may be convertible or exchangeable into common stock of AEP.

The Notes and related Guaranties will be subordinate to all other existing and future unsubordinated indebtedness for borrowed money of the Financing Subsidiary or AEP, as the case may be, and may have no cross-default provisions with respect to other indebtedness of the Financing Subsidiary or AEP. A default under any other outstanding indebtedness of the Financing Subsidiary or AEP would not result in a default under any Note or Guaranty. However, AEP and/or the Financing Subsidiary may be prohibited from declaring and paying dividends on its outstanding capital stock and making payments in respect of pari passu debt unless all payments then due under the Notes and Guaranties (without giving effect to the deferral rights discussed above) have been made.

It is expected that the Financing Subsidiary's interest payments on the Notes will be deductible for federal income tax purposes and that each Special Purpose Subsidiary will be treated as either a partnership or a passive grantor trust for federal income tax purposes. Consequently, holders of the Preferred Securities and AEP (and any Investment Sub) will be deemed to have received distributions in respect of their ownership interests in the respective Special Purpose Subsidiary and will not be entitled to any ''dividends received deduction'' under the Internal Revenue Code. The Preferred Securities of any series, however, may be redeemable at the option of the Special Purpose Subsidiary issuing the series (with the consent or at the direction of AEP) at a price equal to their par or stated value or liquidation preference, plus any accrued and unpaid dividends or distributions, (a) at any time after a specified date not later than approximately 10 years from their date of issuance, or (b) upon the occurrence of certain events, among them that (c) the Special Purpose Subsidiary is required to withhold or deduct certain amounts in connection with dividend, distribution or other payments or is subject to federal income tax with respect to interest received on the Notes issued to the Special Purpose Subsidiary, or (d) it is determined that the interest payments by the Financing Subsidiary on the related Notes are not

deductible for income tax purposes, or (e) the Special Purpose Subsidiary becomes subject to regulation as an ''investment company'' under the Investment Company Act of 1940. The Preferred Securities of any series may also be subject to mandatory redemption upon the occurrence of certain events. The Financing Subsidiary also may have the right in certain cases or in its discretion to exchange the Preferred Securities of any Special Purpose Subsidiary for the Notes or other junior subordinated debt issued to the Special Purpose Subsidiary.

In the event that any Special Purpose Subsidiary is required to withhold or deduct certain amounts in connection with dividend, distribution or other payments, the Special Purpose Subsidiary may also have the obligation to ''gross up'' payments so that the holders of the Preferred Securities issued by the Special Purpose Subsidiary will receive the same payment after withholding or deduction as they would have received if no withholding or deduction were required. In this event, the Financing Subsidiary's obligations under its related Note and Guaranty may also cover the ''gross up'' obligation. In addition, if any Special Purpose Subsidiary is required to pay taxes with respect to income derived from interest payments on the Notes issued to it, the Financing Subsidiary may be required to pay the additional interest on the related Notes as shall be necessary in order that net amounts received and retained by the Special Purpose Subsidiary, after the payment of taxes, shall result in the Special Purpose Subsidiary's having funds as it would have had in the absence of payment of taxes.

In the event of any voluntary or involuntary liquidation, dissolution or winding up of any Special Purpose Subsidiary, the holders of the Preferred Securities of the Special Purpose Subsidiary will be entitled to receive, out of the assets of the Special Purpose Subsidiary available for distribution to its shareholders, partners or other owners, as the case may be, an amount equal to the par or stated value or liquidation preference of the Preferred Securities plus any accrued and unpaid dividends or distributions.

The constituent instruments of each Special Purpose Subsidiary, including its Limited Liability Company Agreement, Limited Partnership Agreement or Trust Agreement, as the case may be, will provide, among other things, that the Special Purpose Subsidiary's activities will be limited to the issuance and sale of Preferred Securities from time to time and the lending to the Financing Subsidiary or Investment Sub of (a) the proceeds thereof and (b) the Equity Contribution to the Special Purpose Subsidiary, and certain other related activities. Accordingly, it is proposed that no Special Purpose Subsidiary's constituent instruments include any interest or dividend coverage or capitalization ratio restrictions on its ability to issue and sell Preferred Securities as each issuance will be supported by a Note and Guaranty and the restrictions would therefore not be relevant or necessary for any Special Purpose Subsidiary to maintain an appropriate capital structure.

Each Special Purpose Subsidiary's constituent instruments will further state that its common stock or general partnership or other common equity interests are not transferable (except to certain permitted successors), that its business and affairs will be managed and controlled by AEP, the Financing Subsidiary and/or its Investment Sub (or permitted successor), and that AEP or the Financing Subsidiary (or permitted successor) will pay all expenses of the Special Purpose Subsidiary.

The distribution rate to be borne by the Preferred Securities and the interest rate on the Notes will not exceed the greater of (a) 300 basis points over U.S. Treasury securities having comparable maturities or (b) a gross spread over U.S. Treasury securities that is consistent with similar securities having comparable maturities and credit quality issued by other companies. Current market conditions suggest the costs for issuing long-term indebtedness with a three to five year maturity are less than or equal to the costs for issuing short-term indebtedness over the same time period.

III. Debt Securities

AEP proposes that, in addition to, or as an alternative to, any Preferred Securities financing as described above, AEP and/or the Financing Subsidiary may issue and sell notes directly to public or private investors without an intervening Special Purpose Subsidiary (''Debt Securities''). Any notes so issued will be unsecured, may be either senior or subordinated obligations of AEP or the Financing Subsidiary, as the case may be, may be convertible or exchangeable into common stock of AEP or Preferred Securities, may have the benefit of a sinking fund, may have a term of up to 50 years, may have fixed or adjustable rates of interest which may be reset by predetermined methods such as auction, remarketing, put or call features and/or a formula or formulae based upon certain reference rates and otherwise will have terms and provisions substantially as described here. Debt Securities of the Financing Subsidiary will have the benefit of a guarantee or other credit support by AEP. AEP will not issue the Debt Securities, either directly or through the Financing Subsidiary, unless it has evaluated all relevant financial considerations (including, without limitation, the cost of equity capital) and has determined that to do so is preferable to issuing common stock or short-term debt. Current market conditions suggest the costs for issuing long-term indebtedness with a three to five year maturity are less than or equal to the costs for issuing short-term indebtedness over the same time period.

The interest rate on the Debt Securities will not exceed the greater of (a) 300 basis points over U.S. Treasury securities having comparable maturities or (b) a gross spread over U.S. Treasury securities that is consistent with similar securities having comparable maturities and credit quality issued by other companies.

IV. Stock Purchase Contracts, Stock Purchase Units and Common Stock

AEP or the Financing Subsidiary may issue and sell from time to time stock purchase contracts (''Stock Purchase Contracts''), including contracts obligating holders to purchase from AEP and/or AEP to sell to the holders, a specified number of shares or aggregate offering price of AEP common stock at a future date. The consideration per share of common stock may be fixed at the time the Stock Purchase Contracts are issued or may be determined by reference to a specific formula set forth in the Stock Purchase Contracts. The Stock Purchase Contracts may be issued separately or as part of units (''Stock Purchase Units'') consisting of a Stock Purchase Contract and Debt Securities, Preferred Securities of AEP, or debt obligations of third parties, including U.S. Treasury securities, securing holders' obligations to purchase the common stock of AEP under the Stock Purchase Contracts. The Stock Purchase Contracts may require holders to secure their obligations in a specified manner.

AEP may issue and sell its common stock other than as a component or in satisfaction of a Stock Purchase Contract or Stock Purchase Unit (''Direct Sales'') (a) through solicitations of proposals from underwriters or dealers; (b) through negotiated transactions with underwriters or dealers; (c) directly to a limited number of purchasers or to a single purchaser; and/or (d) through agents. The price applicable to shares

sold in any transaction will be based on several factors, including the current market price of the common stock and prevailing capital market conditions. AEP is authorized under its restated articles of incorporation to issue 600,000,000 shares of common stock ($6.50 par value), of which 322,024,714 were issued and outstanding as of February 1, 2001. As of September 30, 2001, AEP's consolidated capitalization consisted of 63.0% indebtedness, 0.7% preferred stock, 1.3% mandatorily redeemable preferred securities and 35.0% common equity.

V. Interest Rate Hedges

AEP requests authorization for it and/or the Financing Subsidiary to enter into interest rate-hedging transactions with respect to existing indebtedness (''Interest Rate Hedges''), subject to certain limitations and restrictions, in order to reduce or manage interest rate cost or risk. Interest Rate Hedges would only be entered into with counterparties (''Approved Counterparties'') whose senior debt ratings, or whose parent companies'' senior debt ratings, as published by Standard and Poor's Ratings Group, are equal to or greater than BBB, or an equivalent rating from Moody's Investors' Service or Fitch Investor Service. Interest Rate Hedges will involve the use of financial instruments and derivatives commonly used in today's capital markets, such as interest rate swaps, options, caps, collars, floors, and structured notes (i.e., a debt instrument in which the principal and/or interest payments are indirectly linked to the value of an underlying asset or index), or transactions involving the purchase or sale, including short sales, of U.S. Treasury obligations. The transactions would be for fixed periods and stated notional amounts. In no case will the notional principal amount of any interest rate swap exceed that of the underlying debt instrument and related interest rate exposure. AEP and/or the Financing Subsidiary will not engage in speculative transactions. Fees, commissions and other amounts payable to the counterparty or exchange (excluding, however, the swap or option payments) in connection with an Interest Rate Hedge will not exceed those generally obtainable in competitive markets for parties of comparable credit quality.

VI. Anticipatory Hedges

In addition, AEP requests authorization for it and/or the Financing Subsidiary to enter into interest rate hedging transactions with respect to anticipated debt offerings (''Anticipatory Hedges''), subject to certain limitations and restrictions. Anticipatory Hedges would only be entered into with Approved Counterparties, and would be utilized to fix and/or limit the interest rate risk associated with any new issuance through (a) a forward sale of exchange-traded U.S. Treasury futures contracts, U.S. Treasury obligations and/or a forward swap (''Forward Sale''); (b) the purchase of put options on U.S. Treasury obligations (''Put Options Purchase''); (c) a Put Options Purchase in combination with the sale of call options on U.S. Treasury obligations (''Zero Cost Collar''); (d) transactions involving the purchase or sale, including short sales, of U.S. Treasury obligations; or (e) some combination of a Forward Sale, Put Options Purchase, Zero Cost Collar and/or other derivative or cash transactions, including, but not limited to structured notes, options, caps and collars, appropriate for the Anticipatory Hedges. Anticipatory Hedges may be executed on-exchange (''On-Exchange Trades'') with brokers through the opening of futures and/or options positions traded on the Chicago Board of Trade or the Chicago Mercantile Exchange, the opening of over-the-counter positions with one or more counterparties (''Off-Exchange Trades''), or a combination of On-Exchange Trades and Off-Exchange Trades. AEP and/or the Financing Subsidiary will determine the optimal structure of each Anticipatory Hedge transaction at the time of execution. AEP may decide to lock in interest rates and/or limit its exposure to interest rate increases. AEP represents that each Interest Rate Hedge and Anticipatory Hedge will be treated for accounting purposes under generally accepted accounting principles. AEP will comply with the then existing financial disclosure requirements of the Financial Accounting Standards Board associated with hedging transactions.[1]

VII. Use of Proceeds

The proceeds of any financing by the Financing Subsidiary or any Special Purpose Subsidiary will be remitted, paid as a dividend, loaned or otherwise transferred to AEP or its designee. The proceeds of the Preferred Securities, Debt Securities, Stock Purchase Contracts and Stock Purchase Units will be used to acquire the securities of associate companies and interests in other businesses, including interests in exempt wholesale generators (''EWGs'') and foreign utility holding companies (''FUCOs''), or in any transactions permitted under the Act and for other general corporate purposes, including the reduction of short-term indebtedness. AEP had approximately $3.6 billion outstanding short-term indebtedness as of September 30, 2001. No proceeds will be used to purchase generation assets currently owned by AEP or any affiliate unless the purchase has been approved by order of this Commission in File No. 70–9785 or other similar applications. AEP represents that no financing proceeds will be used to acquire the equity securities of any company or any interest in other businesses unless the acquisition has been approved by the Commission in this proceeding or in File No. 70–9353 or is in accordance with an available exemption under sections 32, 33 and 34 of the Act or rule 58 under the Act. AEP does not seek in this proceeding any increase in the amount it is permitted to invest in EWGs and FUCOs.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–942 Filed 1–14–02; 8:45 am]

BILLING CODE 8010–01–P

[1] The proposed terms and conditions of the Interest Rate Hedges and Anticipatory Hedges are substantially the same as the Commission has approved in other cases. See Entergy Corporation, HCAR No. 27371 (April 3, 2001); New Century Energies, Inc., et al., HCAR No. 27000 (April 7, 1999); and Ameren Corp., et al., HCAR No. 27053 (July 23, 1999).

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 25359; 812–12468]

Conseco Fund Group, *et al.*; Notice of Application

January 9, 2002.

AGENCY: Securities and Exchange Commission (''SEC'' or ''Commission'').

ACTION: Notice of application for an exemption under section 6(c) of the Investment Company Act of 1940 (''Act'') from section 15(a) of the Act and rule 18f–2 under the Act.

Summary of the Application: The order would permit applicants to enter into and materially amend subadvisory agreements without shareholder approval.

Applicants: Conseco Fund Group (''CFG''), Conseco Series Trust (''CST'' together with CFG, the ''Trusts''), and Conseco Capital Management, Inc. (the ''Adviser'').

Filing Dates: The application was filed on March 6, 2001, and amended on December 26, 2001.

Hearing or Notification of Hearing: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on February 4, 2002, and should be accompanied by proof of service on applicants, in the form of an affidavit, or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW, Washington, DC 20549–0609. Applicants, 11825 North Pennsylvania Street, Carmel, IN 46032.

FOR FURTHER INFORMATION CONTACT: Bruce R. MacNeil, Senior Counsel, at (202) 942–0634, or Nadya B. Roytblat, Assistant Director, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch, 450 Fifth Street, NW, Washington, DC 20549–0102 (telephone (202) 942–8090).

Applicants' Representations

1. The Trusts, each a Massachusetts business trust, are registered under the Act as open-end management investment companies. Each Trust is organized as a series investment company and offers shares of multiple series (each series, a ''Fund,'' and together, the ''Funds''), each with its own investment objectives, policies, and restrictions.[1] The Adviser serves as the investment adviser to the Funds and is registered as an investment adviser under the Investment Advisers Act of 1940 (''Advisers Act'').

2. The Adviser serves as investment adviser to the Funds pursuant to an investment advisory agreement between each Trust and the Adviser that was approved by the respective Trust's board of trustees (''Board''), including a majority of the trustees who are not ''interested persons,'' as defined in section 2(a)(19) of the Act (''Independent Trustees''), and each Fund's shareholders (''Advisory Agreement''). The Advisory Agreement permits the Adviser to enter into separate investment advisory agreements (''Subadvisory Agreements'') with subadvisers (''Subadvisers'') to whom the Adviser may delegate responsibility for providing investment advice and making investment decisions for a Fund. Each Subadviser is an investment adviser registered under the Advisers Act. The Adviser monitors and evaluates the Subadvisers and recommends to the Board their hiring, termination, and replacement. The Adviser compensates the Subadvisers out of the fees paid to the Adviser by the Fund.

3. Applicants request relief to permit the Adviser to enter into and materially amend Subadvisory Agreements without obtaining shareholder approval. The requested relief will not extend to any Subadviser that is an affiliated person, as defined in section 2(a)(3) of the Act, of the Trust or the Adviser, other than by reason of serving as a Subadviser to one or more of the Funds (''Affiliated Subadviser'').

Applicants' Legal Analysis

1. Section 15(a) of the Act provides, in relevant part, that it is unlawful for any person to act as an investment adviser to a registered investment company except under a written contract that has been approved by a majority of the investment company's outstanding voting securities. Rule 18f–2 under the Act provides that each series or class of stock in a series company affected by a matter must approve the matter if the Act requires shareholder approval.

2. Section 6(c) of the Act authorizes the SEC to exempt persons or transactions from the provisions of the Act to the extent that the exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policies and provisions of the Act. Applicants state that the requested relief meets this standard for the reasons discussed below.

3. Applicants assert that the Funds' shareholders rely on the Adviser to select the Subadvisers best suited to achieve a Fund's investment objectives. Applicants assert that, from the perspective of the investor, the role of the Subadvisers is comparable to that of individual portfolio managers employed by other investment advisory firms. Applicants contend that requiring shareholder approval of each Subadvisory Agreement would impose costs and unnecessary delays on the Funds, and may preclude the Adviser from acting promptly in a manner considered advisable by the Board. Applicants also note that the Advisory Agreement will remain subject to section 15(a) of the Act and rule 18f–2 under the Act.

Applicants' Conditions

Applicants agree that any order granting the requested relief will be subject to the following conditions:

1. Before a Fund may rely on the requested order, the operation of the Fund in the manner described in the application will be approved by the vote of a majority of its outstanding voting securities, as defined in the Act, or, in the case of a Fund whose public shareholders purchased shares on the basis of a prospectus containing the disclosure contemplated by condition number 2 below, by the initial shareholder(s) before offering shares of that Fund to the public.

2. Each Fund will disclose in its prospectus the existence, substance, and effect of any order granted pursuant to the application. In addition, each Fund relying on the requested order will hold itself out to the public as employing the management structure described in the application. The prospectus will prominently disclose that the Adviser has ultimate responsibility (subject to oversight of the Board) to oversee Subadvisers and recommend their hiring, termination, and replacement.

3. At all times, a majority of each Trust's Board will be Independent Trustees, and the nomination of new or additional Independent Trustees will be at the discretion of the then existing Independent Trustees.

4. The Adviser will not enter into a Subadvisory Agreement with any Affiliated Subadviser without that agreement, including the compensation to be paid thereunder, being approved by the shareholders of the applicable Fund.

5. When a change of Subadviser is proposed for a Fund with an Affiliated Subadviser, the Board of the corresponding Trust, including a majority of the Independent Trustees,

[1] The applicants also request that any relief granted pursuant to the application also apply to future series of the Trusts and any other registered open-end management investment companies and their series that: (a) Are advised by the Adviser or any person controlling, controlled by, or under common control with the Adviser; (b) use the multi-manager structure described in the application; and (c) comply with the terms and conditions in the application (''Future Funds,'' included in the term ''Funds''). The Trusts are the only existing investment companies that currently intend to rely on the requested order. No Fund will contain in its name the name of a Subadviser (as defined below).

will make a separate finding, reflected in the Board's minutes, that the change is in the best interests of the Fund and its shareholders and does not involve a conflict of interest from which the Adviser or the Affiliated Subadviser derives an inappropriate advantage.

6. Within 90 days of the hiring of any new Subadviser, shareholders will be furnished all information about the new Subadviser that would be contained in a proxy statement, including any change in such disclosure caused by the addition of a new Subadviser. Each Fund will meet this condition by providing shareholders, within 90 days of the hiring of a Subadviser, an information statement meeting the requirements of Regulation 14C, Schedule 14C, and Item 22 of Schedule 14A under the Securities Exchange Act of 1934.

7. The Adviser will provide general management services to each Fund, including overall supervisory responsibility for the general management and investment of each Fund's assets, and, subject to review and approval by the Board, will (a) set the Fund's overall investment strategies; (b) evaluate, select, and recommend Subadviser(s) to manage all or a part of the Fund's assets; (c) monitor and evaluate the performance of Subadviser(s); (d) ensure that Subadvisers comply with each Subadvised Fund's investment objectives, restrictions, and policies by, among other things, implementing procedures reasonably designed to ensure compliance; and (e) allocate and, when appropriate, reallocate a Fund's assets among its Subadvisers when a Fund has more than one Subadviser.

8. No trustee or officer of the Trust or director or officer of the Adviser will own, directly or indirectly (other than through a pooled investment vehicle that is not controlled by any such trustee, director or officer) any interest in a Subadviser except for: (a) Ownership of interests in the Adviser or any entity that controls, is controlled by, or is under common control with the Adviser, or (b) ownership of less than 1% of the outstanding securities of any class of equity or debt securities of any publicly-traded company that is either a Subadviser or an entity that controls, is controlled by, or is under common control with a Subadviser.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–941 Filed 1–14–02; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Federal Register Citation of Previous Announcement: [66 FR 1524, January 11, 2002]

Status: Closed meeting.

Place: 450 Fifth Street, NW., Washington, DC.

Date and Time of Previously Announced Meeting: Tuesday, January 15, 2002 at 10:00 a.m.

Change in the Meeting: Time Change.

The closed meeting scheduled for Tuesday, January 15, 2002 at 10:00 a.m. has been changed to Tuesday, January 15, 2002 at 9:00 a.m.

Dated: January 11, 2002.

Jonathan G. Katz,

Secretary,

[FR Doc. 02–1094 Filed 1–11–02; 11:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45252; File No. SR–Amex–2001–26]

Self-Regulatory Organizations; American Stock Exchange LLC; Order Granting Approval to Proposed Rule Change and Amendment No. 1 Thereto Relating to an Increase in the Exchange Regulatory Fee

January 8, 2002.

On May 7, 2001, the American Stock Exchange LLC (''Amex'' or ''Exchange'') filed with the Securities and Exchange Commission (''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 the Amex Equity Fee Schedule to increase the regulatory fee from .00005 x Total Value to .000075 x Total Value for certain orders in Portfolio Depositary Receipts, Index Fund Shares, and Trust Issued Receipts (collectively, the ''Products'') entered electronically into the Amex Order File from off the Floor (''System Orders'') by a member or member organization trading as an agent for the account of a non-member competing market maker.

The proposed rule change was published for comment in the **Federal Register** on June 18, 2001.[3] The Commission received no comments on the proposal. On December 12, 2001, the Amex filed an amendment to the proposed rule change.[4] In Amendment No. 1, the Amex made a technical amendment to the proposed rule change by further clarifying its purpose for increasing the Exchange's regulatory fee that does not need to be published for comment. In Amendment No. 1, the Exchange states that the regulatory fee increase has been put in place to ensure that the Amex has the appropriate resources to provide the regulatory, operational, and business development function necessary to meet the increasing demands of a complex and competitive marketplace.[5]

The Commission notes that the proposed rule change allows for disparate treatment of competing market makers in that it increases the regulatory fee for System Orders in the Products by a member or member organization trading as an agent for the account of a non-member.[6] However, the Commission notes that under the Amex's current fee schedule, orders in the Products by a member or member organization trading as an agent for the account of a non-member were not entitled to the same treatment as other orders in the fee schedule in that they were not exempt from the regulatory fee. This proposed rule change does not alter this result. Furthermore, the Commission believes that the Intermarket Trading System (''ITS'') will continue to provide an alternative means by which non-member competing market makers can access the Amex. ITS provides an avenue for non-member competing market makers to interact with trading interests on the Amex, fee-free.

For these reasons, the Commission finds that the proposed rule change and Amendment No. 1 are consistent with the requirements of the Act and the rules and regulations thereunder

[1] 15 U.S.C. 78s (b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 44410 (June 12, 2001), 66 FR 32852.

[4] *See* letter from Michael J. Ryan, Jr., Executive Vice President & General Counsel, Amex, to Katherine England, Assistant Director, Division of Market Regulation, Commission, dated December 11, 2001 (''Amendment No. 1'').

[5] Specifically, the Amex states that the Exchange continues to make heavy investments in: technologies to support the efficient trading of Exchange Traded Funds (''ETFs'') and HOLDRS on the Exchange; product development to bring new products to market; and the regulation of the EFT and HOLDRs markets. The Exchange believes that non-member competing market markers receive the most benefit from trading ETFs and HOLDRs on the Amex, with associated Amex technological enhancements and regulatory structure. The Exchange believes that the fee increase will support the infrastructure relied upon by the broader marketplace including competitive exchanges and market participants. *Id.*

[6] The Commission does not intend this proposal to establish a precedent to permit a primary market to make distinctions in the treatment of orders on its Floor as a means to discriminate unfairly against its competitors.

applicable to a national securities exchange.[7] In particular, the Commission finds that the proposed rule change and Amendment No. 1 are consistent with section 6(b)(4) of the Act[8] in that it provides for the equitable allocation of reasonable dues, fees, and other charges among Exchange members, issuers, and other persons using its facilities.

It is therefore ordered, pursuant to section 19 (b)(2) of the Act[9], that the proposed rule change (File No. SR–Amex–2001–26) and Amendment No. 1 be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–943 Filed 1–14–02; 8:45 am]

BILLING CODE 8010–01–M

[7] In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[8] 15 U.S.C. 78f(b)(4).

[9] 15 U.S.C. 78s(b)(2).

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45253; File No. SR–Amex–2001–92]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto by the American Stock Exchange LLC To Simplify the Manner in Which a Contrary Exercise Advice Is Submitted and To Extend by One Hour the Time for Members To Submit Customer's Contrary Exercise Advices

January 8, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and rule 19b–4 thereunder,[2] notice is hereby given that on October 29, 2001, the American Stock Exchange LLC (''Amex'' 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 Exchange. The Amex amended its proposal on December 17, 2001.[3] 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 Amex proposes to amend Amex Rule 980 to: (i) Simplify the manner in which a Contrary Exercise Advice is submitted to the Exchange; and (ii) to extend by one hour the cut-off time by which members must submit to the Exchange Contrary Exercise Advice notices for customer accounts.

The text of the proposed rule change is available at the Amex and 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 Amex 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 Amex has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The OCC, the issuer of all Amex traded options contracts, has an established procedure for options holders wishing to exercise in-the-money options before they expire. Known as Ex-by-Ex, the procedure provides for the automatic exercise at expiration of any equity options contract that is ¾ of a point or more in-the-money for customer accounts or ¼ point or more in-the-money for any other accounts. All options holders who wish to have their options contracts exercised in accordance with the Ex-by-Ex procedure need to take no further action; those contracts that are in-the-money by the appropriate amount will be automatically exercised. Options holders who do not wish to have their options automatically exercised, or do wish options to be exercised that do not fit within the parameters of the Ex-by-Ex procedure, must file with the Exchange a Contrary Exercise Advice pursuant to Exchange Rule 980, and instruct OCC of their contrary intention. Members and member organizations satisfy the filing requirement by manually submitting a Contrary Exercise Advice Form or by electronically submitting the Advice Form through OCC's Clearing Management and Control System (C/MACS). Exchange Rule 980 is designed to deter individuals from taking improper advantage of late-breaking news by requiring evidence of an option holder's intention to exercise or not exercise expiring equity options via the submission of a Contrary Exercise Advice.

On occasion, OCC has had to suspend use of its Ex-by-Ex procedure, such as when trading in the underlying stock has been halted, or if there is no accurate price available to be used in the determination of the closing price. When this occurs and there is no automatic exercise, all options contract holders must send exercise instructions to OCC if they wish to exercise, regardless of whether the option is in or out-of-the-money. When OCC suspends its Ex-by-Ex procedure for an option class, Exchange Rule 980 currently requires the submission of a Contrary Exercise Advice. Thus, when OCC has waived the Ex-by-Ex procedure, option holders must determine what price would have been used, even though the only available price might be a stale last sale price (a price OCC did not feel comfortable using). They then must determine whether a Contrary Exercise Advice needs to be submitted to the Exchange, evidencing the option holder's intention to exercise or not exercise.

The Amex has long viewed this process as cumbersome and confusing to options holders. Therefore, the Amex now proposes to amend Exchange Rule 980 to eliminate the requirement that a Contrary Exercise Advice be submitted if the holder does not want to exercise the option when OCC has waived its Ex-by-Ex procedure for that options class. As a result, when Ex-by-Ex has been waived, submission of instructions to exercise is only required when the options holder wants to exercise the option contract. The Amex clarifies that the applicable underlying security price in such instances will be as described in OCC Rule 805(1), which is normally the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Jeffrey P. Burns, Assistant General Counsel, Amex, to Jennifer L. Colihan, Special Counsel, Division of Market Regulation, Commission, dated December 14, 2001 (''Amendment No. 1''). In Amendment No. 1, the Amex clarified its purpose to modify the Exchange's Contrary Exercise Advice procedure set forth in proposed paragraph (g) of Amex Rule 980. In addition, the Amex revised proposed paragraph (d) of Amex Rule 980 to clarify that in cases where the Exercise-by-Exception or ''Ex-by-Ex'' procedure has been waived and members and member organizations submit an affirmative Exercise Notice to the Options Clearing Corporation (''OCC'') to exercise the options, the applicable underlying security price in such instances will be as described in OCC Rule 805(l), which is normally the last sale price in the primary market for the underlying security.

last sale price in the primary market for the underlying security.[4]

In addition, the Exchange proposes to extend the cut-off time for members to deliver Contrary Exercise Advices for customer accounts to the Exchange by one hour (from 5:30 p.m. to 6:30 p.m. EST). Currently, members are required to submit Contrary Exercise Advices to the Exchange and OCC no later than 5:30 p.m. (EST). However, because determination of final settlement prices is sometimes delayed and members need to confirm exercise instructions with customers, it is sometimes difficult for firms to deliver customer Contrary Exercise Advices in satisfaction of the 5:30 p.m. (EST) cut-off time. Accordingly, members must immediately process customer Contrary Exercise Advices to submit them to the Exchange simultaneously upon receipt of the instructions from customers in order to meet the Contrary Exercise Advice cut-off time. Accordingly, to provide members with sufficient time to process Contrary Exercise Advices for customers accounts, the Exchange proposes to extend the cut-off time for members to deliver Contrary Exercise Advices for customer accounts to the Exchange by one hour (from 5:30 p.m. to 6:30 p.m. EST). The Exchange believes it is appropriate to extend the cut-off time for member submission of customer Contrary Exercise Advices, and any cancellation thereof, to the Exchange as all decisions to exercise (or not exercise) must still be made by 5:30 p.m. (EST) in accordance with Exchange Rule 980.

Furthermore, the Amex believes that customers and member firms should have added flexibility in connection with the delivery of a Contrary Exercise Advice cancel[5] when the Exchange announces a modified time for the close of trading in equity options.[6] Currently, the delivery of a Contrary Exercise Advice or Advice cancel is required on the business day preceding the expiration date for the expiring option. Instead of a final cut-off time of 5:30 p.m., the Exchange proposes to allow a time period of 1 hour and 28 minutes after the announced close of trading for accounts of members and member firms to make a final decision whether to exercise or not exercise an expiring option and to deliver the Contrary Exercise Advice or Advice cancel. In addition, the Exchange proposes that customers be able to make a final decision on whether to exercise or not exercise an expiring option within 1 hour and 28 minutes following the time announced for the close of trading rather than an established time of 5:30 p.m., and that members and member firms acting as an agent for customer accounts have a time period of 2 hours and 28 minutes after the close of trading instead of the current 6:30 p.m. to deliver a Contrary Exercise Advice or Advice cancel to the Exchange. The Exchange believes that the extension of time to deliver a Contrary Exercise Advice for customer accounts will benefit customers and make the process easier to administer. Moreover, the Amex feels that the proposed time periods for the delivery of a Contrary Exercise Advice or Advice cancel to the Exchange rather than a designated time when there is a modified time for the close of trading for expiring options will permit customers and member firms to better deliver their intentions whether to exercise the option. To address unusual circumstances, the proposed rule would give the Exchange the ability to establish different exercise cut-off times on a case-by-case basis.

2. Statutory Basis

The Exchange believes that the proposed rule change, as amended, is consistent with section 6(b) of the Act[7] in general, and furthers the objectives of section 6(b)(5) of the Act[8] in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of change, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change, as amended, 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 Exchange 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, as amended, 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 20549–0609. 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 Amex. All submissions should refer to File No. SR–Amex–2001–92 and should be submitted by [insert date 21 days from date of publication].

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–946 Filed 1–14–02; 8:45 am]

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[4] Id.

[5] An Advice cancel refers to a cancellation of the Contrary Exercise Advice. Telephone conversation between Jeffrey P. Burns, Assistant General Counsel, Amex, and Jennifer L. Colihan, Special Counsel and Cyndi N. Nguyen, Attorney, Commission on December 21, 2001.

[6] *See* Amendment No. 1, *supra* note 3.

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45248; File No. SR–GSCC–2001–13]

Self-Regulatory Organizations; Government Securities Clearing Corporation; Notice of Filing of a Proposed Rule Change Relating to a New Governance Structure

January 7, 2001.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934(''Act''),[1] notice is hereby given that on October 11, 2001, the Government Securities Clearing Corporation (''GSCC'') 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 GSCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change will amend GSCC's rules to reflect GSCC's new ownership and governance structure that will result from the integration of GSCC, MBS Clearing Corporation (''MBSCC''), and Emerging Markets Clearing Corporation (''EMCC'') with The Depository Trust & Clearing Corporation (''DTCC'') whereby GSCC, MBSCC, and EMCC will become operating subsidiaries of DTCC.[2]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, GSCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in item IV below. GSCC has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.[3]

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

GSCC proposes to amend its rules to reflect its new ownership and governance structure that will result from the integration of GSCC, MBSCC, and EMCC with DTCC. In order for GSCC to maintain orderly and efficient operations, GSCC will implement a three-tiered governance structure. The first tier will be the Board of Directors of GSCC that will be identical in composition to the Board of Directors of MBSCC, EMCC, DTC, NSCC, and DTCC. GSCC's business will be managed under the direction of the GSCC Board, which will set the basic policy direction for GSCC. The second tier will consist of committees of or established by the DTCC Board, including a Fixed Income Operations and Planning Committee to be established by the DTCC Board, and committees of or established by the GSCC Board, including GSCC/MBSCC Membership and Risk Management Committee to be established by the GSCC Board and the MBSCC Board acting jointly. The third tier will be GSCC management, which will oversee the daily routine operations of GSCC.

The proposed changes to GSCC's rules will reassign various management responsibilities to the GSCC Board, the new committees, or GSCC management in light of the revised management structure summarized above. GSCC believes that these proposed rule changes will permit the GSCC Board, the various DTCC or GSCC committees, or GSCC management to appropriately handle functions so that GSCC may continue to maintain orderly and efficient operations.

GSCC believes that the proposed rule change is consistent with section 17A of the Act and the rules and regulations thereunder because it will ensure that GSCC's operations will continue to be conducted in an efficient and orderly manner once it is integrated into the DTCC organization.

B. Self-Regulatory Organization's Statement on Burden on Competition

GSCC does not believe that the proposed rule change will have an impact or impose a burden on competition. GSCC notes that it, as well as each of the other operating subsidiaries, is a utility created to serve members of the securities industry by providing certain complementary services that are ancillary to the businesses in which industry members compete with one another.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments relating to the proposed rule change have not yet been solicited or received. GSCC members will be notified of the rule change filing and comments will be solicited by an Important Notice. GSCC will notify the Commission of any written comments it receives.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which 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, U.S. Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. 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 in Washington, DC Copies of such filing will also be available for inspection and copying at GSCC's principal office. All submissions should refer to File No. SR–GSCC–2001–13 and should be submitted by January 30, 2002.

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[1] 15 U.S.C. 78s(b)(1).

[2] For explanations of the mechanics of these integration plans, refer to Securities Exchange Act Release Nos. 44989 (Oct. 25, 2001), 66 FR 55220 (Nov. 1, 2001); 44988 (Oct. 25, 2001), 66 FR 55222 (Nov. 1, 2001); and 44987 (Oct. 25, 2001), 66 FR 55218 (Nov. 1, 2001). The Depository Trust Company (''DTC'') and National Securities Clearing Corporation (''NSCC'') are currently operating subsidiaries of DTCC.

[3] The Commission has modified the text of the summaries prepared by GSCC.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[4]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–944 Filed 1–14–02; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45247; File No. SR–MBSCC–2001–05]

Self-Regulatory Organizations; MBS Clearing Corporation; Notice of Filing of a Proposed Rule Change Relating to a New Governance Structure

January 7, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on October 11, 2001, the MBS Securities Clearing Corporation (''MBSCC'') 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 MBSCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change will amend MBSCC's rules to reflect MBSCC's new ownership and governance structure that will result from the integration of MBSCC, Government Securities Clearing Corporation (''GSCC''), and Emerging Markets Clearing Corporation (''EMCC'') with The Depository Trust & Clearing Corporation (''DTCC'') whereby MBSCC, GSCC, and EMCC will become operating subsidiaries of DTCC.[2]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, MBSCC 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. MBSCC has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.[3]

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

MBSCC proposes to amend its rules to reflect its new ownership and governance structure that will result from the integration of MBSCC, GSCC, and EMCC with DTCC. In order for MBSCC to maintain orderly and efficient operations, MBSCC will implement a three-tiered governance structure. The first tier will be the Board of Directors of MBSCC that will be identical in composition to the Board of Directors of GSCC, EMCC, DTC, NSCC, and DTCC. MBSCC's business will be managed under the direction of the MBSCC Board, which will set the basic policy direction for MBSCC. The second tier will consist of committees of or established by the DTCC Board, including a Fixed Income Operations and Planning Committee to be established by the DTCC Board, and committees of or established by the MBSCC Board, including a MBSCC/GSCC Membership and Risk Management Committee to be established by the MBSCC Board and the GSCC Board acting jointly. The third tier will be MBSCC management, which will oversee the daily routine operations of MBSCC.

The proposed changes to MBSCC's rules will reassign various management responsibilities to the MBSCC Board, the new committees, or MBSCC management in light of the revised management structure summarized above. MBSCC believes that these proposed rule changes will permit the MBSCC Board, the various DTCC or MBSCC committees, or MBSCC management to appropriately handle functions so that MBSCC may continue to maintain orderly and efficient operations.

MBSCC believes that the proposed rule change is consistent with section 17A of the Act and the rules and regulations thereunder because it will ensure that MBSCC's operations will continue to be conducted in an efficient orderly manner once it is integrated into the DTCC organization.

B. Self-Regulatory Organization's Statement on Burden on Competition

MBSCC does not believe that the proposed rule change will have an impact or impose a burden on competition. MBSCC notes that it, as well as each of the other operating subsidiaries, is a utility created to serve members of the securities industry by providing certain complementary services that are ancillary to the business in which industry members compete with one another.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments relating to the proposed rule change have not yet been solicited or received. MBSCC will notify the Commission of any written comments it receives.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which 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, U.S. Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. 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 in Washington, DC. Copies of such filing will also be available for

[4] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] For explanations of the mechanics of these integration plans, refer to Securities Exchange Act Release Nos. 44989 (Oct. 25, 2001), 66 FR 55220 (Nov. 1, 2001); 44988 (Oct. 25, 2001), 66 FR 55222 (Nov. 1, 2001); and 44987 (Oct. 25, 2001), 66 FR 55218 (Nov. 1, 2001). The Depository Trust Company (''DTC'') and National Securities Clearing Corporation (''NSCC'') are currently operating subsidiaries of DTCC.

[3] The Commission has modified the text of the summaries prepared by MBSCC.

inspection and copying at MBSCC's principal office. All submissions should refer to File No. SR–MBSCC–2001–05 and should be submitted by January 30, 2002.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[4]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–945 Filed 1–14–02; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3364, Amdt. #3]

State of New York

In accordance with information received from the Federal Emergency Management Agency, the above numbered declaration is hereby amended to extend the deadline for filing applications for physical damages as a result of this disaster to March 11, 2002.

All other information remains the same, i.e., the deadline for filing applications for economic injury is June 11, 2002.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: January 4, 2002.

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. 02–933 Filed 1–14–02; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Economic Injury Disaster Loans as a Result of the September 11, 2001 Terrorist Attacks

ACTION: Notice of extension of application deadline.

FOR FURTHER INFORMATION CONTACT: George Camp, Supervisory Program Analyst, Office of Disaster Assistance, 202–205–6734.

SUPPLEMENTARY INFORMATION: In response to the President's major disaster declarations with respect to the World Trade Center and the Pentagon and the widespread economic impact caused by the terrorist attacks and the related Federal actions taken directly thereafter, the SBA revised its disaster loan regulations on October 22, 2001. Under the revised regulations, SBA can make economic injury loans to eligible small business concerns outside the declared disaster areas that suffered substantial economic injury as a direct result of the destruction of the World Trade Center or the damage to the Pentagon on September 11, 2001, or as a direct result of any related Federal action taken between September 11, 2001 and October 22, 2001. As provided in 13 CFR 123.605, SBA extends the application deadline for good cause. A large number of applications were issued and have not been returned to the SBA. With this Notice, the SBA extends the filing deadline for economic injury disaster loans under this disaster program from January 22, 2002 to April 22, 2002.

Applications for economic injury disaster loans may be obtained and filed at the SBA disaster office servicing the applicant's state.

The disaster numbers assigned are:

Area 1

Connecticut 9TCT, District of Columbia 9TDC, Delaware 9TDE, Maryland 9TMD, Maine 9TME, Massachusetts 9TMA, New Hampshire 9TNH, New Jersey 9TNJ, New York 9TNY, Pennsylvania 9TPA, Rhode Island 9TRI, Virginia 9TVA, Vermont 9TVT, West Virginia 9TWV, Puerto Rico 9TPR, Virgin Islands 9TVI

Area 2

Alabama 9TAL, Florida 9TFL, Georgia 9TGA, Illinois 9TIL, Indiana 9TIN, Kentucky 9TKY, Michigan 9TMI, Minnesota 9TMN, Mississippi 9TMS, North Carolina 9TNC, Ohio 9TOH, South Carolina 9TSC, Tennessee 9TTN, Wisconsin 9TWI

Area 3

Arkansas 9TAR, Colorado 9TCO, Iowa 9TIA, Kansas 9TKS, Louisiana 9TLA, Missouri 9TMO, Montana 9TMT, North Dakota 9TND, Nebraska 9TNE, New Mexico 9TNM, South Dakota 9TSD, Oklahoma 9TOK, Texas 9TTX, Utah 9TUT, Wyoming 9TWY

Area 4

Alaska 9TAK, Arizona 9TAZ, California 9TCA, Hawaii 9THI, Idaho 9TID, Nevada 9TNV, Oregon 9TOR, Washington 9TWA, American Samoa 9TAS, Federated States of Micronesia 9TFM, Guam 9TGU, Republic of the Marshall Islands 9TMH, Commonwealth of Northern Mariana Islands 9TMP

The interest rate for eligible small businesses is 4 percent.

Authority: 13 CFR part 123, subpart G.

Dated: January 9, 2002.

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. 02–934 Filed 1–14–02; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Public Federal Regulatory Enforcement Fairness Hearing; Region IV Regulatory Fairness Board

The Small Business Administration Region IV Regulatory Fairness Board and the SBA Office of the National Ombudsman, will hold a Public Hearing on Monday, January 28, 2002 at 8:30 AM at the Radisson Plaza Hotel—Downtown Orlando, 60 South Ivanhoe Boulevard, Orlando, FL 32804, Phone (407) 425–4455, Fax (407) 313–6043, to receive comments and testimony from small business owners, small government entities, and small non-profit organizations concerning the regulatory enforcement and compliance actions taken by federal agencies.

Anyone wishing to attend or to make a presentation must contact Ms. Lola Kress in writing or by fax, in order to be put on the agenda. Lola Kress, SBA North Florida District Office, 7825 Baymeadows Way, Suite 100–B, Jacksonville, FL 32256–7504, Phone (904) 443–1933, fax (202) 481–4188, E-mail: *Lola.Kress@sba.gov.*

For more information see our web site at *http://www.sba.gov/ombudsman/dsp_hearings.html.*

Steve Tupper,

Committee Management Officer.

[FR Doc. 02–932 Filed 1–14–02; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Region V—Wisconsin District Advisory Council; Public Meeting

The Small Business Administration Region V Wisconsin District Advisory Council, located in the geographical area of Milwaukee, Wisconsin, will hold a public meeting at 12:00 a.m. central time on Wednesday, January 16, 2002, at the Metro Milwaukee Area Chamber 756 North Milwaukee Street Fourth floor, Milwaukee Wisconsin, 53202 to discuss such matters as may be presented by members, staff of the Small Business Administration, or others present.

Anyone wishing to make an oral presentation to the Board must contact Yolanda Staples. Lassiter Economic Development Assistant, in writing by letter or fax no later than January 14, 2002, in order to be put on the agenda. Yolanda Staples Lassiter, Economic Development Assistant, Small Business Administration 310 West Wisconsin Ave, Suite 400, Milwaukee, Wisconsin

[4] 17 CFR 200.30–3(a)(12).

53203 (414) 297–1090 phone (414) 297–3928 fax.

Steve Tupper,

Committee Management Officer.

[FR Doc. 02–931 Filed 1–14–02; 8:45 am]

BILLING CODE 8025–01–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Technical Corrections to the Harmonized Tariff Schedule of the United States

AGENCY: Office of the United States Trade Representative.

ACTION: Notice.

SUMMARY: The United States Trade Representative (USTR) is making technical corrections to the Harmonized Tariff Schedule of the United States (HTS) as set forth in the annex to this notice, pursuant to authority delegated to the USTR in Presidential Proclamation 6969 of January 27, 1997 (62 FR 4415). These modifications correct several inadvertent errors and omissions in Presidential Proclamation 7515 of December 18, 2001 (66 FR 66,549), so that the intended tariff treatment is provided.

EFFECTIVE DATE: January 10, 2002.

FOR FURTHER INFORMATION CONTACT: Paul Moore, Director for Market Access, Office of the United States Trade Representative, (202) 395–5097, or David W. Oliver, Associate General Counsel, (202) 395–3581.

SUPPLEMENTARY INFORMATION: Every five years the World Customs Organization (WCO), to which the United States belongs, reviews and updates the tariff nomenclature annexed to the International Convention on the Harmonized Commodity and Coding System (HS Convention) that member countries apply. Proclamation 7515 modifies the HTS, which incorporates the HS Convention tariff nomenclature, to conform it to the most recent changes to the HS Convention tariff nomenclature that the WCO has adopted. The annex to this notice makes technical corrections to the HTS to remedy several technical errors and omissions introduced through the annexes to Proclamation 7515, so that the intended tariff treatment is provided. In particular, the annex to this notice corrects (1) errors regarding the eligibility of products classified in certain subheadings for duty-free treatment under the Generalized System of Preferences program, (2) the omission of a tariff subheading that implements a change in the HS Convention annex, and (3) an omission in the description of a tariff subheading that implements a change in the HS Convention annex.

Proclamation 6969 authorized the USTR to exercise the authority provided to the President under section 604 of the Trade Act of 1974 (19 U.S.C. 2483) to embody rectifications, technical or conforming changes, or similar modifications in the HTS. Under the authority vested in the USTR by Proclamation 6969, the rectifications, technical and conforming changes, and similar modifications set forth in the annex to this notice shall be embodied in the HTS with respect to goods entered, or withdrawn from warehouse for consumption, on or after January 10, 2002.

Robert B. Zoellick,

United States Trade Representative.

Annex

The HTS is modified as set forth in this annex, with bracketed matter included to assist in the understanding of the modifications. The following provisions supersede matter now in the HTS. The new subheading and superior text thereto being inserted by this notice are set forth in columnar format, and material in such columns is inserted in the columns of the HTS designated ''Heading/Subheading'', ''Article Description'', ''Rates of Duty 1 General'', ''Rates of Duty 1 Special'', and ''Rates of Duty 2'', respectively.

Effective with respect to articles entered, or withdrawn from warehouse for consumption, on or after January 10, 2002, the HTS is modified as follows:

(1). General note 4(d) is modified by:

(a). deleting the following subheadings and the country set out opposite such subheading:

1403.00.94 India—4107.19.40 India

4106.21.10 India; Pakistan—4107.99.40 India

(b). deleting the country set opposite the following subheadings:

4103.10.30 India—4107.99.60 India

4106.21.90 India—4113.10.30 India

4106.22.00 India—4113.10.60 India

4107.19.60 India—

(2). The article description of subheading 0305.20 is modified to read:

''Livers and roes of fish, dried, smoked, salted or in brine:''

(3). The following subheading is inserted in numerical sequence:

:[Residual products of the chemical or allied...] : : :

''3825.30.00: Clinical waste.....: Free:: Free''

(4). For subheadings 1403.00.94 and 4106.21.10, the Rates of Duty 1–Special subcolumn is modified by deleting the symbol ''A*'' and inserting an ''A'' in lieu thereof.

[FR Doc. 02–948 Filed 1–14–02; 8:45 am]

BILLING CODE 3190–01–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number: MARAD–2002–11298]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel J&B I.

SUMMARY: As authorized by Pub. L. 105–383, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a description of the proposed service, is listed below. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines that in accordance with Pub. L. 105–383 and MARAD's regulations at 46 CFR part 388 (65 FR 6905; February 11, 2000) that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels, a waiver will not be granted.

DATES: Submit comments on or before February 14, 2002.

ADDRESSES: Comments should refer to docket number MARAD–2002–11298. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001. You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit/*. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Kathleen Dunn, U.S. Department of Transportation, Maritime Administration, MAR–830 Room 7201,

400 Seventh Street, SW., Washington, DC 20590. Telephone 202–366–2307.

SUPPLEMENTARY INFORMATION: Title V of Pub. L. 105–383 provides authority to the Secretary of Transportation to administratively waive the U.S.-build requirements of the Jones Act, and other statutes, for small commercial passenger vessels (no more than 12 passengers). This authority has been delegated to the Maritime Administration per 49 CFR 1.66, Delegations to the Maritime Administrator, as amended. By this notice, MARAD is publishing information on a vessel for which a request for a U.S.-build waiver has been received, and for which MARAD requests comments from interested parties. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD'S regulations at 46 CFR part 388.

Vessel Proposed for Waiver of the U.S.-Build Requirement

(1) Name of vessel and owner for which waiver is requested. *Name of vessel:* J&B I. *Owner:* Fredrick Gatchell.

(2) Size, capacity and tonnage of vessel. *According to the applicant:* ''The vessel measures 46.6′ in length × 15′ beam. Gross tonnage is 28.84.''

(3) Intended use for vessel, including geographic region of intended operation and trade. *According to the applicant:* ''The intended use of vessel is to carry passengers on sailing tours (Jacksonville, Fla. to Ft. Lauderdale, Fla. Not more than 5 miles coastwise.''

(4) Date and Place of construction and (if applicable) rebuilding. *Date of construction:* 1986. *Place of construction:* Trinity, Newfoundland.

(5) A statement on the impact this waiver will have on other commercial passenger vessel operators. *According to the applicant*: ''This waiver will have no impact on other commercial passenger operators as there are no other passenger day or evening tour sail boats in the area.''

(6) A statement on the impact this waiver will have on U.S. shipyards. According to the applicant: ''This waiver will have no impact on any U.S. Shipyards.''

Dated: January 10, 2002.

By Order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 02–940 Filed 1–14–02; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number: MARAD–2002–11299]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel SHIBUMI.

SUMMARY: As authorized by Pub. L. 105–383, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a description of the proposed service, is listed below. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines that in accordance with Pub. L. 105–383 and MARAD's regulations at 46 CFR part 388 (65 FR 6905; February 11, 2000) that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels, a waiver will not be granted.

DATES: Submit comments on or before February 14, 2002.

ADDRESSES: Comments should refer to docket number MARAD–2002–11299. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001. You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit/*. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Kathleen Dunn, U.S. Department of Transportation, Maritime Administration, MAR–832 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone 202–366–2307.

SUPPLEMENTARY INFORMATION: Title V of Pub. L. 105–383 provides authority to the Secretary of Transportation to administratively waive the U.S.-build requirements of the Jones Act, and other statutes, for small commercial passenger vessels (no more than 12 passengers). This authority has been delegated to the Maritime Administration per 49 CFR 1.66, Delegations to the Maritime Administrator, as amended. By this notice, MARAD is publishing information on a vessel for which a request for a U.S.-build waiver has been received, and for which MARAD requests comments from interested parties. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD'S regulations at 46 CFR part 388.

Vessel Proposed for Waiver of the U.S.-Build Requirement

(1) Name of vessel and owner for which waiver is requested. *Name of vessel:* SHIBUMI. *Owner:* Christian J. Lambertsen and Jacqueline J. Lambertsen.

(2) Size, capacity and tonnage of vessel. *According to the applicant:* ''65 foot pilot house ketch. 15 foot beam, 7 foot draft. Pleasure craft. 50 gross tons.''

(3) Intended use for vessel, including geographic region of intended operation and trade. *According to the applicant:* ''Small group charter for training in offshore large vessel handling and cruising.'' ''Near coastal waters of the East coast of the United States from Maine to Key West.''

(4) Date and Place of construction and (if applicable) rebuilding. *Date of construction:* 1973. *Place of construction:* Auckland, New Zealand.

(5) A statement on the impact this waiver will have on other commercial passenger vessel operators. *According to the applicant:* ''I know of no other local group offering the same services covering the same region.''

(6) A statement on the impact this waiver will have on U.S. shipyards. According to the applicant: ''None.''

Dated: January 10, 2002.

By Order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 02–939 Filed 1–14–02; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34147]

Paula J. Mudge-Gibson and Don L. Gibson—Continuance in Control Exemption—Chicago Heights Switching Company

Paula J. Mudge-Gibson and Don L. Gibson, noncarrier individuals (applicants), have filed a verified notice of exemption to continue in control of Chicago Heights Switching Company (CHSC), upon CHSC's becoming a carrier.

This transaction is related to a concurrently filed verified notice of exemption in STB Finance Docket No. 34146, *Chicago Heights Switching Company—Operation Exemption—Bulkmatic Railroad Corporation,* wherein CHSC seeks to operate a line of railroad subleased by Bulkmatic Railroad Corporation.[1]

The transaction was expected to be consummated on or shortly after December 28, 2001, the effective date of the exemption (7 days after the notice of exemption was filed).

Applicants own and control the Central Illinois Railroad Company (CIRY), which operates in the State of Illinois. Applicants state that: (i) The properties of CIRY and CHSC will not connect with each other or any railroads in their corporate family; (ii) the continuance in control is not part of a series of anticipated transactions that would connect the rail lines of CIRY and CHSC with each other or any railroads in their corporate family; and (iii) the transaction does not involve a Class I carrier. Therefore, the transaction is exempt from the prior approval requirements of 49 U.S.C. 11323. *See* 49 CFR 1180.2(d)(2).

Under 49 U.S.C. 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. Section 11326(c), however, does not provide for labor protection for transactions under sections 11324 and 11325 that involve only Class III rail carriers. Because this transaction involves Class III rail carriers only, the Board, under the statute, may not impose labor protective conditions for this transaction.

If the notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34147, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Thomas F. McFarland, Thomas F. McFarland, P.C., 208 South LaSalle Street, Suite 1890, Chicago, IL 60604–1194.

Board decisions and notices are available on our website at *www.stb.dot.gov.*

Decided: January 4, 2002.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 02–764 Filed 1–14–02; 8:45 am]

BILLING CODE 4915–00–P

[1] *See Bulkmatic Railroad Corporation-Acquisition Exemption-Bulkmatic Transport Company,* STB Finance Docket No. 34145 (STB served Jan. 15, 2002).

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34145]

Bulkmatic Railroad Corporation—Acquisition Exemption—Bulkmatic Transport Company

Bulkmatic Railroad Corporation, a noncarrier, has filed a verified notice of exemption under 49 CFR 1150.31 to acquire by sublease from Bulkmatic Transport Company approximately 3.9 miles of railroad right-of-way and trackage known as Bulkmatic Distribution Center, at Chicago Heights, IL (line).[1]

The transaction was scheduled to be consummated on January 1, 2002.[2]

If the notice contains false or misleading information, the exemption is void *ab initio.* Petitions to reopen the proceeding to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34145, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on David C. Dillon, Esq., Dillon & Nash, 111 West Washington Street, Suite 719, Chicago, IL 60602.

Board decisions and notices are available on our website at *www.stb.dot.gov.*

Decided: January 4, 2002.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 02–763 Filed 1–14–02; 8:45 am]

BILLING CODE 4915–00–P

[1] BRC has subleased the line from Bulkmatic Transport Company. *See Bulkmatic Railroad Corporation—Acquisition Exemption—Bulkmatic Transport Company,* STB Finance Docket No. 34145 (STB served Jan. 15, 2002).

[2] On December 26, 2001, a petition to stay the effective dates of the exemptions in both STB Finance Docket No. 34146 and STB Finance Docket No. 34145 was filed by Joseph C. Szabo, for and on behalf of the United Transportation Union-Illinois Legislative Board. By decision served December 27, 2001, the petition for stay was denied.

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34146]

Chicago Heights Switching Company—Operation Exemption—Bulkmatic Railroad Corporation

Chicago Heights Switching Company (CHSC), a noncarrier, has filed a verified notice of exemption under 49 CFR 1150.31 to operate, pursuant to an operating agreement with Bulkmatic Railroad Corporation (BRC), approximately 3.9 miles of railroad right-of-way and trackage known as Bulkmatic Distribution Center, at Chicago Heights, IL (line).[1]

The transaction was scheduled to be consummated on January 1, 2002.[2] This transaction is related to STB Finance Docket No. 34147, *Paula J. Mudge-Gibson and Don L. Gibson—Continuance in Control Exemption—Chicago Heights Switching Company,* wherein Paula J. Mudge-Gibson and Don L. Gibson have filed a verified notice of exemption to continue in control of CHSC upon its becoming a Class III rail carrier.

If the notice contains false or misleading information, the exemption is void *ab initio.* Petitions to reopen the proceeding to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to

[1] Chicago Heights Switching Company will be the operator of the line. *See Chicago Heights Switching Company-Operation Exemption-Bulkmatic Railroad Corporation,* STB Finance Docket No. 34146 (STB served Jan. 15, 2002).

[2] On December 26, 2001, a petition to stay the effective dates of the exemptions in both STB Finance Docket No. 34146 and STB Finance Docket No. 34145 was filed by Joseph C. Szabo, for and on behalf of the United Transportation Union-Illinois Legislative Board. By decision served December 27, 2001, the petition for stay was denied.

revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34146, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Thomas F. McFarland, Esq., Thomas F. McFarland, P.C., 208 South LaSalle Street, Suite 1890, Chicago, IL 60604–1194.

Board decisions and notices are available on our website at *www.stb.dot.gov.*

Decided: January 4, 2002.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 02–762 Filed 1–14–02; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE TREASURY

Departmental Offices/Federal Consulting Group; Proposed Collection; Comment Request

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 proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Federal Consulting Group within the Department of the Treasury is soliciting comments concerning the Government Web Site Customer Satisfaction Survey.

DATES: Written comments should be received on or before March 18, 2002 to be assured of consideration.

ADDRESSESES: Direct all written comments to the Federal Consulting Group, Attention: Bernard Lubran, 1700 G Street, NW., Washington, DC 20552, (202) 906–5642, *bernie.lubran@ots.treas.gov*.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to the Federal Consulting Group, Attention: Bernard Lubran, 1700 G Street, NW., Washington, DC 20552, (202) 906–5642, *bernie.lubran@ots.treas.gov.*

SUPPLEMENTARY INFORMATION:

Title: Government Web Site Customer Satisfaction Survey.

OMB Number: New.

Abstract: The following summary of the proposed new information collection activity is designed to establish a means to consistently measure and compare customer satisfaction with federal government agency web sites within the Executive Branch. The Federal Consulting Group of the Department of the Treasury has partnered with ForeSeeResults, a joint venture between Compuware Corporation and the CFI Group, to offer this survey instrument to federal government agencies (the ''partnership'').

ForeSeeResults is a leader in customer satisfaction and customer experience management on the web. It utilizes the methodology of the most respected, credible, and well-known measure of customer satisfaction in the country, the American Customer Satisfaction Index (ACSI). This methodology utilizes an econometric model and provides for a very precise measurement of customer satisfaction of web site users, identifies specific areas for improvement, and determines the impact of those improvements on customer satisfaction and future customer behaviors. The ACSI is a cross-industry, cross-agency methodology for obtaining comparable measures of customer satisfaction. Along with other economic objectives, the quality of output of goods and services is a part of measuring living standards. The ACSI's ultimate purpose is to help improve the quality of goods and services available to the American people.

The Government Web Site Customer Satisfaction surveys will be completed subject to the Privacy Act 1074, Public Law 93–579, December 31,1974 (5 U.S.C. 522a). The agency information collection will be used solely for the purpose of the survey. The partnership will not be authorized to release any agency information upon completion of the survey without first obtaining permission from the Federal Consulting Group and the participating agency. In no case shall any new system of records containing privacy information be developed by the Federal Consulting Group, participating agencies, or the contractor collecting the data.

This survey asks no questions of a sensitive nature, such as sexual behavior and attitudes, religious beliefs, and other matters that are commonly considered private.

Current Actions: Newly proposed collection of information.

Type of Review: New collection.

Affected Public: Individuals or households/Business or other for-profit/Not-for-profit institutions/Farms/Federal Government/State, Local or Tribal Government.

Estimated Number of Respondents: Usage by federal agencies of the Government Web Site Customer Satisfaction Survey is expected to vary as new agency web sites are added or deleted. However, projected estimates for fiscal years 2002 through 2004 are as follows:

Fiscal Year 2002—10 Customer Satisfaction Surveys

Respondents: 50,000; *annual responses:* 50,000; *average minutes per response:* 2.0; *burden hours:* 1,666.

Fiscal Year 2003—20 Customer Satisfaction Surveys

Respondents: 100,000; *annual responses:* 100,000; *average minutes per response:* 2.0; *burden hours:* 3,333

Fiscal Year 2004—30 Customer Satisfaction Surveys

Respondents: 150,000; *annual responses:* 150,000; *average minutes per response:* 2.0; *burden hours:* 5,000

Requst 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 shall have 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.

Dated: January 8, 2002.

Bernard A. Lubran,

Project Manager, Federal Consulting Group.

[FR Doc. 02–906 Filed 1–14–02; 8:45 am]

BILLING CODE 4810–25–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

January 8, 2002.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before February 14, 2002 to be assured of consideration.

Financial Management Service (FMS)

OMB Number: 1510–0061.

Form Number: None.

Type of Review: Extension.

Title: Cash Management Improvement Act (CMIA) Annual Report and Direct Cost Claims.

Description: States and Territories must report interest owed to and from the Federal government for major Federal assistance programs on an annual basis. The data is used by Treasury and other Federal agencies to verify State and Federal interest claims to assess State and Federal cash management practices and to exchange amounts of interest owed.

Respondents: State, Local or Tribal Government, Federal Government.

Estimated Number of Respondents/Recordkeepers: 56.

Estimated Burden Hours Per Respondent/Recordkeeper: 350 hours.

Frequency of Response: Annually.

Estimated Total Reporting Burden: 19,600 hours.

Clearance Officer: Juanita Holder, Financial Management Service, 3700 East West Highway, Room 135, PGP II, Hyattsville, MD 20782.

OMB Reviewer: Alexander T. Hunt, (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

Mary A. Able,

Departmental Reports, Management Officer.

[FR Doc. 02–947 Filed 1–14–02; 8:45 am]

BILLING CODE 4810–35–P

DEPARTMENT OF THE TREASURY

Fiscal Service

Surety Companies Acceptable on Federal Bonds: Odyssey America Reinsurance Corporation

AGENCY: Financial Management Service, Fiscal Service, Department of the Treasury.

ACTION: Notice.

SUMMARY: This is Supplement No. 16 to the Treasury Department Circular 570; 2001 Revision, published July 2, 2001, at 66 FR 35024.

FOR FURTHER INFORMATION CONTACT: Surety Bond Branch at (202) 874–6765.

SUPPLEMENTARY INFORMATION: A Certificate of Authority as an acceptable surety on Federal bonds is hereby issued to the following Company under 31 U.S.C. 9304 to 9308. Federal bond-approving officers should annotate their reference copies of the Treasury Circular 570, 2001 Revision, on page 35063 to reflect this addition:

Odyssey America Reinsurance Corporation. *Business Address:* 300 First Stamford Place, Stamford, Connecticut, 06902. *Phone:* (203) 977–8000. *Underwriting Limitation b/:* $47,483,000.

Certificates of Authority expire on June 30 each year, unless revoked prior to that date. The Certificates are subject to subsequent annual renewal as long as the companies remain qualified (31 CFR part 223). A list of qualified companies is published annually as of July 1 in Treasury Department Circular 570, with details as to underwriting limitations, areas in which licensed to transact surety business and other information.

The Circular may be viewed and downloaded through the Internet at *http://www.fms.treas.gov/c570/index.html.* A hard copy may be purchased from the Government Printing Office (GPO) Subscription Service, Washington, DC, Telephone (202) 512–1800. When ordering the Circular from GPO, use the following stock number: 769–004–04067–1.

Questions concerning this Notice may be directed to the U.S. Department of the Treasury, Financial Management Service, Financial Accounting and Services Division, Surety Bond Branch, 3700 East-West Highway, Room 6A04, Hyattsville, MD 20782.

Dated: December 31, 2001.

Wanda J. Rogers,

Director, Financial Accounting and Services Division, Financial Management Service.

[FR Doc. 02–969 Filed 1–14–02; 8:45 am]

BILLING CODE 4810–35–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8609

AGENCY: Internal Revenue Service (IRS), 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 proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8609, Low-Income Housing Credit Allocation Certification and Schedule A (Form 8609), Annual Statement.

DATES: Written comments should be received on or before March 18, 2002, to be assured of consideration.

ADDRESSES: Direct all written comments to George Freeland, Internal Revenue Service, room 5577, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, room 5242, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Low-Income Housing Credit Allocation Certification and Schedule A (Form 8609), Annual Statement.

OMB Number: 1545–0988.

Form Number: Form 8609 and Schedule A (Form 8609).

Abstract: Owners of residential low-income rental buildings may claim a low-income housing credit for each qualified building over a 10-year credit period. Form 8609 is used to obtain a housing credit allocation from the housing credit agency. The form, along with Schedule A, is used by the owner to certify necessary information required by the law.

Current Actions: There are no changes being made to Form 8609 or Schedule A at this time.

Type of Review: Extension of a current OMB approval.

Affected Public: Business or other for-profit organizations, individuals, and state, local or tribal governments.

Estimated Number of Respondents: 120,000.

Estimated Time Per Respondent: 23 hours, 5 minutes.

Estimated Total Annual Burden Hours: 2,770,200.

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 a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

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 shall have 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: January 9, 2002.

George Freeland,

IRS Reports Clearance Officer.

[FR Doc. 02–986 Filed 1–14–02; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the New York Metro Citizen Advocacy Panel

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the New York Metro Citizen Advocacy Panel will be held in Brooklyn, New York.

DATES: The meeting will be held Wednesday February 27, 2002.

FOR FURTHER INFORMATION CONTACT: Eileen Cain at 1–888–912–1227 or 718–488–3555.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an operational meeting of the Citizen Advocacy Panel will be held Wednesday February 27, 2002, 6:00 p.m. to 9:20 p.m. at the Internal Revenue Service, 625 Fulton Street, Brooklyn, NY 11201.

For more information or to confirm attendance, notification of intent to attend the meeting must be made with Eileen Cain. Mrs. Cain can be reached at 1–888–912–1227 or 718–488–3555. The public is invited to make oral comments from 9:00 p.m. to 9:20 p.m. on Wednesday February 27, 2002.

Individual comments will be limited to 5 minutes. If you would like to have the CAP consider a written statement, please call 1–888–912–1227 or 718–488–3555, or write Eileen Cain, CAP Office, P.O. Box R, Brooklyn, NY, 11201. The Agenda will include the following: various IRS issues. Note: Last minute changes to the agenda are possible and could prevent effective advance notice.

Dated: January 9, 2002.

Cathy VanHorn,

Director, CAP, Communication and Liaison.

[FR Doc. 02–987 Filed 1–14–02; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the New York Metro Citizen Advocacy Panel

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the New York Metro Citizen Advocacy Panel will be held in Brooklyn, NY.

DATES: The meeting will be held Wednesday March 20, 2002.

FOR FURTHER INFORMATION CONTACT: Eileen Cain at 1–888–912–1227 or 718–488–3555.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an operational meeting of the Citizen Advocacy Panel will be held Wednesday March 20, 2002, 6:00 p.m. to 9:20 p.m. at the Internal Revenue Service, 625 Fulton Street, Brooklyn, NY 11201.

For more information or to confirm attendance, notification of intent to attend the meeting must be made with Eileen Cain. Mrs. Cain can be reached at 1–888–912–1227 or 718–488–3555. The public is invited to make oral comments from 9:00 p.m. to 9:20 p.m. on Wednesday March 20, 2002.

Individual comments will be limited to 5 minutes. If you would like to have the CAP consider a written statement, please call 1–888–912–1227 or 718–488–3555, or write Eileen Cain, CAP Office, P.O. Box R, Brooklyn, NY, 11201. The Agenda will include the following: various IRS issues. **Note:** Last minute changes to the agenda are possible and could prevent effective advance notice.

Dated: January 9, 2002.

Cathy VanHorn,

Director, CAP, Communication and Liaison.

[FR Doc. 02–988 Filed 1–14–02; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0606]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Health Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Health Administration (VHA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments on the information to authorize VA to bill ''reasonable charges'' instead of ''reasonable costs'' for medical care or services provided or furnished to a veteran for a non-service-connected condition.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before March 18, 2002.

ADDRESSES: Submit written comments on the collection of information to Ann Bickoff, Veterans Health Administration (193B1), Department of Veterans Affairs,

810 Vermont Avenue, NW., Washington, DC 20420 or e-mail: *ann.bickoff@hq.med.va.gov.* Please refer to ''OMB Control No. 2900–0606'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Ann Bickoff at (202) 273–8310.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C., 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VHA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VHA's functions, including whether the information will have practical utility; (2) the accuracy of VHA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Regulation for Submission of Evidence—Title 38 CFR 17.101(a)(2).

OMB Control Number: 2900–0606.

Type of Review: Extension of a currently approved collection.

Abstract: A third-party payer that is liable for reimbursing VA for health care VA provided to veterans with non-service connected conditions continues to have the option of paying either the billed charges or the amount the health plan demonstrates it would pay to providers other than entities of the United States for the same care or services in the same geographic area. If the amount submitted for payment is less than the amount billed, VA will accept the submission as payment, subject to verification at VA's discretion. VA may request the third-party payer to submit evidence or information to substantiate the appropriateness of the payment amount (e.g., health plan policies, provider agreements, medical evidence, proof of payment to other providers demonstrating the amount paid for the same care and services VA provided). The information is needed to determine whether the third-party payer has met the test of properly demonstrating its equivalent private sector provider payment amount for the same care or services and within the same geographic area as provided by VA.

Affected Public: Business or other for-profit, Individuals or households, Not for Profit Institutions, Farms, and State, Local or Tribal Government.

Estimated Total Annual Burden: 800 hours.

Estimated Average Burden Per Respondent: 2 hours.

Frequency of Response: On occasion.

Estimated Number of Respondents: 400.

Dated: December 27, 2001.

By direction of the Secretary.

Mary Granito,

Management Analyst, Information Management Service.

[FR Doc. 02–989 Filed 1–14–02; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0116]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed revision of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments for information needed from penal institutions about incarcerated VA beneficiaries.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before March 18, 2002.

ADDRESSES: Submit written comments on the collection of information to Nancy J. Kessinger, Veterans Benefits Administration (20S52), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or e-mail: *irmnkess@vba.va.gov.* Please refer to ''OMB Control No. 2900–0116'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 273–7079 or FAX (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C., 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Notice to Department of Veterans Affairs of Veteran or Beneficiary Incarcerated in Penal Institution, VA Form 21–4193.

OMB Control Number: 2900–0116.

Type of Review: Revision of a currently approved collection.

Abstract: VA Form 21–4193 is used by penal institutions to furnish information about incarcerated VA beneficiaries. The information is used to determine reduction or termination of a beneficiary's VA compensation or pension rate when the beneficiary is incarcerated in a penal institution in excess of 60 days after conviction.

Affected Public: Individuals or households, and State, Local or Tribal Government.

Estimated Annual Burden: 416 hours.

Estimated Average Burden Per Respondent: 15 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 1,664.

Dated: December 20, 2001.

By direction of the Secretary.

Donald L. Neilson,

Director, Information Management Service.

[FR Doc. 02–991 Filed 1–14–02; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–NEW]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Health Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Health Administration (VHA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed new collection, and allow 60 days for public comment in response to the notice. This notice solicits comments on the information needed to guarantee loans for construction or rehabilitation of multifamily transitional housing for homeless veterans.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before March 18, 2002.

ADDRESSES: Submit written comments on the collection of information to Ann Bickoff, Veterans Health Administration (193B1), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420 or e-mail: *ann.bickoff@mail.va.gov.* Please refer to ''OMB Control No. 2900–NEW'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Ann Bickoff at (202) 273–8310.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C., 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VHA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VHA's functions, including whether the information will have practical utility; (2) the accuracy of VHA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: VA Multifamily Transitional Housing Loan Guaranty Application, VA Form 10–0365.

OMB Control Number: 2900–NEW.

Type of Review: New collection.

Abstract: VA is authorized to guarantee loans for construction or rehabilitation of multifamily transitional housing for homeless veterans. Loans may include amounts to acquire land, refinance existing loans, finance acquisition of furniture, equipment, supplies and materials and to supply working capital for the organization. The information collected is used to determine financial and program service provider eligibility and apply criteria to rate each application; and to obtain information necessary to ensure minimal defaults and delinquencies, interest subsidies, or other payments.

Affected Public: Not for Profit Institutions, and State, Local or Tribal Government.

Estimated Total Annual Burden: 200 hours.

Estimated Average Burden Per Respondent: 40 hours.

Frequency of Response: On occasion.

Estimated Number of Respondents: 5.

Dated: December 20, 2001.

By direction of the Secretary.

Donald L. Neilson,

Director, Information Management Service.

[FR Doc. 02–992 Filed 1–14–02; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0620]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Health Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C., 3501 *et seq.*), this notice announces that the Veterans Health Administration (VHA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before February 14, 2002.

FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT: Denise McLamb, Information Management Service (045A4), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 273–8030, FAX (202) 273–5981 or e-mail to: *denise.mclamb@mail.va.gov.* Please refer to ''OMB Control No. 2900–0620.''

SUPPLEMENTAL INFORMATION:

Title: Payment or Reimbursement for Emergency Services for Nonservice-Connected Conditions in Non-VA Facilities.

OMB Control Number: 2900–0620.

Type of Review: Extension of a currently approved collection.

Abstract: VA has established provisions regarding payment of or reimbursement for reasonable value of non-VA emergency services provided for nonservice-connected conditions of certain veterans who have no medical insurance and no other recourse for payment. VA will make payment or reimbursement only for emergency services provided in a hospital emergency department or a similar facility held out as providing emergency care to the public. Health care providers furnishing emergency treatment who believe they may have a basis for filing a claim with VA for payment should contact VA within 48 hours after the veteran begins receiving emergency treatment for emergency services other than emergency transportation. Such contact is not a condition of VA payment. However, the contact will assist the provider in understanding the condition for payment and assist the provider in planning for transfer of the veteran after stabilization. VA would use the information and certifications submitted to process claims for such reimbursement or payment.

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. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on October 26, 2001, at pages 54340–54341.

Affected Public: Individuals or households, business or other for-profit and not-for-profit institutions.

Estimated Annual Burden: 120,729 hours.

Estimated Average Burden Per Respondent: 30 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 241,457.

Send comments and recommendations concerning any aspect of the information collection to

VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503, (202) 395–7316. Please refer to ''OMB Control No. 2900–0620'' in any correspondence.

Dated: December 27, 2001.

By direction of the Secretary.

Mary Granito,

Management Analyst, Information Management Service.

[FR Doc. 02–990 Filed 1–14–02; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0103]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C., 3501 *et seq.*), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before February 14, 2002.

FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT: Denise McLamb, Information Management Service (045A4), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 273–8015, FAX (202) 273–5981 or e-mail: *denise.mclamb@mail.va.gov.* Please refer to ''OMB Control No. 2900–0103.''

SUPPLEMENTAL INFORMATION:

Title: Application for Dependency and Indemnity Compensation by Child, VA Form 21–4183.

OMB Control Number: 2900–0103.

Type of Review: Extension of a currently approved collection.

Abstract: VA Form 21–4183 is used by a child under age 18 to apply for dependency and indemnity compensation where the surviving spouse was not entitled or is no longer entitled to receive benefits or by a child age 18 or over regardless of the surviving spouse's entitlement. The form is used in lieu of VA Form 21–534, Application for Dependency and Indemnity Compensation or Death Pension by Widow(er) or Child, in order to help reduce the reporting burden of a child under 18 when information about the deceased veteran's spouse is not required.

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. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on July 6, 2001, at pages 35700–35701.

Affected Public: Individuals or households.

Estimated Annual Burden: 1,975 hours.

Estimated Average Burden Per Respondent: 15 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 7,900.

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to ''OMB Control No. 2900–0103'' in any correspondence.

Dated: December 17, 2001.

By direction of the Secretary.

Donald L. Neilson,

Director, Information Management Service.

[FR Doc. 02–993 Filed 1–14–02; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0590]

Agency Information Collection Activities Under OMB Review

AGENCY: Office of Acquisition and Materiel Management, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C., 3501 *et seq.*), this notice announces that the Office of Acquisition and Materiel Management, Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before February 14, 2002.

FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT: Denise McLamb, Information Management Service (045A4), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 273–8030 or FAX (202) 273–5981 or e-mail to: *denise.mclamb@mail.va.gov.* Please refer to ''OMB Control No. 2900–0590'' in any correspondence.

SUPPLEMENTAL INFORMATION:

Titles:

a. Veterans Affairs Acquisition Regulation (VAAR) Clause 852.237–7, Indemnification and Medical Liability Insurance.

b. Veterans Affairs Acquisition Regulation (VAAR) Clause 852.237–71, Indemnification and Insurance.

c. Veterans Affairs Acquisition Regulation (VAAR) Clause 852.207–70, Report of Employment Under Commercial Activities.

OMB Control Number: 2900–0590.

Type of Review: Revision of a currently approved collection.

Abstract:

a. Veterans Affairs Acquisition Regulation Clause 852.237–7, Indemnification and Medical Liability Insurance is used in lieu of Federal Acquisition Regulation clause 52.237–7, Indemnification and Medical Liability Insurance, in solicitations and contracts for the acquisition of non-personal health care services. VAAR 852.237–7 clause requires the apparent successful bidder/offeror, upon the request of the contracting officer, prior to contract award, to furnish evidence of insurability of the offeror and/or all health-care providers who will perform under the contract. Failure to collect the information would have a negative impact on VA's ability to ensure that VA will not be held liable for any negligent acts of the contractor or its employees and ensure that VA and VA beneficiaries are protected by adequate insurance coverage.

b. Veterans Affairs Acquisition Regulation Clause 852.237–71, Indemnification and Insurance, is used in solicitations for vehicle or aircraft services. To protect VA, VAAR 852.237–71 clause requires the apparent successful bidder/offeror, prior to contract award, to furnish evidence that the firm possesses the types and amounts of insurance required by the solicitation. The information will ensure that VA will not be held liable for any negligent acts of the contractor and ensures that VA beneficiaries and the public are protected by adequate insurance coverage.

c. Veterans Affairs Acquisition Regulation (VAAR) Clause 852.207–70,

Report of Employment Under Commercial Activities, is used in solicitations for commercial items and services where the work is currently being performed by VA employees and where those employees might be displaced as a result of an award to a commercial firm. VAAR 852.207–70 clause requires contractors awarded such contracts to provide, within 5 days of contract award, a list of employment openings, including salaries and benefits, and blank job applications forms. The clause requires the contractor, during the first 90 days of the contract performance, to report the names of all person hired or terminated under the contract.

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. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on September 28, 2001, at pages 49744—49745.

Affected Public: Business or Other for Profit, Individuals or Households, Not-for-Profit Institutions and State, Local or Tribal Government.

Estimated Annual Burden: 1,300 hours.

a. Veterans Affairs Acquisition Regulation (VAAR) Clause 852.237–7, Indemnification and Medical Liability Insurance—750 hours.

b. Veterans Affairs Acquisition Regulation (VAAR) Clause 852.237–71, Indemnification and Insurance—250 hours.

c. Veterans Affairs Acquisition Regulation (VAAR) Clause 852.207–70, Report of Employment Under Commercial Activities—300 hours.

Estimated Average Burden Per Respondent:

a. Veterans Affairs Acquisition Regulation (VAAR) Clause 852.237–7, Indemnification and Medical Liability Insurance—30 minutes.

b. Veterans Affairs Acquisition Regulation (VAAR) Clause 852.237–71, Indemnification and Insurance—30 minutes.

c. Veterans Affairs Acquisition Regulation (VAAR) Clause 852.207–70, Report of Employment Under Commercial Activities—30 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 2,600.

a. Veterans Affairs Acquisition Regulation (VAAR) Clause 852.237–7, Indemnification and Medical Liability Insurance—1,500.

b. Veterans Affairs Acquisition Regulation (VAAR) Clause 852.237–71, Indemnification and Insurance—500.

c. Veterans Affairs Acquisition Regulation (VAAR) Clause 852.207–70, Report of Employment Under Commercial Activities—200 (three reports per contract awarded).

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to ''OMB Control No. 2900–0590'' in any correspondence.

Dated: December 18, 2001.

By direction of the Secretary.

Donald L. Neilson,

Director, Information Management Service.

[FR Doc. 02–994 Filed 1–14–02; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0149]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C., 3501 *et seq.*), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before February 14, 2002.

FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT: Denise McLamb, Information Management Service (045A4), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 273–8030, FAX (202) 273–5981 or e-mail: *denise.mclamb@mail.va.gov.* Please refer to ''OMB Control No. 2900–0149.''

SUPPLEMENTAL INFORMATION:

Title: Application for Conversion (Government Life Insurance), VA Form 29–0152.

OMB Control Number: 2900–0149.

Type of Review: Extension of a currently approved collection.

Abstract: The form is used by the insured to convert to a permanent plan of insurance. VA uses the information to initiate the processing of the insured's request to convert his/her term insurance.

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. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on October 3, 2001, at page 50502.

Affected Public: Individuals or Households.

Estimated Annual Burden: 1,125 hours.

Estimated Average Burden Per Respondent: 15 minutes.

Frequency of Response: One time.

Estimated Number of Respondents: 4,500.

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503, (202) 395–7316. Please refer to ''OMB Control No. 2900–0149'' in any correspondence.

Dated: December 20, 2001.

By direction of the Secretary.

Donald L. Neilson,

Director, Information Management Service.

[FR Doc. 02–995 Filed 1–14–02; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0255]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before February 14, 2002.

FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT: Denise McLamb, Information Management Service (045A4), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 273–8030, FAX (202) 273–5981 or e-mail: *denise.mclamb@mail.va.gov.* Please refer to ''OMB Control No. 2900–0255.''

SUPPLEMENTARY INFORMATION:

Title: Application for Dependency and Indemnity Compensation or Death Pension (Including Accrued Benefits and Death Compensation Where Applicable) From the Department of Veterans Affairs (Supplement to Social Security Administration Forms SSA–4, 5, 7 and 10), VA Form 21–4182.

OMB Control Number: 2900–0255.

Type of Review: Extension of a currently approved collection.

Abstract: The form is used to determine the applicant's eligibility for accrued, dependency and indemnity compensation, death compensation and/or death pension benefits when applying for Social Security benefits.

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. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on July 5, 2001, at pages 35515–35516.

Affected Public: Individuals or households.

Estimated Annual Burden: 3,500 hours.

Estimated Average Burden Per Respondent: 15 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 14,000.

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to ''OMB Control No. 2900–0255'' in any correspondence.

Dated: December 20, 2001.

By direction of the Secretary.

Donald L. Neilson,

Director, Information Management Service.

[FR Doc. 02–996 Filed 1–15–02; 8:45 am]

BILLING CODE 8320–01–P

Notices

Federal Register

Vol. 67, No. 10

Tuesday, January 15, 2002

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

Forest Service

Metolius Basin Forest Management Project, Deschutes National Forest, Jefferson County, OR

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The USDA, Forest Service will prepare an environmental impact statement (EIS) to evaluate options for addressing forest health concerns in the southern half of the Metolius Basin. The main objectives of the project will be to reduce the risk of losing important forest habitats to catastrophic wildfire, insects and disease; reduce the risk of impacts from wildfire on residents, visitors and tribal resources; enhance late-successional habitats; protect and restore riparian areas; to evaluate the road network. The project area is located approximately 15 miles northwest of Sisters, Oregon.

The Forest Service Proposed Action would include combinations of thinning forest stands, mowing brush, and controlled burning of forest fuels on approximately 10,000 acres of the 17,000-acre project area. Approximately, 1,400 acres of thinning would occur within pre-existing tree plantations. Of the 1,800 acres of riparian reserves, an estimated 25% (450 acres) may be treated through thinning or prescribed burning using low impact methods (primarily implemented by hand crews). In addition, the Proposed Action would evaluate the current road network in the project area to identify a more efficient and environmentally sensitive road system. Options for managing the road system may include closing roads that are in excess of public needs, and improving maintenance on remaining roads to reduce resource impacts. No construction of permanent roads is proposed.

DATES: Issues and comments concerning the Proposed Action should be received by February 21, 2002.

ADDRESSES: Submit written comments regarding the Proposed Action to Kris Martinson, Project Team Leader, P.O. Box 249, Sisters, Oregon 97759.

FOR FURTHER INFORMATION CONTACT: Direct questions about the Proposed Action and EIS to Kris Martinson, Attention: Metolius Basin Forest Management Project, P.O. Box 249, Sisters, Oregon 97759, phone 541–549–7730.

SUPPLEMENTARY INFORMATION: The Metolius Basin is an important place for the many people who reside in, or visit the area. The community of Camp Sherman, 5 tracts of summer homes, and 9 popular recreation sites are located in the project area. The Metolius Basin also has important values for the Confederated Tribes of Warm Springs, whose reservation lies just north of the Sisters Ranger District, and through which a portion of the Metolius River flows. The Metolius Basin is also a place of very high ecological significance. It is a Late-Successional Reserve, and provides habitat for many rare plants and animals, including northern spotted owl, goshawk, white-headed woodpecker, bull trout, and Peck's penstemon.

Alternatives to be considered will include deferring any actions at this time (No Action) and several action alternatives that would include different methods for meeting the main objectives of the project. The selected alternative may result in an amendment to the LRMP (Forest Plan) standards and guidelines on visual quality due to the potential visibility of management activities (harvest debris, and scorched and blackened trees) beyond the one-year limit.

Preliminary issues that relate to the Proposed Action include: (1) The upper diameter limit of the trees that should be removed to meet project objectives, (2) potential effects on water quality in the Metolius Wild and Scenic River and its tributaries from thinning, (3) potential effects of the proposed action on late-successional species that are associated with dense, interior forests (the proposed actions will open up portions of the forest), (4) debate about the best actions to help reduce the risk of catastrophic wildfire, and (5) concern about changes in road access within the project area (some roads may be closed).

A scoping notice was sent out locally on October 10, 2001 indicating the Forest's intent to plan and implement actions in the Metolius Basin to address forest health and risk concerns. The scoping letter and additional information about this project is posted on the Deschutes National Forest website (www.fs.fed.us/r6/centraloregon). Future public participation opportunities will be available throughout the planning process.

The public is invited to offer suggestions and comments in writing. Comments received in response to this notice, including the names and addresses of those who comment, will be considered part of the public record on this proposal and will be available to public inspection. Comments submitted anonymously will be accepted and considered; however, those who submit anonymous comments will not have standing to appeal the subsequent decision under 36 CFR part 215. Additionally, pursuant to 7 CFR 1.27(d), any person may request the agency to withhold a submission from the public record by showing how the Freedom of Information Act (FOIA) permits such confidentiality. Persons requesting such confidentiality should be aware that under the FOIA, confidentiality may be granted in only very limited circumstances, such as to protect trade secrets. The Forest Service will inform the requester of the agency's decision regarding the request for confidentiality, and where the request is denied, the agency will return the submission and notify the requester that the comments may be resubmitted with or without name and address within a specified number of days.

The draft EIS is expected to be completed in October 2002. The comment period on the draft EIS will be 45 days from the date the Environmental Protection agency publishes the notice of availability in the **Federal Register**.

The Forest Service believes it is important to give reviewers notice at this early stage of several court rulings related to public participation in the environmental review process. First, reviewers of a draft EIS must structure their participation in the environmental review of the proposal so that it is

meaningful and alerts an agency to the reviewer's position and contentions. [*Vermont Yankee Nuclear Power Corp.* v. *NRDC,* 435 U.S. 519, 553 (1978)]. Also, environmental objections that could be raised at the draft EIS stage but that are not raised until after completion of the final EIS may be waived or dismissed by the courts [*City of Angoon* v. *Hodel,* 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris,* 490 F. Supp. 1334, 1338 (E.D. Wis. 1980)]. Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45 day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final EIS.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft EIS should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft EIS or the merits of the alternatives formulated and discussed in the statement. (Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.)

The final EIS is scheduled to be completed by February 2003. In the final EIS, the Forest Service is required to respond to comments and responses received during the comment period that pertain to the environmental consequences discussed in the draft EIS and applicable laws, regulations, and policies considered in making the decision regarding the Metolius Basin Forest Management Project.

The Forest Service is the lead agency. Leslie Weldon, Forest Supervisor, is the Responsible Official. The Responsible Official will determine which alternative best meets the purpose and need for this project and addresses the key issues raised about this project. The decision and rationale will be documented in the Record of Decision. That decision will be subject to Forest Service Appeal Regulations (36 CFR part 215).

Dated: January 3, 2002.

Leslie Weldon,

Forest Supervisor.

[FR Doc. 02–922 Filed 1–14–02; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Palmer Quarry Expansion, Mt. Hood National Forest, Clackamas County, OR

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Forest Service, USDA, will prepare an environmental impact statement (EIS) on a proposal to expand an existing rock quarry. The Proposed Action will be in compliance with the 1990 Mt. Hood National Forest Land and Resource Management Plan (Forest Plan) as amended by the Northwest Forest Plan, which provides the overall guidance for management of this area. The Proposed Action is within the Salmon River watershed on the Zigzag Ranger District and scheduled for implementation in fiscal year 2003. The Mt. Hood National Forest invites written comments and suggestions on the scope of the analysis. The agency will give notice of the full environmental analysis and decision-making process so interested and affected people may be able to participate and contribute in the final decision.

DATES: Comments concerning the scope of the analysis should be postmarked by March 1, 2002.

ADDRESSES: Send written comments and suggestions concerning the Proposed Action in this area to Jim Tierney, Project Coordinator, 595 NW Industrial Ways, Estacada, Oregon 97023 (phone: 503–630–8751). Comments may also be sent by FAX (503–630–2299). Include your name and mailing address with your comments so documents pertaining to this project may be mailed to you.

FOR FURTHER INFORMATION CONTACT: Questions about the Proposed Action and EIS should be directed to Jim Tierney (address and phone number listed above), or to Mike Redmond, Environmental Coordination, 16400 Champion Way, Sandy, Oregon 97055–7248 (phone: 503–668–1776).

SUPPLEMENTARY INFORMATION: The Proposed Action includes expansion of the existing Palmer rock quarry on approximately 60 acres of National Forest system land. The proposal may also include road improvements on the access to the quarry. The excavated material from the quarry would be used by the Forest Service and the Oregon Department of Transportation of maintenance and reconstruction of roads, including State Highways 26 and 35.

The project area is located approximately 4 miles south of Government Camp, in Section 2, T.4S., R.8–½E., Willamette Meridian, Clackamas County, Oregon. This analysis will evaluate a range of alternatives for implementation of the project activities including a no-action alternative. The project area does not include any wilderness, roadless areas, wild and scenic rivers, late successional reserves, or riparian reserves.

Some of the preliminary issues that have been identified include: Visual quality as seen from key view points on the Forest, and traffic management conflict between commercial use and recreation.

The scoping process will include the following: Identify and clarify issues; identify key issues to be analyzed in depth; explore alternatives based on themes which will be derived from issues recognized during scoping activities; and identify potential environmental effects of the Proposed Action and alternatives.

The draft EIS is planned to be filed with the Environmental Protection Agency (EPA) and available for public review by September 2002. The EPA will publish a Notice of Availability (NOA) of the draft EIS in the **Federal Register**. The comment period on the draft EIS will be 45 days from the date the NOA appears in the **Federal Register**. Copies of the draft EIS will be distributed to interested and affected agencies, organizations, Indian Tribes, and members of the public for their review and comment. It is important that those interested in this proposal on the Mt. Hood National Forest participate at that time.

Comments received in response to this Proposed Action, including names and addresses of those who comment, will be considered part of the public record on this Proposed Action and will be available for public inspection. Comments submitted anonymously will be accepted and considered; however, those who submit anonymous comments will not have standing to appeal the subsequent decision under 36 CFR parts 215 or 217. Additionally, pursuant to 7 CFR 1.27(d), any person may request the agency to withhold a submission from the public record by showing how the Freedom of Information Act (FOIA) permits such confidentiality. Persons requesting such confidentiality should be aware that, under the FOIA, confidentiality may be granted in only very limited circumstances, such as to protect trade secrets. The Forest Service will inform the requestor of the agency's decision regarding the request for confidentiality,

and where the request is denied, the agency will return the submission and notify the requestor that the comments may be resubmitted with or without names and addresses within thirty days.

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First reviewers of draft EIS must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC,* 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft EIS stage but are not raised until after completion of the final EIS may be waived or dismissed by the courts. *City of Angoon* v. *Hodel,* 803 f. 2d 1016, 1022 (9th Cir, 1986) and *Wisconsin Heritages, Inc.* v. *Harris,* 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this Proposed Action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final EIS.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft EIS should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft EIS. Comments may also address the adequacy of the draft EIS or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

The final EIS is scheduled to be available by March 2003. In the final EIS, the Forest Service is required to respond to substantive comments received during the comment period for the draft EIS. The responsible official is Gary Larsen, Mt. Hood National Forest Supervisor. The responsible official will decide which, if any, of the alternatives will be implemented. The Palmer Quarry Expansion decision and rationale will be documented in a Record of Decision, which will be subject to Forest Service Appeal Regulations (36 CFR part 215).

Dated: December 28, 2001.

Kathryn J. Silverman,

Acting Forest Supervisor.

[FR Doc. 02–921 Filed 1–14–02; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Red Knight Restoration Project, Winema National Forest, Klamath County, OR

AGENCY: Forest Service, USDA.

ACTION: Cancellation notice.

SUMMARY: On August 16, 1999, a Notice of Intent (NOI) to prepare an environmental impact statement for the Red Knight Restoration Project was published in the **Federal Register** (64 FR 44477). Since the project proposed action has been postponed and the date for any further environmental analysis is unknown, the 1999 NOI is hereby rescinded.

FOR FURTHER INFORMATION CONTACT: Jayne Goodwin, Red Knight Project Leader, Chemult Ranger District, P.O. Box 150, Chemult, Oregon 97731, telephone 541–365–7072 or e-mail at: *jgoodwin/r6pnw_winema@fs.fed.us.*

Dated: December 28, 2001.

Jack B. Sheehan,

Acting Forest Supervisor.

[FR Doc. 02–923 Filed 1–14–02; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Winema and Fremont National Forests Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Winema and Fremont Resource Advisory Committee will hold its first meeting on January 31–February 1, 2002. The meeting will be held in Room 20 at the Klamath County Courthouse, 316 Main Street, in Klamath Falls, Oregon. The meeting will begin at 9:30 AM and end at approximately 4:30 PM. both days. Day 1 agenda topics are: (1) Introductions; (2) Federal Advisory Committee Act (FACA) overview; (3) Resource Advisory Committee (RAC) Roles and Responsibilities; (4) RAC Rules and Bylaws; (5) RAC Guidebook Review; (6) RAC Communication; (7) Future meetings and agendas; (8) Project Process for submission; (9) County Update on Title III Projects; (10) Election of RAC Chairperson; and (11) Public comments. Day 2 will be devoted to a review of Title II projects submitted by the National Forests and making funding recommendations to the Secretary of Agriculture for fiscal year 2002 projects.

All Winema and Fremont Resource Advisory Committee Meetings are open to the public. Interested citizens are encouraged to attend.

FOR FURTHER INFORMATION CONTACT: Direct questions regarding this meeting to Bill Aney, Designated Federal Official, USDA, Paisley Ranger District, Fremont National Forest, PO Box 67, Paisley OR 97636 (541) 943–4401 or Chuck Graham, Forest Supervisor at (541) 947–2151 or 883–6714.

Dated: January 3, 2002.

Charles Graham,

Forest Supervisor, Winema and Fremont National Forests.

[FR Doc. 02–949 Filed 1–14–02; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Central Closed/Estancia Basin (Torrance, Lincoln, and Socorro Counties, *et al*), EQIP for GPAs, New Mexico

AGENCY: Natural Resources Conservation Service, USDA.

ACTION: Notice of a finding of no significant impact.

SUMMARY: Pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Regulations (40 CFR part 1500); and the Natural Resources Conservation Service Regulations (7 CFR part 650); the U.S. Department of Agriculture, Natural Resources Conservation Service, in New Mexico, gives notice that an environmental impact statement is not being prepared for:

Central Closed/Estancia Basin (Torrance, Lincoln and Socorro Counties)

Lower Rio Grande (Sierra and Socorro Counties)

Irrigated Cropland of the Southwest Closed Basins (Dona Ana and Luna Counties)

Lesser Prairie Chicken (Roosevelt, Lea, Chaves and Curry Counties)

Macho/Gallo Watershed (Lincoln County)

Tramperos Creek Watershed (Union and Harding Counties)

Upper Tularosa Basin Watershed Treatment (Lincoln and Socorro Counties)

Zuni River Watershed (Cibola and McKinley Counties)

Eastern NM Conservation Buffer Initiative (Union, Mora, Harding, San Miguel, Quay, Curry, Roosevelt and Lea Counties)

Cougar/Torrance Watershed (Torrance County)

Estancia Closed Underground Watershed (Torrance, Santa Fe and Bernallilo Counties)

Black River/Delaware River (Eddy County)

Abo Arroyo Watershed (Torrance, Socorro and Valencia Counties)

Rio Hondo Watershed Treatment (Lincoln and Otero Counties)

Yellow Dog Canyon (Socorro County)

Irrigated Cropland of Hidalgo (Hidalgo County)

Upper Canadian River Watershed (Union, Colfax, Harding, Mora and San Miguel Counties)

Pecos River Watershed Aquifer Brush Control (Chaves County)

Eastern Sangre De Cristo Mountain Watershed (Mora, San Miguel and Taos Counties)

FOR FURTHER INFORMATION CONTACT: Rosendo Trevino III, State Conservationist, Natural Resources Conservation Service, 6200 Jefferson, NE, Albuquerque, NM 87109–3734, Telephone (505)761–4400.

Copies of these environmental assessements are available from NRCS in Albuquerque, NM and are also available electronically on the NRCS New Mexico Internet Homepage at: *http://www.nm.nrfcs.usda.gov/techserv/ea.htm.*

SUPPLEMENTARY INFORMATION: The environmental assessments of these federally assisted actions indicate that the projects will not cause significant local, regional, or national effects on the human environment. As a result of these findings, Rosendo Trevino III, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for these projects. Basic data developed during the environmental assessment is on file and may be reviewed by contacting Rosendo Trevino III.

No administrative action on implementation of the proposed action will be taken until 30 days after the date of this publication in the **Federal Register**.

Dated: December 20, 2001.

Rosendo Trevino III,

State Conservationist.

[FR Doc. 02–913 Filed 1–14–02; 8:45 am]

BILLING CODE 3410–16–P

DEPARTMENT OF AGRICULTURE

Natural Resources Conservaiton Service

TV–13a Oaks/Avery Canal Hydrologic Restoration Project, Iberia and Vermilion Parishes, LA

AGENCY: Natural Resources Conservation Service, USDA.

ACTION: Notice of finding of no significant impact.

SUMMARY: Pursuant to Section 102 (2) (C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR part 1500); and the Natural Resources Conservation Service Guidelines (7 CFR part 650); the Natural Resources Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Oaks/Avery Canal Hydrologic Restoration Project, Iberia and Vermilion Parishes, Louisiana.

FOR FURTHER INFORMATION, CONTACT: Donald W. Gohmert, State Conservationist, Natural Resources Conservation Service, 3737 Government Street, Alexandria, Louisiana 71302; telephone (318) 473–7751.

SUPPLEMENTARY INFORMATION: The environmental assessment of the federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Donald W. Gohmert, State Conservationist, has determined that preparation and review of an environmental impact statement is not needed for this project.

TV–13a Oaks/Avery Canal Hydrologic Restoration Project Notice of Finding of No Significant Impact

The project will minimize marsh loss which is attributed to saltwater intrusion, shoreline deterioration, and bankline erosion within the project area. This will be accomplished by the installation of 800 linear feet of bankline stabilization on Oaks Canal, 6,500 linear feet of bankline stabilization along the Gulf Intracoastal Waterway (GIWW), one (1) low sill weir structure at the ''cowpath'' and approximately 900 linear feet of bankline stabilization in a manmade channel east of Oaks Canal and north of GIWW, one (1) armored plug in a breach in the north bank of the Union Oil Canal, and 1,100 linear feet of spoilbank refurbishment on the Union Oil Canal.

The Notice of Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various federal, state, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data collected during the environmental assessment are on file and may be reviewed by contacting Donald W. Gohmert.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register**.

Donald W. Gohmert,

State Conservationist.

[FR Doc. 02–911 Filed 1–14–02; 8:45 am]

BILLING CODE 3410–16–P

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Notice of Proposed Changes to Section IV of the Field Office Technical Guide (FOTG) of the Natural Resources Conservation Service in Indiana

AGENCY: Natural Resources Conservation Service (NRCS), USDA.

ACTION: Notice of availability of proposed changes in Section IV of the FOTG of the NRCS in Indiana for review and comment.

SUMMARY: It is the intention of NRCS in Indiana to issue two revised conservation practice standards in Section IV of the FOTG. The revised standards are: Land Smoothing (466); and Wetland Wildlife Habitat Management (644). These practices may be used in conservation systems that treat highly erodible land and/or wetlands.

DATES: Comments will be received for a 30-day period commencing with this date of publication.

ADDRESSES: Address all requests and comments to Jane E. Hardisty, State Conservationist, Natural Resources Conservation Service (NRCS), 6013 Lakeside Blvd., Indianapolis, Indiana 46278. Copies of this standard will be made available upon written request. You may submit your electronic requests and comments to *darrell.brown@in.usda.gov.*

FOR FURTHER INFORMATION CONTACT: Jane E. Hardisty, 317–290–3200.

SUPPLEMENTARY INFORMATION: Section 343 of the Federal Agriculture Improvement and Reform Act of 1996 states that after enactment of the law, revisions made to NRCS state technical guides used to carry out highly erodible land and wetland provisions of the law, shall be made available for public review and comment. For the next 30 days, the NRCS in Indiana will receive comments relative to the proposed changes. Following that period, a determination will be made by the NRCS in Indiana regarding disposition of those comments and a final determination of changes will be made.

Dated: December 10, 2001.

Jane E. Hardisty,

State Conservationist, Indianapolis, Indiana.

[FR Doc. 02–912 Filed 1–14–02; 8:45 am]

BILLING CODE 3410–16–P

DEPARTMENT OF COMMERCE

Bureau of Export Administration

Sensors and Instrumentation Technical Advisory Committee; Notice of Partially Closed Meeting

The Sensors and Instrumentation Technical Advisory Committee will meet on February 12, 2002, 9:30 a.m., in the Herbert C. Hoover Building, Room 3884, 14th Street between Constitution and Pennsylvania Avenues, NW., Washington, DC. The Committee advises the Office of the Assistant Secretary for Export Administration on technical questions that affect the level of export controls applicable to sensors and instrumentation equipment and technology.

Agenda

Public Session

1. Opening remarks and introductions.
2. Committee Annual Report for 2001.
3. Goals for 2002.
4. Status on Wassenaar Arrangement proposals.
5. Update on implementation of regulations.
6. Committee's proposed change to 6A002 (Optical sensors).
7. Update on Wassenaar Arrangement negotiating cycle.
8. Review of status on Uncooled IR licensing.

Closed Session

9. Discussion of matters properly classified under Executive Order 12958, dealing with the U.S. export control program and strategic criteria related thereto.

A limited number of seats will be available during the public session of the meeting. Reservations are not accepted. To the extent that time permits, members of the public may present oral statements to the Committee. The public may submit written statements at any time before or after the meeting. However, to facilitate distribution of public presentation materials to the Committee members, the Committee suggests that presenters forward the public presentation materials prior to the meeting date to the following address: Ms. Lee Ann Carpenter, OSIES/EA/BXA MS: 3876, U.S. Department of Commerce, 14th St. & Constitution Ave., NW., Washington, DC 20230.

The Assistant Secretary for Administration, with the concurrence of the General Counsel, formally determined on November 29, 2001, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, that the series of meetings of the Committee and of any Subcommittees thereof, dealing with the classified materials listed in 5 U.S.C., 552b(c)(1) shall be exempt from the provisions relating to public meetings found in section 10(a)(1) and 10(a)(3), of the Federal Advisory Committee Act. The remaining series of meetings or portions thereof will be open to the public.

A copy of the Notice of Determination to close meetings or portions of meetings of the Committee is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6020, U.S. Department of Commerce, Washington, DC 20230. For more information contact Lee Ann Carpenter on (202) 482–2583.

Dated: January 9, 2002.

Lee Ann Carpenter,

Committee Liaison Officer.

[FR Doc. 02–1016 Filed 1–14–02; 8:45 am]

BILLING CODE 3510–JT–M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

[Docket No. 010412092–1296–04]

Report on the Effect of Imports of Iron Ore and Semi-Finished Steel on the National Security

AGENCY: Bureau of Export Administration, Department of Commerce.

ACTION: Publication of Executive Summary of Report from the Secretary of Commerce to the President on the Effect of Imports of Iron Ore and Semi-Finished Steel on the National Security/ Notice of availability of full report.

SUMMARY: On October 29, 2001, the Secretary of Commerce (''Secretary'') submitted a report to the President summarizing the findings of an investigation conducted by the Department pursuant to Section 232 of the Trade Expansion Act of 1962, into the effect of imports of iron ore and semi-finished steel on the national security of the United States. Based on the evidence gathered in that investigation, the Secretary was unable to conclude that imports of iron ore and semi-finished steel threaten to impair the national security of the United States, or to recommend to the President that he take action under Section 232 to adjust the level of imports of these items. Included herein is the Executive Summary of the Secretary's report to the President.

ADDRESSES: Copies of the Secretary's report and certain records related to this investigation (with any business confidential information redacted) are accessible in accordance with the regulations published in part 4 of title 15 of the Code of Federal Regulations (15 CFR 4.1 *et seq.*). Specifically, the above documents are maintained on the Bureau of Export Administration's Web page, which can be found at *http://www.bxa.doc.gov* (*see* Freedom of Information Act (''FOIA'') heading). Alternatively, any person may request that a copy of the Secretary's report be sent to him by calling (202) 482–0500.

FOR FURTHER INFORMATION CONTACT: Daniel O. Hill, Director, Office of Strategic Industries and Economic Security, Bureau of Export Administration, U.S. Department of Commerce, (202) 482–4506.

SUPPLEMENTARY INFORMATION:

On February 1, 2001, the Secretary initiated an investigation under Section 232 to determine the effects on the national security of imports of iron ore and semi-finished steel. This investigation was conducted at the request of Representative James Oberstar of Minnesota and Representative Bart Stupak of Michigan. For further details on this investigation, see the **Federal Register** notices of February 6, 2001 (66 FR 9067), April 18, 2001 (66 FR 19917), June 14, 2001 (66 FR 32315), and July 10, 2001 (66 FR 35927).

On October 29, 2001, the Secretary concluded his investigation and submitted a report to the President. Based on the evidence gathered in that investigation, the Secretary was unable to conclude that imports of iron ore and semi-finished steel threaten to impair the national security of the United States, or to recommend to the President that he take action under Section 232 to adjust the level of imports of these items. The Executive Summary of the Secretary's October 2001 report to the President, titled ''The Effect of Imports of Iron Ore and Semi-Finished Steel on the National Security,'' is reproduced below in accordance with 15 CFR 705.10.

Dated: January 10, 2002.

James J. Jochum,

Assistant Secretary for Export Administration.

I. Executive Summary

This report summarizes the findings of an investigation conducted by the Secretary of Commerce (''Secretary'') pursuant to Section 232 of the Trade Expansion Act of 1962, as amended, 19 U.S.C. 1862 (''Section 232''), into the effects of imports of iron ore and semi-finished steel on the national security of the United States. The conclusions of this report are as follows:

(1) Iron ore and semi-finished steel are important to U.S. national security. Specifically, iron ore and semi-finished steel— as raw and semi-finished materials consumed by certain segments of the steel industry in the production of finished steel products—are needed to satisfy the requirements for finished steel products of (i) the U.S. Department of Defense (''DoD''), and (ii) certain industries that are critical to the minimum operations of the U.S. economy and government.

(2) Imports of iron ore and semi-finished steel could threaten to impair U.S. national security in either of two ways: (i) through excessive domestic dependency on unreliable foreign suppliers, or (ii) if such imports fundamentally threaten to impair the capability of the U.S. iron ore and semi-finished steel industries to satisfy national security requirements.

(3) In fact, however, there is no probative evidence that imports of iron ore or semi-finished steel threaten to impair U.S. national security. There is neither evidence showing that the United States is dependent on imports of iron ore or semi-finished steel, nor evidence showing that such imports fundamentally threaten the ability of domestic producers to satisfy national security requirements. Specific findings supporting this conclusion include the following:

- National defense requirements, as communicated to the Department of Commerce (''Department'') by DoD, for finished steel—and thus for iron ore and semi-finished steel as inputs—are very low and likely to remain flat over the next five years. DoD's current and projected demand for iron ore and steel can be readily satisfied by domestic production. Moreover, DoD already has established domestic preferences that apply to essentially all of the steel used in weapons systems; accordingly, no weapons system is dependent upon foreign steel. DoD has concluded that ''imports of iron ore and semi-finished steel do not currently affect the national security when assessed in terms of the ability to meet defense demands.''
- The demand of critical industries for iron ore and semi-finished steel can be readily satisfied by domestic production, even assuming that all such demand were necessary to preserve the national security (which is not the case).
- Consideration of other relevant factors, as dictated by Section 232, does not demonstrate that imports of iron ore or semi-finished steel threaten to impair U.S. national security. U.S. industry currently has, and anticipates continuing to have in the future, sufficient human resources, products, raw materials, and other supplies and services needed for the production of iron ore and semi-finished steel.
- Imports of iron ore and semi-finished steel are from diverse and ''safe'' foreign suppliers, with the largest suppliers of these products being U.S. allies in the Western Hemisphere (Canada, Mexico, and Brazil).
- Although domestic manufacturers of iron ore and semi-finished steel clearly are enduring substantial economic hardship, there is no evidence that imports of these items (which account for approximately 20 and 7 percent of U.S. iron ore and semi-finished steel consumption, respectively) fundamentally threaten to impair the capability of U.S. industry to produce the quantities of iron ore and semi-finished steel needed to satisfy national security requirements, a modest proportion of total U.S. consumption.
- These conclusions take into account the campaign against terrorism resulting from the events of September 11, 2001, and the requirements of related military operations.

Accordingly, the Department is unable to conclude that imports of iron ore and semi-finished steel threaten to impair the national security of the United States, or to recommend to the President that he take action under Section 232 to adjust the level of imports.

[FR Doc. 02–977 Filed 1–14–02; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 2–2002]

Foreign-Trade Zone 143—Sacramento, California, Area Application for Expansion

An application has been submitted to the Foreign-Trade Zones (FTZ) Board (the Board), by the Sacramento-Yolo Port District, grantee of Foreign-Trade Zone 143, requesting authority to expand its zone to include an additional site in the Sacramento, California, area, adjacent to the San Francisco Customs port of entry. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on January 7, 2002.

FTZ 143 was approved on August 6, 1987 (Board Order 360, 52 FR 30698, 8/17/87) and expanded on December 15, 1997 (Board Order 944, 62 FR 67043, 12/23/97) and January 18, 2000 (Board Order 1074, 65 FR 5495, 2/4/00). The general-purpose zone project currently consists of the following sites: *Site 1* (686 acres)—within the Port of Sacramento, Industrial Blvd. and Boatman Ave., W. Sacramento; *Site 2* (1,280 acres)—Lincoln Airport Business Park, Aviation Blvd, Lincoln, some 25 miles northeast of Sacramento; and, *Site 3* (1,574 acres)—Chico Municipal Airport complex and adjacent industrial development area, Chico.

The applicant is now requesting authority to expand the general-purpose zone to include an additional site (Proposed Site 4) in Sacramento County. *Proposed Site 4* (976 acres)—McClellan Park (the former site of the McClellan Air Force Base), 3140 Peacekeeper Way, McClellan, California. The site is located in an unincorporated area of the County of Sacramento. The County of Sacramento selected McClellan Business Park, LLC to redevelop and manage the former 2,856-acre McClellan Air Force Base. The area to be included in the proposed zone is currently owned by the U.S. Air Force, but ownership is in the process of being conveyed to the County of Sacramento and McClellan Business Park LLC. (The property is currently leased to the County of Sacramento and McClellan Business Park, LLC as part of the conveyance process.) A variety of businesses are already established on the site performing activities including services, manufacturing and processing, and warehousing and distribution. No specific manufacturing requests are being made at this time. Such requests would be made to the Board on a case-by-case basis. The site contains certain historic properties which will be managed in accordance with the agreement between the United States Air Force and the California State Historic Preservation Officer.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to

investigate the application and report to the Board.

Public comment on the application is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at one of the addresses:

1. Submissions via Express/Package Delivery Services: Foreign-Trade Zones Board, U.S. Department of Commerce, Franklin Court Building-Suite 4100W, 1099—14th Street NW., Washington, DC 20005; or

2. Submissions via the U.S. Postal Service: Foreign-Trade Zones Board, U.S. Department of Commerce, FCB—Suite 4100W, 1401 Constitution Avenue NW, Washington, DC 20230.

The closing period for their receipt is March 18, 2002. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to April 1, 2002).

A copy of the application and accompanying exhibits will be available for public inspection at the Office of the Foreign-Trade Zones Board's Executive Secretary at the first address listed above, and at the Office of the Port Director, Sacramento-Yolo Port District, 3251 Beacon Boulevard, Suite 210, W. Sacramento, CA 95798.

Dated: January 7, 2002.

Dennis Puccinelli,

Executive Secretary.

[FR Doc. 02–974 Filed 1–14–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 3–2002]

Foreign-Trade Zone 124—LaPlace, Louisiana, Application for Expansion—Subzone 124H; Bollinger Shipyards Lockport, LLC; (Shipbuilding), LaFourche, Louisiana

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the South Louisiana Port Commission, grantee of FTZ 124, requesting authority to expand Subzone 124H, at the Bollinger Shipyards Lockport, LLC (Bollinger) shipbuilding facility located in Lockport, Louisiana, to include six new sites in Lafourche, Jefferson and Orleans Parishes. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on January 8, 2002.

Subzone 124H was approved on July 10, 1998 (Board Order 993, 63 FR 39069, 7–21–98). The subzone currently consists of five sites: *Site 1* (250 acres)—Bollinger Lockport, 8365 LA Hwy. 308, Lockport; *Site 2* (168 acres)—Bollinger Larose, LLC, 1515 Highway 24, Larose; *Site 3* (67 acres)—Bollinger Marine Fabricators, LLC, 816 Bollinger Lane, Amelia; *Site 4* (101 acres)—Bollinger Morgan City, LLC, 806 Bollinger Lane, Amelia; and, *Site 5* (50 acres)—Bollinger Amelia Repair, LLC, 606 Ford Industrial Road, Amelia. The applicant is now requesting authority to expand the subzone to include six additional sites: proposed *Site 6* (3 acres)—Bollinger Algiers, LLC, 434 Powder St., New Orleans; proposed *Site 7* (40 acres)—Bollinger Gretna, 4640 Peters Rd., Harvey; proposed *Site 8* (58 acres)—Bollinger Gulf Repair, 3900 Jourdan Road W, New Orleans; proposed *Site 9* (30 acres) Bollinger Quick Repair, 615 Destrehan Ave., Harvey; proposed *Site 10* (4 acres) Bollinger Fourchon, LLC, 106 Norman Doucet Dr., Golden Meadow; and, proposed *Site 11* (21 acres)—Chand, LLC, 157 Highway 654, Matthews. The Bollinger facilities are used for the construction and repair of commercial and government vessels for domestic and international customers.

This proposal does not request any new authority under FTZ procedures in terms of products or components, but it does involve a potential increase in the facility's level of production under FTZ procedures. Bollinger will operate the proposed sites as an integral part of Subzone 124H.

The proposed expanded manufacturing activity conducted under FTZ procedures would be subject to the ''standard shipyard restriction'' applicable to foreign-origin steel mill products (e.g., angles, pipe, plate), which requires that Customs duties be paid on such items.

Public comment is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at one of the following addresses:

1. Submissions Via Express/Package Delivery Services: Foreign-Trade-Zones Board, U.S. Department of Commerce, Franklin Court Building—Suite 4100W, 1099 14th St. NW., Washington, DC 20005; or

2. Submissions Via the U.S. Postal Service: Foreign-Trade-Zones Board, U.S. Department of Commerce, FCB—Suite 4100W, 1401 Constitution Ave. NW., Washington, DC 20230. The closing period for their receipt is March 18, 2002. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to April 1, 2002).

A copy of the application and accompanying exhibits will be available for public inspection at the Office of the Foreign-Trade Zones Board's Executive Secretary at the first address listed above, and at the U.S. Department of Commerce Export Assistance Center, One Canal Place, 365 Canal Street, Suite 1170, New Orleans, LA 70130.

Dated: January 8, 2002.

Dennis Puccinelli,

Executive Secretary.

[FR Doc. 02–975 Filed 1–14–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–475–703]

Notice of Final Results of Antidumping Duty Administrative Review: Granular Polytetrafluoroethylene Resin From Italy

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

SUMMARY: On September 10, 2001, the Department of Commerce (the Department) published the preliminary results of its twelfth administrative review of the antidumping duty order on Granular Polytetrafluoroethylene Resin from Italy. The review covers one producer/exporter of the subject merchandise, Ausimont SpA, and its U.S. affiliate, Ausimont USA (Ausimont). The period of review (POR) is August 1, 1999, through July 31, 2000. Based on our analysis of comments received, these final results differ from the preliminary results. The final results are listed below in the *Final Results of Review* section.

EFFECTIVE DATE: January 15, 2002.

FOR FURTHER INFORMATION CONTACT: Vicki Schepker or Amber Musser, at (202) 482–1756 or (202) 482–1777, respectively; AD/CVD Enforcement, Office V, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street & Constitution Avenue, NW., Washington, D.C. 20230.

SUPPLEMENTARY INFORMATION:

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (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 to 19 CFR part 351 (April 2001).

Background

On September 10, 2001, the Department published in the **Federal Register** the preliminary results of the twelfth administrative review of the antidumping duty order on Granular Polytetrafluoroethylene Resin from Italy. *See Notice of Preliminary Results of Antidumping Duty Administrative Review: Granular Polytetrafluoroethylene Resin from Italy,* 66 FR 46996 (September 10, 2001) (*Preliminary Results*).

We invited parties to comment on the *Preliminary Results*. On October 10, 2001, we received a case brief from the petitioner, E.I. Dupont de Nemours & Company (Dupont). We did not receive a case brief from the respondent, Ausimont. On October 17, 2001, we received a rebuttal brief from Ausimont. No other interested parties filed case or rebuttal briefs.

Scope of the Review

The product covered by this review is granular PTFE resin, filled or unfilled. This order also covers PTFE wet raw polymer exported from Italy to the United States. *See Final Affirmative Determination; Granular Polytetrafluoroethylene Resin from Italy,* 58 FR 26100 (April 30, 1993). This order excludes PTFE dispersions in water and fine powders. During the period covered by this review, such merchandise was classified under item number 3904.61.00 of the Harmonized Tariff Schedule of the United States (HTS). We are providing this HTS number for convenience and U.S. Customs purposes only. The written description of the scope remains dispositive.

Analysis of Comments Received

All issues raised in the case briefs by parties to this administrative review are addressed in the ''Issues and Decision Memorandum'' (*Decision Memorandum*) from Bernard T. Carreau, Deputy Assistant Secretary, Import Administration, to Faryar Shirzad, Assistant Secretary for Import Administration, dated January 8, 2002, which is hereby adopted by this notice. Attached to this notice, as an appendix, is a list of the issues which parties have raised and to which we have responded in the *Decision Memorandum*. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in the public version of this memorandum, which is on file in Room B–099 of the main Commerce building. In addition, a complete version of the public version of the *Decision Memorandum* can be accessed directly on the Web at *ia.ita.doc.gov.* The paper copy and electronic version of the *Decision Memorandum* are identical in content.

Changes Since the Preliminary Determination

Based on our analysis of comments received, we have made an adjustment to the calculation methodology in determining the final dumping margins in the proceeding. For the final determination, we disallowed gains on the sale of securities as an offset to financial expense and recalculated the respondent's interest expense ratio. This adjustment is discussed in the *Decision Memorandum.*

As a result of our review, we determine that the following weighted-average margin exists for the period of August 1, 1999, through July 31, 2000:

Exporter/Manufacturer	Weighted-Average
Ausimont SpA	2.15

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. In accordance with 19 CFR 351.212(b)(1), we have calculated importer-specific assessment rates based on the ratio of the total amount of antidumping duties calculated for the importer-specific sales to the total entered value of the same sales. Where the assessment rate is above *de minimis,* we will instruct the Customs Service to assess duties on all entries of subject merchandise by that importer. The Department will issue appraisement instructions directly to the Customs Service.

Furthermore, the following deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of these final results of administrative review, as provided by section 751(a) of the Act: (1) For the exporter/manufacturer covered by this review, the cash deposit rate will be the rate listed above; (2) for merchandise exported by producers or exporters not covered in this review but covered in a previous segment of this proceeding, the cash deposit rate will continue to be the company-specific rate published in the most recent final results in which that producer or exporter participated; (3) if the exporter is not a firm covered in this review or in any previous segment of this proceeding, but the producer is, the cash deposit rate will be that established for the producer of the merchandise in these final results of review or in the most recent final results in which that producer participated; and (4) if neither the exporter nor the producer is a firm covered in this review or in any previous segment of this proceeding, the cash deposit rate will be 46.46 percent, the ''All Others'' rate established in the less-than-fair-value investigation (53 FR 26096, July 11, 1988). These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402 (f) 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 in the subsequent assessment of double antidumping duties.

This notice also is the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return/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.

We are issuing and publishing these results and notice in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: January 8, 2002.

Faryar Shirzad,

Assistant Secretary for Import Administration.

APPENDIX

1. Financial Expense Calculation.
2. Application of the Special Rule.
3. Calculation of Constructed Export Price Profit Ratio.
4. Scope of the Review.

[FR Doc. 02–970 Filed 1–14–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–201–802]

Gray Portland Cement and Clinker From Mexico; Notice of Extension of Final Results of Antidumping Duty Administrative Review

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

ACTION: Notice of extension of time limits for final results of antidumping duty administrative review.

SUMMARY: The Department of Commerce is extending the time limit for the final results of the administrative review of the antidumping duty order on gray portland cement and clinker from Mexico. The review covers one manufacturer/exporter, CEMEX, S.A. de C.V, and its affiliate, GCC Cemento, S.A. de C.V. The period of review is August 1, 1999, through July 31, 2000.

EFFECTIVE DATE: January 15, 2002.

FOR FURTHER INFORMATION CONTACT: Hermes Pinilla, AD/CVD Enforcement Group I, Office 3, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–3477.

The Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (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.

Extension of Time Limit for Final Results

The Department of Commerce (the Department) published the preliminary results of this administrative review on September 13, 2001 (66 FR 47632). The deadline for completing the final results of the review is January 11, 2002. 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. Due to the complexity of the issues, such as product matching and whether certain sales are outside the ordinary course of trade, the Department determines that it is not practicable to complete the final results of this review within the statutory time limit. Therefore, the Department is extending the time limit for the final results in this review to March 12, 2002.

Dated: January 9, 2002.

Susan Kuhbach,

Acting, Deputy Assistant Secretary, for AD/CVD Enforcement I.

[FR Doc. 02–973 Filed 1–14–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–815]

Sulfanilic Acid From the People's Republic of China; Final Results and Final Partial Rescission of Antidumping Duty Administrative Review

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

EFFECTIVE DATE: January 15, 2002.

SUMMARY: On September 10, 2001, the Department of Commerce (the Department) published the preliminary results of its administrative review of the antidumping duty order on sulfanilic acid from the People's Republic of China. The review covers exports of this merchandise to the United States for the period August 1, 1999, through July 31, 2000, and three firms: Zhenxing Chemical Industry Company (Zhenxing), Yude Chemical Industry Company (Yude), and Baoding Chemical Industry Import and Export Corporation (Baoding). The final results of this review indicate that there are dumping margins only for Zhenxing and the ''PRC enterprise.''

We find that Baoding acted as Zhenxing's shipping agent in preparing Zhenxing's export documents and coordinating its shipments of subject merchandise to the United States during the POR. Therefore, we are rescinding the review of Baoding since we did not find Baoding to be involved in any sales of sulfanilic acid to the United States other than those reported by Zhenxing. In addition, we are rescinding the review with respect to Yude because Yude did not export the subject merchandise to the United States during the period of review (POR). We have made changes in the margin calculations for these final results which are listed below in the ''Final Results of the Review'' section of this notice.

FOR FURTHER INFORMATION CONTACT: Sean Carey or Dana Mermelstein, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230 at (202) 482–3964 or (202) 482–1391, respectively.

SUPPLEMENTARY INFORMATION:

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the Tariff Act of 1930 (the Act), as amended. In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations codified at 19 CFR part 351 (2001).

Background

On September 10, 2001, the Department published the preliminary results of the administrative review of the antidumping duty order on sulfanilic acid. *See Sulfanilic Acid from the People's Republic of China; Preliminary Results of Antidumping Duty Administrative Review (Preliminary Results*), 66 FR 47003 (September 10, 2001). Petitioner filed a supplemental submission on September 28, 2001, of additional publicly available information (PAI) to value factors of production. On October 1, 2001, respondents also submitted, on a timely basis, PAI for the Department's consideration in the instant administrative review. Petitioner filed additional factual information in rebuttal to respondents PAI on October 10, 2001. On November 2, 2001, the Department issued the verification report discussing our on-site inspection of relevant sales and financial records. Respondents filed a case brief with the Department on November 16, 2001, and petitioner submitted a rebuttal brief to the Department on November 21, 2001. Finally, at respondents' request, a hearing was held at the Department on November 29, 2001. The hearing was attended by both respondents and petitioner.

Scope of Review

Imports covered by this review are all grades of sulfanilic acid, which include technical (or crude) sulfanilic acid, refined (or purified) sulfanilic acid and sodium salt of sulfanilic acid.

Sulfanilic acid is a synthetic organic chemical produced from the direct sulfonation of aniline with sulfuric acid. Sulfanilic acid is used as a raw material in the production of optical brighteners, food colors, specialty dyes, and concrete additives. The principal differences between the grades are the undesirable quantities of residual aniline and alkali insoluble materials present in the sulfanilic acid. All grades are available as dry, free flowing powders.

Technical sulfanilic acid, classifiable under the subheading 2921.42.22 of the

Harmonized Tariff Schedule (HTS), contains 96 percent minimum sulfanilic acid, 1.0 percent maximum aniline, and 1.0 percent maximum alkali insoluble materials. Refined sulfanilic acid, also classifiable under the subheading 2921.42.22 of the HTS, contains 98 percent minimum sulfanilic acid, 0.5 percent maximum aniline and 0.25 percent maximum alkali insoluble materials.

Sodium salt (sodium sulfanilate), classifiable under the HTS subheading 2921.42.90, is a powder, granular or crystalline material which contains 75 percent minimum equivalent sulfanilic acid, 0.5 percent maximum aniline based on the equivalent sulfanilic acid content, and 0.25 percent maximum alkali insoluble materials based on the equivalent sulfanilic acid content.

Although the HTS subheadings are provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

Period of Review

The review period is August 1, 1999 through July 31, 2000.

Verification

As provided in section 782(i) of the Act, we verified information provided by the respondents using standard verification procedures, including on-site inspection of the manufacturer's facilities, and the examination of relevant sales and financial records. The results of our verification are discussed in the verification report, a public version of which is on file in the Central Records Unit (CRU), room B–099 of the Main Commerce Building.

Final Rescission of Review with Respect to Yude

In the last administrative review, the Department did not reach the issue of whether to collapse Zhenxing and Yude due to our determination to assign the PRC-wide rate to Yude and Zhenxing as adverse facts available. *See Sulfanilic Acid from the People's Republic of China; Final Results of Administrative Review,* 66 FR 15837 (March 21, 2001) and accompanying Decision Memo at Comment 10, on file in the CRU. For purposes of this review, the Department did not analyze the issue of whether to collapse Yude and Zhenxing because we are rescinding the review with respect to Yude, as Yude did not export the subject merchandise to the United States during the POR.

Separate Rate Analysis for Zhenxing

It is the Department's standard policy to assign to all exporters of the merchandise subject to review in non-market economy countries a single rate, unless an exporter can affirmatively demonstrate an absence of government control, both in law (*de jure*) and in fact (*de facto*), with respect to exports. *See Mitsubishi Heavy Industries, Ltd.,* v. *U.S.,* 54 F.Supp 2d 1183, (CIT 1999). Based on our findings at verification and our analysis of comments received from the interested parties, we continue to find an absence of government control, both in law and in fact, over Zhenxing's export activities, and determine that a separate rate should be applied to Zhenxing. For further discussion of the Department's preliminary determination regarding the issuance of separate rates, *see* Separate Rates Decision Memorandum for Barbara Tillman, Director, Office of AD/CVD Enforcement VII, dated August 31, 2001. A public version of this memorandum is on file in the CRU.

Analysis of Comments Received

As noted above, specific issues and comments raised in the respondents' case brief and petitioner's rebuttal brief are addressed in the Decision Memorandum, which is hereby adopted by this notice. A list of issues which parties have raised and to which we have responded, all of which are in the Decision Memorandum, is attached to this notice as Appendix I. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in this public memorandum which is on file in the Department's CRU. In addition, a complete version of the Decision Memorandum can be accessed directly on the Internet at *http://ia.ita.doc.gov.*

Changes Since the Preliminary Results

Based on our analysis of comments received, we have made certain changes in the margin calculations. For a discussion of the issues and changes in the margin calculation for Zhenxing, refer to the Decision Memorandum and the Department's Final Results Analysis Memorandum for Barbara Tillman, Director, Office of AD/CVD Enforcement VII, dated January 8, 2002. A public version of these memoranda are on file in the CRU.

Final Results of Review

We determine the weighted average dumping margin for Zhenxing for the period August 1, 1999 through July 31, 2000 to be 54.40 percent. Pursuant to 19 CFR 351.224(b), the Department will disclose to parties to the proceeding any calculations performed in connection with these final results within five days after the date of publication of this notice.

Duty Assessments and Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of this notice of final results of administrative review for all shipments of sulfanilic acid from the PRC entered, or withdrawn from warehouse, for consumption on or after the date of publication, as provided by section 751(a)(2)(C) of the Act: (1) The cash deposit rate for the reviewed company listed above will be the rate for that firm established in the final results of this review; (2) for companies previously found to be entitled to a separate rate and for which no review was requested, the cash deposit rate will be the rate established in the most recent review of that company; (3) for all other PRC exporters of subject merchandise, the cash deposit rate will be the PRC-wide rate of 85.20 percent; and (4) the cash deposit rate for non-PRC exporters of subject merchandise from the PRC will be the rate applicable to the PRC supplier of that exporter. These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

Notification of Interested Parties

This notice serves as a final reminder to importers of their responsibility under section 351.402(f)(2) of the Department's regulations 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 notice also 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 section 351.305(a)(3) of the Department's regulations. Timely written notification of the return/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 administrative review and notice are in accordance with sections 751(a)(1) and 777 (i)(1) of the Act.

Dated: January 8, 2002.

Faryar Shirzad,

Assistant Secretary for Import Administration.,

Appendix I: Issues Discussed in Decision Memorandum

(*See* Web address *http://ia.ita.doc.gov*)

Comments and Responses

1. Surrogate Value for Aniline.
2. Calculation of Indirect Selling Expenses.
3. Calculation of Packing Expenses.
4. Calculation of Overhead used for the Constructed Export Price.
5. Deduction of Duties from U.S. Sales Price.

[FR Doc. 02–971 Filed 1–14–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–580–835]

Final Results and Partial Rescission of Countervailing Duty Administrative Review: Stainless Steel Sheet and Strip in Coils From the Republic of Korea

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

ACTION: Notice of final results of countervailing duty administrative review.

SUMMARY: On September 10, 2001, the Department of Commerce (the Department) published in the **Federal Register** its preliminary results and partial rescission of administrative review of the countervailing duty order on stainless steel sheet and strip from the Republic of Korea for the period November 17, 1998 through December 31, 1999 (66 FR 47008). The Department has now completed this administrative review in accordance with section 751(a) of the Tariff Act of 1930, as amended (the Act).

Based on information received since the preliminary results and our analysis of the comments received, the Department has revised the net subsidy rate for Inchon Iron and Steel Co. (Inchon). Therefore, the final results differ from the preliminary results. The final net subsidy rate for the reviewed company is listed below in the section entitled ''Final Results of Review.''

EFFECTIVE DATE: January 15, 2002.

FOR FURTHER INFORMATION CONTACT: Tipten Troidl or Darla Brown, Office of AD/CVD Enforcement VI, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: 202–482–2786.

SUPPLEMENTARY INFORMATION:

Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the provisions of the Act as amended by the Uruguay Round Agreements Act (URAA) effective January 1, 1995. The Department conducted this administrative review in accordance with section 751(a) of the Act. All citations to the Department's regulations reference 19 CFR part 351 (2001) (CVD Regulations), unless otherwise indicated.

Background

Pursuant to 19 CFR 351.213(b), this review covers only those producers or exporters of the subject merchandise for which a review was specifically requested. Accordingly, this review covers Inchon. This review covers the period November 17, 1998 through December 31, 1999 and fourteen (14) programs.

On August 6, 1999, the Department published in the **Federal Register** the countervailing duty order on stainless steel sheet and strip in coils from the Republic of Korea. *See Amended Final Determination: Stainless Steel Sheet and Strip in Coils from the Republic of Korea; and Notice of Countervailing Duty Orders: Stainless Steel Sheet and Strip from France, Italy and the Republic of Korea,* 64 FR 42923 (August 6, 1999).

We published the preliminary results of the instant administrative review in the **Federal Resister** on September 10, 2001 (66 FR 47008). We invited interested parties to comment on the results. On October 17, 2001, we received case briefs from petitioners and respondents. On October 22, 2001, we received rebuttal briefs from petitioners and respondents.

Scope of the Review

For purposes of this review, the products covered are certain stainless steel sheet and strip in coils. Stainless steel is an alloy steel containing, by weight, 1.2 percent or less of carbon and 10.5 percent or more of chromium, with or without other elements. The subject sheet and strip is a flat-rolled product in coils that is greater than 9.5 mm in width and less than 4.75 mm in thickness, and that is annealed or otherwise heat treated and pickled or otherwise descaled. The subject sheet and strip may also be further processed (*e.g.,* cold-rolled, polished, aluminized, coated, *etc.*) provided that it maintains the specific dimensions of sheet and strip following such processing.

The merchandise subject to this review is classified in the *Harmonized Tariff Schedule of the United States* (HTSUS) at subheadings: 7219.13.00.30, 7219.13.00.50, 7219.13.00.70, 7219.13.00.80, 7219.14.00.30, 7219.14.00.65, 7219.14.00.90, 7219.32.00.05, 7219.32.00.20, 7219.32.00.25, 7219.32.00.35, 7219.32.00.36, 7219.32.00.38, 7219.32.00.42, 7219.32.00.44, 7219.33.00.05, 7219.33.00.20, 7219.33.00.25, 7219.33.00.35, 7219.33.00.36, 7219.33.00.38, 7219.33.00.42, 7219.33.00.44, 7219.34.00.05, 7219.34.00.20, 7219.34.00.25, 7219.34.00.30, 7219.34.00.35, 7219.35.00.05, 7219.35.00.15, 7219.35.00.30, 7219.35.00.35, 7219.90.00.10, 7219.90.00.20, 7219.90.00.25, 7219.90.00.60, 7219.90.00.80, 7220.12.10.00, 7220.12.50.00, 7220.20.10.10, 7220.20.10.15, 7220.20.10.60, 7220.20.10.80, 7220.20.60.05, 7220.20.60.10, 7220.20.60.15, 7220.20.60.60, 7220.20.60.80, 7220.20.70.05, 7220.20.70.10, 7220.20.70.15, 7220.20.70.60, 7220.20.70.80, 7220.20.80.00, 7220.20.90.30, 7220.20.90.60, 7220.90.00.10, 7220.90.00.15, 7220.90.00.60, and 7220.90.00.80. Although the HTS subheadings are provided for convenience and Customs purposes, the Department's written description of the merchandise is dispositive.

Excluded from the scope of this order are the following: (1) Sheet and strip that is not annealed or otherwise heat treated and pickled or otherwise descaled, (2) sheet and strip that is cut to length, (3) plate (*i.e.,* flat-rolled stainless steel products of a thickness of 4.75 mm or more), (4) flat wire (*i.e.,* cold-rolled sections, with a prepared edge, rectangular in shape, of a width of not more than 9.5 mm), and (5) razor blade steel. Razor blade steel is a flat rolled product of stainless steel, not further worked than cold-rolled (cold-reduced), in coils, of a width of not more than 23 mm and a thickness of 0.266 mm or less, containing, by weight, 12.5 to 14.5 percent chromium, and certified at the time of entry to be used in the manufacture of razor blades. *See* Chapter 72 of the HTSUS, ''Additional U.S. Note'' 1(d).

The Department has determined that certain specialty stainless steel products are also excluded from the scope of this order. These excluded products are described below:

Flapper valve steel is defined as stainless steel strip in coils containing,

by weight, between 0.37 and 0.43 percent carbon, between 1.15 and 1.35 percent molybdenum, and between 0.20 and 0.80 percent manganese. This steel also contains, by weight, phosphorus of 0.025 percent or less, silicon of between 0.20 and 0.50 percent, and sulfur of 0.020 percent or less. The product is manufactured by means of vacuum arc remelting, with inclusion controls for sulphide of no more than 0.04 percent and for oxide of no more than 0.05 percent. Flapper valve steel has a tensile strength of between 210 and 300 ksi, yield strength of between 170 and 270 ksi, plus or minus 8 ksi, and a hardness (Hv) of between 460 and 590. Flapper valve steel is most commonly used to produce specialty flapper valves in compressors.

Also excluded is a product referred to as suspension foil, a specialty steel product used in the manufacture of suspension assemblies for computer disk drives. Suspension foil is described as 302/304 grade or 202 grade stainless steel of a thickness between 14 and 127 microns, with a thickness tolerance of plus-or-minus 2.01 microns, and surface glossiness of 200 to 700 percent Gs. Suspension foil must be supplied in coil widths of not more than 407 mm, and with a mass of 225 kg or less. Roll marks may only be visible on one side, with no scratches of measurable depth. The material must exhibit residual stresses of 2 mm maximum deflection, and flatness of 1.6 mm over 685 mm length.

Certain stainless steel foil for automotive catalytic converters is also excluded from the scope of this order. This stainless steel strip in coils is a specialty foil with a thickness of between 20 and 110 microns used to produce a metallic substrate with a honeycomb structure for use in automotive catalytic converters. The steel contains, by weight, carbon of no more than 0.030 percent, silicon of no more than 1.0 percent, manganese of no more than 1.0 percent, chromium of between 19 and 22 percent, aluminum of no less than 5.0 percent, phosphorus of no more than 0.045 percent, sulfur of no more than 0.03 percent, lanthanum of between 0.002 and 0.05 percent, and total rare earth elements of more than 0.06 percent, with the balance iron.

Permanent magnet iron-chromium-cobalt alloy stainless strip is also excluded from the scope of this order. This ductile stainless steel strip contains, by weight, 26 to 30 percent chromium, and 7 to 10 percent cobalt, with the remainder of iron, in widths 228.6 mm or less, and a thickness between 0.127 and 1.270 mm. It exhibits magnetic remanence between 9,000 and 12,000 gauss, and a coercivity of between 50 and 300 oersteds. This product is most commonly used in electronic sensors and is currently available under proprietary trade names such as ''Arnokrome III.'' [1]

Certain electrical resistance alloy steel is also excluded from the scope of this order. This product is defined as a non-magnetic stainless steel manufactured to American Society of Testing and Materials (ASTM) specification B344 and containing, by weight, 36 percent nickel, 18 percent chromium, and 46 percent iron, and is most notable for its resistance to high temperature corrosion. It has a melting point of 1390 degrees Celsius and displays a creep rupture limit of 4 kilograms per square millimeter at 1000 degrees Celsius. This steel is most commonly used in the production of heating ribbons for circuit breakers and industrial furnaces, and in rheostats for railway locomotives. The product is currently available under proprietary trade names such as ''Gilphy 36.'' [2]

Certain martensitic precipitation-hardenable stainless steel is also excluded from the scope of this order. This high-strength, ductile stainless steel product is designated under the Unified Numbering System (UNS) as S45500-grade steel, and contains, by weight, 11 to 13 percent chromium, and 7 to 10 percent nickel. Carbon, manganese, silicon and molybdenum each comprise, by weight, 0.05 percent or less, with phosphorus and sulfur each comprising, by weight, 0.03 percent or less. This steel has copper, niobium, and titanium added to achieve aging, and will exhibit yield strengths as high as 1700 Mpa and ultimate tensile strengths as high as 1750 Mpa after aging, with elongation percentages of 3 percent or less in 50 mm. It is generally provided in thicknesses between 0.635 and 0.787 mm, and in widths of 25.4 mm. This product is most commonly used in the manufacture of television tubes and is currently available under proprietary trade names such as ''Durphynox 17.''[3]

Finally, three specialty stainless steels typically used in certain industrial blades and surgical and medical instruments are also excluded from the scope of this order. These include stainless steel strip in coils used in the production of textile cutting tools (*e.g.,* carpet knives).[4] This steel is similar to ASTM grade 440F, but containing, by weight, 0.5 to 0.7 percent of molybdenum. The steel also contains, by weight, carbon of between 1.0 and 1.1 percent, sulfur of 0.020 percent or less, and includes between 0.20 and 0.30 percent copper and between 0.20 and 0.50 percent cobalt. This steel is sold under proprietary names such as ''GIN4 HI–C.'' The second excluded stainless steel strip in coils is similar to AISI 420–J2 and contains, by weight, carbon of between 0.62 and 0.70 percent, silicon of between 0.20 and 0.50 percent, manganese of between 0.45 and 0.80 percent, phosphorus of no more than 0.025 percent and sulfur of no more than 0.020 percent. This steel has a carbide density on average of 100 carbide particles per square micron. An example of this product is ''GIN5'' steel. The third specialty steel has a chemical composition similar to AISI 420 F, with carbon of between 0.37 and 0.43 percent, molybdenum of between 1.15 and 1.35 percent, but lower manganese of between 0.20 and 0.80 percent, phosphorus of no more than 0.025 percent, silicon of between 0.20 and 0.50 percent, and sulfur of no more than 0.020 percent. This product is supplied with a hardness of more than Hv 500 guaranteed after customer processing, and is supplied as, for example, ''GIN6.''

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this review are addressed in the ''Issues and Decision Memorandum'' (Decision Memorandum) dated January 8, 2002, which is hereby adopted by this notice. A list of issues which parties have raised and to which we have responded, all of which are in the Decision Memorandum, is attached to this notice as Appendix I. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in this public memorandum, which is on file in room B–099 of the Main Commerce Building. In addition, a complete version of the Decision Memorandum can be accessed directly on the World Wide Web at *http://ia.ita.doc.gov,* under the heading ''**Federal Register** notices.'' The paper copy and electronic version of the Decision Memorandum are identical in content.

Final Results of Review

In accordance with section 705(c)(1)(B)(i) of the Act, we calculated an *ad valorem* subsidy rate for Inchon. For the period November 17, 1998 through December 31, 1999, we determine the net subsidy for Inchon to be 4.21 percent *ad valorem.*

[1] ''Arnokrome III'' is a trademark of the Arnold Engineering Company.

[2] ''Gilphy 36'' is a trademark of Imphy, S.A.

[3] ''Durphynox 17'' is a trademark of Imphy, S.A.

[4] This list of uses is illustrative and provided for descriptive purposes only.

We will instruct the Customs Service (''Customs'') to assess countervailing duties as indicated above. The Department will also instruct Customs to collect cash deposits of estimated countervailing duties in the percentage detailed above of the f.o.b. invoice prices on all shipments of the subject merchandise from the producers/exporters under review, entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review.

Because the URAA replaced the general rule in favor of a country-wide rate with a general rule in favor of individual rates for investigated and reviewed companies, the procedures for establishing countervailing duty rates, including those for non-reviewed companies, are now essentially the same as those in antidumping cases, except as provided for in section 777A(e)(2) of the Act. The requested review will normally cover only those companies specifically named. *See* 19 CFR 351.213(b). Pursuant to 19 CFR 351.212(c), for all companies for which a review was not requested, duties must be assessed at the cash deposit rate, and cash deposits must continue to be collected, at the rate previously ordered. As such, the countervailing duty cash deposit rate applicable to a company can no longer change, except pursuant to a request for a review of that company. *See Federal-Mogul Corporation and The Torrington Company* v. *United States,* 822 F. Supp. 782 (CIT 1993) and *Floral Trade Council* v. *United States*, 822 F. Supp. 766 (CIT 1993). Therefore, the cash deposit rates for all companies except those covered by this review will be unchanged by the results of this review.

We will instruct Customs to continue to collect cash deposits for non-reviewed companies at the most recent company-specific or country-wide rate applicable to the company. Accordingly, the cash deposit rates that will be applied to non-reviewed companies covered by this order will be the rate for that company established in the most recently completed administrative proceeding conducted under the URAA. If such a review has not been conducted, the rate established in the most recently completed administrative proceeding pursuant to the statutory provisions that were in effect prior to the URAA amendments is applicable. *See Certain Carbon Steel Products from Sweden; Final Results of Countervailing Duty Administrative Review,* 62 FR 16549 (April 7, 1997). This rate shall apply to all non-reviewed companies until a review of a company assigned this rate is requested. In addition, for the period November 17, 1998 through December 31, 1999, the assessment rates applicable to all non-reviewed companies covered by this order are the cash deposit rates in effect at the time of entry.

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of duties prior to liquidation of the relevant entries during this review period.

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 351.305(a)(3). Timely written notification of return/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 administrative review and notice are issued and published in accordance with section 751(a)(1) of the Act.

Dated: January 8, 2002.

Faryar Shirzad,

Assistant Secretary for Import Administration.

Appendix I—Issues and Decision Memorandum

Summary

Methodology and Background Information

I. Subsidies Valuation Information
  1. Benchmarks for Loans and Discount Rate
  2. Allocation Period
  3. Attribution (Treatment of Subsidies Received by Trading Companies)
II. Analysis of Programs
  A. Programs Conferring Subsidies From the Government of Germany
  1. The GOK's Direction of Credit
  2. Article 17 of the Tax Exemption and Reduction Control Act (TERCL): Reserve for Overseas Market Development
  3. Electricity Discounts under the Requested Loan Adjustment Program (RLA)
  4. POSCO's Provision of Steel Inputs for Less than Adequate Remuneration
  B. Programs Determined to Be Not Used
  1. Article 16 of the TERCL: Reserve for Export Loss
  2. Investment Tax Credits under Article 10, 18, 25, 26, 27 and 71 of TERCL
  3. Loans from the National Agricultural Cooperation Federation
  4. Tax Incentives for Highly-Advanced Technology Businesses under the Foreign Investment and Foreign Capital Inducement Act
  5. Reserve for Investment under Article 43–5 of TERCL
  6. Export Insurance Rates Provided by the Korean Export Insurance Corporation
  7. Special Depreciation of Assets on Foreign Exchange Earnings
  8. Excessive Duty Drawback
  9. Short-Term Export Financing
  10. Export Industry Facility Loans
III. Analysis of Comments
  Comment 1: Ministerial Errors
  Comment 2: Program-wide Change
  Comment 3: U.S. Dollar Interest Rate Benchmark for Inchon's Loans

[FR Doc. 02–972 Filed 1–14–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Government owned inventions available for licensing

AGENCY: National Institute of Standards and Technology Commerce.

ACTION: Notice of Government owned inventions available for licensing.

SUMMARY: The inventions listed below are owned in whole or in part by the U.S. Government, as represented by the Department of Commerce, and are available for licensing in accordance with 35 U.S.C. 207 and 37 CFR part 404 to achieve expeditious commercialization of results of federally funded research and development.

FOR FURTHER INFORMATION CONTACT: Technical and licensing information on these inventions may be obtained by writing to: National Institute of Standards and Technology, Office of Technology Partnerships, Building 820, Room 213, Gaithersburg, MD 20899; Fax 301–869–2751. Any request for information should include the NIST Docket No. and Title for the relevant invention as indicated below.

SUPPLEMENTARY INFORMATION: NIST may enter into a Cooperative Research and Development Agreement (''CRADA') with the licensee to perform further research on the inventions for purposes of commercialization. The inventions available for licensing are:

NIST Docket Number: 99–039US.

Title: Fiber Optic Tomographic Plasma Uniformity Monitor.

Abstract: The tomographic plasma uniformity monitor simultaneously measures the optical emissions of a plasma from many different directions through two small windows in order to determine the plasma distribution within a vacuum chamber. This accomplished with two lens arrays coupling the light from the plasma into fiber optic cables. The light transmitted through each fiber optic cable is simultaneously recorded with a CCD camera. An appropriate tomographic

inversion program can then be used to convert the measured intensities into a two dimensional map of the plasma density. This technology is available only for non-exclusive licensing.

NIST Docket Number: 99–002US.

Title: Three Degree-Of-Freedom Telescoping Geometry Scanner.

Abstract: The invention relates to a three-dimensional measuring device, comprising a rotating 360 degree sensor head, a laser scanner and an extendable mast system. The sensor head contains a 360 degree rotating multi-faceted mirror, which determines total path distance from the laser scanner to a particular target. Angular orientations on both the scanner and the faceted mirrors are calculated by a precision encoding system. The measured total path distance, mast system extension, scanner head rotation, mirror rotation angles, and mast deflection are all used to calculate the location of a target point in 3–D space relative to the scanner. The sensing device can be utilized in the construction and nuclear power areas. In the nuclear power area, the mast system can be extended into a contaminated area which the sensor remains outside the contaminated area, thereby avoiding contamination problems.

NIST Docket Number: 98–001US.

Title: Electrophoresis Gels.

Abstract: The present invention provides electrophoresis apparatus and electroporesis methods employing the present invention provides electrophoresis apparatus and electrophoresis methods employing gellan gum based gels employing divalent metal cation and diamine cross-linking agents. The gels are reversible under conditions that do not damage the biomolecules separated using the gels. The present invention also provides novel gellan gum-based gels which are cross-linked which employ a diamine cross-linking agent.

NIST Docket Number: 00–002US.

Title: Crosslinked Micellar Gel Composition.

Abstract: A crosslinked micellar gel composition is comprised of a polymer formed by a reaction between (a) ionic surfactant units which include ionic surfactant molecules, each of which includes a counterion which has a first polymerizable functional group, (b) crosslinking agent molecules, each of which includes two second polymerizable functional groups, and (c) a reaction initiator selected from the group consisting of reaction initiator molecules and ultraviolet light radiation, wherein the reaction initiator initiates a reaction between a plurality of the ionic surfactant units with each other and a plurality of the ionic surfactant units with the second polymerizable functional groups. The ionic surfactant molecules are rodlike in shape. The ionic surfactant units can consist essentially of ionic surfactant molecules or, alternatively, can also include co-monomer molecules. The polymer compositions formed from the reactions are crosslinked micellar gels which include a network structure of rodlike micelles forming a soft gel material which retains features and utility of rodlike micelles and benefits from the structural stability of a crosslinked ploymer matrix. Dilute hydrophobic solutes can be solubilized and concentrated in the micellar gel, removing the containants from solution. The gel which contains the absorbed solute can then be physically separated from the solution. The crosslinked micellar gel composition is not limited to aqueous solutions and can also be used as a delivery vehicle for solutes.

Dated: January 3, 2002.

Karen H. Brown,

Deputy Director.

[FR Doc. 02–997 Filed 1–14–02; 8:45 am]

BILLING CODE 3510–13–M

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Advanced Technology Program Advisory Committee; Meeting

AGENCY: National Institute of Standards and Technology, Department of Commerce.

ACTION: Notice of partially closed meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, 5 U.S.C. app. 2, notice is hereby given that the Advanced Technology Program Advisory Committee, National Institute of Standards and Technology (NIST), will meet Wednesday, January 30, 2002, from 8:45 a.m. to 3:45 p.m. The Advanced Technology Program Advisory Committee is composed of seven members appointed by the Director of NIST; who are eminent in such fields as business, research, new product development, engineering, education, and management consulting. The purpose of this meeting is to review and make recommendations regarding general policy for the Advanced Technology Program (ATP), its organization, its budget, and its programs within the framework of applicable national policies as set forth by the President and the Congress. The agenda will include an update on the ATP competition, an overview of the NIST Industrial Liaison Office, a presentation from the National Governors Association on efforts to assist states develop innovative strategies for science and technology, a presentation from Harvard University on the funding gap as it relates to states and universities, and a presentation from the State Science and Technology Institute on existing state S&T strategies. Discussions scheduled to begin at 8:45 a.m. and to end at 9:50 a.m. and to begin at 3:00 p.m. and to end at 3:45 p.m. on January 30, 2002 on the ATP budget issues and staffing of positions will be closed.

DATES: The meeting will convene January 30, 2002, at 8:45 a.m. and will adjourn at 3:45 p.m. on January 30, 2002.

ADDRESSES: The meeting will be held at the National Institute of Standards and Technology, Administration Building, Employees' Lounge, Gaithersburg, Maryland 20899.

FOR FURTHER INFORMATION CONTACT: Janet R. Russell, National Institute of Standards and Technology, Gaithersburg, MD 20899–1004, telephone number (301) 975–2107.

SUPPLEMENTARY INFORMATION: The Assistant Secretary for Administration, with the concurrence of the General Counsel, formally determined on January 3, 2002 that portions of the meeting of the Advanced Technology Program Advisory Committee which involve discussion of proposed funding of the Advanced Technology Program may be closed in accordance with 5 U.S.C. 552b(c)(9)(B), because those portions of the meetings will divulge matters the premature disclosure of which would be likely to significantly frustrate implementation of proposed agency actions; and that portions of meetings which involve discussion of staffing of positions in ATP may be closed in accordance with 5 U.S.C. 552b(c)(6), because divulging information discussed in those portions of the meetings is likely to reveal information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy.

Dated: January 9, 2002.

Karen H. Brown,

Deputy Director.

[FR Doc. 02–929 Filed 1–14–02; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Technical Information Service

National Technical Information Service Advisory Board

AGENCY: National Technical Information Service, Commerce.

ACTION: Notice; solicitation of applications for NTIS Advisory Board membership.

SUMMARY: The National Technical Information Service (NTIS) is seeking qualified Candidates to serve as members of the NTIS Advisory Board (Board). The Board will meet at least semiannually to advise the Secretary of Commerce, the Under Secretary for Technology, and the Director of NTIS on NTIS's mission, general policies and fee structure.

DATES: Applications must be received no later than February 14, 2002.

ADDRESSES: Applications should be submitted to Ronald E. Lawson, Director, NTIS, 5285 Port Royal Road, Springfield, Virginia 22161.

FOR FURTHER INFORMATION CONTACT: Walter L. Finch, (703) 605–6507.

SUPPLEMENTARY INFORMATION: The National Technical Information Service (NTIS) is seeking five qualified candidates to serve as members of its Advisory Board, one of whom will also be designated chairperson. The Board was established pursuant to section 3704b(c) of Title 15, United States Code. It will meet at least semiannually to advise the Secretary of Commerce, the Under Secretary for Technology, and the Director of NTIS on NTIS's mission, general policies and fee structure. Members will be appointed by the Secretary and will serve for three-year terms. They will receive no compensation but will be authorized travel and per diem expenses. NTIS is seeking candidates who can provide guidance on trends in the information industry and changes in the way NTIS's customers acquire and use its products and services. Interested candidates should submit a resume and a statement explaining their interest in serving on the Board.

Dated: January 3, 2002.

Ronald E. Lawson,

Director.

[FR Doc. 02–998 Filed 1–14–02; 8:45 am]

BILLING CODE 3510–04–M

PATENT AND TRADEMARK OFFICE

Submission for OMB Review; Comment Request

The United States Patent and Trademark Office (USPTO) 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: United States Patent and Trademark Office (USPTO).

Title: Trademark Processing (proposed rulemaking, Electronic Submission of Applications for Registration and Other Documents).

Form Number(s): PTO Form 4.8/4.9/4.16/1478/1478(a)/1553/1581/1583/1963/2000, PTO/TM/4.16/1583.

Agency Approval Number: 0651–0009.

Type of Request: Revision of a currently approved collection.

Burden: 137,030 hours annually.

Number of Respondents: 677,151 responses per year.

Avg. Hours Per Response: The time needed to respond is estimated to range from 3 to 30 minutes. It is estimated that the time needed to complete the electronic forms ranges from 4 to 21 minutes, and the time needed to complete the paper forms with the declaration ranges from 6 to 24 minutes. The information collection also includes four items, namely, powers of attorney, designations of domestic representatives, trademark amendments/corrections/surrenders, and petitions to revive abandoned applications, for which forms have not been created and which are not subject to the proposed mandatory electronic filing rule. The USPTO estimates that completing these items ranges from 3 to 30 minutes. The time estimates include time to gather the necessary information, create the documents, and submit the completed requests.

Needs and Uses: This collection is being submitted as a proposed addition in support of a proposed rulemaking, RIN 0651–AB31, ''Electronic Submission of Applications for Registration and Other Documents.'' The USPTO proposes to amend the Rules of Practice in Trademark Cases (37 CFR) to require electronic filing of all documents for which forms are currently available through the Trademark Electronic Application System (TEAS). Subject to certain exceptions for parties who lack access to TEAS or the technical capability to use TEAS, and for certain other parties, all documents for which an electronic form is available in TEAS must be filed through TEAS.

The USPTO proposes to amend §§ 1.4, 1.10, 2.21, 2.56, 2.76, 2.88, 2.89, 2.161, 2.166, 2.167 and 2.168 of 37 CFR parts 1 and 2 to make electronic filing through the TEAS system mandatory.

This rulemaking would add an additional requirement to this collection, namely an affidavit or declaration, if appropriate, that verifies that the applicant or registrant or the attorney, if any, for that applicant or registrant, lacks access to TEAS or the technical capability to use TEAS. Under the proposed rule, submissions that are made on paper but that could be made by TEAS and that are not accompanied by such an affidavit or declaration will be returned unless the party who made the submission is within the exception provided for certain foreign applicants and registrants.

Affected Public: Individuals or households; business or other for-profit; not-for-profit institutions; farms; the federal Government; and state, local or tribal Government.

Frequency: On occasion.

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

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Susan K. Brown, Records Officer, Office of Data Management, Data Administration Division, (703) 308–7400, USPTO, Suite 310, 2231 Crystal Drive, Washington, DC 20231, or by e-mail at *susan.brown@uspto.gov.*

Written comments and recommendations for the proposed collection should be sent on or before February 14, 2002 to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20503.

Dated: January 9, 2002.

Susan K. Brown,

Records Officer, USPTO, Office of Data Management, Data Administration Division.

[FR Doc. 02–950 Filed 1–14–02; 8:45 am]

BILLING CODE 3510–16–P

PATENT AND TRADEMARK OFFICE

Submission for OMB Review; Comment Request

The United States Patent and Trademark Office (USPTO) 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: United States Patent and Trademark Office (USPTO).

Title: Disclosure Document Program.

Form Number(s): PTO/SB/95.

Agency Approval Number: 0651–0030.

Type of Request: Extension of a currently approved collection.

Burden: 4,050 hours annually.

Number of Respondents: 20,250 responses per year.

Avg. Hours Per Response: The USPTO estimates that it will take 12 minutes to submit a Disclosure Document Deposit Request. This includes time to gather the necessary information, create the documents, and submit the completed request.

Needs and Uses: An applicant files a disclosure document to establish a date of conception for an invention. When the USPTO receives a request for disclosure document deposit, an identifying number is assigned and stamped on the document. The document is then filed. The information is used by the USPTO to establish the date of conception for an invention. The USPTO keeps a disclosure document for only two years, unless it is referred to in a related provisional or nonprovisional patent application filed within the two-year period. The disclosure document is not a patent application, and the date of its receipt in the USPTO will not become the effective filing date of any patent application subsequently filed.

Affected Public: Individuals or households; business or other for-profit; not-for-profit institutions; and the Federal Government.

Frequency: On occasion.

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

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Susan K. Brown, Records Officer, Office of Data Management, Data Administration Division, (703) 308–7400, USPTO, Suite 310, 2231 Crystal Drive, Washington, DC 20231, or by e-mail at *susan.brown@uspto.gov.*

Written comments and recommendations for the proposed information collection should be sent on or before February 14, 2002 to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20503.

Dated: January 2, 2002.

Susan K. Brown,

Records Officer, USPTO, Office of Data Management, Data Administration Division.

[FR Doc. 02–951 Filed 1–14–02; 8:45 am]

BILLING CODE 3510–16–P

DEPARTMENT OF ENERGY

National Nuclear Security Administration; National Ignition Facility

AGENCY: National Nuclear Security Administration, Department of Energy.

ACTION: Notice.

SUMMARY: On March 13, 1998, the Office of Defense Programs within the Department of Energy (''DOE'' or ''the Department''), issued a Supplement Analysis (SA) for the National Ignition Facility (NIF) to assist the Department in determining whether or not to prepare a Supplemental Programmatic Environmental Impact Statement for the Stockpile Stewardship and Management Program (SSM PEIS). The preparation of an SA for this purpose is provided for in DOE's regulations implementing the National Environmental Policy Act (NEPA), 10 CFR 1021.314. The SA was prepared to address certain allegations made by the plaintiffs in *NRDC* v. *Pena,* Civ. No. 97–936 (SS) (D.D.C.), a lawsuit challenging the adequacy of the SSM PEIS. The SA specifically addressed the issue of using hazardous materials in NIF experiments. In the SA the Department concluded: (1) That the only proposed use of fissile or fissionable materials in the NIF experiments is subgram quantities of uranium-238 in non-fusion yield experiments, and (2) that the impacts from using uranium-238 for this purpose are bounded by the analysis in the SSM PEIS. DOE therefore concluded that a supplement to the existing SSM PEIS was not required. However, DOE was aware that circumstances could change, and committed in the SA to prepare further NEPA analysis if the Department decides to propose experiments outside the bounds of the SSM PEIS. The SA indicated that this review would be conducted within 5 years after the SSM PEIS Record of Decision, and would be conducted in the form of an SA. The Record of Decision was issued on December 19, 1996.

DOE has reviewed the current status of planned activities for the NIF and has determined that the circumstances with regard for the proposed use of hazardous materials in NIF experiments remain unchanged from those at the time of the preparation of the 1998 SA. Therefore, the Department has concluded that there are no substantial changes or significant new circumstances or information that would justify preparing a new SA at this time. However, DOE is continuing to examine the question of use of certain materials in NIF experiments, consistent with the requirements of the court decision resolving *NRDC* v. *Pena.* Pursuant to Paragraph 6 of the District Court's Memorandum Opinion and Order, dated August 19, 1998, in *NRDC* v. *Pena,* DOE, no later than January 1, 2004, will (1) determine that experiments using materials listed in the Order will not be conducted in the NIF, or (2) prepare a Supplemental SSM PEIS analyzing the reasonably foreseeable environmental impacts of such experiments. DOE has in place a process to make that determination. However, at the present time there are no DOE proposals to use any of these materials in experiments in the NIF.

FOR FURTHER INFORMATION CONTACT: Jay Rose, Office of Defense Programs, National Nuclear Security Administration, (202) 586–5484.

Issued in Washington, DC, on January 8, 2002.

John Gordon,

Administrator.

[FR Doc. 02–936 Filed 1–14–02; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP02–55–000]

CMS Trunkline Gas Company, LLC; Notice of Application

January 9, 2002.

Take notice that on December 26, 2001, CMS Trunkline Gas Company, LLC (Trunkline Gas), P.O. Box 4967, Houston, Texas 77210–4967, filed an application in the above-referenced docket number pursuant to section 7(c) of the Natural Gas Act (NGA) and part 157 of the Commission's Rules and Regulations, for a certificate of public convenience and necessity authorizing it to increase the maximum capacity of its LNG metering facilities in Calcasieu Parish, Louisiana. Also, Trunkline Gas requests permission and approval to operate its pipeline system downstream of the LNG metering facilities to accommodate the increased LNG receipt. This proceeding is in conjunction with a filing by CMS Trunkline LNG Company, LLC (Trunkline LNG) in Docket No. CP02–60–000. The application is on file with the Commission and open to public inspection. This filing may be viewed on the web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (please call (202) 208–2222 for assistance).

In order to meet the contractual obligations with BG LNG Services, Inc. (BG LNG), Trunkline LNG has requested Trunkline Gas to perform modifications to its metering facilities located at the tailgate of the Trunkline LNG Terminal. The requested facility modification will increase the maximum capacity of the LNG metering facilities from 1.0 Bcf/d to 1.3 Bcf/d and allow Trunkline Gas to operate its 30-inch pipeline, along with other paralleling pipelines, to transport up to 1.3 Bcf/d of LNG on its South Louisiana pipeline system. In order to accommodate Trunkline LNG's request, Trunkline Gas is proposing to increase the maximum capacity of its metering facilities at the tailgate of LNG's terminal to 1.3 Bcf/d by replacing two existing 16-inch orifice meter runs with two 16-inch ultrasonic meter runs and associated facilities. This replacement will allow increased deliverability from the LNG Terminal to Trunkline Gas. The remaining three 16-inch orifice meter runs will remain in place.

By modifying the existing metering facilities, the maximum LNG receipt capability of the Trunkline Gas system in Louisiana will increase from 0.7 Bcf/d to 1.2 Bcf/d on a sustained basis and from 1.0 Bcf/d to 1.3 Bcf/d on a peak day basis. All construction will be performed aboveground solely within Trunkline Gas' existing right-of-way easement at the LNG plant. No ground will be disturbed as a result of this replacement, nor will there be an increase in noise or air emissions from the proposed metering facilities. The cost of the proposed project is estimated at $275,000.

Any questions regarding the application be directed to William W. Grygar, Vice President, Rates and Regulatory Affairs, CMS Trunkline LNG Company, LLC, P. O. Box 4967, Houston, Texas 77210–4967 at (713) 989–7000.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before January 30, 2002, file with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, D.C. 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR part 385.214 or 385.211) and the Regulations under the NGA (18 CFR part 157.10). A person obtaining party 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 all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission may issue a preliminary determination on non-environmental issues prior to the completion of its review of the environmental aspects of the project. This preliminary determination typically considers such issues as the need for the project and its economic effect on existing customers of the applicant, on other pipelines in the area, and on landowners and communities. For example, the Commission considers the extent to which the applicant may need to exercise eminent domain to obtain rights-of-way for the proposed project and balances that against the non-environmental benefits to be provided by the project. Therefore, if a person has comments on community and landowner impacts from this proposal, it is important either to file comments or to intervene as early in the process as possible.

Comments, protests, and interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR part 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

If the Commission decides to set the application for a formal hearing before an Administrative Law Judge, the Commission will issue another notice describing that process. At the end of the Commission's review process, a final Commission order approving or denying a certificate will be issued.

C.B. Spencer,

Acting Secretary.

[FR Doc. 02–907 Filed 1–14–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP02–60–000]

CMS Trunkline LNG Company, LLC; Notice of Application

January 9, 2002.

Take notice that on December 26, 2001, and supplemented on January 7, 2002, CMS Trunkline LNG Company, LLC (Trunkline LNG), P.O. Box 4967, Houston, Texas 77210–4967, filed an application in the above-referenced docket number pursuant to section 7(c) of the Natural Gas Act (NGA) and part 157 of the Commission's Rules and Regulations, for a certificate of public convenience and necessity authorizing the construction, operation and maintenance of additional facilities at its LNG Terminal located in Calcasieu Parish, Louisiana. The application is on file with the Commission and open to public inspection. This filing may be viewed on the web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (please call (202) 208–2222 for assistance).

Trunkline LNG proposes (1) to expand the storage capacity of its terminal by constructing and operating a fourth cryogenic storage tank with a capacity of 140,000 cubic meters; (2) to increase its sustainable daily sendout capability from 630 MMcf per day to 1,200 MMcf per day by constructing and operating additional LNG pumps and LNG vaporizers; (3) to construct and operate a second marine unloading dock; and (4) appurtenant supporting facilities. Currently, all re-gasified LNG is transported from Trunkline LNG's

terminal by CMS Trunkline Gas Company, LLC's pipeline facilities (Trunkline Gas) which have a certificated capacity of 1.0 Bcf per day. Concurrently, Trunkline Gas is filing an application, Docket No. CP02–55–000, requesting a certificate of public convenience and necessity authorizing Trunkline Gas to modify its existing metering facilities to accommodate the proposed increased LNG deliveries.

Trunkline LNG conducted an open season for the future use and potential expansion of its terminal, from December 15, 2000 to February 15, 2001. As a consequence, Trunkline LNG entered into the contracts with BG LNG Services, Inc. (BG LNG). In May 2001, Trunkline LNG and BG LNG entered into a firm service agreement (Base Agreement) for all the current uncommitted capacity at the Terminal. The 22-year contract, which begins in January 2002, gives BG LNG the firm service rights to all of the Terminal's current uncommitted vaporization and storage capacity of approximately 5.1 Bcf at the currently effective maximum tariff rate under Rate Schedule FTS. The contract storage capacity will increase to 6.3 Bcf after the existing contract with Trunkline LNG's existing customer, Duke Energy LNG, expires in August 2005. In addition to the Base Agreement, Trunkline LNG and BG LNG entered into an agreement (Precedent Agreement) that sets the parameters for a second firm service agreement (Expansion Agreement) utilizing the capacity associated with the Expansion Project. In essence, the Precedent Agreement provides for BG LNG to obtain additional firm storage capacity of 2.7 MMDt and daily sendout capability of 570,000 Dt per day at the Terminal from January 1, 2005 until December 31, 2023.

The proposed construction will take place entirely on Trunkline LNG's property already dedicated to its terminal. No new land or rights-of-way are required for the proposed expansion.

Trunkline LNG estimates that the total capital cost of constructing its proposed expansion will be approximately $149.1 million, excluding AFUDC. Trunkline LNG estimates that AFUDC will total $28.1 million. The total capital cost including AFUDC will be approximately $177.2 million. The total Cost of Service associated with the expansion project will be approximately $54.2 million. The initial incremental recourse rates proposed by Trunkline LNG for service utilizing the expansion facilities are traditional cost-of-service based rates, using the straight-fixed variable rate design methodology. The incremental recourse rates have been designed on 100% of the costs associated with the Expansion Project. The incremental recourse reservation rate will be $0.5208 per Dt for service under proposed Rate Schedule FTS–2, using design units based on the incremental storage capacity associated with the Expansion Project.

Any questions regarding the application be directed to William W. Grygar, Vice President, Rates and Regulatory Affairs, CMS Trunkline LNG Company, LLC, P.O. Box 4967, Houston, Texas 77210–4967 at (713) 989–7000.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before January 30, 2002, file with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR parts 385.214 or 385.211) and the Regulations under the NGA (18 CFR part 157.10). A person obtaining party 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 all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission may issue a preliminary determination on non-environmental issues prior to the completion of its review of the environmental aspects of the project. This preliminary determination typically considers such issues as the need for the project and its economic effect on existing customers of the applicant, on other pipelines in the area, and on landowners and communities. For example, the Commission considers the extent to which the applicant may need to exercise eminent domain to obtain rights-of-way for the proposed project and balances that against the non-environmental benefits to be provided by the project. Therefore, if a person has comments on community and landowner impacts from this proposal, it is important either to file comments or to intervene as early in the process as possible.

Comments, protests, and interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR part 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

If the Commission decides to set the application for a formal hearing before an Administrative Law Judge, the Commission will issue another notice describing that process. At the end of the Commission's review process, a final Commission order approving or denying a certificate will be issued.

C.B. Spencer,

Acting Secretary.

[FR Doc. 02–908 Filed 1–14–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. AD02–6–000]

Northeast Energy Infrastructure Conference; Notice of Technical Conference and Agenda

January 8, 2002.

As announced in the Notice of Conference issued on December 11,

2001, the Federal Energy Regulatory Commission will hold a conference on January 31, 2002 to discuss issues regarding energy infrastructure in the northeastern states. This one-day conference will begin at 8:30 a.m.[1] and end approximately at 4 p.m., and will be held at the Helmsley Park Lane Hotel, 36 Central Park South, New York, New York. All interested persons are invited to attend.

The conference will discuss the adequacy of the electric, gas and hydropower infrastructure in the Northeast, and related matters. The FERC Commissioners will attend and the Governors of the northeastern states have been invited to participate. The goal of this conference is to identify present infrastructure conditions, needs, investment and other barriers to expansion, and environmental and landowner concerns. We look forward to an informative discussion of the issues to clarify how the FERC can facilitate and enhance a comprehensive collaborative approach to energy infrastructure development and reliability for the northeastern states. It is our firm belief that an adequate, well-functioning energy infrastructure is a keystone of workable, competitive energy markets.

The conference Agenda is appended to this Notice. As the attached Agenda and this Notice indicate, the purpose of the conference is to discuss regional infrastructure issues. The conference is not intended to deal with issues pending in individually docketed cases before the Commission, such as applications involving hydropower, natural gas certificates, or the formation of Regional Transmission Organizations (RTOs). Therefore, all participants are requested to focus on the agenda topics and avoid discussing the merits of individual cases.

Opportunities for Listening to and Obtaining Transcripts of the Conference

The Capitol Connection will offer this meeting live via telephone coverage for a fee. There will not be live video coverage or videotapes of the conference. To find out more about the Capitol Connection's phone bridge, contact David Reininger or Julia Morelli (703–993–3100), or go to *www.capitolconnection.gmu.edu.*

Audio tapes of the meeting will be available from VISCOM (703–715–7999).

Additionally, transcripts of the conference will be available from Ace Reporting Company (202–347–3700), for a fee. The transcript will be available on the Commission's RIMS system two weeks after the conference.

As indicated in the December 11, 2001 notice, hotel rooms have been blocked at the Helmsley Park Lane Hotel (212–371–4000) under the name of the Federal Energy Regulatory Commission for any attending guests to reserve a one- or two-night stay, but unreserved rooms will be released by January 15, 2002.

Questions about the conference program should be directed to: Carol Connors, Office of External Affairs, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, 202–208–0870, *carol.connors@ferc.gov.*

C.B. Spencer,

Acting Secretary.

Agenda for FERC's Northeast Energy Infrastructure Conference

Helmsley Park Lane Hotel, New York, NY.

January 31, 2002.

I. Opening Remarks and Introductions—8:30 a.m. to 9 a.m.

Chairman Pat Wood, Commissioner Nora Mead Brownell, Commissioner William Massey and Commissioner Linda Breathitt

II. Overview of Current Energy Infrastructure—9 a.m. to 9:30 a.m.

• Jeff Wright, Office of Energy Projects, FERC

III. Forecasts for Future Energy Use and Economic Impacts of Energy—9:30 to 10 a.m.

What is the Northeast region's economic and demographic outlook over the coming decade?

What is the forecasted growth in energy needs?

How much energy is available and at what prices?

Where is additional energy needed?

• Mary Novak, Managing Director-Energy Consulting, DRI–WEFA

• Scott Sitzer, Acting Director, EIA

Break—10 a.m. to 10:15 a.m.

IV. Near-term Energy Infrastructure Needs and Adequacy of Supplies—10:15 a.m. to 12 p.m.

What are the high priority infrastructure needs for today?

What happens if these are not built?

Roundtable discussion on infrastructure improvements needed in electric, hydroelectric, and natural gas facilities.

• Steve Whitley, Senior V.P., New England ISO

• Craig Frew, President, New England Gas Association

• Andre Caille, President/CEO, Hydro Quebec

• Eric Gustafson, V.P.—Transportation & Technology, Buckeye Pipeline

• Douglas M. Logan, Principal, Platt's RDI Consulting

• Representative from U.S. EPA

Lunch Break—12 p.m. to 1 p.m.

V. Identifying Factors Affecting Adequate Energy Infrastructure, Investment, and Alternative Actions—1:15 p.m. to 3 p.m.

Why is needed infrastructure delayed or not being built?

What barriers have to be overcome?

What can state and federal governments do to overcome these barriers?

Do alternatives exist to new infrastructure projects?

Roundtable discussion of energy infrastructure barriers (e.g., to siting, construction, or investment) and alternatives to construction.

• Pete Dunbar, Director, Maryland Power Plant Research Program

• Richard Kruse, Senior V.P., Duke Energy Gas Transmission

• Ron Erd, Mirant Corp.

• Richard Cowart, Director, Regulatory Assistance Project

• Eugene R. McGrath, Chairman/CEO/Pres., Consolidated Edison Co. NY

• Ashok Gupta, Director—Air/Energy, Natural Resources Defense Council

• Sonny Popowsky, Pennsylvania Consumer Advocate

• Debra Coy, V.P. & Utilities Analyst, Charles Schwab & Co.

VI. Discussion by State and Federal Officials of Next Steps and Closing Remarks by FERC Commissioners—3 p.m. to 4 p.m.

• Glenn Booth, Chief Economist, Canadian National Energy Board

• Maureen Helmer, Chairwoman, NY Public Service Commission

• Invited Governors and State Commissioners

[FR Doc. 02–909 Filed 1–14–02; 8:45 am]

BILLING CODE 6717–01–P

[1] This reflects a change in starting time from the December 11, 2001 notice.

ENVIRONMENTAL PROTECTION AGENCY

[OPPTS–00329; FRL–6814–9]

National Advisory Committee for Acute Exposure Guideline Levels for Hazardous Substances; Notice of Charter Renewal

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The charter for EPA's National Advisory Committee for Acute Exposure Guideline Levels for Hazardous Substances (NAC/AEGL Committee) is renewed for an additional 2-year period. EPA has determined that the NAC/AEGL Committee is necessary and finds that it is in the public's interest that the NAC/AEGL Committee be continued.

FOR FURTHER INFORMATION CONTACT: *For general information contact*: Barbara Cunningham, Acting Director, Environmental Assistance Division (7401), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 554–1404; e-mail address: TSCA-Hotline@epa.gov.

For technical information contact: Paul S. Tobin, Economics, Exposure, and Technology Division (7406M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 564–8557; e-mail address: tobin.paul@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. This action may be of particular interest to anyone who may be affected if AEGL values are adopted by government agencies for emergency planning, prevention, or response programs, such as EPA's Risk Management Program under the Clean Air Act and Amendments Section 112r. It is possible that other Federal agencies besides EPA, as well as State agencies and private organizations, may adopt AEGL values for their programs. As such, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Additional Information, Including Copies of this Document or Other Related Documents?

1. *Electronically*. You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select ''Laws and Regulations,'' ''Regulations and Proposed Rules,'' and then look up the entry for this document under the ''**Federal Register**—Environmental Documents.'' You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person*. The Agency has established an official record for this action under docket control number OPPTS–00329. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the TSCA Nonconfidential Information Center, North East Mall Rm. B–607, Waterside Mall, 401 M St., SW., Washington, DC. The Center is open from noon to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Center is (202) 260–7099.

II. Background

A. What Action is the Agency Taking?

EPA is renewing the charter for the NAC/AEGL Committee for an additional 2-year period.

The NAC/AEGL Committee provides advice and recommendations to the Administrator of EPA on issues associated with the development of acute exposure guideline levels for hazardous substances. Acute exposure guideline levels for hazardous substances are used by other Federal agencies, State and local governments, and private organizations for exposure limits in chemical emergency programs.

It is determined that the NAC/AEGL Committee is in the public's interest and is related to the performance of duties imposed on the Agency by law.

B. What is the Agency's Authority for Taking this Action?

The charter for the NAC/AEGL Committee is in accordance with the provisions of FACA, 5 U.S.C. App., section 9(c).

List of Subjects

Environmental protection, Acute exposure guideline levels, Hazardous substances, Public health, Safety, Worker protection.

Dated: January 3, 2002.

Stephen L. Johnson,

Assistant Administrator for the Office of Prevention, Pesticides, and Toxic Substances.

[FR Doc. 02–961 Filed 1–14–02; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP;–00756;FRL–6820–1]

FIFRA Scientific Advisory Panel; Notice of Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: There will be a 4–day meeting of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and Food Quality Protection Act (FQPA) Scientific Advisory Panel (SAP) to review a set of issues being considered by the Agency pertaining to methods used to conduct a preliminary cumulative risk assessment for organophosphorous pesticides. Seating at the meeting will be on a first-come basis. Individuals requiring special accommodations at this meeting, including wheelchair access, should contact Paul Lewis at the address listed under **FOR FURTHER INFORMATION CONTACT** at least 5 business days prior to the meeting so that appropriate arrangements can be made.

DATES: The meeting will be held on February 5th–8th, 2002 from 8:30 a.m. to 5 p.m.

ADDRESSES: The meeting will be held at the Sheraton Crystal City Hotel, 1800 Jefferson Davis Highway, Arlington, VA 22202. The telephone number for the Sheraton Crystal City Hotel is (703) 486–1111.

Requests to participate may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I. of the

SUPPLEMENTARY INFORMATION: To ensure proper receipt by EPA, your request must identify docket control number

OPP–00756 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: Paul Lewis, Designated Federal Official, Office of Science Coordination and Policy, (7201M), Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 564–8450; fax number: (202) 564–8382; e-mail address: lewis.paul@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. This action may, however, be of interest to persons who are or may be required to conduct testing of chemical substances under the Federal Food, Drug, and Cosmetic Act (FFDCA), FIFRA and FQPA. Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically*. A meeting agenda and background documents relevant to this meeting are now available. The EPA's position paper and questions to the FIFRA SAP, and Panel composition (i.e. SAP members and consultants) will be available as soon as possible, but no later than mid January. In addition, the Agency may provide additional background documents as the material becomes available. You may obtain electronic copies of these documents, and certain other related documents that might be available electronically, from the FIFRA SAP Internet Home Page at http://www.epa.gov/scipoly/sap. To access this document on the Home Page select **Federal Register** notice announcing this meeting. You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person*. The Agency has established an administrative record for this meeting under docket control number OPP–00756. The administrative record consists of the documents specifically referenced in this notice, any public comments received during an applicable comment period, and other material information, including any information claimed as Confidential Business Information (CBI). This administrative record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. In addition, the Agency may provide additional background documents as the material becomes available. The public version of the administrative record, which includes printed, paper versions of any electronic comments that may be submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

C. How Can I Request to Participate in this Meeting?

You may submit a request to participate in this meeting through the mail, in person, or electronically. Do not submit any information in your request that is considered CBI. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–00756 in the subject line on the first page of your request. Public statements presented at the meetings should not be repetitive of previously submitted oral or written statements.

Oral comments: Although requests for oral comments are accepted until the date of the meeting (unless otherwise stated), to the extent that time permits, interested persons may be permitted by the Chair of the FIFRA SAP to present oral statements at the meeting. Each individual or group wishing to make a brief oral presentation to the SAP is strongly advised to submit their request to the person listed under **FOR FURTHER INFORMATION CONTACT** no later than noon Eastern Standard Time, Thursday, January 31, 2002 in order to be included on the meeting agenda. The request should identify the name of the individual making the presentation, the organization (if any) the individual will represent, and any requirements for audiovisual equipment (e.g., overhead projector, 35 mm projector, chalkboard). Oral statements before the Panel are limited to approximately 5 minutes unless prior arrangements have been made. In addition, the speaker should bring to the meeting 30 copies of their comments and presentation slides for distribution to the Panel at the meeting.

Written comments: Although requests for written comment are accepted until the date of the meeting (unless otherwise stated), the Agency encourages that written statements be submitted no later than noon Eastern Standard Time, Thursday, January 31, 2002 to provide Panel members the time necessary to consider and review the comments. There is no limit on the extent of written comments for consideration by the Panel. Persons wishing to submit written comments at the meeting should contact the person listed under **FOR FURTHER INFORMATION CONTACT** and submit 30 copies.

1. *By mail*. You may submit a request to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier*. Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically*. You may submit your request electronically by e-mail to: opp-docket@epa.gov. Do not submit any information electronically that you consider to be CBI. Use WordPerfect 6.1/8.0 or ASCII file format and avoid the use of special characters and any form of encryption. Be sure to identify by docket control number OPP–00756. You may also file a request online at many Federal Depository Libraries.

II. Background

A. Purpose of the Meeting

The Food Quality Protection Act of 1996 amended the FIFRA and the FFDCA. One of the major changes is the requirement that EPA consider risk posed by pesticides acting by common mechanism of toxicity. For such groups of pesticides, EPA's Office of Pesticide Programs (OPP) has treated cumulative risk, under FQPA, as the risk of a common toxic effect associated with concurrent exposure by all relevant pathways and routes.

Organophosphorous pesticides were assigned priority for tolerance reassessment early during the process of FQPA implementation. OPP considered whether this group of pesticides caused common toxic effects by a common mechanism of toxicity using EPA's ''guidance for identifying pesticide chemicals and other substances that have a common mechanism of toxicity.'' The inhibition of acetylcholinesterase was a focal point given that most

organophosphorous pesticides cause this response as their critical and common effect. When acetylcholinesterase is inhibited, acetylcholine accumulates and cholinergic toxicity results due to continuous stimulation of cholinergic receptors throughout the central and peripheral nervous systems which innervate virtually every organ in the body. Cholinergic effects associated with exposures to OP pesticides have been found in both humans and animals.

OPP proceeded with the methodology and risk assessment development in a step by step process. The approach to the risk assessment was evaluated using a case study of 3 organophosphorous pesticides. That assessment was reviewed by the SAP (September and December, 1999), who recommended that OPP proceed with a more comprehensive case study. OPP developed the hazard, dose-response and exposure assessment for twenty four OP pesticides and brought it to the SAP for comment in September and December of 2000. Based on the comments, the hazard and dose-response assessment was revised and again reviewed by the SAP in September, 2001.

The exposure assessment of the OP pesticides presented here incorporates probabilistic approaches in all pathways considered: Food, drinking water, and residential/non-occupational. The methodology for conducting a preliminary cumulative risk assessment for the organophosphorous pesticides presented here is a first time that the Agency has assessed risk combining multiple sources of exposure for multiple chemicals acting via a common mechanism of toxicity. The general methodology and the specific approach have been under development for 5 years and have been subject to extensive peer review and public comment.

B. Panel Report

The Panel will prepare a report of its recommendations to the Agency in approximately 60 days. The report will be posted on the FIFRA SAP web site or may be obtained by contacting the Public Information and Records Integrity Branch at the address or telephone number listed in Unit I. of this document.

List of Subjects

Environmental protection.

Dated: January 8, 2002.

Vanessa Vu,

Director, Office of Science Coordination and Policy

[FR Doc. 02–960 Filed 1–14–02; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7128–9]

Notice of the Eighth Meeting of the Mississippi River/Gulf of Mexico Watershed Nutrient Task Force

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; announcement meeting.

SUMMARY: This notice announces the Eighth Meeting of the Mississippi River/Gulf of Mexico Watershed Nutrient Task Force. The purpose of this Task Force, consisting of federal, state, and tribal members, is to lead efforts to coordinate and support nutrient management and hypoxia-related activities in the Mississippi River and Gulf of Mexico watersheds. The major matter to be discussed at the meeting is the implementation of the Action Plan for Reducing, Mitigating, and Controlling Hypoxia in the Northern Gulf of Mexico. The Plan was developed in fulfillment of a requirement of section 604(b) of the Harmful Algal Blooms and Hypoxia Research Control Act (Pub. L. 105–383—Coast Guard Authorization Act of 1998) and was submitted as a Report to Congress on January 18, 2001. The public will be afforded an opportunity to provide input to the Task Force during open discussion periods. The meeting coincides with a meeting of the Ohio River Valley Water Sanitation Commission in the vicinity, and will afford opportunities for exchange between the participants of both meetings. The meeting room accommodates approximately 125 people.

DATES: The two-day meeting will be held from 2 p.m.–5:30 p.m., February 7, 2002 and from 8 a.m.–3:30 p.m., February 8, 2002.

ADDRESSES: The meeting will be held at the Radisson Hotel and Suites Downtown, 200 North Fourth Street, St. Louis, MO 63102. A block of rooms has been reserved at the hotel. For reservations, call (314) 621–8200 or 1–800–925–1395. When making room reservations, use the group name ''EPA Mississippi River/Gulf of Mexico Meeting.'' (Internet: *http://www.radisson.com/stlouismo*)

FOR FURTHER INFORMATION CONTACT: Dr. Mary Belefski, U.S. EPA, Assessment and Watershed Protection Division (AWPD), Mail Code 4503F, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; Phone (202)–260–7061; E-mail: *belefski.mary@epa.gov.* For additional information on logistics and accommodations, contact Ansu John, Tetra Tech, Inc., 10306 Eaton Place, Suite 340, Fairfax, VA 22030; Phone: (703) 385–6000; E-mail: *ansu.john@tetratech-ffx.com.*

Dated: January 8, 2002.

Robert Wayland III,

Director, Office of Wetlands, Oceans, and Watersheds.

[FR Doc. 02–956 Filed 1–14–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENT PROTECTION AGENCY

[FRL–7129–1]

Notice of Public Meeting of the National Environmental Education Advisory Council

Notice is hereby given that the National Environmental Education Advisory Council, established under section 9 of the National Environmental Education Act of 1990 (the Act), will hold a public meeting on January 31 and February 01, 2002. The meeting will take place at the Four Seasons Hotel, 411 University Street, Seattle, WA, 98101 from 9 am to 5 pm on Thursday, January 31st and Friday, February 1st. The purpose of this meeting is to provide the Council with an opportunity to advise EPA's Office of Communications, Education and Media Relations (OCEMR) and the Office of Environmental Education (OEE) on its implementation of the Act. Members of the public are invited to attend and to submit written comments to EPA following the meeting.

For additional information regarding the Council's upcoming meeting, please contact Ginger Keho, Office of Environmental Education (1704), Office of Communications, Education and Media Relations, U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460 or call (202) 564–0453.

Dated: January 8, 2002.

Ginger Keho,

Designated Federal Official, National Environmental Education Advisory Council.

[FR Doc. 02–957 Filed 1–14–02; 8:45 am]

BILLING CODE 6560–50–N

ENVIRONMENTAL PROTECTION AGENCY

[OPP–66295A; FRL–6817–7]

Benomyl; Cancellation Order

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces a cancellation order for product cancellations requested by the American Mushroom Institute, Amvac Chemical Corp., Pursell Industries, Inc., the Scotts Company, Value Garden Supply LLC, and Voluntary Purchasing Groups, Inc. for their registrations of pesticide products containing methyl 1-(butylcarbamoyl)-2-benzimidazole carbamate, or benomyl, and accepted by EPA, pursuant to section 6(f) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). This order follows up an October 12, 2001, notice of receipt of request for the above-mentioned voluntary registration cancellations. In that notice, EPA requested comments on the proposed cancellations and indicated that it would issue an order confirming the cancellations. Any distribution, sale, or use of canceled benomyl products is only permitted in accordance with the terms of the existing stocks provisions of this cancellation order.

DATES: The cancellations are effective January 15, 2002.

FOR FURTHER INFORMATION CONTACT: Demson Fuller, Special Review and Reregistration Division (7508C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460, telephone number: (703) 308–8062; fax number: (703) 308–7042; e-mail address: fuller.demson@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. You may be potentially affected by this action if you manufacture, sell, distribute, or use benomyl products. The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, does not apply because this action is not a rule, for purposes of 5 U.S.C. 804(3). Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically*. You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select ''Laws and Regulations,'' ''Regulations and Proposed Rules,'' and then look up the entry for this document under the ''**Federal Register**—Environmental Documents.'' You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person*. The Agency has established an official record for this action under docket control number OPP–66295A. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

II. Receipt of Request to Cancel Registrations

A. Background

Benomyl is a benzimidazole carbamate and systemic foliar fungicide registered for use on a variety of fruit and vegetable crops.

The technical registrant, E.I. duPont de Nemours and Company (DuPont), met with the Agency on April 18, 2001, and requested a voluntary cancellation of all their registrations for products containing benomyl. DuPont stated that this decision was based on business reasons. Following a public comment period on the proposed cancellations and consideration of comments received, the cancellation order was published in the **Federal Register** and became effective on August 8, 2001.

The Agency also received letters from the following registrants requesting voluntary cancellation of all their products containing benomyl: American Mushroom Institute, Amvac Chemical Corp., Pursell Industries, Inc., the Scotts Company, Value Garden Supply LLC, and Voluntary Purchasing Groups, Inc.

In their letters, Pursell and Amvac stated that they no longer manufacture or distribute end use products that contain benomyl and therefore, no end use products should be in the channels of trade. Likewise, in their letter, Value Garden Supply noted that their benomyl products are no longer being sold and they are not aware of any stocks of the products in the channels of trade. The American Mushroom Institute requested cancellation of its 24(c) registration due to the cancellation of DuPont's registrations. The Scotts Company and Voluntary Purchasing Groups, Inc. had end-use products that were suspended on April 13, 1994, and May 20, 1998, respectively. Both registrants failed to comply with a Data Call-In that was issued on June 16, 1992. The Agency contacted both The Scotts Company and Voluntary Purchasing Groups, Inc. to notify them that DuPont canceled all its benomyl registrations, and both registrants subsequently submitted letters requesting voluntary cancellations.

Pursuant to section 6(f)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), EPA announced receipt of these requests from the American Mushroom Institute, Amvac Chemical Corp., Pursell Industries, Inc., The Scotts Company, Value Garden Supply LLC, and Voluntary Purchasing Groups, Inc., in a **Federal Register** Notice published on October 12, 2001 (66 FR 52132) (FRL–6805–3). In that Notice, EPA provided a 30–day comment period. All of the registrants requested the Administrator waive the 180–day comment period provided under FIFRA section 6(f)(1)(c), and EPA granted this request. No public comments were received during the 30–day comment period.

B. Requests for Voluntary Cancellation of Products

Pursuant to FIFRA section 6(f)(1)(A), American Mushroom Institute, Amvac Chemical Corp., Pursell Industries Inc., the Scotts Company, Value Garden Supply LLC, and Voluntary Purchasing Groups, Inc., have submitted requests for voluntary cancellation of registrations for their products containing benomyl. The registrations

for which cancellations were requested are identified in the following table.

PRODUCT REGISTRATION CANCELLATION REQUESTS

Company	Registration No.	Product
American Mushroom Institute	PA–97000200	Dupont Benlate® SP Fungicide
Amvac Chemical Corp.	5481–138	ALCO® Systemic Fungicide
Pursell Industries Inc.	8660–75	VertaGreen Systemic Disease Control
The Scotts Company	538–66 538–132	Scotts Proturf 28 – 0 – 7 Fertilizer Plus Fungicide DSB Scotts Proturf DSB Fungicide
Value Garden Supply LLC	769–874 769–921	Pratt Benomyl 50W Systemic Fungicide Science Benomyl 50W Systemic Fungicide
Voluntary Purchasing Groups, Inc.	7401–225 7401–407	Fertilome® Systemic Fungicide with Benomyl American Brand® Benomyl Systemic Fungicide

III. Cancellation Order

Pursuant to section 6(f)(1)(A) of FIFRA, EPA is approving the requested cancellations. Accordingly, EPA orders that the registrations identified in Table 1, are hereby canceled. Any distribution, sale, or use of existing stocks of the products identified in the table above in a manner inconsistent with the terms of this Order or the Existing Stock Provisions in Unit IV. of this **Federal Register** Notice will be considered a violation of section 12(a)(2)(K) of FIFRA and/or section 12(a)(1)(A) of FIFRA.

IV. Existing Stocks Provisions

For purposes of this Order, the term ''existing stocks'' is defined, pursuant to EPA's existing stocks policy June 26, 1991 (56 FR 29362) (FRL–3846–4), as those stocks of a registered pesticide product which are currently in the United States and which have been packaged, labeled, and released for shipment prior to the effective date of cancellation.

A. Distribution or Sale by the Registrant

Cancellation orders generally permit a registrant to sell or distribute existing stocks for 1 year after the date the cancellation request was received. However, the registrants have stated that they no longer manufacture or distribute end use products that contain benomyl. Therefore, the distribution or sale of existing stocks by registrants will not be lawful under FIFRA after January 15, 2002 except for the purposes of returns and relabeling, shipping such stocks for export consistent with the requirements of section 17 of FIFRA, or for proper disposal.

B. Distribution and Sale by Other Persons

Sale or distribution by any person of existing stocks of any products identified in the table above will not be lawful under FIFRA after December 31, 2002.

V. Notification of Intent to Revoke Tolerances

This Notice also serves as an advance notification that the Agency intends to revoke the related tolerances for the canceled registrations listed in this Notice unless there is a request from the public to support the tolerances for import purposes. EPA believes that production of technical benomyl ended in April 2001, and use of any remaining existing stocks of these products will likely end in 2003 given that the sale and distribution of benomyl products will end on December 31, 2002. EPA will determine how long treated food containing residues of benomyl could remain in the channels of trade assuming that the last treatment occurred on December 31, 2003, and will set the expiration date accordingly.

It is EPA's general practice to propose revocation of tolerances for residues of pesticide active ingredients for which FIFRA registrations no longer exist, to protect the food supply of the U.S. and to discourage the misuse of pesticides within the United States. In many cases the cancellation of a food use in the U.S. indicates that there are insufficient domestic residue data or other information to support the continuation of the tolerance and an uncertain amount of relevant data concerning residues on imported food. In the absence of relevant data, EPA is unable to make a safety finding regarding the treated food entering the U.S. Upon request, EPA will provide interested parties with its import tolerance policy and data requirements, explaining how an interested party should go about seeking to retain a tolerance for import purposes.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: January 3, 2002.

Lois A. Rossi,

Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. 02–958 Filed 1–14–02; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7128–8]

Workshop Report on the Application of 2,3,7,8-TCDD Toxicity Equivalence Factors to Fish and Wildlife

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability of a final report.

SUMMARY: The U.S. Environmental Protection Agency's (EPA) Risk Assessment Forum (RAF) announces the availability of a final report, *Workshop Report on the Application of 2,3,7,8-TCDD Toxicity Equivalence Factors to Fish and Wildlife* (EPA/630/R–01/002, August 2001). It is the report of a January 20–22, 1998, workshop sponsored by EPA and the U.S. Department of the Interior (DOI). The Eastern Research Group, Inc. (ERG), an EPA contractor, organized, convened, and conducted the workshop on EPA's behalf. Workshop participants concluded that the toxicity equivalence methodology is appropriate for

evaluating risks to fish, birds, and mammals from mixtures of dioxins, furans, and PCBs.

ADDRESSES: The document will be made available electronically through the Risk Assessment Forum's Web site (*www.epa.gov/ncea/raf/rafpub.htm*). A limited number of paper copies will be available from the EPA's National Service Center for Environmental Publications (NSCEP), PO Box 42419, Cincinnati, OH 45242; telephone: 1–800–490–9198 or 513–489–8190; facsimile: 513–489–8695. Please provide your name and mailing address and the title and EPA number of the requested publication.

FOR FURTHER INFORMATION CONTACT: Scott Schwenk, Risk Assessment Forum Staff (8601D), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington DC 20460; telephone: 202–564–6667; facsimile: 202–565–0062; e-mail: *schwenk.scott@epa.gov.*

SUPPLEMENTARY INFORMATION: In January 1998, a planning committee of EPA and the U.S. Department of the Interior (DOI) sponsored a workshop on the application of 2,3,7,8–TCDD toxicity equivalence factors (TEFs) to fish and wildlife. TEFs are tools for estimating the combined risks from exposure to complex mixtures of polychlorinated dioxins (PCDDs), furans (PCDFs), and biphenyls (PCBs). The primary objective of the workshop was to identify, document, and compare uncertainties in TEF development and their impact in ecological risk assessments. The 20 invited workshop participants, seven of whom were from other countries, came from academia, industry, public interest groups, and government. In addition, eight EPA and four DOI planning committee members participated. Major conclusions included:

—The toxicity equivalence methodology is technically appropriate for evaluating risks to fish, birds, and mammals.

—The toxicity equivalence methodology reduces uncertainties and is less likely to underestimate risks than are methods based on a single compound (e.g., 2,3,7,8–TCDD) or a class of compounds (e.g., total PCBs).

—The uncertainties associated with using relative potencies (RePs) or TEFs are not thought to be larger than other uncertainties within the risk assessment process, but they should be better quantified.

The planning committee concluded that the results of the workshop support the use of the toxicity equivalence methodology in ecological risk assessment. The committee also suggested the development of additional tools and data to improve the methodology's implementation.

The final workshop report consists of (1) an overview and set of conclusions prepared by EPA and DOI and (2) a complete set of workshop materials, including case studies discussed at the workshop, workshop proceedings, pre-meeting comments from the invited experts, and written observer comments.

Dated: December 20, 2001.

George W. Alapas,

Acting Director, National Center for Environmental Assessment.

[FR Doc. 02–954 Filed 1–14–02; 8:45 am]

BILLING CODE 6560–50–P

FARM CREDIT ADMINISTRATION

Farm Credit Administration Board; Amendment to Sunshine Act Meeting

AGENCY: Farm Credit Administration.

SUMMARY: Pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), the Farm Credit Administration gave notice on January 9, 2002 (67 FR 1217) of the regular meeting of the Farm Credit Administration Board (Board) scheduled for January 10, 2002. This notice is to amend the agenda by moving an item from the open session to the closed session of that meeting.

ADDRESSES: Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090.

FOR FURTHER INFORMATION CONTACT: Kelly Mikel Williams, Secretary to the Farm Credit Administration Board, (703) 883–4025, TDD (703) 883–4444.

SUPPLEMENTARY INFORMATION: Parts of this meeting of the Board were open to the public (limited space available), and parts of this meeting were closed to the public. In order to increase the accessibility to Board meetings, persons requiring assistance should make arrangements in advance. The agenda for January 10, 2002, is amended by moving an item to the closed session to read as follows:

Closed Session*

- 2001 Financial Statement Audit Report

Dated: January 10, 2002.

Kelly Mikel Williams,

Secretary, Farm Credit Administration Board.

[FR Doc. 02–1067 Filed 1–11–02; 10:58 am]

BILLING CODE 6705–01–P

* Session Closed—Exempt pursuant to 5 U.S.C. 552b(c)(8) and (9).

FEDERAL COMMUNICATIONS COMMISSION

Sunshine Act Meeting; Open Commission Meeting

January 10, 2002.

The Federal Communications Commission will hold in Open Meeting on Thursday, January 17, 2002, at 9:30 a.m. in Room TW–C305; at 445 12th Street, SW., Washington, DC. The meeting will focus on a comprehensive review of FCC policies and procedures by the Commissioners and senior agency officials.

Presentations will be made in three panels:

Panel One consisting of the Chiefs of the Mass Media Bureau, the Cable Service Bureau and the Common Carrier Bureau.

Panel Two consisting of the Chiefs of the Consumer Information Bureau and the Enforcement Bureau.

Panel Three consisting of the Chiefs of the Office of Engineering and Technology, the International Bureau, and the Wireless Telecommunications Bureau.

Additional information concerning this meeting may be obtained from Maureen Peratino or David Fiske, Office of Media Relations, telephone number (202) 418–0500; TTY 1–888–835–5322.

Copies of materials presented at this meeting can be purchased from the FCC's duplicating contractor, Qualex International at (202) 863–2893; fax (202) 863–2898; TTY (202) 863–2897. These copies are available in paper format and alternative media, including large print/type, digital disk, and audio tape. Qualex International may be reached by e-mail at *qualexint@aol.com*

This meeting can be viewed over George Mason University's Capitol Connection. The Capitol Connection also will carry the meeting live via the Internet. For information on these services call (703) 993–3100. The audio. portion of the meeting will be broadcast live on the Internet via the FCC's Internet audio broadcast page at *http://www.fcc.gov/realaudio/*>. The meeting can also be heard via telephone, for a fee, from National Narrowcast Network, telephone (202) 966–2211 or fax (202) 966–1770. Audio and video tapes of this meeting can be purchased from Infocus, 341 Victory Drive, Herndon, VA 20170, telephone (703) 834–1470, Ext. 10; fax number (703) 834–0111.

Federal Communication Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 02–1091 Filed 1–11–02; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than January 29, 2002.

A. Federal Reserve Bank of Boston (Richard Walker, Community Affairs Officer) 600 Atlantic Avenue, Boston, Massachusetts 02106-2204:

1. Dorothy M. Mawn,Woburn, Massachusetts; James Lawrence Mawn, Malden, Massachusetts; Russell A. Mawn, Vestavia Hills, Alabama; the Thomas M. Mawn, Jr., Trust Fund B, Woburn, Massachusetts; and Mary Elizabeth Mawn-Ferullo, Woburn, Massachusetts; acting in concert; to acquire voting shares of Northern Bancorp, Inc., Woburn, Massachusetts, and thereby indirectly acquire Northern Bank and Trust Company, Woburn, Massachusetts.

2. James J. Mawn, Gloucester, Massachusetts; Rita M. Mawn, Naples, Florida; Rita M. Barger, Manlius, New York; Sheila E. Carpenter, San Antonio, Texas; James J. Mawn, Jr., Charlestown, Massachusetts; Alicia J. Mawn-Mahlau, and Sam A. Mawn-Mahlau, both of Winchester, Massachusetts; Louise S. McDonough, Woburn, Massachusetts; Mary E. Negri, Woburn, Massachusetts; Mary Catherine Riley, Princeton, New Jersey; and the Mawn Family Limited Partnership, Woburn, Massachusetts; acting in concert; to acquire voting shares of Northern Bancorp, Inc., Woburn, Massachusetts, and thereby indirectly acquire Northern Bank and Trust Company, Woburn, Massachusetts.

Board of Governors of the Federal Reserve System, January 9, 2002.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 02–915 Filed 1–14–02; 8:45 am]

BILLING CODE 6210–02–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than February 8, 2002.

A. Federal Reserve Bank of Cleveland (Stephen J. Ong, Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101–2566:

1. Charter One Financial, Inc., and Charter-Michigan Bancorp, Inc., both of Cleveland, Ohio; to acquire 100 percent of the voting shares of Charter One Bank, National Association, Cleveland, Ohio (in formation). In connection with this application, Charter-Michigan has applied to become a bank holding company.

B. Federal Reserve Bank of Chicago (Phillip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. Central Bancshares, Inc., Muscatine, Iowa; to acquire 100 percent of the voting shares of Marquette Bank Illinois, Galesburg, Illinois.

Board of Governors of the Federal Reserve System, January 9, 2002.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 02–914 Filed 1–14–02; 8:45 am]

BILLING CODE 6210–02–S

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than January 29, 2002.

A. Federal Reserve Bank of Cleveland (Stephen J. Ong, Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101–2566:

1. National Bancshares Corporation, Orrville, Ohio; to acquire Peoples Financial Corporation, Massillon, Ohio, and thereby indirectly acquire Peoples Federal Savings and Loan Assocation, Massillon, Ohio, and engage in operating a savings association, pursuant to § 225.28(b)(4)(ii) of Regulation Y. Comments regarding this application must be received not later than February 8, 2002.

B. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166–2034:

1. Concord EFS, Inc., Memphis, Tennessee; to acquire Logix Companies, LLC, Longmont, Colorado, and thereby engage in data processing activities, pursuant to § 225.28(b)(14) of Regulation Y.

Board of Governors of the Federal Reserve System, January 9, 2002.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc.02–916 Filed 1–14–02; 8:45 am]

BILLING CODE 6210–02–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Statement of Organization, Functions and Delegations of Authority

Part A, Office of the Secretary, Statement of Organization, Functions, and Delegations of Authority of the Department of Health and Human Services (HHS) is being amended at Chapter AA, Immediate Office of the Secretary, as last amended at 44 FR 31045, May 30, 1979. This reorganization is to establish a new Chapter AAB, ''Office of Public Health Preparedness (OPHP)'' to direct activities of the Department of Health and Human Services relating to protecting the civilian population from acts of bioterrorism and other public health emergencies. The changes are as follows: Under Part A, Office of the Secretary, Chapter AA, make the following changes:

A. Under Section AA.10 ''Organization,'' add the following new component: Office of Public Health Preparedness.

B. Establish a new chapter AAB, ''Office of Public Preparedness (OPHP)'' to read as follows:

Office of Public Health Preparedness

AAB.00 MISSION
AAB.10 ORGANIZATION
AAB.20 FUNCTIONS

Section AAB.00 Mission. The Office of Public Health Preparedness (OPHP) shall direct the Department of Health and Human Services' efforts to prepare for, protect against, respond to, and recover from all acts of bioterrorism and other public health emergencies that affect the civilian population; and shall serve as the focal point within HHS for these activities.

Section AAB.10 Organization: The Office of Public Health Preparedness (OPHP) is headed by a Director, who reports directly to the Secretary, and serves as the Secretary's principal advisor on HHS activities relating to protecting the civilian population from acts of bioterrorism and other public health emergencies.

Section AAB.20 Functions: The Office of Public Health Preparedness (OPHP) includes the following responsibilities:

1. Serves as the Secretary's principal advisor on matters relating to bioterrorism and public health emergencies.
2. Acts as the Department's liaison with the Office of Homeland Security.
3. Serves as the principal representative of the Department to other Federal agencies and the private sector in all matters related to bioterrorism, and other public health emergencies.
4. Directs HHS Operating and Staff Division implementation of a comprehensive HHS strategy to protect the civilian population from acts of bioterrorism and other public health emergencies. The OPHP will work with the OPDIVS and STAFFDIVs to ensure the adequacy of HHS strategy for preparing, preventing, responding to, and recovering from acts of bioterrorism and other public health emergencies.

Dated: December 14, 2001.

Tommy G. Thompson,

Secretary.

[FR Doc. 02–900 Filed 1–14–02; 8:45 am]

BILLING CODE 4150–03–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket Nos. 01M–0271, 01M–0255, 01M–0210, 01M–0173, 01M–0254, 01M–0227, 01M–0226, and 01M–0270]

Medical Devices; Availability of Safety and Effectiveness Summaries for Premarket Approval Applications

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is publishing a list of premarket approval applications (PMAs) that have been approved. This list is intended to inform the public of the availability of safety and effectiveness summaries of approved PMAs through the Internet and the agency's Dockets Management Branch.

ADDRESSES: Submit written requests for copies of summaries of safety and effectiveness to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Please cite the appropriate docket number as listed in table 1 of this document when submitting a written request. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the summaries of safety and effectiveness.

FOR FURTHER INFORMATION CONTACT: Thinh Nguyen, 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 the **Federal Register** of January 30, 1998 (63 FR 4571), FDA published a final rule to revise §§ 814.44(d) and 814.45(d) (21 CFR 814.44(d) and 814.45(d)) to discontinue publication of individual PMA approvals and denials in the **Federal Register**. Instead, revised §§ 814.44(d) and 814.45(d) state that FDA will notify the public of PMA approvals and denials by posting them on FDA's home page on the Internet at http://www.fda.gov, by placing the summaries of safety and effectiveness on the Internet and in FDA's Dockets Management Branch, and by publishing in the **Federal Register** after each quarter a list of available safety and effectiveness summaries of approved PMAs and denials announced in that quarter.

FDA believes that this procedure expedites public notification of these actions because announcements can be placed on the Internet more quickly than they can be published in the **Federal Register**, and FDA believes that the Internet is accessible to more people than the **Federal Register**.

In accordance with section 515(d)(4) and (e)(2) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360e(d)(4) and (e)(2)), notification of an order approving, denying, or withdrawing approval of a PMA will continue to include a notice of opportunity to request review of the order under section 515(g) of the act. The 30-day period for requesting reconsideration of an FDA action under § 10.33(b) (21 CFR 10.33(b)) for notices announcing approval of a PMA begins on the day the notice is placed on the Internet. Section 10.33(b) provides that FDA may, for good cause, extend this 30-day period. Reconsideration of a denial or withdrawal of approval of a PMA may be sought only by the applicant; in these cases, the 30-day period will begin when the applicant is notified by FDA in writing of its decision.

The following is a list of approved PMAs for which summaries of safety

and effectiveness were placed on the Internet in accordance with the procedure explained previously from April 1, 2001, through June 30, 2001. There were no denial actions during this period. The list provides the manufacturer's name, the product's generic name or the trade name, and the approval date.

TABLE 1.—LIST OF SAFETY AND EFFECTIVENESS SUMMARIES FOR APPROVED PMAS MADE AVAILABLE APRIL 1, 2001, THROUGH JUNE 30, 2001

PMA Number/Docket No.	Applicant	Trade Name	Approval Date
P990086/01M–0271	HealthTronics, Inc.	HealthTronics OssaTron®	October 12, 2000
P000023/01M–0255	TMJ Implants, Inc.	TMJ Fossa-Eminence/Condylar Prosthesis System™	January 5, 2001
P000035/01M–0210	TMJ Implants, Inc.	TMJ Fossa-Eminence Prosthesis™	February 27, 2001
P990080/01M–0173	Pharmacia & Upjohn Co.	CeeOn™ Edge Foldable Ultraviolet Light-Absorbing Posterior Chamber Intraocular Lens, Model 911A	April 5, 2001
P980050(S1)/01M–0254	Medtronic, Inc.	Medtronic® Model 7350 Jewel® AF Implantable Cardioverter Defibrillator System, Medtronic Model 9465 InCheck™ Patient Assistant, and Medtronic Transvene® CS/SVC Model 6937A Lead	April 6, 2001
P000046/01M–0227	Anika Therapeutics, Inc.	Staar Surgical Co. STAARVISC™ II Sodium Hyaluronate	April 18, 2001
P000044/01M–0226	Ortho-Clinical Diagnostics, Inc.	Vitros Immunodiagnostic Products HBsAg Reagent Pack, HBsAg Confirmatory Kit, and HBsAg Calibrator	April 27, 2001
P000037/01M–0270	Medical Carbon Research Institute, LLC.	ON–X® Prosthetic Heart Valve, Model ONXA	May 30, 2001

II. Electronic Access

Persons with access to the Internet may obtain the documents at http://www.fda.gov/cdrh/pmapage.html.

Dated: December 31, 2001.

Linda S. Kahan,

Deputy Director, Center for Devices and Radiological Health.

[FR Doc. 02–901 Filed 1–14–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF THE INTERIOR

Fish & Wildlife Service

Hanford Reach National Monument Federal Advisory Committee; Meeting Notice

AGENCY: Fish and Wildlife Service.

ACTION: Notice; FACA meeting.

SUMMARY: The Hanford Reach National Monument Federal Advisory Committee will conduct a meeting on Wednesday, February 6, 2002 from 8:30 am to 12:30 pm in the Consolidated Information Center (CIC)/Library, rooms 120 and 120A on the Washington State University, Tri-Cities campus, 2770 University Dr., Richland, WA. The meeting is open to the public and media.

DATES: Verbal comments will be considered during the course of the meeting and written comments will be accepted that are submitted by the close of the meeting.

ADDRESSES: Any member of the public wishing to submit written comments should send those to Mr. Greg Hughes, Designated Federal Officer for the Hanford Reach National Monument (HRNM) Federal Advisory Committee, Hanford Reach National Monument/Saddle Mountain National Wildlife Refuge, 3250 Port of Benton Blvd., Richland, WA 99352; fax (509) 375–0196. Copies of the draft meeting agenda can be obtained from the Designated Federal Officer.

FOR FURTHER INFORMATION CONTACT: Any member of the public wishing further information concerning the meeting should contact Mr. Greg Hughes, Designated Federal Official for the Hanford Reach National Monument (HRNM) FAC; phone (509) 371–1801, fax (509) 375–0196.

SUPPLEMENTARY INFORMATION: The Hanford Reach National Monument Federal Advisory Committee will review and augment their issues grouping topics as well as identify subcommittees and formulate rules to focus on specific areas.

Dated: January 8, 2002.

Greg Hughes,

Project Leader, Hanford Reach National Monument.

[FR Doc. 02–952 Filed 1–14–02; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Indian Gaming

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of approved tribal-state compact.

SUMMARY: Pursuant to Section 11 of the Indian Gaming Regulatory Act of 1988 (IGRA), Pub. L. 100–497, 25 U.S.C. 2710, the Secretary of the Interior shall publish, in the **Federal Register**, notice of approved Tribal-State Compacts for the purpose of engaging in Class III gaming activities on Indian lands. The Assistant Secretary—Indian Affairs, Department of the Interior, through his delegated authority, has approved the Tribal-State Compact between the Jicarilla Apache Nation and the State of New Mexico, which was executed on November 7, 2001.

DATES: This action is effective January 15, 2002.

FOR FURTHER INFORMATION CONTACT: George T. Skibine, Director, Office of Indian Gaming Management, Bureau of Indian Affairs, Washington, DC 20240, (202) 219–4066.

Dated: December 21, 2001.

Neal A. McCaleb,

Assistant Secretary—Indian Affairs.

[FR Doc. 02–904 Filed 1–14–02; 8:45 am]

BILLING CODE 4310–4N–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[UT–912–02–1120–PG–24–1A]

Extension of Due Date for Nomination on Utah Resource Advisory Council (RAC)

AGENCY: Bureau of Land Management, Department of Interior.

ACTION: Extension of Due Date for Nomination on Utah Resource Advisory Council (RAC).

SUMMARY: The purpose of this notice is to extend the due date for nominations, due to a vacancy on Utah's Resource Advisory Council, from January 4, 2002 to February 15, 2002.

Utah residents with an interest and background in commercial recreation or oil and gas development are being sought to fill this vacancy on the 15-person Council, which has occurred due to the resignation of one of its members. The person selected will serve out the remaining balance of a 3-year term that will continue through September 2003.

FOR FURTHER INFORMATION: Anyone interested in requesting a nomination form should inquire at the Bureau of Land Management, Utah State Office, Attention: Sherry Foot, 324 South State Street, Salt Lake City, Utah, 84111; phone (801) 539–4195. Nominations must be received no later than close of business February 15, 2002.

Dated: December 17, 2001.

Sally Wisely,

State Director.

[FR Doc. 02–983 Filed 1–14–02; 8:45 am]

BILLING CODE 4310–$$–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK–910–07–1310–AG]

Extension of Scoping Period on an Integrated Activity Plan (IAP)/ Environmental Impact Statement (EIS) for the Northwest Area of the National Petroleum Reserve-Alaska (NPR–A)

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of extension of scoping period.

SUMMARY: The Bureau of Land Management (BLM) is announcing the extension of the scoping period for planning its future management of approximately 9.4 million acres in northwestern NPR–A. A Notice of Intent published in the **Federal Register** on November 15, 2001, indicates scoping information and comments are to be received by December 15, 2001 or 45 days after publication of the original notice. The BLM is extending the time for receiving these comments until February 15, 2002. The closing date for nominations of areas of interest to oil and gas companies remains December 31, 2001.

FOR MORE INFORMATION CONTACT: For further information, contact Curtis Wilson (907) 271–5546 at BLM's Alaska State Office, 222 West 7th Avenue, Anchorage, Alaska 99513.

Francis R. Cherry, Jr.,

State Director.

[FR Doc. 02–982 Filed 1–14–02; 8:45 am]

BILLING CODE 4310–JA–P

DEPARTMENT OF THE INTERIOR

The Bureau of Land Management

[NM–910–01–1020–PG]

New Mexico Resource Advisory Council Meeting

AGENCY: The Bureau of Land Management, Department of the Interior.

ACTION: Notice of Council meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act and the Federal Advisory Committee Act of 1972 (FACA), 5 U.S.C. Appendix 1, The Department of the Interior, Bureau of Land Management (BLM), announces a meeting of the New Mexico Resource Advisory Council (RAC). New Mexico Resource Advisory Council Meetings are planned in conjunction with the representative of the Governor of the State of New Mexico; the Office of the Lieutenant Governor.

DATES: The meeting will be held on February 28 and March 1, 2002, with an optional Field Trip preceding on Wednesday, February 27. The meeting will begin at 8 a.m. and end by 5 p.m. both days.

ADDRESSES: The meeting will take place at the Crowne Plaza Pyramid, 5151 San Francisco Road NE, Albuquerque, NM.

Agenda: The draft agenda for the RAC meeting on Thursday, February 28, includes agreement on the meeting agenda, any RAC comments on the draft minutes of the last RAC meeting which was held on December 13 and 14, 2001, in Las Cruces, New Mexico, and a check-in from the RAC members.

Main topics will be to finalize draft Recommendations for Off-Highway Vehicle (OHV) Use on public lands, discussions on NEPA 101 and implementation of the Standards and Guidelines for Grazing, and an overview of Otero Mesa oil and gas leasing issues.

Reports from the seven Field Offices and from the three established subcommittees will be presented at various times throughout the two day meeting. The three established RAC subcommittees may have late afternoon or evening meetings on Wednesday, February 27 or on Thursday, February 28. The exact time and location of possible subcommittee meetings will be established by the chairperson of each subcommittee and be available to the public at the front desk of the hotel on those two days. The subcommittee meetings may be attended by the public. The Energy Subcommittee has established that they will meet after the Field Trip, at the hotel, on Wednesday, February 27. If there is unfinished business, they will continue at breakfast Thursday morning, before the meeting. The meeting is open to the public, and starting at 2:45 p.m. on Thursday, February 28, 2001, there will be an additional 15 minute Public Comment Period for members of the public who are not able to be present to address the RAC during the regular two hour Public Comment Period on Friday, March 1, from 10 a.m to 12 noon. The RAC may reduce or extend the end time of 12 noon depending on the number of people wishing to address the RAC.

A RAC assessment of the current meeting and development of draft agenda items and selection of a location for the next RAC meeting will take place Friday afternoon. On Friday, March 1, the ending time of the meeting may be changed depending on the work remaining for the RAC.

FOR FURTHER INFORMATION CONTACT: Mary White, New Mexico State Office, Office of External Affairs, Bureau of Land Management, 1474 Rodeo Road, P.O. Box 27115, Santa Fe, New Mexico 87502–0115, telephone (505) 438–7404.

SUPPLEMENTARY INFORMATION: The purpose of the Resource Advisory Council is to advise the Secretary of the Interior, through the BLM, on a variety of planning and management issues associated with the management of public lands. The Council's responsibilities include providing advice on long-range planning, establishing resource management priorities and assisting the BLM to identify State and regional standards for rangeland health and guidelines for grazing management.

Dated: December 17, 2001.

Carsten F. Goff,

Acting State Director.

[FR Doc. 02–980 Filed 1–14–02; 8:45 am]

BILLING CODE 4310–FB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ–910–0777–26–241A]

State of Arizona Resource Advisory Council Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Arizona Resource Advisory Council meeting notice.

SUMMARY: This notice announces a tour and meeting of the Arizona Resource Advisory Council (RAC). On February 28, 2002, the RAC and BLM staff will tour the Ironwood Forest National Monument and Asarco Mine site outside of the Tucson Metropolitan Area and discuss resource issues facing the Monument's management. The tour will depart from the Radisson Inn (Downtown) located at 181 W. Broadway at 8 a.m., and conclude approximately at 5 p.m.

On March 1, the business meeting will also be held at the Radisson Inn and will begin at 9 a.m. and conclude at approximately 4 p.m. The agenda items to be covered include: review of the December 6, 2001 meeting minutes; BLM State Director's Update on legislation, regulations and statewide planning efforts; Updates on the BLM National Mountain Biking Strategy and 3809 Surface Management Regulations for Locatable Mineral Operations; and Presentations on the Arizona Supreme Court Ruling on State Land Grazing Leases and BLM's International Programs; Update Proposed Field Office Rangeland Resource Teams; Reports from BLM Field Office Managers; Reports by the Standards and Guidelines, Recreation and Public Relations, Wild Horse and Burro Working Groups; Reports from RAC members; and Discussion of future meetings. A public comment period will be provided at 11:30 a.m. on March 1, 2002, for any interested publics who wish to address the Council.

FOR FURTHER INFORMATION CONTACT: Deborah Stevens, Bureau of Land Management, Arizona State Office, 222 North Central Avenue, Phoenix, Arizona 85004–2203, (602) 417–9215.

Denise P. Meridith,

Arizona State Director.

[FR Doc. 02–981 Filed 1–14–02; 8:45 am]

BILLING CODE 4310–32–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NM–910–02–1020–PG]

New Mexico Resource Advisory Council Meeting

AGENCY: The Bureau of Land Management, Department of the Interior.

ACTION: Notice of Council meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act and the Federal Advisory Committee Act of 1972 (FACA), 5 U.S.C. Appendix 1, The Department of the Interior, Bureau of Land Management (BLM), announces a meeting of the New Mexico Resource Advisory Council (RAC). New Mexico Resource Advisory Council Meetings are planned in conjunction with the representative of the Governor of the State of New Mexico; the Office of the Lieutenant Governor.

DATES: The meeting will be held on January 30, 2002. The meeting will be held at 10:00 a.m. and is not expected to be more than two hours in duration. Some members will be calling in to the meeting via conference phone.

ADDRESSES: The meeting will take place at the Bureau of Land Management State Office, State Director's Conference Room, located at 1474 Rodeo Road, Santa Fe, NM 87505.

Agenda: Members will draft, review and approve a letter to the Secretary of the Interior regarding implementation of the Standards and Guidelines for Grazing. Members of the public are invited and may address the RAC during the meeting.

FOR FURTHER INFORMATION CONTACT: Mary White, New Mexico State Office, Office of External Affairs, Bureau of Land Management, 1474 Rodeo Road, P.O. Box 27115, Santa Fe, New Mexico 87502–01115, Telephone: (505) 438–7404.

SUPPLEMENTARY INFORMATION: The purpose of the Resource Advisory Council is to advise the Secretary of the Interior, through the BLM, on a variety of planning and management issues associated with the management of public lands. The Council's responsibilities include providing advice on long-range planning, establishing resource management priorities and assisting the BLM to identify State and regional standards for rangeland health and guidelines for grazing management.

Dated: January 9, 2002.

Richard A. Whitley,

Associate State Director.

[FR Doc. 02–1093 Filed 1–14–02; 8:45 am]

BILLING CODE 4310–FB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–930–1430–ET; COC–17320]

Public Land Order No. 7508; Partial Revocation of the Executive Order Which Created Public Water Reserve No. 107; Colorado

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order partially revokes an Executive Order insofar as it affects 45.77 acres of public land withdrawn for Bureau of Land Management Public Water Reserve No. 107. This action will open 45.77 acres to surface entry under the public land laws and to nonmetalliferous location and entry under the United States mining laws. The land has been and will remain open to mineral leasing and to metalliferous mining.

EFFECTIVE DATE: February 14, 2002.

FOR FURTHER INFORMATION CONTACT: Doris E. Chelius, BLM Colorado State Office, 2850 Youngfield Street, Lakewood, Colorado 80215, 303–239–3706.

SUPPLEMENTARY INFORMATION: 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 Order dated April 17, 1926, which established Public Water Reserve No. 107, is hereby revoked insofar as it affects the following described land:

Sixth Principal Meridian

T. 5 N., R. 81 W.,
sec. 9, lot 13.

The area described contains 45.77 acres in Jackson County.

2. At 9 a.m. on February 14, 2002, the land described in Paragraph 1 will be opened to the operation of the public land laws generally, subject to valid

existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law. All valid applications received at or prior to 9 a.m. on February 14, 2002, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

3. At 9 a.m. on, February 14, 2002, the land described in Paragraph 1 will be opened to nonmetalliferous location and entry under the United States mining laws, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law. Appropriation of any of the land described in this order to nonmetalliferous mining under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. 38 (1994), shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law.

The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts.

Dated: December 13, 2001.

J. Steven Griles,

Deputy Secretary.

[FR Doc. 02–978 Filed 1–14–02; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–935–1430–ET; COC–28585; COC–28650; COC–0123825]

Public Land Order No. 7507; Partial Revocation of Waterpower Withdrawals and Opening of Public Lands Under Section 24 of the Federal Power Act; Colorado

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order revokes an Executive Order and a Secretarial Order insofar as they affect 439.24 acres of public lands withdrawn for two Bureau of Land Management waterpower withdrawals. This action will open the lands to surface entry. These lands have been open to mineral leasing, and, under the provisions of the Mining Claims Rights Restoration Act of 1955, to mining. These provisions are no longer required. This order opens 412.40 acres of public lands to disposal, subject to section 24 of the Federal Power Act. This order also opens 42.62 acres of lands withdrawn by Power Project 2035, subject to section 24 of the Federal Power Act to allow for disposal to the Power Project licensee. This action will allow for consummation of pending land disposals.

EFFECTIVE DATE: April 15, 2002.

FOR FURTHER INFORMATION CONTACT: Doris E. Chelius, BLM Colorado State Office, 2850 Youngfield Street, Lakewood, Colorado 80215–7093, 303–239–3706.

SUPPLEMENTARY INFORMATION: 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), and pursuant to the determination by the Federal Energy Regulatory Commission in DVCO–557–000, it is ordered as follows:

1(a). Executive Order dated July 2, 1910, which established Powersite Reserve No. 78, and Secretarial Order dated October 31, 1944, which established Powersite Classification No. 372, are hereby revoked insofar as they affect the following described public lands:

Sixth Principal Meridian

T. 1 S., R. 71 W., Tracts 53, 56, 57, 58, 59, 60, 61, 65, 139, 148, and 150.

The areas described aggregate 439.24 acres in Boulder County.

(b). At 9 a.m. on April 15, 2002, the lands described in paragraph 1(a), will be opened to operation of the public land laws generally subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable law. All valid applications received on or prior to 9 a.m on April 15, 2002, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

(c). The lands described in paragraph 1(a) have been open to mining under the provisions of the Mining Claims Rights Restoration Act of 1955, 30 U.S.C. 621 (1994), and these provisions are no longer required.

2. By virtue of the authority vested in the Secretary of the Interior by the Act of June 10, 1920, section 24, as amended, 16 U.S.C. 818 (1994), and pursuant to the determination by the Federal Energy Regulatory Commission in DVCO–557–000, it is ordered as follows:

(a) At 9 a.m. on April 15, 2002, the following described public lands withdrawn by Executive Order dated July 2, 1910, which established Powersite Reserve No. 78, and Secretarial Order dated October 31, 1944, which established Power Site Classification No. 372, will be opened to disposal, subject to the provisions of section 24 of the Federal Power Act. The opening is subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law:

Sixth Principal Meridian

T. 1 S., R. 71 W., Tracts 54, 127, 142, 143, 144, 145, 146, 147, 149, and 154.

The area described contains 412.40 acres of public lands in Boulder County.

(b). At 9 a.m. on April 15, 2002, Tract 49, T. 1 S., R.71 W., Sixth Principal Meridian, in Power Project No. 2035 is hereby open to disposal to the Power Project licensee only. The Commission imposed annual charges shall continue and any use not authorized by the License is prohibited without the consent of the Federal Energy Regulatory Commission. This parcel contains 42.62 acres in Boulder County.

3. The State of Colorado, with respect to the lands described in paragraph 1(a) and 2(a), has a preference right for public highway rights-of-way or material sites until April 15, 2002 and any location, entry, selection, or subsequent patent shall be subject to any rights granted the State as provided by the Act of June 10, 1920, section 24, as amended, 16 U.S.C. 818 (1994).

Dated: December 13, 2001.

J. Steven Griles,

Deputy Secretary.

[FR Doc. 02–979 Filed 1–14–02; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Environmental Documents Prepared for Proposed Oil and Gas Operations on the Gulf of Mexico Outer Continental Shelf (OCS)

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the availability of environmental documents. Prepared for OCS mineral proposals on the Gulf of Mexico OCS.

SUMMARY: Minerals Management Service (MMS), in accordance with Federal Regulations that implement the National Environmental Policy Act (NEPA), announces the availability of NEPA-related Site-Specific Environmental Assessments (SEA) and Findings of No Significant Impact (FONSI), prepared by

MMS for the following oil and gas activities proposed on the Gulf of Mexico OCS.

FOR FURTHER INFORMATION CONTACT: Public Information Unit, Information Services Section at the number below. Minerals Management Service, Gulf of Mexico OCS Region, Attention: Public Information Office (MS 5034), 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana 70123–2394, or by calling 1–800–200-GULF.

SUPPLEMENTARY INFORMATION: MMS prepares an SEA and FONSI for proposals that relate to exploration for and the development/production of oil and gas resources on the Gulf of Mexico OCS. The EA examines the potential environmental effects of activities described in the proposals and present MMS conclusions regarding the significance of those effects.

Environmental Assessments are used as a basis for determining whether or not approval of the proposals constitutes major Federal actions that significantly affect the quality of the human environment in the sense of NEPA section 102(2)(C). A FONSI is prepared in those instances where MMS finds that approval will not result in significant effects on the quality of the human environment. The FONSI briefly presents the basis for that finding and includes a summary or copy of the EA.

This notice constitutes the public notice of availability of environmental documents required under the NEPA Regulations.

This listing includes all proposals for which the Gulf of Mexico OCS Region prepared a FONSI in the period subsequent to publication of the preceding notice.

Activity/Operator	Location	Date
Murphy Exploration & Production Company, Supplemental Development Operations, SEA Nos. S–05676, P–13457 and P–13458.	South Timbalier Area, Block 86, Lease OCS–G 00605, 18 miles south of Lafourche Parish, Louisiana.	09/10/01
TotalFinaElf, Inc., Williams Field Services-Gulf Coast Company, L.P., Right-of-Use and Easement and Pipeline Activity, SEA Nos. P–13233–13260, 13355–13358 and RUE–1.	Canyon Express and Canyon Station Projects, Camden Hill, Aconcagua and King's Peak Field Development from Mississippi Canyon and DeSoto Canyon, through Viosca Knoll and Main Pass to Main Pass 261, 89 miles south of Mobile County Alabama, and 68 to 93 miles east and southeast of Plaquemines Parish, Louisiana.	09/13/01
Marathon Oil Company, Initial Exploration Plan, SEA No. N6974	Desoto Canyon Area, Block 927, Lease OCS–G 10480, 104 miles off the coast of Plaquemines Parish, Louisiana.	10/18/01
El Paso Production Oil & Gas Company, Pipeline Activity, SEA No. P–13114.	High Island Area, Block A–368, Lease OCS–G 02433, 118 miles off the coast of Texas, and 123 miles from Cameron, Louisiana.	12/06/01
Forest Oil Company, Structure Removal Activity, SEA No. ES/SR 00–038A.	West Cameron Area, Block 212, Lease OCS–G 04758, 39 miles south of Cameron, Louisiana, and 37 miles south of Cameron Parish, Louisiana.	09/07/01
RME Petroleum Company, Structure Removal Activity, SEA No. ES/SR 01–049A.	Ship Shoal Area, Block 204, Lease OCS–G 01520, 81 miles south of Morgan City, Louisiana, and 38 miles south-southwest of Terrebonne Parish, Louisiana.	09/05/01
Callon Petroleum Company, Structure Removal Activity, SEA No. ES/SR 01–070A.	Main Pass (South and East Addition) Area, Block 165, Lease OCS–G 05705, 26 miles southeast of Chandeleur Islands, Louisiana, and 66 miles south-southwest of Theodore, Alabama.	09/17/01
Hall-Houston Oil Company, Structure Removal Activity, SEA No. ES/SR 01–072.	West Delta Area, Block 94, Lease OCS–G 00839, 29 miles southeast of Fourchon, Louisiana, and 25 miles southeast of LaFourche Parish, Louisiana.	08/27/01
Agip Petroleum, Structure Removal Activity, SEA No. ES/SR 01–073A.	Grand Isle Area, Block 102, Lease OCS–G 05662, 46 miles south-southeast of LaFourche Parish, Louisiana, and 48 miles south-southeast of Fourchon, Louisiana.	08/29/01
Amerada Hess Corporation, Structure Removal Activity, SEA No. ES/SR 01–074.	East Cameron Area, Block 188, Lease OCS–G 13586, 73 miles south-southeast of Cameron, Louisiana, and 57 miles south-southwest of Cameron Parish, Louisiana.	08/24/01
Callon Petroleum Company, Structure Removal Activity, SEA No. ES/SR 01–071A.	Main Pass (South and East Addition) Area, Block 165, Lease OCS–G 05705, 26 miles east-southeast of Chandeleur Islands, Louisiana, and 64 miles south-southwest of Theodore, Alabama.	09/04/01
Energy Resource Technology, Inc., Structure Removal Activity, SEA No. ES/SR 01–077.	Eugene Island Area, Block 128A, Lease OCS–G 00442, 30 miles southwest of Terrebonne Parish, Louisiana, and 58 miles south-southwest of Morgan City, Louisiana.	09/17/01
El Paso Production GOM, Inc., Structure Removal Activity, SEA No. ES/SR 01–078.	West Cameron (South Addition) Area, Block 509, Lease OCS–G 15101, 95 miles south-southeast of Cameron, Louisiana, and 83 miles south-southwest of Cameron Parish, Louisiana.	09/26/01
Kelley Oil Company, Structure Removal Activity, SEA Nos. ES/SR 01–079 and 01—080.	Mobile Area, Blocks 822 and 865, Leases OCS–G 05056 and 06847, Platform B lies 7 miles south of Dauphin Island, Alabama, and 41 miles south-southwest of Mobile, Alabama. Platform A lies 6 miles south of Dauphin Island, Alabama, and 39 miles south-southwest of Mobile, Alabama.	10/04/01
Amerada Hess Corporation, Structure Removal Activity, SEA No. ES/SR 01–081.	Breton South Area, Block 55, Lease OCS–G 04492, 6 miles southeast of Breton Island, and 23 miles northeast of Venice, Louisiana.	10/04/01
Forest Oil Corporation, Structure Removal Activity, SEA No. ES/SR 01–082.	High Island Area, Block A20, Lease OCS–G 06178, 34 miles southeast of Galveston, Texas, and 76 miles southwest of Cameron, Louisiana.	10/17/01

Activity/Operator	Location	Date
Louis Dreyfus Natural Gas, Structure Removal Activity, SEA No. ES/SR 01–083.	West Cameron (West Addition) Area, Block 408, Lease OCS–G 10508, 64 miles south-southwest of Cameron Parish, Louisiana, and 83 miles southeast of Sabine Pass, Texas.	10/17/01
Texaco Exploration and Production, Inc., Structure Removal Activity, SEA Nos. ES/SR 01–084, 01–085, 01–086, 01–087 and 01–088.	South March Island (North Addition) Area, Blocks 217, 218, 238 and 239, Lease OCS 00310, between 8 to 11 miles southwest and 6 miles south-southwest of Iberia Parish, Louisiana, and 23 to 36 miles southeast of Intracoastal City, Louisiana.	11/14/01
Texaco Exploration and Production, Inc., Structure Removal Activity, SEA No. ES/SR 01–089.	Vermilion Area, Block 30, Lease OCS–G 04785, 7 miles south-southeast of Vermilion Parish, Louisiana, and 21 miles south of Intracoastal City, Louisiana.	11/27/01
Vastar Offshore, Inc., Structure Removal Activity, SEA No. ES/SR 01–090.	South Pelto Area, Block 11, Lease OCS–G 00071, 8 miles south of Terrebonne Parish, Louisiana, and 33 miles south-southwest of Fourchon, Louisiana.	11/08/01
Denbury Resources Inc., Structure Removal Activity, SEA No. ES/SR 01–091.	High Island (East Addition South Extension) Area, Block A–286, Lease OCS–G 03486, 91 miles south-southeast of Galveston County, Texas, and 105 miles south-southwest of Cameron, Louisiana.	11/15/01
Maritech Resources, Inc., Structure Removal Activity, SEA Nos. ES/SR 01–092, 01–093, 01–094, 01–095, 01–096, 01–097, 01–098, 01–099 and 01–100.	West Delta Area, Block 32, Leases OCS–G 00367 and 01332, 19 miles east-southeast of Grand Isle, Louisiana, and 10 miles south-southwest of Plaquemines Parish, Louisiana.	11/28/01
Seneca Resources Corporation, Structure Removal Activity, SEA No. ES/SR 01–101.	Vermilion Area (South Addition), Block 296, Lease OCS–G 09511, 114 miles southwest of Morgan City, Louisiana, and 78 miles south-southwest of Iberia Parish, Louisiana.	11/27/01
BP America, Inc., Structure Removal Activity, SEA No. ES/SR 01–102.	South Pelto Area, Block 11, Lease OCS–G 00071, 8 miles south of Terrebonne Parish, Louisiana, and 33 miles south-southwest of Fourchon, Louisiana.	11/16/01
Apex Oil & Gas, Inc., Structure Removal Activity, SEA No. ES/SR 01–103.	East Cameron Area, Block 24, Lease OCS–G 04098, 5 miles south-southwest of Cameron Parish, Louisiana, and 35 miles east-southeast of Cameron, Louisiana.	12/10/01

Persons interested in reviewing environmental documents for the proposals listed above or obtaining information about EAs and FONSIs prepared for activities on the Gulf of Mexico OCS are encouraged to contact MMS at the address or telephone listed in the **FOR FURTHER INFORMATION** section.

Dated: December 18, 2001.

Chris C. Oynes,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 02–976 Filed 1–4–02; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Review of Existing Coordinate Long Range Operating Criteria for Colorado River Reservoirs

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice.

SUMMARY: The Operating Criteria for Colorado River Reservoirs (Operating Criteria), promulgated pursuant to Public Law 90–537, were published in the **Federal Register** on June 10, 1970. The Operating Criteria state that the Secretary will sponsor a formal review of the Operation Criteria at least every 5 years. As part of that 5-year review process, the Bureau of Reclamation invites written comments regarding whether the Operating Criteria should be modified, and if so, how they should be modified. The existing Operating Criteria are included at the end of this notice.

DATES: Written comments must be received on or before March 18, 2002.

ADDRESSES: Written comments may be mailed to: Regional Director, Attn: BCOO–4600, Lower Colorado Region, Bureau of Reclamation, P.O. Box 61470, Boulder City, NV 89006–1470.

FOR FURTHER INFORMATION CONTACT: Jayne Harkins at (702) 293–8190 or in writing at Bureau of Reclamation, Lower Colorado Region, P.O. Box 61470, Boulder City, NV 89006–1470 or by faxogram at (702) 293–8042 or Tom Ryan at (801) 524–3732 or in writing at Bureau of Reclamation, Upper Colorado Region, 125 South State Street, Salt Lake City, Utah 84138–1102. E-mail can be sent to *LROC_Review@lc.usbr.gov.*

SUPPLEMENTARY INFORMATION: The Operating Criteria provided for the coordinated long-range operation of the reservoirs constructed and operated under the authority of the Colorado River Storage Project Act, the Boulder Canyon Project Act, and the Boulder Canyon Project Adjustment Act for the purposes of complying with and carrying out the provisions of the Colorado River Compact, the Upper Colorado River Basin Compact, and the Mexican Water Treaty.

The Operating Criteria provide for a review at least every 5 years with participation by Colorado River Basin state representatives as each Governor may designate and other parties and agencies as the Secretary of the Interior may deem appropriate. As provided in Public Law 102–575 (The Grand Canyon Protection Act of 1992), the Secretary also consults in this review process with the general public including representatives of academic and scientific communities, environmental organizations, the recreation industry, and contractors for the purchase of Federal power produced at Glen Canyon Dam. This will be the sixth 5-year review of the Operating Criteria since their initial promulgation in 1970. The Commissioner of the Bureau of Reclamation shall be the authorized agent of the Secretary of the Interior for the purposes of conducting and coordinating this review.

The Record of Decision, Colorado River Interim Surplus Guidelines Final Environmental Impact Statement (Interim Surplus Guidelines) states that 5-year reviews of the Interim Surplus Guidelines may be conducted and if so, such reviews would be coordinated with the Operating Criteria review. The Interim Surplus Guidelines were signed by former Secretary Bruce Babbit on January 16, 2001, became effective in

February 2001, and are to be applied in 2002. Accordingly, at this time, there is no need for a review of the Interim Surplus Guidelines.

Our practice is to make comments, including names and home addresses of respondents, available for public review. Individual respondents may request that we withhold their home address from public disclosure, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold a respondent's identity from public disclosure, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public disclosure in their entirety.

In addition to written comments, open public meetings will be conducted during calendar year 2002. Notification of dates, times, and locations for public meetings will be made through the **Federal Register**, media outlets, and to all respondents to this notice.

Dated: December 20, 2001.

John W. Keys, III,

Commissioner, Bureau of Reclamation.

Criteria for Coordinated Long-Range Operation of Colorado River Reservoirs Pursuant to the Colorado River Basin Project Act of September 30, 1968 (Pub. L. 90–537)

These Operating Criteria are promulgated in compliance with Section 602 of Public Law 90–537. They are to control the coordinated long-range operation of the storage reservoirs in the Colorado River Basin constructed under the authority of the Colorado River Storage Act (hereinafter ''Upper Basin Storage Reservoirs'') and the Boulder Canyon Project Act (Lake Mead). The Operating Criteria will be administered consistent with applicable Federal laws, the Mexican Water Treaty, interstate compacts, and decrees relating to the use of the waters of the Colorado River.

The Secretary of the Interior (hereinafter the ''Secretary'') may modify the Operating Criteria from time to time in accordance with Section 602(b) of Pub. L. 90–537. The Secretary will sponsor a formal review of the Operating Criteria at least every 5 years, with participation by State representatives as each Governor may designate and such other parties and agencies as the Secretary may deem appropriate.

I. Annual Report

(1) On January 1, 1972, and on January 1 of each year thereafter, the Secretary shall transmit to the Congress and to the Governors of the Colorado River Basin States a report describing the actual operation under the adopted criteria for the preceding compact water year and the projected plan of operation for the current year.

(2) The plan of operation shall include such detailed rules and quantities as may be necessary and consistent with the criteria contained herein, and shall reflect appropriate consideration of the uses of the reservoirs for purposes, including flood control, river regulation, beneficial consumptive uses, power production, water quality control, recreation, enhancement of fish and wildlife, and other environmental factors. The projected plan of operation may be revised to reflect the current hydrologic conditions, and the Congress and the Governors of the Colorado River Basin States be advised of any changes by June of each year.

II. Operation of Upper Basin Reservoirs

(1) The annual plan of operation shall include a determination by the Secretary of the quantity of water considered necessary as of September 30 of each year to be in storage as required by Section 602(a) of Pub. L. 90–537 (hereinafter ''602(a) Storage''). The quantity of 602(a) Storage shall be determined by the Secretary after consideration of all applicable laws and relevant factors, including, but not limited to, the following:

(a) Historic streamflows;

(b) The most critical period of record;

(c) Probabilities of water supply;

(d) Estimated future depletions of the upper basin, including the effects of recurrence of critical periods of water supply;

(e) The ''Report of the Committee on Probabilities and Test Studies to the Task Force on Operating Criteria for the Colorado River,'' dated October 30, 1969, and such additional studies as the Secretary deems necessary;

(f) The necessity to assure that upper basing consumptive uses not be impaired because of failure to store sufficient water to assure deliveries under Section 602(a)(1) and (2) of Pub. L. 90.537.

(2) If, in the plan of operation, either:

(a) The Upper Basin Storage Reservoirs active storage forecast for September 30 of the current year is less than the quantity of 602(a) Storage determined by the Secretary under Article II(1) hereof, for that date; or

(b) The Lake Powell active storage forecast for that date is less than the Lake Mead active storage forecast for that date:

the objective shall be to maintain a minimum release of water from Lake Powell of 8.23 million acre-feet for that year. However, for the years ending September 30, 1971 and 1972, the release may be greater than 8.23 million acre-feet if necessary to deliver 75,000,000 acre-feet at Lee Ferry for the 10-year period ending September 30, 1972.

(3) If, the plan of operation, the Upper Basin Storage Reservoirs active storage forecast for September 30 of the current water year is greater than the quantity of 602(a) Storage determination for that date, water shall be released annually from Lake Powell at a rate greater than 8.23 million acre-feet per year to the extent necessary to accomplish any or all of the following objectives:

(a) to the extent it can be reasonably applied in the States of the Lower Division to the uses specified in Article III(e) of the Colorado River Compact, but no such releases shall be made when the active storage in Lake Powell is less than the active storage in Lake Mead,

(b) to maintain, as nearly as practicable, active storage in Lake Mead equal to the active storage in Lake Powell, and

(c) to avoid anticipated spills from Lake Powell.

(4) In the application of Article II(3)(b) herein, the annual release will be made to the extent that it can be passed through Glen Canyon Powerplant when operated at the available capability of the powerplant. Any water thus retained in Lake Powell to avoid bypass of water at the Glen Canyon Powerplant will be released through the Glen Canyon Powerplant as soon as practicable to equalize the active storage in Lake Powell and Lake Mead.

(5) Releases from Lake Powell pursuant to these criteria shall not prejudice the position of either the upper or lower basin interests with respect to required deliveries at Lee Ferry pursuant to the Colorado River Compact.

III. Operation of Lake Mead

(1) Water released from Lake Powell, plus the tributary inflows between Lake Powell and Lake Mead, shall be regulated in Lake Mead and either pumped from Lake Mead or released to the Colorado River to meet requirements as follows:

(a) Mexican Treaty obligations;

(b) Reasonable consumptive use requirements of mainstream users in the Lower Basin;

(c) Net river losses;
(d) Net reservoir losses;
(e) Regulatory wastes.

(2) Until such time as mainstream water is delivered by means of the Central Arizona Project, the consumptive use requirements of Article III(1)(b) of these Operating Criteria will be met.

(3) After commencement of delivery of mainstream water by means of the Central Arizona Project, the consumptive use requirements of Article III(1)(b) of these Operating Criteria will be met to the following extent:

(a) Normal: The annual pumping and release from Lake Mead will be sufficient to satisfy 7,500 acre-feet of annual consumptive use in accordance with the decree in *Arizona* v. *California*, 376 U.S. 340 (1964).

Surplus: The Secretary shall determine from time to time when water in quantities greater than ''Normal'' is available for either pumping or release from Lake Mead pursuant to Article II(b)(2) of the decree in *Arizona* v. *California* after consideration of all relevant factors, including, but not limited to, the following:

(i) the requirements stated in Article III(1) of these Operating Criteria;

(ii) requests for water by holders of water delivery contracts with the United States, and of other rights recognized in the decree in *Arizona* v. *California*;

(iii) actual and forecast quantities of active storage in Lake Mead and the Upper Basin Storage Reservoirs; and

(iv) estimated net inflow to Lake Mead.

(c) Shortage: The Secretary shall determine from time to time when insufficient mainstream water is available to satisfy annual consumptive use requirements of 7,500,000 acre-feet after consideration of all relevant factors, including, but not limited to, the following:

(i) The requirements stated in Article III(1) of these Operating Criteria;

(ii) actual and forecast quantities of active storage in Lake Mead;

(iii) estimated of net inflow to Lake Mead for the current year;

(iv) historic streamflows, including the most critical period of record;

(v) priorities set forth in Article II(A) of the decree in *Arizona* v. *California*; and

(vi) the purposes stated in Article I(2) of these Operating Criteria.

The shortage provisions of Article II(B)(3) of the decree in *Arizona* v. *California* shall thereupon become effective and consumptive uses from the mainstream shall be restricted to the extent determined by the Secretary to be required Section 301(b) of Public Law 90–537.

IV. Definitions

(1) In addition to the definitions in Section 606 of Pub. L. 90–537, the following shall also apply:

(a) ''Spills,'' as used in Article II(3)(c) herein, means water released from Lake Powell which cannot be utilized for project purposes, including, but not limited to, the general of power and energy.

(b) ''Surplus,'' as used in Article III(3)(b) herein, is water which can be used to meet consumptive use demands in the three Lower Division States in excess of 7,500,000 acre-feet annually. The term ''surplus'' as used in these Operating Criteria is not be construed as applied to, being interpretive of, or in any manner having reference to the term ''surplus'' in the Colorado River Compact.

(c) ''Net inflow to Lake Mead,'' as used in Article III(3) (b)(iv) and (c)(iii) herein, represents the annual inflow to Lake Mead in excess of losses from Lake Mead.

(d) ''Available capability,'' used in Article II(4) herein, means that portion of the total capacity of the powerplant that is physically available for generation.

[FR Doc. 02–688 Filed 1–14–02; 8:45 am]
BILLING CODE 4310–MN–M

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

[Nevada, INT–DES 01–43]

Implementation Agreement, Inadvertent Overrun and Payback Policy and Related Federal Actions, Colorado River in the Lower Basin

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of availability of and public hearing for a draft environmental impact statement (DEIS).

SUMMARY: Pursuant to the National Environmental Policy Act (NEPA) of 1969, as amended, and the Council on Environmental Quality's Regulations for Implementing the Procedural Provisions of NEPA, the Bureau of Reclamation (Reclamation) has issued a DEIS on the proposed execution of an Implementation Agreement (IA) that would commit the Secretary of the Interior (Secretary) to make Colorado River water deliveries in accordance with the terms and conditions of the IA to enable certain southern California water agencies to implement the proposed Quantification Settlement Agreement (QSA). (The QSA is an agreement in principle among several southern California water agencies. It establishes a framework of conservation measures and water transfers within southern California for up to 75 years. It provides a substantial mechanism for California to reduce its diversions of Colorado River water in normal years to its 4.4 million acre-feet per year apportionment.) The proposed Federal action includes the following components: Execution of an IA, wherein the Secretary agrees to changes in the amount and/or location of deliveries of Colorado River water that are necessary to implement the QSA; adoption of an Inadvertent Overrun and Payback Policy (IOP), which establishes requirements for payback of inadvertent overuse of Colorado River water by Colorado River water users in Arizona, California, and Nevada; and implementation of biological conservation measures to offset potential impacts from the proposed action that could occur to federally listed fish and wildlife species. Information on public hearings may be found below in the **DATES** section.

DATES: A 60-day public review and comment period begins with the filing of the draft EIS with the Environmental Protection Agency. Written comments must be received no later than March 12, 2002 [*see* **ADDRESSES,** below].

Public hearings are scheduled to be held to receive written or verbal comments about the DEIS from interested organizations and individuals, on the adequacy with which the EIS identifies and describes the potential impacts associated with approving and implementing the proposed Federal action. The hearings will be held at the following times and locations:

- February 5, 2002, VFW Hall, 148 N. First St., Blythe, California, 6:30–9:30 p.m.
- February 6, 2002, Henderson Convention Center, 200 S. Water St., Henderson, Nevada, 2:00–5:00 p.m.
- February 7, 2002, Marriott Hotel (Downtown), 333 S. Figueroa St., Los Angeles, California, 2:00–5:00 p.m.

ADDRESSES: Send written comments to Mr. Bruce Ellis, Chief, Environmental Resources Management Division, Bureau of Reclamation, Phoenix Area Office (PXAO–1500), PO Box 81169, Phoenix, AZ 85069–1169; fax number (602) 216–4006.

A copy of the draft EIS is available upon request from Ms. Janice Kjesbo, Bureau of Reclamation, Phoenix Area Office (PXAO–1500), PO Box 81169,

Phoenix, AZ 85069–1169, telephone (602) 216–3864, faxogram (602) 216–4006. A copy of the draft EIS is also available for public inspection and review at the libraries listed under Supplementary Information below.

FOR FURTHER INFORMATION CONTACT: Questions regarding the draft EIS should be directed to Mr. Ellis, at the address provided above, telephone (602) 216–3854.

SUPPLEMENTARY INFORMATION: The Secretary, pursuant to the Boulder Canyon Project Act of 1928 and *Arizona* v. *California* 1964 Supreme Court Decree (376 U.S. 340), proposes to take Federal actions necessary to support the implementation of the QSA. The purpose of the Federal action is to facilitate implementation of the QSA, which incorporates contractual agreements necessary for California to reduce its use of Colorado River water. The need for the Federal action is to assist California's efforts to reduce its use of Colorado River water to its 4.4 million acre-feet apportionment in a normal year. This reduction in California's use of Colorado River water would benefit the entire Colorado River Basin.

The IA, IOP, and Related Federal Actions DEIS describes the potential environmental impacts of the three components that make up the proposed Federal action. Because the purpose of the proposed action is to provide Federal approval of an agreement negotiated among the California parties, no other action alternatives to the IA are considered in the DEIS. Similarly, the biological conservation measures proposed to be implemented under the proposed action relate specifically to the water transfers specified in the IA and QSA. These measures were developed and agreed to by Reclamation and the U.S. Fish and Wildlife Service (FWS) in response to an August 2000 Reclamation Biological Assessment, and were incorporated into a FWS January 2001 Biological Opinion; no alternatives to the biological conservation measures are considered in the DEIS. With regard to the IOP, in response to scoping comments received, Reclamation developed an alternative that would eliminate the forgiveness of payment aspect of the proposed policy. This alternative has been evaluated and is described in the DEIS.

Copies of the draft EIS are available for public inspection and review at the following locations:

- Department of the Interior, Natural Resources Library, 1849 C St., NW, Washington, DC 20240
- Bureau of Reclamation, Denver Office Library, Building 67, Room 167, Denver Federal Center, 6th and Kipling, Denver, CO 80225
- Bureau of Reclamation, Lower Colorado Regional Office, Nevada Highway and Park St., Boulder City, NV 89006
- Bureau of Reclamation, Phoenix Area Office, 2222 W. Dunlap Ave., Suite 100, Phoenix, AZ 85021
- Bureau of Reclamation, Southern California Area Office, 27710 Jefferson Ave., Suite 201, Temecula, CA 92590–2628
- Bureau of Reclamation, Yuma Area Office, 7301 Calle Agua Salada, Yuma, AZ 85364–9763
- Bureau of Reclamation, Upper Colorado Regional Office, 125 S. State St., Salt Lake City, UT 84138–1102
- Lake Havasu City Library, 1787 McCulloch Blvd. North, Lake Havasu City, AZ 86403
- Mohave County Library, 1170 Hancock Rd., Bullhead City, AZ 86442
- Parker Public Library, 1001 S. Navajo Ave., Parker, AZ 85344
- Phoenix Public Library (Burton Barr Central), 1221 N. Central Ave., AZ 85004
- Yuma County Library, 350 S. 3rd Ave., Yuma, AZ 85364
- Los Angeles Central Library, 630 W. 5th St., Los Angeles, CA 90071
- Palo Verde Valley Library, 125 W. Canslor Way, Blythe, CA 92225
- San Bernardino County Library, 1111 Bailey Ave., Needles, CA 92363
- San Diego Central Library, 820 E St., San Diego, CA 92101
- Henderson District Public Library, 280 South Water St., Henderson, NV 89015
- Salt Lake City Public Library, 209 E 500 S, Salt Lake City, UT 84111

Written comments received by Reclamation become part of the public record associated with this action. Accordingly, Reclamation makes these comments, including names and home addresses of respondents, available for public review. Individual respondents may request that we withhold their home address from public disclosure, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold a respondent's identity from public disclosure, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public disclosure in their entirety.

Dated: December 28, 2001.

Kenneth D. Naser,

Director, Office of Environmental, Policy and Compliance.

[FR Doc. 02–689 Filed 1–14–02; 8:45 am]

BILLING CODE 4310–MN–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Change in Discount Rate for Water Resources Planning

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of change.

SUMMARY: The Water Resources Planning Act of 1965 and the Water Resources Development Act of 1974 require an annual determination of a discount rate for Federal water resources planning. The discount rate for Federal water resources planning for fiscal year 2002 is 6.125 percent. Discounting is to be used to convert future monetary values to present values.

DATES: This discount rate is to be used for the period October 1, 2001, through and including September 30, 2002.

FOR FURTHER INFORMATION CONTACT: James Handlon, Economist, Office of Policy, Washington, DC 20240; telephone: (202) 513–0603.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the interest rate to be used by Federal agencies in the formulation and evaluation of plans for water and related land resources is 6.125 percent for fiscal year 2002.

This rate has been computed in accordance with section 80(a), Pub. L. 93–251 (88 Stat. 34) and 18 CFR 704.39, which: (1) Specify that the rate shall be based upon the average yield during the preceding fiscal year on interest-bearing marketable securities of the United States which, at the time the computation is made, have terms of 15 years or more remaining to maturity (average yield is rounded to nearest one-eighth percent); and (2) Provide that the rate shall not be raised or lowered more than one-quarter of 1 percent for any year. The Treasury Department calculated the specified average to be 5.654 percent. Rounding this average yield to the nearest one-eighth percent is 5.625 percent, which exceeds the permissible one-quarter of 1 percent change from fiscal year 2001 to 2002. Therefore, the change is limited to one-quarter of 1 percent.

The rate of 6.125 percent shall be used by all Federal agencies in the formulation and evaluation of water and

related land resources plans for the purpose of discounting future benefits and computing costs or otherwise converting benefits and costs to a common time basis.

Dated: December 13, 2001.

Elizabeth Cordova-Harrison,

Deputy Director, Office of Policy.

[FR Doc. 02–925 Filed 1–15–02; 8:45 am]

BILLING CODE 4310–MN–P

INTERNATIONAL TRADE COMMISSION

[USITC SE–02–002]

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: United States International Trade Commission.

TIME AND DATE: January 22, 2002 at 2 p.m.

PLACE: Room 101, 500 E Street SW., Washington, DC 20436, Telephone: (202) 205–2000.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. *Agenda for future meeting:* None.
2. Minutes.
3. Ratification List.
4. Inv. Nos. 701–TA–409–412 and 731–TA–909 (Final) (Low Enriched Uranium from France, Germany, the Netherlands, and the United Kingdom)—briefing and vote. (The Commission is currently scheduled to transmit its determination and Commissioners' opinions to the Secretary of Commerce on January 28, 2002.)
5. *Outstanding action jackets:* None.

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting. Earlier announcement of this meeting was not possible.

Issued: January 10, 2002.

By order of the Commission.

Marilyn R. Abbott,

Acting Secretary.

[FR Doc. 02–1108 Filed 1–11–02; 1:19 pm]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration

By Notice dated July 13, 2001, and published in the **Federal Register** on July 23, 2001 (66 FR 38323), Abbott Laboratories, DBA Knoll Pharmaceutical Company, 30 North Jefferson Road, Whippany, New Jersey 07981, made application to the Drug Enforcement Administration to be registered as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Dihydromorphine (9145)	I
Hydromorphone (9150)	II

The firm plans to produce bulk product and finished dosage units for distribution to its 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 Abbott Laboratories to manufacture the listed controlled substances is consistent with the public interest at this time. DEA has investigated Abbott Laboratories to ensure that the company's registration is consistent with the public interest. This investigation has included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 823 and 28 CFR 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 classes of controlled substances listed above is granted.

Dated: January 4, 2002.

Laura M. Nagel,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 02–935 Filed 1–14–02; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Office of Justice Programs

[OJP(OJP)–1340]

Notice of Intent To Prepare an Environmental Impact Statement (EIS) and Environmental Impact Report (EIR) for the Alameda County Government Center, Including a New Juvenile Justice Facility in the City of Dublin, Alameda County, California

AGENCY: Office of Justice Programs, Justice.

ACTION: Notice of intent (NOI).

SUMMARY: Alameda County (California) proposes to approve a master plan and develop a government center in the East County area, specifically in the City of Dublin, California. The government center is proposed to include a courthouse (15 adult courts), 250,000 square feet of County offices, parking facilities, related site improvements, and a new Juvenile Justice facility with 420 beds, juvenile courts, administration, and associated support facilities (approximately 400,000 square feet total). The Juvenile Justice Facility component of the government center is proposed in response to serious shortcomings in the capability of the existing facility located in San Leandro, California to serve existing and future needs of children in the County. The government center would be developed on a 40-acre County-owned site located at the northern terminus of Hacienda Drive, bounded by Gleason Drive on the south, Arnold Road on the west, Broder Blvd. on the north, and Madigan Avenue on the east. The proposed Alameda County Juvenile Justice project would be funded in part by federal grant monies disbursed by the California Board of Corrections. These funds total $33,165,000, and are part of the State's allocation from the Violent Offender Incarceration and Truth-in-Sentencing (VOI/TIS) Incentive Grant Program. The County would provide additional funding from bonds, certificates of participation, and the general fund. The total cost for the Juvenile Justice Facility is estimated to be approximately $177,000,000.

The Department of Justice, the California Board of Corrections and Alameda County are preparing a joint Environmental Impact Statement and Environmental Impact Review (EIS/EIR) document in order to satisfy the requirements of the National Environmental Policy Act (NEPA) and the California Environmental Quality Act (CEQA) concurrently. The U.S. Department of Justice is the lead federal agency under NEPA for the preparation of the EIS/EIR and the California Board of Corrections will be preparing the EIS/EIR under a provision of NEPA that allows an agency of statewide jurisdiction with responsibility for the proposed action (pursuant to the VOI/TIS grant) to prepare an EIS. Alameda County will be the lead agency under CEQA for the preparation of the EIS/EIR for the master plan for the government center as well as the Juvenile Justice Facility.

DATES: Public scoping meetings will be held in the City of Dublin, County of Alameda, California, within thirty days

of the date of this publication. In accordance with the U.S. Department of Justice, Office of Justice Programs, Corrections Programs Office, Program Guidance on Environmental Protection Requirements, a notice will be published in a non-legal section of at least two editions of a newspaper of general circulation in the area of the proposed action announcing the date, time, and location of the meeting as well as briefly summarizing its purpose.

The public, as well as Federal, State, and local agencies are encouraged to participate in the scoping meetings. Comments may also be submitted in writing, identifying relevant environmental and socioeconomic issues to be addressed in this environmental analysis. Comments and information should be mailed to Ms. Jill Young of the Department of Justice or Mr. Michael Houghtby of the California Board of Corrections at the addresses listed below. Requests to be placed on the mailing list for announcements and the Draft EIS/EIR should also be sent to Ms. Jill Young or Mr. Michael Houghtby.

FOR FURTHER INFORMATION CONTACT: Ms. Jill Young, Environmental Coordinator, Department of Justice, Office of Justice Programs, Corrections Programs Office, 810 7th Street, NW, Washington, DC 20531, Telephone (202) 353–7302, Fax (202) 307–2019, or contact Mr. Michael Houghtby, Field Representative, State of California Board of Corrections, Corrections Planning and Programs Division, 600 Bercut Dr, Sacramento, CA 95814, Telephone (916) 322–7085; Fax (916) 445–5796.

SUPPLEMENTARY INFORMATION: The proposed Juvenile Justice Facility is intended to replace the existing Alameda County Juvenile Hall, which is located in the hills of San Leandro, Alameda County, California. The existing facility was constructed in various phases with most structures dating from the 1950s to 1970s. It includes secure detention at the Juvenile Hall facility for 299 detainees, camps for low security detention, and the Chabot Community Day Center. The detention facility is constructed on a steep hillside in close proximity to the Hayward fault, an active earthquake fault with a potential for causing severe ground shaking with an estimated 32% chance of a major seismic event during the next 30 years. In addition, these facilities, which routinely are overcrowded, have or will soon exceed their useful, economic life and are in need of replacement, based on operational and architectural/engineering evaluations. Therefore, the facility does not meet the present or future needs of the residents, staff or community and must be replaced.

A juvenile justice system master plan completed in 1998 determined that the County needed to construct a new juvenile detention facility that would house up to 540 youth at any given time. The facility would respond to the approximately 10,000 annual referrals for intake, of which 6,000 are admitted for detention in a given year. The estimated total number of beds required for a new detention facility was based on historical trends and projections, multiplied by a factor of 1.2 to account for peaking, classification and operational needs, so that the County could house youth in a facility that reflects the detainees' gender, age, and security risk, to avoid crowding, and to provide for long-term planning. The County Board of Supervisors has since revised the project to include 420 beds, with a possible capacity of 450 beds. The environmental effects of this project and several alternatives will be evaluated in the EIS/EIR.

Alternatives: The EIS/EIR will consider the No Project/No Action Alternative, as required by CEQA and NEPA. Under such a scenario, the existing Juvenile Hall facility, courts, and County offices would remain in their present locations and no Master Plan would be approved for the Dublin site.

The EIS/EIR will also discuss and evaluate certain other alternatives, which may include: an alternative location for the Juvenile Justice Facility, including development of a replacement facility at the existing site in San Leandro; development of a split campus with part of the project in Dublin and part in San Leandro; or other locations to be determined during the environmental review process.

The EIS/EIR will also consider variations in the project size, such as a reduced or increased number of beds at the Juvenile Justice facility, or a reduced or increased number of courts at the East County Hall of Justice.

The EIS/EIR will also discuss policy alternatives that are under consideration, such as increased community placement and monitoring of youth offenders.

Dated: January 10, 2002.

Deborah Daniels,

Assistant Attorney General, Office of Justice Programs.

[FR Doc. 02–999 Filed 1–14–02; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF JUSTICE

Office of Justice Programs

[OJP(OJP)–1341]

Notice of Intent To Prepare an Environmental Impact Statement/Environmental Impact Report (EIS/EIR) for the Construction and Operation of a Juvenile Justice Campus in Fresno County, California

AGENCY: Office of Justice Programs, Justice.

ACTION: Notice of Intent (NOI).

SUMMARY: Pursuant to the requirements of the National Environmental Policy Act (NEPA), codified at 42 U.S.C. 4321 *et seq.*, the U.S. Department of Justice, Office of Justice Programs, Corrections Program Office (OJP/CPO) announces the Notice of Intent (NOI) for the preparation of an EIS/EIR for the Construction and Operation of a Juvenile Justice Campus (JJC) in Fresno County, California. The construction and operation of the JJC is being proposed by Fresno County which is applying for OJP/CPO grants funds obtained by the California Board of Corrections (BOC) through the Violent Offender Incarceration/Truth-in-Sentencing (VOI/TIS) Incentive Grants Program. This project is subject to NEPA review because it may be funded in part with federal funding available under the VOI/TIS Grant Program. The EIS/EIR is being prepared as a joint document so as to satisfy the requirements of the California Environmental Quality Act (CEQA) in addition to NEPA.

DATES: During the preparation of the draft EIS/EIR, there will be opportunities for public involvement in order to determine the issues to be examined. Public scoping meetings will be held at the Fresno County Plaza, 8th floor, Conference Room ''A'', 2220 Tulare Street, Fresno, CA 93721, within thirty days of the date of this publication, to solicit input on the scope of the EIS/EIR to be conducted, and to identify significant issues related to the proposed action. Although the purpose of the agency Scoping Meeting will be to gather comments from interested and affected agencies, the public is invited to attend. Maps and information on the proposed action will be available beginning at 6:00 PM immediately prior to the formal portion of the meeting. The meeting location, date, and time will be well publicized and arranged to allow for the public as well as interested agencies and organizations to attend. The scoping meeting is being held for individuals to formally express their views on the proposed action and to

identify those environmental issues or concerns with respect to the implementation of the proposed action and its alternatives so that these issues can be analyzed in depth in the draft EIS/EIR. Community input will be solicited throughout this process, and community comments will be incorporated into the decision-making process.

FOR FURTHER INFORMATION CONTACT: Public notice will be given concerning the availability of the draft EIS/EIR for public review and comment. Questions concerning the proposed action and the draft EIS/EIR may be directed to: Jill Young, Environmental Coordinator, Corrections Program Office, Office of Justice Programs, U.S. Department of Justice, 810 7th Street, NW, Washington, DC 20531, Telephone: 202.307–3914, Telefacsimile: 202.307–2019, or Michael A. Houghtby, Field Representative, State of California Board of Correction, Corrections Planning and Programs Division, 600 Bercut Drive, Sacramento, CA 95814, Telephone: 916.322.7085, Telefacsimile: 916.445.5796.

SUPPLEMENTARY INFORMATION:

Proposed Action

Fresno County is proposing to build and operate the JJC to better serve the community and the existing and future juvenile justice populations. The need for this action is based on the conditions of existing juvenile justice facilities, additional space requirements needed to accommodate projected growth rates in the youth population that will enter the juvenile justice system, and the County's desire to increase efficiency by concentrating all main functions of the juvenile justice system at a site close to downtown Fresno. The Proposed Action would include the acquisition of an approximately 210-acre site that would be capable of accommodating up to 1,400 beds in addition to the related functions that would be located on the campus. Related functions would include courts, offices, medical and mental health facilities, probation department offices, group homes, and related schooling, recreational, and community based programs. The Proposed Action would also include amending the Fresno County General Plan by redesignating the preferred site to Public Facility and rezoning to the AL–20 Zoning District.

Alternatives

The draft EIS/EIR will address the potential impacts of the ''no action'' alternative and the construction and operation of the JJC at alternative sites. Practicable alternative sites have been identified by Fresno County that include: Site #1b located at the northeast corner of W. Jensen and S. Grantland Avenues; Site #3 located at the northwest corner of the intersection of E. Jensen and S. Fowler Avenues; and Site #6 (the preferred site) located at the southwest quadrant of Highway 99 and E. American Avenue.

Dated: January 10, 2002.

Deborah J. Daniels,

Assistant Attorney General, Office of Justice Programs.

[FR Doc. 02–1000 Filed 1–14–02; 8:45 am]

BILLING CODE 4410–18–P

LEGAL SERVICES CORPORATION

Sunshine Act Meeting of the Board of Directors

TIME AND DATE: The Board of Directors of the Legal Services Corporation will meet on January 19, 2002. The meeting will begin at 10:15 a.m. and continue until conclusion of the Board's agenda.

LOCATION: Hilton Alexandria Mark Center, 5000 Seminary Road, Alexandria, Virginia.

STATUS OF MEETING: Open, except that a portion of the meeting may be closed pursuant to a vote of the Board of Directors to hold an executive session. At the closed session, the Corporation's General Counsel will report to the Board on litigation to which the Corporation is or may become a party, and the Board may act on the matters reported. The closing is authorized by the relevant provisions of the Government in the Sunshine Act [5 U.S.C. 552b(c) (10)] and the corresponding provisions of the Legal Services Corporation's implementing regulation [45 CFR 1622.5(h)]. A copy of the General Counsel's Certification that the closing is authorized by law will be available upon request.

MATTERS TO BE CONSIDERED:

Open Session

1. Approval of agenda.
2. Approval of the minutes of the Board's meeting of November 17, 2001.
3. Approval of the minutes of the Executive Session of the Board's meeting of November 17, 2001.
4. Chairman's Report.
5. Members' Reports.
6. Acting Inspector General's Report.
7. President's Report.
8. Consider and act on the report of the Board's Performance Review Committee.
9. Consider and act on the report of the Board's Committee on Provision for the Delivery of Legal Services.
10. Consider and act on the report of the Board's Operations and Regulations Committee.
11. Consider and act on the report of the Board's Finance Committee.
12. Panel presentation by the African American Project Directors discussing diversity issues within the LSC community and recognizing LSC for its diversity initiative.
13. Consider and act on changes to the Board's 2002 meeting schedule.

Closed Session

14. Briefing [1] by the Acting Inspector General on the activities of the Office of Inspector General.
15. Consider and act on the Office of Legal Affairs' report on potential and pending litigation involving LSC.

Open Session

16. Consider and act on other business.
17. Public Comment.

Contact Person for Information: Victor M. Fortuno, Vice President for Legal Affairs, General Counsel & Corporate Secretary, at (202) 336–8800.

Special Needs: Upon request, meeting notices will be made available in alternate formats to accommodate visual and hearing impairments. Individuals who have a disability and need an accommodation to attend the meeting may notify Elizabeth S. Cushing, at (202) 336–8800.

Dated: January 11, 2002.

Victor M. Fortuno,

Vice President for Legal Affairs, General Counsel & Corporate Secretary.

[FR Doc. 02–1179 Filed 1–11–02; 3:53 pm]

BILLING CODE 7050–01–P

LEGAL SERVICES CORPORATION

Sunshine Act Meeting of the Board of Directors Finance Committee

Time and Date: The Finance Committee of the Legal Services Corporation Board of Directors will meet on January 19, 2002 The meeting will begin at 9 a.m. and continue until the Committee concludes its agenda.

Location: Hilton Alexandria Mark Center, 5000 Seminary Road, Alexandria, Virginia.

Status of Meeting: Open.

Matters To Be Considered

1. Approval of agenda.

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[1] Any portion of the closed session consisting solely of staff briefings does not fall within the Sunshine Act's definition of the term ''meeting'' and, therefore, the requirements of the Sunshine Act do not apply to any such portion of the closed session. 5 U.S.C. 552(b)(a)(2) and (b). See also 45 C.F.R. 1622.2 & 1622.3.

2. Approval of the minutes of the Committee's meeting of September 8, 2001.
3. Office of Inspector General's presentation of the Corporation's FY '01 annual audit.
4. Review and adoption of FY '02 operating budget for the Corporation.
5. Review of expenses through November 30, 2001.
6. Consider and act on conforming amendments to LSC's 403(b) plan.
7. Consider and act on other business.
8. Public comment.

Contact Person for Information: Victor M. Fortuno, Vice President for Legal Affairs, General Counsel, & Corporate Secretary, at (202) 336–8800.

Special Needs: Upon request, meeting notices will be made available in alternate formats to accommodate visual and hearing impairments. Individuals who have a disability and need an accommodation to attend the meeting may notify Elizabeth S. Cushing, at (202) 336–8800.

Dated: January 11, 2002.

Victor M. Fortuno,

Vice President for Legal Affairs, General Counsel, & Corporate Secretary.

[FR Doc. 02–1180 Filed 1–11–02; 3:53 pm]

BILLING CODE 7050–01–P

LEGAL SERVICES CORPORATION

Sunshine Act Meeting of the Board of Directors Operations & Regulations Committee

Time and Date: The Operations and Regulations Committee of the Legal Services Corporation Board of Directors will meet on January 18, 2002. The meeting will begin at 2 p.m. and continue until the Committee concludes its agenda.

Location: Hilton Alexandria Mark Center, 5000 Seminary Road, Alexandria, Virginia.

Status of Meeting: Open.

Matters To Be Considered

1. Approval of agenda.
2. Approval of the minutes of the Committee's meeting of November 16, 2001.
3. Staff report on the status of Current Rulemaking: 45 CFR Part 1626 (Restrictions on Legal Assistance to Aliens); 45 CFR Part 1611 (Eligibility); and 45 CFR Part 1639 (Welfare Reform).
4. Staff report on the status of the activities of the Regulations Review Task Force.
5. A report by David de la Tour on the Office of Compliance & Enforcement's planned activities in 2002.
6. Consider and act on other business.
7. Public comment.

Contact Person for Information: Victor M. Fortuno, Vice President for Legal Affairs, General Counsel & Corporate Secretary, at (202) 336–8800.

Special Needs: Upon request, meeting notices will be made available in alternate formats to accommodate visual and hearing impairments. Individuals who have a disability and need an accommodation to attend the meeting may notify Elizabeth S. Cushing, at (202) 336–8800.

Dated: January 11, 2002.

Victor M. Fortuno,

Vice President for Legal Affairs, General Counsel & Corporate Secretary.

[FR Doc. 02–1181 Filed 1–11–02; 3:53 pm]

BILLING CODE 7050–01–P

LEGAL SERVICES CORPORATION

Sunshine Act Meeting of the Board of Directors Ad Hoc Committee on the Performance Review of the Acting Inspector General

Time and Date: The Ad Hoc Committee on Performance Review of the Acting Inspector General of the Legal Services Corporation's Board of Directors will meet on January 18, 2002. The meeting will begin at 9 a.m. and continue until conclusion of the committee's agenda.

Location: Hilton Alexandria Mark Center, 5000 Seminary Road, Alexandria, Virginia.

Status of Meeting: Except for approval of the committee's agenda and any miscellaneous business that may come before the committee, the meeting will be closed to the public. The closing is authorized by the relevant provisions of the Government in the Sunshine Act [5 U.S.C. 552b(c)(2) & (6)] and the corresponding provisions of the Legal Services Corporation's implementing regulation [45 CFR 1622.5(a) & (e)]. A copy of the General Counsel's Certification that the closing is authorized by law will be available upon request.

Matters To Be Considered

Open Session:

1. Approval of agenda.
2. Approval of the minutes of the Committee's meeting of November 17, 2001.

Closed Session:

3. Consider and act on recommendation to the Board of Directors on the annual evaluation of the Acting Inspector General for FY '01.

Open Session:

4. Consider and act on other business.
5. Public comment.

Contact Person for Information: Victor M. Fortuno, Vice President for Legal Affairs, General Counsel & Corporate Secretary, at (202) 336–8800.

Special Needs: Upon request, meeting notices will be made available in alternate formats to accommodate visual and hearing impairments. Individuals who have a disability and need an accommodation to attend the meeting may notify Elizabeth S. Cushing at (202) 336–8800.

Dated: January 11, 2002.

Victor M. Fortuno,

Vice President for Legal Affairs, General Counsel & Corporate Secretary.

[FR Doc. 02–1182 Filed 1–11–02; 3:54 pm]

BILLING CODE 7050–01–P

LEGAL SERVICES CORPORATION

Sunshine Act Meeting of the Board of Directors Committee on Provision for the Delivery of Legal Services

Time and Date: The Committee on Provision for the Delivery of Legal Services of the Legal Services Corporation Board of Directors will meet on January 18, 2002. The meeting will begin at 10 a.m. and continue until the Committee concludes its agenda.

Location: Hilton Alexandria Mark Center, 5000 Seminary Road, Alexandria, Virginia.

Status of Meeting: Open.

Matters To Be Considered

1. Approval of agenda.
2. Approval of the minutes of the Committee's meeting of September 7, 2001.
3. A Panel Presentation by Anh Tu, Michelle DeBord (Executive Director, Mid-Pennsylvania Legal Services), Larry Harley (Executive Director, Southwest Virginia Legal Aid Society), Martin Wegbreit (Managing Attorney, Southwest Virginia Legal Aid Society), Alma Jones (Executive Director, Legal Services of North Louisiana), and Ramon Arias (Executive Director, Bay Area Legal Aid) on the Problems Experienced by Programs and Executive Directors Once the Technical Aspects of ''Merger'' are Completed and the Real Work of Developing and Sustaining a High-Quality Legal Services Program Begins.
4. A report by Michael Genz and Robert Gross on the progress of the Programs Office's performance in terms of the goals outlined in the ''Strategic Directions.''

5. A report by Reginald Haley and Barbara Donnelly on the action agenda that LSC will pursue in 2002 as an outgrowth of the Hershey Client Conference.

6. A report by Patricia Hanrahan on the action agenda that LSC will pursue in 2002 as an outgrowth of our 2001 conversations on Diversity and Leadership.

7. Consider and act on other business.

8. Public comment.

Contact Person for Information: Victor M. Fortuno, Vice President for Legal Affairs, General Counsel & Secretary of the Corporation, at (202) 336–8800.

Special Needs: Upon request, meeting notices will be made available in alternate formats to accommodate visual and hearing impairments. Individuals who have a disability and need an accommodation to attend the meeting may notify Elizabeth S. Cushing, at (202) 336–8800.

Dated: January 11, 2002.

Victor M. Fortuno,

Vice President for Legal Affairs, General Counsel & Corporate Secretary.

[FR Doc. 02–1183 Filed 1–11–02; 3:54 pm]

BILLING CODE 7050–01–P

NATIONAL CREDIT UNION ADMINISTRATION

Notice of Meeting

TIME AND DATE: 10 a.m., Thursday, January 17, 2002.

PLACE: Board Room, 7th Floor, Room 7047, 1775 Duke Street, Alexandria, VA 22314–3428.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Quarterly Insurance Fund Report.

2. Requests from three (3) Federal Credit Unions to Convert to Community Charters.

3. Wisconsin Member Business Loan Rule.

4. Request from a Corporate Federal Credit Union for a Field of Membership Amendment.

FOR FURTHER INFORMATION CONTACT: Becky Baker, Secretary of the Board, telephone 703–518–6304.

Becky Baker,

Secretary of the Board.

[FR Doc. 02–1059 Filed 1–10–02; 4:43 pm]

BILLING CODE 7535–01–M

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Nuclear Regulatory Commission (NRC).

ACTION: Notice of pending NRC action to submit an information collection request to OMB and solicitation of public comment.

SUMMARY: The NRC is preparing a submittal to OMB for review of continued approval of information collections under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

Information pertaining to the requirement to be submitted:

1. *The title of the information collection:* 10 CFR part 36—Licenses and Radiation Safety Requirements for Large Irradiators.

2. *Current OMB approval number:* 3150–0158.

3. *How often the collection is required:* On occasion. It is estimated that there are approximately 3 NRC and 8 Agreement State reports submitted annually.

4. *Who is required or asked to report:* Irradiator licensees licensed by NRC or an Agreement State.

5. *The number of annual respondents:* 77 (22 NRC licensees and 55 Agreement State licensees).

6. *The number of hours needed annually to complete the requirement or request:* 35,975 (10,277 hours for NRC licensees [10,087 recordkeeping + 190 reporting] and 25,698 hours for Agreement State licensees [25,218 recordkeeping + 480 reporting]) or 467 hours per licensee.

7. *Abstract:* 10 CFR part 36 contains requirements for the issuance of a license authorizing the use of sealed sources containing radioactive materials in irradiators used to irradiate objects or materials for a variety of purposes in research, industry, and other fields. The subparts cover specific requirements for obtaining a license or license exemption, design and performance criteria for irradiators; and radiation safety requirements for operating irradiators, including requirements for operator training, written operating and emergency procedures, personnel monitoring, radiation surveys, inspection, and maintenance. Part 36 also contains the recordkeeping and reporting requirements that are necessary to ensure that the irradiator is being safely operated so that it poses no danger to the health and safety of the general public and the irradiator employees.

Submit, by March 18, 2002, comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?

2. Is the burden estimate accurate?

3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?

4. How can the burden of the information collection be minimized, including the use of automated collection techniques or other forms of information technology?

A copy of the draft supporting statement may be viewed free of charge at the NRC Public Document Room located at One White Flint North, 11555 Rockville Pike, Rockville, MD. OMB clearance requests are available at the NRC worldwide Web site, *http://www.nrc.gov/NRC/PUBLIC/OMB/index.html.* The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions about the information collection requirements may be directed to the NRC Clearance Officer, Brenda Jo. Shelton, U.S. Nuclear Regulatory Commission, T–6 E 6, Washington, DC 20555–0001, by telephone at (301) 415–7233, or by Internet electronic mail at *infocollects@NRC.GOV.*

Dated at Rockville, Maryland, this 8th day of January, 2002.

For the Nuclear Regulatory Commission.

Brenda Jo. Shelton,

NFR Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 02–928 Filed 1–14–02; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Sunshine Act Meeting

DATES: Weeks of January 14, 21, 28, February 4, 11, 18, 2002.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of January 14, 2002

Tuesday, January 15, 2002

9:30 a.m.

Briefing on Status of Nuclear Materials Safety (Public Meeting) (Contact: Claudia Seelig, 301–415–7243)

This meeting will be webcast live at the Web address—*www.nrc.gov.*

Wednesday, January 16, 2002

9:30 a.m.
Discussion of Security Issues (Closed—Ex. 1)

Week of January 21, 2002—Tentative

Wednesday, January 23, 2002

9:30 a.m.
Discussion of Intragovernmental Issues (Closed—Ex. 9)

Week of January 28, 2002—Tentative

Tuesday, January 29, 2002

9:30 a.m.
Briefing on Status of Nuclear Reactor Safety (Public Meeting) (Contact: Mike Case, 301–415–1134)

This meeting will be webcast live at the Web address—*www.nrc.gov.*

Wednesday, January 30, 2002

9:25 a.m.
Affirmation Session (Public Meeting) (If needed)
9:30 a.m.
Briefing on Status of Office of the Chief Information Officer (OCIO) Programs, Performance, and Plans (Public Meeting) (Contact: Jackie Silber, 301–415–7330)

This meeting will be webcast live at the Web address—*www.nrc.gov.*
2 p.m.
Discussion of Intragovernmental Issues (Closed—Ex. 1 & 9)

Week of February 4, 2002—Tentative

Wednesday, February 6, 2002

9:25 a.m.
Affirmation Session (Public Meeting) (If needed)
9:30 a.m.
Briefing on Equal Employment Opportunity (EEO) Program (Public Meeting) (Contact: Irene Little, 301–415–7380)

Week of February 11, 2002—Tentative

There are no meetings scheduled for the Week of February 11, 2002.

Week of February 18, 2002—Tentative

Tuesday, February 19, 2002

2 p.m.
Meeting with the Advisory Committee on the Medical Uses of Isotopes (ACMUI) (Public Meeting) (Contact: Angela Williamson, 301–415–5030)

This meeting will be webcast live at the Web address—*www.nrc.gov.*

Wednesday, February 20, 2002

2:55 p.m.
Affirmation Session (Public Meeting) (If needed)
3 p.m.
Briefing on Status of Nuclear Waste Safety (Public Meeting) (Contact: Claudia Seelig, 301–415–7243)

This meeting will be webcast live at the Web address—*www.nrc.gov.*

*–The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (recording)—(301) 415–1292. Contact person for more information: David Louis Gamberoni (301) 415–1651.

* * * * *

Additional Information:

By a vote of 5–0 on January 7 and 8, the Commission determined pursuant to U.S.C. 552b(e) and § 9.107(a) of the Commission's rules that ''Discussion of Intragovernmental and Security Issues (Closed—Ex. 1 & 9),'' be held on January 9, 2002, and on less than one week's notice to the public.

By a vote of 5–0 on January 8 and 9, the Commission determined pursuant to U.S.C. 552b(e) and § 9.107(a) of the Commission's rules that ''Discussion of Security Issues (Closed—Ex. 1),'' be held on January 16, 2002, and on less than one week's notice to the public.

* * * * *

The NRC Commission Meeting Schedule can be found on the Internet at: *www.nrc.gov.*

* * * * *

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 (301–415–1969). In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to dkw@nrc.gov.

Dated: January 10, 2002.

David Louis Gamberoni,

Technical Coordinator, Office of the Secretary.

[FR Doc. 02–1069 Filed 1–11–02; 10:58 am]

BILLING CODE 7590–01–M

NUCLEAR REGULATORY COMMISSION

Notice of Extension of the Public Comment Period for the Draft Supplement to the Final Generic Environmental Impact Statement on Decommissioning of Nuclear Facilities

Notice is hereby given that the U.S. Nuclear Regulatory Commission (the Commission) has extended the public comment period for draft Supplement 1 to NUREG–0586, ''Final Generic Environmental Impact Statement on Decommissioning of Nuclear Facilities [GEIS],'' dealing with decommissioning of nuclear power reactors. The public comment period is extended to January 30, 2002.

The draft supplement to the GEIS is available electronically through the NRC's Public Electronic Reading Room (PERR) found on the Internet at the following web address: *http://www.nrc.gov/reading-rm.html.* From this site, the public can gain access to the NRC's Agencywide Document Access and Management Systems (ADAMS), which provides text and image files of NRC's public documents. The draft report can also be examined, or copied for a fee, at the NRC's Public Document Room found at One White Flint North, 11555 Rockville Pike (first floor), Rockville, MD. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, or 301–415–4737, or by e-mail to *pdr@nrc.gov.*

Any interested party may submit comments on the draft supplement to the GEIS for consideration by the NRC staff. To be certain of consideration, comments on the draft supplement to the GEIS and the proposed action must be received by January 30, 2002. Comments received after the due date will be considered if it is practical to do so, but the NRC staff is able to assure consideration only for comments received on or before this date. Written comments on the draft supplement to the GEIS should be sent to: Chief, Rules and Directives Branch, Division of Administrative Services, Mailstop T 6 D 59, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

Comments may be hand-delivered to the NRC at 11545 Rockville Pike, Rockville, Maryland, between 7:45 a.m. and 4:15 p.m. on Federal workdays. Comments may be submitted electronically to the NRC to the e-mail address *dgeis@nrc.gov.* All comments received by the NRC, including those made by Federal, State, and local agencies; Indian tribes; or other interested persons, will be accessible electronically through NRC's PERR link listed above, and can be examined, or copied for a fee, at the NRC's Public Document Room in Rockville, Maryland.

To ensure timely receipt of comments, electronic submittal of comments is preferred because of the extended times now being routinely encountered for the

safe processing and delivery of first class mail to the NRC. If comments are sent via first class mail, commenters are requested to contact Dr. Michael T. Masnik by telephone at (301) 415–1191, or through the NRC operator at (800) 368–5642, to inform him that comments have been submitted by mail.

FOR FURTHER INFORMATION, CONTACT: Dr. Michael T. Masnik, Environmental Section, License Renewal and Environmental Impacts Program, Division of Regulatory Improvement Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Dr. Masnik may be contacted at the aforementioned telephone number or e-mail address.

Dated at Rockville, Maryland, this 11th day of January, 2002.

For the Nuclear Regulatory Commission.

Andrew J. Kugler,

Acting Chief, Environmental Section, License Renewal and Environmental Impacts Program, Division of Regulatory Improvement Programs, Office of Nuclear Reactor Regulation.

[FR Doc. 02–1070 Filed 1–14–02; 8:45 am]

BILLING CODE 7590–01–P

PENSION BENEFIT GUARANTY CORPORATION

Required Interest Rate Assumption for Determining Variable-Rate Premium; Interest on Late Premium Payments; Interest on Underpayments and Overpayments of Single-Employer Plan Termination Liability and Multiemployer Withdrawal Liability; Interest Assumptions for Multiemployer Plan Valuations Following Mass Withdrawal

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of interest rates and assumptions.

SUMMARY: This notice informs the public of the interest rates and assumptions to be used under certain Pension Benefit Guaranty Corporation regulations. These rates and assumptions are published elsewhere (or can be derived from rates published elsewhere), but are collected and published in this notice for the convenience of the public. Interest rates are also published on the PBGC's Web site *(http://www.pbgc.gov).*

DATES: The required interest rate for determining the variable-rate premium under part 4006 applies to premium payment years beginning in January 2002. The interest assumptions for performing multiemployer plan valuations following mass withdrawal under part 4281 apply to valuation dates occurring in February 2002. The interest rates for late premium payments under part 4007 and for underpayments and overpayments of single-employer plan termination liability under part 4062 and multiemployer withdrawal liability under part 4219 apply to interest accruing during the first quarter (January through March) of 2002.

FOR FURTHER INFORMATION CONTACT: Harold J. Ashner, Assistant General Counsel, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005, 202–326–4024. (TTY/TDD users may call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to 202–326–4024.)

SUPPLEMENTARY INFORMATION:

Variable-Rate Premiums

Section 4006(a)(3)(E)(iii)(II) of the Employee Retirement Income Security Act of 1974 (ERISA) and § 4006.4(b)(1) of the PBGC's regulation on Premium Rates (29 CFR part 4006) prescribe use of an assumed interest rate (the ''required interest rate'') in determining a single-employer plan's variable-rate premium. The required interest rate is the ''applicable percentage'' (currently 85 percent) of the annual yield on 30-year Treasury securities for the month preceding the beginning of the plan year for which premiums are being paid (the ''premium payment year''). The yield figure is reported in Federal Reserve Statistical Releases G.13 and H.15.

The required interest rate to be used in determining variable-rate premiums for premium payment years beginning in January 2002 is 4.66 percent (*i.e.,* 85 percent of the 5.48 percent yield figure for December 2001).

The following table lists the required interest rates to be used in determining variable-rate premiums for premium payment years beginning between February 2001 and January 2002.

For premium payment years beginning in:	The required interest rate is:
February 2001	4.71
March 2001	4.63
April 2001	4.54
May 2001	4.80
June 2001	4.91
July 2001	4.82
August 2001	4.77
September 2001	4.66
October 2001	4.66
November 2001	4.52
December 2001	4.35
January 2002	4.66

Late Premium Payments; Underpayments and Overpayments of Single-Employer Plan Termination Liability

Section 4007(b) of ERISA and § 4007.7(a) of the PBGC's regulation on Payment of Premiums (29 CFR part 4007) require the payment of interest on late premium payments at the rate established under section 6601 of the Internal Revenue Code. Similarly, § 4062.7 of the PBGC's regulation on Liability for Termination of Single-employer Plans (29 CFR part 4062) requires that interest be charged or credited at the section 6601 rate on underpayments and overpayments of employer liability under section 4062 of ERISA. The section 6601 rate is established periodically (currently quarterly) by the Internal Revenue Service. The rate applicable to the first quarter (January through March) of 2002, as announced by the IRS, is 6 percent.

The following table lists the late payment interest rates for premiums and employer liability for the specified time periods:

From	Through	Interest rate (percent)
7/1/95	3/31/96	9
4/1/96	6/30/96	8
7/1/96	3/31/98	9
4/1/98	12/31/98	8
1/1/99	3/31/99	7
4/1/99	3/31/00	8
4/1/00	3/31/01	9
4/1/01	6/30/01	8
7/1/01	12/31/01	7
1/1/02	3/31/02	6

Underpayments and Overpayments of Multiemployer Withdrawal Liability

Section 4219.32(b) of the PBGC's regulation on Notice, Collection, and Redetermination of Withdrawal Liability (29 CFR part 4219) specifies the rate at which a multiemployer plan is to charge or credit interest on underpayments and overpayments of withdrawal liability under section 4219 of ERISA unless an applicable plan provision provides otherwise. For interest accruing during any calendar quarter, the specified rate is the average quoted prime rate on short-term commercial loans for the fifteenth day (or the next business day if the fifteenth day is not a business day) of the month preceding the beginning of the quarter, as reported by the Board of Governors of the Federal Reserve System in Statistical Release H.15 (''Selected Interest Rates''). The rate for the first quarter (January through March) of 2002

(*i.e.,* the rate reported for December 17, 2001) is 4.75 percent.

The following table lists the withdrawal liability underpayment and overpayment interest rates for the specified time periods:

From	Through	Interest rate (percent)
10/1/95	3/31/96	8.75
4/1/96	6/30/97	8.25
7/1/97	12/31/98	8.50
1/1/99	9/30/99	7.75
10/1/99	12/31/99	8.25
1/1/00	3/31/00	8.50
4/1/00	6/30/00	8.75
7/1/00	3/31/01	9.50
4/1/01	6/30/01	8.50
7/1/01	9/30/01	7.00
10/1/01	12/31/01	6.50
1/1/02	3/31/02	4.75

Multiemployer Plan Valuations Following Mass Withdrawal

The PBGC's regulation on Duties of Plan Sponsor Following Mass Withdrawal (29 CFR part 4281) prescribes the use of interest assumptions under the PBGC's regulation on Allocation of Assets in Single-employer Plans (29 CFR part 4044). The interest assumptions applicable to valuation dates in February 2002 under part 4044 are contained in an amendment to part 4044 published elsewhere in today's **Federal Register**. Tables showing the assumptions applicable to prior periods are codified in appendix B to 29 CFR part 4044.

Issued in Washington, DC, on this 10th day of January 2002.

Steven A. Kandarian,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 02–1137 Filed 1–14–02; 8:45 am]

BILLING CODE 7708–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35–27489]

Filings Under the Public Utility Holding Company Act of 1935, as Amended (''Act'')

January 9, 2002.

Notice is hereby given that the following filing has been made with the Commission pursuant to provisions of the Act and rules promulgated under the Act. All interested persons are referred to the declaration for complete statements of the proposed transaction summarized below. The declaration is available for public inspection through the Commission's Branch of Public Reference.

Interested persons wishing to comment or request a hearing on the declaration should submit their views in writing by February 4, 2002, to the Secretary, Securities and Exchange Commission, Washington, DC 20549–0609, and serve a copy on the relevant declarant at the address specified below. Proof of service (by affidavit or, in the case of an attorney at law, by certificate) should be filed with the request. Any request for hearing should identify specifically the issues of facts or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After February 4, 2002, the declaration, as filed or as amended, may be granted and/or permitted to become effective.

American Electric Power Company, Inc. (70–10021)

American Electric Power Company, Inc. (''AEP''), a registered holding company, 1 Riverside Plaza, Columbus, Ohio 43215, has filed a declaration under sections 6(a), 7, 32, and 33 of the Act and rules 53 and 54 under the Act. The Commission issued a notice of the declaration on January 2, 2002 (HCAR No. 27488) (''Prior Notice''). This supplemental notice replaces in its entirety the Prior Notice.

AEP proposes to organize and acquire all of the common stock or other equity interests of one or more subsidiaries (''Financing Subsidiary'' or ''Financing Subsidiaries'') for the purpose of effecting various financing transactions from time to time through June 30, 2004 involving the issuance and sale of up to an aggregate of $3.0 billion (cash proceeds to AEP) in any combination of common stock, preferred securities, debt securities, stock purchase contracts and stock purchase units, as well as its common stock issuable under the stock purchase contracts and stock purchase units. AEP further proposes that it may effect directly (i.e., without Financing Subsidiary) any transaction involving common stock, preferred securities, debt securities, stock purchase contracts or stock purchase units described here, provided that AEP shall not issue any secured indebtedness. AEP will not publicly issue unsecured indebtedness or preferred securities in this file unless it has maintained at least an investment grade corporate or senior unsecured debt rating by at least one nationally recognized rating agency. No Financing Subsidiary or Special Purpose Subsidiary, as defined below, shall acquire or dispose of, directly or indirectly, any interest in any utility asset, as that term is defined under the Act. Additionally, AEP's forecasted cash flow analysis and capitalization forecast for the next two years, which forecasts assume the issuance of $1 billion of common stock out of the $3.0 billion total financing authority requested herein, indicate that it is expected that AEP's common equity will remain above 30% of its consolidated capitalization for each of the next three years.

I. Financing Subsidiaries

AEP will acquire all of the outstanding shares of common stock or other equity interests of the Financing Subsidiary for amounts (inclusive of capital contributions that may be made from time to time to the Financing Subsidiary by AEP) aggregating up to 35% of the total capitalization of the Financing Subsidiary (i.e., the aggregate of the equity accounts and indebtedness of the Financing Subsidiary). An investment by AEP will not in any event be less than the minimum required by any applicable law. The business of the Financing Subsidiary will be limited to effecting financing transactions for AEP and its affiliates. In connection with these financing transactions, AEP will enter into one or more guarantee or other credit support agreements in favor of the Financing Subsidiary.

II. Preferred Securities

In connection with the issuance of preferred securities, AEP or the Financing Subsidiary proposes to organize one or more separate special purpose subsidiaries (''Special Purpose Subsidiary'' or ''Special Purpose Subsidiaries'') as any one or any combination of (a) a limited liability company under the Limited Liability Company Act (the ''LLC Act'') of the State of Delaware or other jurisdiction considered advantageous by AEP, (b) a limited partnership under the Revised Uniform Limited Partnership Act of the State of Delaware or other jurisdiction considered advantageous by AEP, (c) a business trust under the laws of the State of Delaware or other jurisdiction considered advantageous by AEP, or (d) any other entity or structure, foreign or domestic, that is considered advantageous by AEP. In the event that any Special Purpose Subsidiary is organized as a limited liability company, AEP or the Financing Subsidiary may also organize a second special purpose wholly-owned subsidiary under the General Corporation Law of the State of Delaware or other jurisdiction (''Investment Sub'') for the purpose of acquiring and holding Special Purpose

Subsidiary membership interests so as to comply with any requirement under the applicable LLC Act that a limited liability company have at least two members. In the event that any Special Purpose Subsidiary is organized as a limited partnership, AEP or the Financing Subsidiary also may organize an Investment Sub for the purpose of acting as the general partner of the Special Purpose Subsidiary and may acquire, either directly or indirectly through the Investment Sub, a limited partnership interest in the Special Purpose Subsidiary to ensure that the Special Purpose Subsidiary will at all times have a limited partner to the extent required by applicable law.

The respective Special Purpose Subsidiaries then will issue and sell to public or private investors at any time or from time to time unsecured preferred securities described below (''Preferred Securities''), with a specified par or stated value or liquidation preference per security.

AEP, the Financing Subsidiary and/or an Investment Sub will acquire all of the common stock or all of the general partnership or other common equity interests, as the case may be, of any Special Purpose Subsidiary for an amount not less than the minimum required by any applicable law and not exceeding 21% of the total equity capitalization from time to time of the Special Purpose Subsidiary (i.e., the aggregate of the equity accounts of the Special Purpose Subsidiary) (the aggregate of the investment by AEP, the Financing Subsidiary and/or an Investment Sub is referred to as the ''Equity Contribution''). The Financing Subsidiary may issue and sell to any Special Purpose Subsidiary, at any time or from time to time in one or more series, unsecured subordinated debentures, unsecured promissory notes or other unsecured debt instruments (''Note'' or ''Notes'') governed by an indenture or other document, and the Special Purpose Subsidiary will apply both the equity contribution made to it and the proceeds from the sale of Preferred Securities by it from time to time to purchase Notes. Alternatively, the Financing Subsidiary may enter into a loan agreement or agreements with any Special Purpose Subsidiary under which the Special Purpose Subsidiary will loan to the Financing Subsidiary (''Loan'' or ''Loans'') both the equity contribution to the Special Purpose Subsidiary and the proceeds from the sale of the Preferred Securities by the Special Purpose Subsidiary from time to time, and the Financing Subsidiary will issue to the Special Purpose Subsidiary Notes evidencing the borrowings.

AEP or the Financing Subsidiary also proposes to guarantee (''Guaranty'' or ''Guaranties'') (a) payment of dividends or distributions on the Preferred Securities of any Special Purpose Subsidiary if and to the extent the Special Purpose Subsidiary has funds legally available, (b) payments to the Preferred Securities holders of amounts due upon liquidation of the Special Purpose Subsidiary or redemption of the Preferred Securities of the Special Purpose Subsidiary, and (c) certain additional amounts that may be payable in respect of the Preferred Securities. AEP's credit would support any Guaranty by the Financing Subsidiary.

Each Note will have a term of up to 50 years. Prior to maturity, the Financing Subsidiary will pay interest only on the Notes at a rate equal to the dividend or distribution rate on the related series of Preferred Securities, which dividend or distribution rate may be either a fixed rate or an adjustable rate which may be reset by auction, remarketing, put or call features, a formula or formulae based upon certain reference rates and/or by other predetermined methods. Interest payments will constitute each respective Special Purpose Subsidiary's only income and will be used by it to pay dividends or distributions on the Preferred Securities issued by it and dividends or distributions on the common stock or the general partnership or other common equity interests of the Special Purpose Subsidiary. Dividend payments or distributions on the Preferred Securities will be made on a monthly or other periodic basis and must be made to the extent that the Special Purpose Subsidiary issuing the Preferred Securities has legally available funds and cash sufficient for these purposes. However, the Financing Subsidiary may have the right to defer payment of interest on any issue of Notes for up to five or more years. Each Special Purpose Subsidiary will have the parallel right to defer dividend payments or distributions on the related series of Preferred Securities for up to five or more years, provided that if dividends or distributions on the Preferred Securities of any series are not paid for up to 18 or more consecutive months, then the holders of the Preferred Securities of the series may have the right to appoint a trustee, special general partner or other special representative to enforce the Special Purpose Subsidiary's rights under the related Note and Guaranty. The dividend or distribution rates, payment dates, redemption and other similar provisions of each series of Preferred Securities will be substantially identical to the interest rates, payment dates, redemption and other provisions of the Note issued by the Financing Subsidiary with respect thereto. The Preferred Securities may be convertible or exchangeable into common stock of AEP.

The Notes and related Guaranties will be subordinate to all other existing and future unsubordinated indebtedness for borrowed money of the Financing Subsidiary or AEP, as the case may be, and may have no cross-default provisions with respect to other indebtedness of the Financing Subsidiary or AEP. A default under any other outstanding indebtedness of the Financing Subsidiary or AEP would not result in a default under any Note or Guaranty. However, AEP and/or the Financing Subsidiary may be prohibited from declaring and paying dividends on its outstanding capital stock and making payments in respect of pari passu debt unless all payments then due under the Notes and Guaranties (without giving effect to the deferral rights discussed above) have been made.

It is expected that the Financing Subsidiary's interest payments on the Notes will be deductible for federal income tax purposes and that each Special Purpose Subsidiary will be treated as either a partnership or a passive grantor trust for federal income tax purposes. Consequently, holders of the Preferred Securities and AEP (and any Investment Sub) will be deemed to have received distributions in respect of their ownership interests in the respective Special Purpose Subsidiary and will not be entitled to any ''dividends received deduction'' under the Internal Revenue Code. The Preferred Securities of any series, however, may be redeemable at the option of the Special Purpose Subsidiary issuing the series (with the consent or at the direction of AEP) at a price equal to their par or stated value or liquidation preference, plus any accrued and unpaid dividends or distributions, (a) at any time after a specified date not later than approximately 10 years from their date of issuance, or (b) upon the occurrence of certain events, among them that (c) the Special Purpose Subsidiary is required to withhold or deduct certain amounts in connection with dividend, distribution or other payments or is subject to federal income tax with respect to interest received on the Notes issued to the Special Purpose Subsidiary, or (d) it is determined that the interest payments by the Financing Subsidiary on the related Notes are not

deductible for income tax purposes, or (e) the Special Purpose Subsidiary becomes subject to regulation as an ''investment company'' under the Investment Company Act of 1940. The Preferred Securities of any series may also be subject to mandatory redemption upon the occurrence of certain events. The Financing Subsidiary also may have the right in certain cases or in its discretion to exchange the Preferred Securities of any Special Purpose Subsidiary for the Notes or other junior subordinated debt issued to the Special Purpose Subsidiary.

In the event that any Special Purpose Subsidiary is required to withhold or deduct certain amounts in connection with dividend, distribution or other payments, the Special Purpose Subsidiary may also have the obligation to ''gross up'' payments so that the holders of the Preferred Securities issued by the Special Purpose Subsidiary will receive the same payment after withholding or deduction as they would have received if no withholding or deduction were required. In this event, the Financing Subsidiary's obligations under its related Note and Guaranty may also cover the ''gross up'' obligation. In addition, if any Special Purpose Subsidiary is required to pay taxes with respect to income derived from interest payments on the Notes issued to it, the Financing Subsidiary may be required to pay the additional interest on the related Notes as shall be necessary in order that net amounts received and retained by the Special Purpose Subsidiary, after the payment of taxes, shall result in the Special Purpose Subsidiary's having funds as it would have had in the absence of payment of taxes.

In the event of any voluntary or involuntary liquidation, dissolution or winding up of any Special Purpose Subsidiary, the holders of the Preferred Securities of the Special Purpose Subsidiary will be entitled to receive, out of the assets of the Special Purpose Subsidiary available for distribution to its shareholders, partners or other owners, as the case may be, an amount equal to the par or stated value or liquidation preference of the Preferred Securities plus any accrued and unpaid dividends or distributions.

The constituent instruments of each Special Purpose Subsidiary, including its Limited Liability Company Agreement, Limited Partnership Agreement or Trust Agreement, as the case may be, will provide, among other things, that the Special Purpose Subsidiary's activities will be limited to the issuance and sale of Preferred Securities from time to time and the lending to the Financing Subsidiary or Investment Sub of (a) the proceeds thereof and (b) the Equity Contribution to the Special Purpose Subsidiary, and certain other related activities. Accordingly, it is proposed that no Special Purpose Subsidiary's constituent instruments include any interest or dividend coverage or capitalization ratio restrictions on its ability to issue and sell Preferred Securities as each issuance will be supported by a Note and Guaranty and the restrictions would therefore not be relevant or necessary for any Special Purpose Subsidiary to maintain an appropriate capital structure.

Each Special Purpose Subsidiary's constituent instruments will further state that its common stock or general partnership or other common equity interests are not transferable (except to certain permitted successors), that its business and affairs will be managed and controlled by AEP, the Financing Subsidiary and/or its Investment Sub (or permitted successor), and that AEP or the Financing Subsidiary (or permitted successor) will pay all expenses of the Special Purpose Subsidiary.

The distribution rate to be borne by the Preferred Securities and the interest rate on the Notes will not exceed the greater of (a) 300 basis points over U.S. Treasury securities having comparable maturities or (b) a gross spread over U.S. Treasury securities that is consistent with similar securities having comparable maturities and credit quality issued by other companies. Current market conditions suggest the costs for issuing long-term indebtedness with a three to five year maturity are less than or equal to the costs for issuing short-term indebtedness over the same time period.

III. Debt Securities

AEP proposes that, in addition to, or as an alternative to, any Preferred Securities financing as described above, AEP and/or the Financing Subsidiary may issue and sell notes directly to public or private investors without an intervening Special Purpose Subsidiary (''Debt Securities''). Any notes so issued will be unsecured, may be either senior or subordinated obligations of AEP or the Financing Subsidiary, as the case may be, may be convertible or exchangeable into common stock of AEP or Preferred Securities, may have the benefit of a sinking fund, may have a term of up to 50 years, may have fixed or adjustable rates of interest which may be reset by predetermined methods such as auction, remarketing, put or call features and/or a formula or formulae based upon certain reference rates and otherwise will have terms and provisions substantially as described here. Debt Securities of the Financing Subsidiary will have the benefit of a guarantee or other credit support by AEP. AEP will not issue the Debt Securities, either directly or through the Financing Subsidiary, unless it has evaluated all relevant financial considerations (including, without limitation, the cost of equity capital) and has determined that to do so is preferable to issuing common stock or short-term debt. Current market conditions suggest the costs for issuing long-term indebtedness with a three to five year maturity are less than or equal to the costs for issuing short-term indebtedness over the same time period.

The interest rate on the Debt Securities will not exceed the greater of (a) 300 basis points over U.S. Treasury securities having comparable maturities or (b) a gross spread over U.S. Treasury securities that is consistent with similar securities having comparable maturities and credit quality issued by other companies.

IV. Stock Purchase Contracts, Stock Purchase Units and Common Stock

AEP or the Financing Subsidiary may issue and sell from time to time stock purchase contracts (''Stock Purchase Contracts''), including contracts obligating holders to purchase from AEP and/or AEP to sell to the holders, a specified number of shares or aggregate offering price of AEP common stock at a future date. The consideration per share of common stock may be fixed at the time the Stock Purchase Contracts are issued or may be determined by reference to a specific formula set forth in the Stock Purchase Contracts. The Stock Purchase Contracts may be issued separately or as part of units (''Stock Purchase Units'') consisting of a Stock Purchase Contract and Debt Securities, Preferred Securities of AEP, or debt obligations of third parties, including U.S. Treasury securities, securing holders' obligations to purchase the common stock of AEP under the Stock Purchase Contracts. The Stock Purchase Contracts may require holders to secure their obligations in a specified manner.

AEP may issue and sell its common stock other than as a component or in satisfaction of a Stock Purchase Contract or Stock Purchase Unit (''Direct Sales'') (a) through solicitations of proposals from underwriters or dealers; (b) through negotiated transactions with underwriters or dealers; (c) directly to a limited number of purchasers or to a single purchaser; and/or (d) through agents. The price applicable to shares

sold in any transaction will be based on several factors, including the current market price of the common stock and prevailing capital market conditions. AEP is authorized under its restated articles of incorporation to issue 600,000,000 shares of common stock ($6.50 par value), of which 322,024,714 were issued and outstanding as of February 1, 2001. As of September 30, 2001, AEP's consolidated capitalization consisted of 63.0% indebtedness, 0.7% preferred stock, 1.3% mandatorily redeemable preferred securities and 35.0% common equity.

V. Interest Rate Hedges

AEP requests authorization for it and/or the Financing Subsidiary to enter into interest rate-hedging transactions with respect to existing indebtedness (''Interest Rate Hedges''), subject to certain limitations and restrictions, in order to reduce or manage interest rate cost or risk. Interest Rate Hedges would only be entered into with counterparties (''Approved Counterparties'') whose senior debt ratings, or whose parent companies'' senior debt ratings, as published by Standard and Poor's Ratings Group, are equal to or greater than BBB, or an equivalent rating from Moody's Investors' Service or Fitch Investor Service. Interest Rate Hedges will involve the use of financial instruments and derivatives commonly used in today's capital markets, such as interest rate swaps, options, caps, collars, floors, and structured notes (i.e., a debt instrument in which the principal and/or interest payments are indirectly linked to the value of an underlying asset or index), or transactions involving the purchase or sale, including short sales, of U.S. Treasury obligations. The transactions would be for fixed periods and stated notional amounts. In no case will the notional principal amount of any interest rate swap exceed that of the underlying debt instrument and related interest rate exposure. AEP and/or the Financing Subsidiary will not engage in speculative transactions. Fees, commissions and other amounts payable to the counterparty or exchange (excluding, however, the swap or option payments) in connection with an Interest Rate Hedge will not exceed those generally obtainable in competitive markets for parties of comparable credit quality.

VI. Anticipatory Hedges

In addition, AEP requests authorization for it and/or the Financing Subsidiary to enter into interest rate hedging transactions with respect to anticipated debt offerings (''Anticipatory Hedges''), subject to certain limitations and restrictions. Anticipatory Hedges would only be entered into with Approved Counterparties, and would be utilized to fix and/or limit the interest rate risk associated with any new issuance through (a) a forward sale of exchange-traded U.S. Treasury futures contracts, U.S. Treasury obligations and/or a forward swap (''Forward Sale''); (b) the purchase of put options on U.S. Treasury obligations (''Put Options Purchase''); (c) a Put Options Purchase in combination with the sale of call options on U.S. Treasury obligations (''Zero Cost Collar''); (d) transactions involving the purchase or sale, including short sales, of U.S. Treasury obligations; or (e) some combination of a Forward Sale, Put Options Purchase, Zero Cost Collar and/or other derivative or cash transactions, including, but not limited to structured notes, options, caps and collars, appropriate for the Anticipatory Hedges. Anticipatory Hedges may be executed on-exchange (''On-Exchange Trades'') with brokers through the opening of futures and/or options positions traded on the Chicago Board of Trade or the Chicago Mercantile Exchange, the opening of over-the-counter positions with one or more counterparties (''Off-Exchange Trades''), or a combination of On-Exchange Trades and Off-Exchange Trades. AEP and/or the Financing Subsidiary will determine the optimal structure of each Anticipatory Hedge transaction at the time of execution. AEP may decide to lock in interest rates and/or limit its exposure to interest rate increases. AEP represents that each Interest Rate Hedge and Anticipatory Hedge will be treated for accounting purposes under generally accepted accounting principles. AEP will comply with the then existing financial disclosure requirements of the Financial Accounting Standards Board associated with hedging transactions.[1]

VII. Use of Proceeds

The proceeds of any financing by the Financing Subsidiary or any Special Purpose Subsidiary will be remitted, paid as a dividend, loaned or otherwise transferred to AEP or its designee. The proceeds of the Preferred Securities, Debt Securities, Stock Purchase Contracts and Stock Purchase Units will be used to acquire the securities of associate companies and interests in other businesses, including interests in exempt wholesale generators (''EWGs'') and foreign utility holding companies (''FUCOs''), or in any transactions permitted under the Act and for other general corporate purposes, including the reduction of short-term indebtedness. AEP had approximately $3.6 billion outstanding short-term indebtedness as of September 30, 2001. No proceeds will be used to purchase generation assets currently owned by AEP or any affiliate unless the purchase has been approved by order of this Commission in File No. 70–9785 or other similar applications. AEP represents that no financing proceeds will be used to acquire the equity securities of any company or any interest in other businesses unless the acquisition has been approved by the Commission in this proceeding or in File No. 70–9353 or is in accordance with an available exemption under sections 32, 33 and 34 of the Act or rule 58 under the Act. AEP does not seek in this proceeding any increase in the amount it is permitted to invest in EWGs and FUCOs.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–942 Filed 1–14–02; 8:45 am]

BILLING CODE 8010–01–P

[1] The proposed terms and conditions of the Interest Rate Hedges and Anticipatory Hedges are substantially the same as the Commission has approved in other cases. See Entergy Corporation, HCAR No. 27371 (April 3, 2001); New Century Energies, Inc., et al., HCAR No. 27000 (April 7, 1999); and Ameren Corp., et al., HCAR No. 27053 (July 23, 1999).

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 25359; 812–12468]

Conseco Fund Group, *et al.*; Notice of Application

January 9, 2002.

AGENCY: Securities and Exchange Commission (''SEC'' or ''Commission'').

ACTION: Notice of application for an exemption under section 6(c) of the Investment Company Act of 1940 (''Act'') from section 15(a) of the Act and rule 18f–2 under the Act.

Summary of the Application: The order would permit applicants to enter into and materially amend subadvisory agreements without shareholder approval.

Applicants: Conseco Fund Group (''CFG''), Conseco Series Trust (''CST'' together with CFG, the ''Trusts''), and Conseco Capital Management, Inc. (the ''Adviser'').

Filing Dates: The application was filed on March 6, 2001, and amended on December 26, 2001.

Hearing or Notification of Hearing: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on February 4, 2002, and should be accompanied by proof of service on applicants, in the form of an affidavit, or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW, Washington, DC 20549–0609. Applicants, 11825 North Pennsylvania Street, Carmel, IN 46032.

FOR FURTHER INFORMATION CONTACT: Bruce R. MacNeil, Senior Counsel, at (202) 942–0634, or Nadya B. Roytblat, Assistant Director, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch, 450 Fifth Street, NW, Washington, DC 20549–0102 (telephone (202) 942–8090).

Applicants' Representations

1. The Trusts, each a Massachusetts business trust, are registered under the Act as open-end management investment companies. Each Trust is organized as a series investment company and offers shares of multiple series (each series, a ''Fund,'' and together, the ''Funds''), each with its own investment objectives, policies, and restrictions.[1] The Adviser serves as the investment adviser to the Funds and is registered as an investment adviser under the Investment Advisers Act of 1940 (''Advisers Act'').

2. The Adviser serves as investment adviser to the Funds pursuant to an investment advisory agreement between each Trust and the Adviser that was approved by the respective Trust's board of trustees (''Board''), including a majority of the trustees who are not ''interested persons,'' as defined in section 2(a)(19) of the Act (''Independent Trustees''), and each Fund's shareholders (''Advisory Agreement''). The Advisory Agreement permits the Adviser to enter into separate investment advisory agreements (''Subadvisory Agreements'') with subadvisers (''Subadvisers'') to whom the Adviser may delegate responsibility for providing investment advice and making investment decisions for a Fund. Each Subadviser is an investment adviser registered under the Advisers Act. The Adviser monitors and evaluates the Subadvisers and recommends to the Board their hiring, termination, and replacement. The Adviser compensates the Subadvisers out of the fees paid to the Adviser by the Fund.

3. Applicants request relief to permit the Adviser to enter into and materially amend Subadvisory Agreements without obtaining shareholder approval. The requested relief will not extend to any Subadviser that is an affiliated person, as defined in section 2(a)(3) of the Act, of the Trust or the Adviser, other than by reason of serving as a Subadviser to one or more of the Funds (''Affiliated Subadviser'').

Applicants' Legal Analysis

1. Section 15(a) of the Act provides, in relevant part, that it is unlawful for any person to act as an investment adviser to a registered investment company except under a written contract that has been approved by a majority of the investment company's outstanding voting securities. Rule 18f–2 under the Act provides that each series or class of stock in a series company affected by a matter must approve the matter if the Act requires shareholder approval.

2. Section 6(c) of the Act authorizes the SEC to exempt persons or transactions from the provisions of the Act to the extent that the exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policies and provisions of the Act. Applicants state that the requested relief meets this standard for the reasons discussed below.

3. Applicants assert that the Funds' shareholders rely on the Adviser to select the Subadvisers best suited to achieve a Fund's investment objectives. Applicants assert that, from the perspective of the investor, the role of the Subadvisers is comparable to that of individual portfolio managers employed by other investment advisory firms. Applicants contend that requiring shareholder approval of each Subadvisory Agreement would impose costs and unnecessary delays on the Funds, and may preclude the Adviser from acting promptly in a manner considered advisable by the Board. Applicants also note that the Advisory Agreement will remain subject to section 15(a) of the Act and rule 18f–2 under the Act.

Applicants' Conditions

Applicants agree that any order granting the requested relief will be subject to the following conditions:

1. Before a Fund may rely on the requested order, the operation of the Fund in the manner described in the application will be approved by the vote of a majority of its outstanding voting securities, as defined in the Act, or, in the case of a Fund whose public shareholders purchased shares on the basis of a prospectus containing the disclosure contemplated by condition number 2 below, by the initial shareholder(s) before offering shares of that Fund to the public.

2. Each Fund will disclose in its prospectus the existence, substance, and effect of any order granted pursuant to the application. In addition, each Fund relying on the requested order will hold itself out to the public as employing the management structure described in the application. The prospectus will prominently disclose that the Adviser has ultimate responsibility (subject to oversight of the Board) to oversee Subadvisers and recommend their hiring, termination, and replacement.

3. At all times, a majority of each Trust's Board will be Independent Trustees, and the nomination of new or additional Independent Trustees will be at the discretion of the then existing Independent Trustees.

4. The Adviser will not enter into a Subadvisory Agreement with any Affiliated Subadviser without that agreement, including the compensation to be paid thereunder, being approved by the shareholders of the applicable Fund.

5. When a change of Subadviser is proposed for a Fund with an Affiliated Subadviser, the Board of the corresponding Trust, including a majority of the Independent Trustees,

[1] The applicants also request that any relief granted pursuant to the application also apply to future series of the Trusts and any other registered open-end management investment companies and their series that: (a) Are advised by the Adviser or any person controlling, controlled by, or under common control with the Adviser; (b) use the multi-manager structure described in the application; and (c) comply with the terms and conditions in the application (''Future Funds,'' included in the term ''Funds''). The Trusts are the only existing investment companies that currently intend to rely on the requested order. No Fund will contain in its name the name of a Subadviser (as defined below).

will make a separate finding, reflected in the Board's minutes, that the change is in the best interests of the Fund and its shareholders and does not involve a conflict of interest from which the Adviser or the Affiliated Subadviser derives an inappropriate advantage.

6. Within 90 days of the hiring of any new Subadviser, shareholders will be furnished all information about the new Subadviser that would be contained in a proxy statement, including any change in such disclosure caused by the addition of a new Subadviser. Each Fund will meet this condition by providing shareholders, within 90 days of the hiring of a Subadviser, an information statement meeting the requirements of Regulation 14C, Schedule 14C, and Item 22 of Schedule 14A under the Securities Exchange Act of 1934.

7. The Adviser will provide general management services to each Fund, including overall supervisory responsibility for the general management and investment of each Fund's assets, and, subject to review and approval by the Board, will (a) set the Fund's overall investment strategies; (b) evaluate, select, and recommend Subadviser(s) to manage all or a part of the Fund's assets; (c) monitor and evaluate the performance of Subadviser(s); (d) ensure that Subadvisers comply with each Subadvised Fund's investment objectives, restrictions, and policies by, among other things, implementing procedures reasonably designed to ensure compliance; and (e) allocate and, when appropriate, reallocate a Fund's assets among its Subadvisers when a Fund has more than one Subadviser.

8. No trustee or officer of the Trust or director or officer of the Adviser will own, directly or indirectly (other than through a pooled investment vehicle that is not controlled by any such trustee, director or officer) any interest in a Subadviser except for: (a) Ownership of interests in the Adviser or any entity that controls, is controlled by, or is under common control with the Adviser, or (b) ownership of less than 1% of the outstanding securities of any class of equity or debt securities of any publicly-traded company that is either a Subadviser or an entity that controls, is controlled by, or is under common control with a Subadviser.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–941 Filed 1–14–02; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Federal Register Citation of Previous Announcement: [66 FR 1524, January 11, 2002]

Status: Closed meeting.

Place: 450 Fifth Street, NW., Washington, DC.

Date and Time of Previously Announced Meeting: Tuesday, January 15, 2002 at 10:00 a.m.

Change in the Meeting: Time Change.

The closed meeting scheduled for Tuesday, January 15, 2002 at 10:00 a.m. has been changed to Tuesday, January 15, 2002 at 9:00 a.m.

Dated: January 11, 2002.

Jonathan G. Katz,

Secretary,

[FR Doc. 02–1094 Filed 1–11–02; 11:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45252; File No. SR–Amex–2001–26]

Self-Regulatory Organizations; American Stock Exchange LLC; Order Granting Approval to Proposed Rule Change and Amendment No. 1 Thereto Relating to an Increase in the Exchange Regulatory Fee

January 8, 2002.

On May 7, 2001, the American Stock Exchange LLC (''Amex'' or ''Exchange'') filed with the Securities and Exchange Commission (''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 the Amex Equity Fee Schedule to increase the regulatory fee from .00005 x Total Value to .000075 x Total Value for certain orders in Portfolio Depositary Receipts, Index Fund Shares, and Trust Issued Receipts (collectively, the ''Products'') entered electronically into the Amex Order File from off the Floor (''System Orders'') by a member or member organization trading as an agent for the account of a non-member competing market maker.

The proposed rule change was published for comment in the **Federal Register** on June 18, 2001.[3] The Commission received no comments on the proposal. On December 12, 2001, the Amex filed an amendment to the proposed rule change.[4] In Amendment No. 1, the Amex made a technical amendment to the proposed rule change by further clarifying its purpose for increasing the Exchange's regulatory fee that does not need to be published for comment. In Amendment No. 1, the Exchange states that the regulatory fee increase has been put in place to ensure that the Amex has the appropriate resources to provide the regulatory, operational, and business development function necessary to meet the increasing demands of a complex and competitive marketplace.[5]

The Commission notes that the proposed rule change allows for disparate treatment of competing market makers in that it increases the regulatory fee for System Orders in the Products by a member or member organization trading as an agent for the account of a non-member.[6] However, the Commission notes that under the Amex's current fee schedule, orders in the Products by a member or member organization trading as an agent for the account of a non-member were not entitled to the same treatment as other orders in the fee schedule in that they were not exempt from the regulatory fee. This proposed rule change does not alter this result. Furthermore, the Commission believes that the Intermarket Trading System (''ITS'') will continue to provide an alternative means by which non-member competing market makers can access the Amex. ITS provides an avenue for non-member competing market makers to interact with trading interests on the Amex, fee-free.

For these reasons, the Commission finds that the proposed rule change and Amendment No. 1 are consistent with the requirements of the Act and the rules and regulations thereunder

[1] 15 U.S.C. 78s (b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 44410 (June 12, 2001), 66 FR 32852.

[4] *See* letter from Michael J. Ryan, Jr., Executive Vice President & General Counsel, Amex, to Katherine England, Assistant Director, Division of Market Regulation, Commission, dated December 11, 2001 (''Amendment No. 1'').

[5] Specifically, the Amex states that the Exchange continues to make heavy investments in: technologies to support the efficient trading of Exchange Traded Funds (''ETFs'') and HOLDRS on the Exchange; product development to bring new products to market; and the regulation of the EFT and HOLDRs markets. The Exchange believes that non-member competing market markers receive the most benefit from trading ETFs and HOLDRs on the Amex, with associated Amex technological enhancements and regulatory structure. The Exchange believes that the fee increase will support the infrastructure relied upon by the broader marketplace including competitive exchanges and market participants. *Id.*

[6] The Commission does not intend this proposal to establish a precedent to permit a primary market to make distinctions in the treatment of orders on its Floor as a means to discriminate unfairly against its competitors.

applicable to a national securities exchange.[7] In particular, the Commission finds that the proposed rule change and Amendment No. 1 are consistent with section 6(b)(4) of the Act[8] in that it provides for the equitable allocation of reasonable dues, fees, and other charges among Exchange members, issuers, and other persons using its facilities.

It is therefore ordered, pursuant to section 19 (b)(2) of the Act[9], that the proposed rule change (File No. SR–Amex–2001–26) and Amendment No. 1 be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–943 Filed 1–14–02; 8:45 am]

BILLING CODE 8010–01–M

[7] In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[8] 15 U.S.C. 78f(b)(4).

[9] 15 U.S.C. 78s(b)(2).

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45253; File No. SR–Amex–2001–92]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto by the American Stock Exchange LLC To Simplify the Manner in Which a Contrary Exercise Advice Is Submitted and To Extend by One Hour the Time for Members To Submit Customer's Contrary Exercise Advices

January 8, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and rule 19b–4 thereunder,[2] notice is hereby given that on October 29, 2001, the American Stock Exchange LLC (''Amex'' 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 Exchange. The Amex amended its proposal on December 17, 2001.[3] 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 Amex proposes to amend Amex Rule 980 to: (i) Simplify the manner in which a Contrary Exercise Advice is submitted to the Exchange; and (ii) to extend by one hour the cut-off time by which members must submit to the Exchange Contrary Exercise Advice notices for customer accounts.

The text of the proposed rule change is available at the Amex and 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 Amex 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 Amex has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The OCC, the issuer of all Amex traded options contracts, has an established procedure for options holders wishing to exercise in-the-money options before they expire. Known as Ex-by-Ex, the procedure provides for the automatic exercise at expiration of any equity options contract that is ¾ of a point or more in-the-money for customer accounts or ¼ point or more in-the-money for any other accounts. All options holders who wish to have their options contracts exercised in accordance with the Ex-by-Ex procedure need to take no further action; those contracts that are in-the-money by the appropriate amount will be automatically exercised. Options holders who do not wish to have their options automatically exercised, or do wish options to be exercised that do not fit within the parameters of the Ex-by-Ex procedure, must file with the Exchange a Contrary Exercise Advice pursuant to Exchange Rule 980, and instruct OCC of their contrary intention. Members and member organizations satisfy the filing requirement by manually submitting a Contrary Exercise Advice Form or by electronically submitting the Advice Form through OCC's Clearing Management and Control System (C/MACS). Exchange Rule 980 is designed to deter individuals from taking improper advantage of late-breaking news by requiring evidence of an option holder's intention to exercise or not exercise expiring equity options via the submission of a Contrary Exercise Advice.

On occasion, OCC has had to suspend use of its Ex-by-Ex procedure, such as when trading in the underlying stock has been halted, or if there is no accurate price available to be used in the determination of the closing price. When this occurs and there is no automatic exercise, all options contract holders must send exercise instructions to OCC if they wish to exercise, regardless of whether the option is in or out-of-the-money. When OCC suspends its Ex-by-Ex procedure for an option class, Exchange Rule 980 currently requires the submission of a Contrary Exercise Advice. Thus, when OCC has waived the Ex-by-Ex procedure, option holders must determine what price would have been used, even though the only available price might be a stale last sale price (a price OCC did not feel comfortable using). They then must determine whether a Contrary Exercise Advice needs to be submitted to the Exchange, evidencing the option holder's intention to exercise or not exercise.

The Amex has long viewed this process as cumbersome and confusing to options holders. Therefore, the Amex now proposes to amend Exchange Rule 980 to eliminate the requirement that a Contrary Exercise Advice be submitted if the holder does not want to exercise the option when OCC has waived its Ex-by-Ex procedure for that options class. As a result, when Ex-by-Ex has been waived, submission of instructions to exercise is only required when the options holder wants to exercise the option contract. The Amex clarifies that the applicable underlying security price in such instances will be as described in OCC Rule 805(1), which is normally the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Jeffrey P. Burns, Assistant General Counsel, Amex, to Jennifer L. Colihan, Special Counsel, Division of Market Regulation, Commission, dated December 14, 2001 (''Amendment No. 1''). In Amendment No. 1, the Amex clarified its purpose to modify the Exchange's Contrary Exercise Advice procedure set forth in proposed paragraph (g) of Amex Rule 980. In addition, the Amex revised proposed paragraph (d) of Amex Rule 980 to clarify that in cases where the Exercise-by-Exception or ''Ex-by-Ex'' procedure has been waived and members and member organizations submit an affirmative Exercise Notice to the Options Clearing Corporation (''OCC'') to exercise the options, the applicable underlying security price in such instances will be as described in OCC Rule 805(l), which is normally the last sale price in the primary market for the underlying security.

last sale price in the primary market for the underlying security.[4]

In addition, the Exchange proposes to extend the cut-off time for members to deliver Contrary Exercise Advices for customer accounts to the Exchange by one hour (from 5:30 p.m. to 6:30 p.m. EST). Currently, members are required to submit Contrary Exercise Advices to the Exchange and OCC no later than 5:30 p.m. (EST). However, because determination of final settlement prices is sometimes delayed and members need to confirm exercise instructions with customers, it is sometimes difficult for firms to deliver customer Contrary Exercise Advices in satisfaction of the 5:30 p.m. (EST) cut-off time. Accordingly, members must immediately process customer Contrary Exercise Advices to submit them to the Exchange simultaneously upon receipt of the instructions from customers in order to meet the Contrary Exercise Advice cut-off time. Accordingly, to provide members with sufficient time to process Contrary Exercise Advices for customers accounts, the Exchange proposes to extend the cut-off time for members to deliver Contrary Exercise Advices for customer accounts to the Exchange by one hour (from 5:30 p.m. to 6:30 p.m. EST). The Exchange believes it is appropriate to extend the cut-off time for member submission of customer Contrary Exercise Advices, and any cancellation thereof, to the Exchange as all decisions to exercise (or not exercise) must still be made by 5:30 p.m. (EST) in accordance with Exchange Rule 980.

Furthermore, the Amex believes that customers and member firms should have added flexibility in connection with the delivery of a Contrary Exercise Advice cancel[5] when the Exchange announces a modified time for the close of trading in equity options.[6] Currently, the delivery of a Contrary Exercise Advice or Advice cancel is required on the business day preceding the expiration date for the expiring option. Instead of a final cut-off time of 5:30 p.m., the Exchange proposes to allow a time period of 1 hour and 28 minutes after the announced close of trading for accounts of members and member firms to make a final decision whether to exercise or not exercise an expiring option and to deliver the Contrary Exercise Advice or Advice cancel. In addition, the Exchange proposes that customers be able to make a final decision on whether to exercise or not exercise an expiring option within 1 hour and 28 minutes following the time announced for the close of trading rather than an established time of 5:30 p.m., and that members and member firms acting as an agent for customer accounts have a time period of 2 hours and 28 minutes after the close of trading instead of the current 6:30 p.m. to deliver a Contrary Exercise Advice or Advice cancel to the Exchange. The Exchange believes that the extension of time to deliver a Contrary Exercise Advice for customer accounts will benefit customers and make the process easier to administer. Moreover, the Amex feels that the proposed time periods for the delivery of a Contrary Exercise Advice or Advice cancel to the Exchange rather than a designated time when there is a modified time for the close of trading for expiring options will permit customers and member firms to better deliver their intentions whether to exercise the option. To address unusual circumstances, the proposed rule would give the Exchange the ability to establish different exercise cut-off times on a case-by-case basis.

2. Statutory Basis

The Exchange believes that the proposed rule change, as amended, is consistent with section 6(b) of the Act[7] in general, and furthers the objectives of section 6(b)(5) of the Act[8] in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of change, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change, as amended, 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 Exchange 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, as amended, 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 20549–0609. 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 Amex. All submissions should refer to File No. SR–Amex–2001–92 and should be submitted by [insert date 21 days from date of publication].

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–946 Filed 1–14–02; 8:45 am]

BILLING CODE 8010–01–M

[4] Id.

[5] An Advice cancel refers to a cancellation of the Contrary Exercise Advice. Telephone conversation between Jeffrey P. Burns, Assistant General Counsel, Amex, and Jennifer L. Colihan, Special Counsel and Cyndi N. Nguyen, Attorney, Commission on December 21, 2001.

[6] *See* Amendment No. 1, *supra* note 3.

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45248; File No. SR–GSCC–2001–13]

Self-Regulatory Organizations; Government Securities Clearing Corporation; Notice of Filing of a Proposed Rule Change Relating to a New Governance Structure

January 7, 2001.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934(''Act''),[1] notice is hereby given that on October 11, 2001, the Government Securities Clearing Corporation (''GSCC'') 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 GSCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change will amend GSCC's rules to reflect GSCC's new ownership and governance structure that will result from the integration of GSCC, MBS Clearing Corporation (''MBSCC''), and Emerging Markets Clearing Corporation (''EMCC'') with The Depository Trust & Clearing Corporation (''DTCC'') whereby GSCC, MBSCC, and EMCC will become operating subsidiaries of DTCC.[2]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, GSCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in item IV below. GSCC has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.[3]

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

GSCC proposes to amend its rules to reflect its new ownership and governance structure that will result from the integration of GSCC, MBSCC, and EMCC with DTCC. In order for GSCC to maintain orderly and efficient operations, GSCC will implement a three-tiered governance structure. The first tier will be the Board of Directors of GSCC that will be identical in composition to the Board of Directors of MBSCC, EMCC, DTC, NSCC, and DTCC. GSCC's business will be managed under the direction of the GSCC Board, which will set the basic policy direction for GSCC. The second tier will consist of committees of or established by the DTCC Board, including a Fixed Income Operations and Planning Committee to be established by the DTCC Board, and committees of or established by the GSCC Board, including GSCC/MBSCC Membership and Risk Management Committee to be established by the GSCC Board and the MBSCC Board acting jointly. The third tier will be GSCC management, which will oversee the daily routine operations of GSCC.

The proposed changes to GSCC's rules will reassign various management responsibilities to the GSCC Board, the new committees, or GSCC management in light of the revised management structure summarized above. GSCC believes that these proposed rule changes will permit the GSCC Board, the various DTCC or GSCC committees, or GSCC management to appropriately handle functions so that GSCC may continue to maintain orderly and efficient operations.

GSCC believes that the proposed rule change is consistent with section 17A of the Act and the rules and regulations thereunder because it will ensure that GSCC's operations will continue to be conducted in an efficient and orderly manner once it is integrated into the DTCC organization.

B. Self-Regulatory Organization's Statement on Burden on Competition

GSCC does not believe that the proposed rule change will have an impact or impose a burden on competition. GSCC notes that it, as well as each of the other operating subsidiaries, is a utility created to serve members of the securities industry by providing certain complementary services that are ancillary to the businesses in which industry members compete with one another.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments relating to the proposed rule change have not yet been solicited or received. GSCC members will be notified of the rule change filing and comments will be solicited by an Important Notice. GSCC will notify the Commission of any written comments it receives.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which 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, U.S. Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. 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 in Washington, DC Copies of such filing will also be available for inspection and copying at GSCC's principal office. All submissions should refer to File No. SR–GSCC–2001–13 and should be submitted by January 30, 2002.

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[1] 15 U.S.C. 78s(b)(1).

[2] For explanations of the mechanics of these integration plans, refer to Securities Exchange Act Release Nos. 44989 (Oct. 25, 2001), 66 FR 55220 (Nov. 1, 2001); 44988 (Oct. 25, 2001), 66 FR 55222 (Nov. 1, 2001); and 44987 (Oct. 25, 2001), 66 FR 55218 (Nov. 1, 2001). The Depository Trust Company (''DTC'') and National Securities Clearing Corporation (''NSCC'') are currently operating subsidiaries of DTCC.

[3] The Commission has modified the text of the summaries prepared by GSCC.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[4]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–944 Filed 1–14–02; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45247; File No. SR–MBSCC–2001–05]

Self-Regulatory Organizations; MBS Clearing Corporation; Notice of Filing of a Proposed Rule Change Relating to a New Governance Structure

January 7, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on October 11, 2001, the MBS Securities Clearing Corporation (''MBSCC'') 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 MBSCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change will amend MBSCC's rules to reflect MBSCC's new ownership and governance structure that will result from the integration of MBSCC, Government Securities Clearing Corporation (''GSCC''), and Emerging Markets Clearing Corporation (''EMCC'') with The Depository Trust & Clearing Corporation (''DTCC'') whereby MBSCC, GSCC, and EMCC will become operating subsidiaries of DTCC.[2]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, MBSCC 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. MBSCC has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.[3]

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

MBSCC proposes to amend its rules to reflect its new ownership and governance structure that will result from the integration of MBSCC, GSCC, and EMCC with DTCC. In order for MBSCC to maintain orderly and efficient operations, MBSCC will implement a three-tiered governance structure. The first tier will be the Board of Directors of MBSCC that will be identical in composition to the Board of Directors of GSCC, EMCC, DTC, NSCC, and DTCC. MBSCC's business will be managed under the direction of the MBSCC Board, which will set the basic policy direction for MBSCC. The second tier will consist of committees of or established by the DTCC Board, including a Fixed Income Operations and Planning Committee to be established by the DTCC Board, and committees of or established by the MBSCC Board, including a MBSCC/GSCC Membership and Risk Management Committee to be established by the MBSCC Board and the GSCC Board acting jointly. The third tier will be MBSCC management, which will oversee the daily routine operations of MBSCC.

The proposed changes to MBSCC's rules will reassign various management responsibilities to the MBSCC Board, the new committees, or MBSCC management in light of the revised management structure summarized above. MBSCC believes that these proposed rule changes will permit the MBSCC Board, the various DTCC or MBSCC committees, or MBSCC management to appropriately handle functions so that MBSCC may continue to maintain orderly and efficient operations.

MBSCC believes that the proposed rule change is consistent with section 17A of the Act and the rules and regulations thereunder because it will ensure that MBSCC's operations will continue to be conducted in an efficient orderly manner once it is integrated into the DTCC organization.

B. Self-Regulatory Organization's Statement on Burden on Competition

MBSCC does not believe that the proposed rule change will have an impact or impose a burden on competition. MBSCC notes that it, as well as each of the other operating subsidiaries, is a utility created to serve members of the securities industry by providing certain complementary services that are ancillary to the business in which industry members compete with one another.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments relating to the proposed rule change have not yet been solicited or received. MBSCC will notify the Commission of any written comments it receives.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which 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, U.S. Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. 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 in Washington, DC. Copies of such filing will also be available for

[4] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] For explanations of the mechanics of these integration plans, refer to Securities Exchange Act Release Nos. 44989 (Oct. 25, 2001), 66 FR 55220 (Nov. 1, 2001); 44988 (Oct. 25, 2001), 66 FR 55222 (Nov. 1, 2001); and 44987 (Oct. 25, 2001), 66 FR 55218 (Nov. 1, 2001). The Depository Trust Company (''DTC'') and National Securities Clearing Corporation (''NSCC'') are currently operating subsidiaries of DTCC.

[3] The Commission has modified the text of the summaries prepared by MBSCC.

inspection and copying at MBSCC's principal office. All submissions should refer to File No. SR–MBSCC–2001–05 and should be submitted by January 30, 2002.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[4]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–945 Filed 1–14–02; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3364, Amdt. #3]

State of New York

In accordance with information received from the Federal Emergency Management Agency, the above numbered declaration is hereby amended to extend the deadline for filing applications for physical damages as a result of this disaster to March 11, 2002.

All other information remains the same, i.e., the deadline for filing applications for economic injury is June 11, 2002.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: January 4, 2002.

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. 02–933 Filed 1–14–02; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Economic Injury Disaster Loans as a Result of the September 11, 2001 Terrorist Attacks

ACTION: Notice of extension of application deadline.

FOR FURTHER INFORMATION CONTACT: George Camp, Supervisory Program Analyst, Office of Disaster Assistance, 202–205–6734.

SUPPLEMENTARY INFORMATION: In response to the President's major disaster declarations with respect to the World Trade Center and the Pentagon and the widespread economic impact caused by the terrorist attacks and the related Federal actions taken directly thereafter, the SBA revised its disaster loan regulations on October 22, 2001. Under the revised regulations, SBA can make economic injury loans to eligible small business concerns outside the declared disaster areas that suffered substantial economic injury as a direct result of the destruction of the World Trade Center or the damage to the Pentagon on September 11, 2001, or as a direct result of any related Federal action taken between September 11, 2001 and October 22, 2001. As provided in 13 CFR 123.605, SBA extends the application deadline for good cause. A large number of applications were issued and have not been returned to the SBA. With this Notice, the SBA extends the filing deadline for economic injury disaster loans under this disaster program from January 22, 2002 to April 22, 2002.

Applications for economic injury disaster loans may be obtained and filed at the SBA disaster office servicing the applicant's state.

The disaster numbers assigned are:

Area 1

Connecticut 9TCT, District of Columbia 9TDC, Delaware 9TDE, Maryland 9TMD, Maine 9TME, Massachusetts 9TMA, New Hampshire 9TNH, New Jersey 9TNJ, New York 9TNY, Pennsylvania 9TPA, Rhode Island 9TRI, Virginia 9TVA, Vermont 9TVT, West Virginia 9TWV, Puerto Rico 9TPR, Virgin Islands 9TVI

Area 2

Alabama 9TAL, Florida 9TFL, Georgia 9TGA, Illinois 9TIL, Indiana 9TIN, Kentucky 9TKY, Michigan 9TMI, Minnesota 9TMN, Mississippi 9TMS, North Carolina 9TNC, Ohio 9TOH, South Carolina 9TSC, Tennessee 9TTN, Wisconsin 9TWI

Area 3

Arkansas 9TAR, Colorado 9TCO, Iowa 9TIA, Kansas 9TKS, Louisiana 9TLA, Missouri 9TMO, Montana 9TMT, North Dakota 9TND, Nebraska 9TNE, New Mexico 9TNM, South Dakota 9TSD, Oklahoma 9TOK, Texas 9TTX, Utah 9TUT, Wyoming 9TWY

Area 4

Alaska 9TAK, Arizona 9TAZ, California 9TCA, Hawaii 9THI, Idaho 9TID, Nevada 9TNV, Oregon 9TOR, Washington 9TWA, American Samoa 9TAS, Federated States of Micronesia 9TFM, Guam 9TGU, Republic of the Marshall Islands 9TMH, Commonwealth of Northern Mariana Islands 9TMP

The interest rate for eligible small businesses is 4 percent.

Authority: 13 CFR part 123, subpart G.

Dated: January 9, 2002.

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. 02–934 Filed 1–14–02; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Public Federal Regulatory Enforcement Fairness Hearing; Region IV Regulatory Fairness Board

The Small Business Administration Region IV Regulatory Fairness Board and the SBA Office of the National Ombudsman, will hold a Public Hearing on Monday, January 28, 2002 at 8:30 AM at the Radisson Plaza Hotel—Downtown Orlando, 60 South Ivanhoe Boulevard, Orlando, FL 32804, Phone (407) 425–4455, Fax (407) 313–6043, to receive comments and testimony from small business owners, small government entities, and small non-profit organizations concerning the regulatory enforcement and compliance actions taken by federal agencies.

Anyone wishing to attend or to make a presentation must contact Ms. Lola Kress in writing or by fax, in order to be put on the agenda. Lola Kress, SBA North Florida District Office, 7825 Baymeadows Way, Suite 100–B, Jacksonville, FL 32256–7504, Phone (904) 443–1933, fax (202) 481–4188, E-mail: *Lola.Kress@sba.gov.*

For more information see our web site at *http://www.sba.gov/ombudsman/dsp_hearings.html.*

Steve Tupper,

Committee Management Officer.

[FR Doc. 02–932 Filed 1–14–02; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Region V—Wisconsin District Advisory Council; Public Meeting

The Small Business Administration Region V Wisconsin District Advisory Council, located in the geographical area of Milwaukee, Wisconsin, will hold a public meeting at 12:00 a.m. central time on Wednesday, January 16, 2002, at the Metro Milwaukee Area Chamber 756 North Milwaukee Street Fourth floor, Milwaukee Wisconsin, 53202 to discuss such matters as may be presented by members, staff of the Small Business Administration, or others present.

Anyone wishing to make an oral presentation to the Board must contact Yolanda Staples. Lassiter Economic Development Assistant, in writing by letter or fax no later than January 14, 2002, in order to be put on the agenda. Yolanda Staples Lassiter, Economic Development Assistant, Small Business Administration 310 West Wisconsin Ave, Suite 400, Milwaukee, Wisconsin

[4] 17 CFR 200.30–3(a)(12).

53203 (414) 297–1090 phone (414) 297–3928 fax.

Steve Tupper,

Committee Management Officer.

[FR Doc. 02–931 Filed 1–14–02; 8:45 am]

BILLING CODE 8025–01–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Technical Corrections to the Harmonized Tariff Schedule of the United States

AGENCY: Office of the United States Trade Representative.

ACTION: Notice.

SUMMARY: The United States Trade Representative (USTR) is making technical corrections to the Harmonized Tariff Schedule of the United States (HTS) as set forth in the annex to this notice, pursuant to authority delegated to the USTR in Presidential Proclamation 6969 of January 27, 1997 (62 FR 4415). These modifications correct several inadvertent errors and omissions in Presidential Proclamation 7515 of December 18, 2001 (66 FR 66,549), so that the intended tariff treatment is provided.

EFFECTIVE DATE: January 10, 2002.

FOR FURTHER INFORMATION CONTACT: Paul Moore, Director for Market Access, Office of the United States Trade Representative, (202) 395–5097, or David W. Oliver, Associate General Counsel, (202) 395–3581.

SUPPLEMENTARY INFORMATION: Every five years the World Customs Organization (WCO), to which the United States belongs, reviews and updates the tariff nomenclature annexed to the International Convention on the Harmonized Commodity and Coding System (HS Convention) that member countries apply. Proclamation 7515 modifies the HTS, which incorporates the HS Convention tariff nomenclature, to conform it to the most recent changes to the HS Convention tariff nomenclature that the WCO has adopted. The annex to this notice makes technical corrections to the HTS to remedy several technical errors and omissions introduced through the annexes to Proclamation 7515, so that the intended tariff treatment is provided. In particular, the annex to this notice corrects (1) errors regarding the eligibility of products classified in certain subheadings for duty-free treatment under the Generalized System of Preferences program, (2) the omission of a tariff subheading that implements a change in the HS Convention annex, and (3) an omission in the description of a tariff subheading that implements a change in the HS Convention annex.

Proclamation 6969 authorized the USTR to exercise the authority provided to the President under section 604 of the Trade Act of 1974 (19 U.S.C. 2483) to embody rectifications, technical or conforming changes, or similar modifications in the HTS. Under the authority vested in the USTR by Proclamation 6969, the rectifications, technical and conforming changes, and similar modifications set forth in the annex to this notice shall be embodied in the HTS with respect to goods entered, or withdrawn from warehouse for consumption, on or after January 10, 2002.

Robert B. Zoellick,

United States Trade Representative.

Annex

The HTS is modified as set forth in this annex, with bracketed matter included to assist in the understanding of the modifications. The following provisions supersede matter now in the HTS. The new subheading and superior text thereto being inserted by this notice are set forth in columnar format, and material in such columns is inserted in the columns of the HTS designated ''Heading/Subheading'', ''Article Description'', ''Rates of Duty 1 General'', ''Rates of Duty 1 Special'', and ''Rates of Duty 2'', respectively.

Effective with respect to articles entered, or withdrawn from warehouse for consumption, on or after January 10, 2002, the HTS is modified as follows:

(1). General note 4(d) is modified by:

(a). deleting the following subheadings and the country set out opposite such subheading:

1403.00.94 India—4107.19.40 India

4106.21.10 India; Pakistan—4107.99.40 India

(b). deleting the country set opposite the following subheadings:

4103.10.30 India—4107.99.60 India

4106.21.90 India—4113.10.30 India

4106.22.00 India—4113.10.60 India

4107.19.60 India—

(2). The article description of subheading 0305.20 is modified to read:

''Livers and roes of fish, dried, smoked, salted or in brine:''

(3). The following subheading is inserted in numerical sequence:

:[Residual products of the chemical or allied...] : : :

''3825.30.00: Clinical waste.....: Free:: Free''

(4). For subheadings 1403.00.94 and 4106.21.10, the Rates of Duty 1–Special subcolumn is modified by deleting the symbol ''A*'' and inserting an ''A'' in lieu thereof.

[FR Doc. 02–948 Filed 1–14–02; 8:45 am]

BILLING CODE 3190–01–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number: MARAD–2002–11298]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel J&B I.

SUMMARY: As authorized by Pub. L. 105–383, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a description of the proposed service, is listed below. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines that in accordance with Pub. L. 105–383 and MARAD's regulations at 46 CFR part 388 (65 FR 6905; February 11, 2000) that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels, a waiver will not be granted.

DATES: Submit comments on or before February 14, 2002.

ADDRESSES: Comments should refer to docket number MARAD–2002–11298. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001. You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit/*. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Kathleen Dunn, U.S. Department of Transportation, Maritime Administration, MAR–830 Room 7201,

400 Seventh Street, SW., Washington, DC 20590. Telephone 202–366–2307.

SUPPLEMENTARY INFORMATION: Title V of Pub. L. 105–383 provides authority to the Secretary of Transportation to administratively waive the U.S.-build requirements of the Jones Act, and other statutes, for small commercial passenger vessels (no more than 12 passengers). This authority has been delegated to the Maritime Administration per 49 CFR 1.66, Delegations to the Maritime Administrator, as amended. By this notice, MARAD is publishing information on a vessel for which a request for a U.S.-build waiver has been received, and for which MARAD requests comments from interested parties. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD'S regulations at 46 CFR part 388.

Vessel Proposed for Waiver of the U.S.-Build Requirement

(1) Name of vessel and owner for which waiver is requested. *Name of vessel:* J&B I. *Owner:* Fredrick Gatchell.

(2) Size, capacity and tonnage of vessel. *According to the applicant:* ''The vessel measures 46.6′ in length × 15′ beam. Gross tonnage is 28.84.''

(3) Intended use for vessel, including geographic region of intended operation and trade. *According to the applicant:* ''The intended use of vessel is to carry passengers on sailing tours (Jacksonville, Fla. to Ft. Lauderdale, Fla. Not more than 5 miles coastwise.''

(4) Date and Place of construction and (if applicable) rebuilding. *Date of construction:* 1986. *Place of construction:* Trinity, Newfoundland.

(5) A statement on the impact this waiver will have on other commercial passenger vessel operators. *According to the applicant*: ''This waiver will have no impact on other commercial passenger operators as there are no other passenger day or evening tour sail boats in the area.''

(6) A statement on the impact this waiver will have on U.S. shipyards. According to the applicant: ''This waiver will have no impact on any U.S. Shipyards.''

Dated: January 10, 2002.

By Order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 02–940 Filed 1–14–02; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number: MARAD–2002–11299]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel SHIBUMI.

SUMMARY: As authorized by Pub. L. 105–383, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a description of the proposed service, is listed below. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines that in accordance with Pub. L. 105–383 and MARAD's regulations at 46 CFR part 388 (65 FR 6905; February 11, 2000) that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels, a waiver will not be granted.

DATES: Submit comments on or before February 14, 2002.

ADDRESSES: Comments should refer to docket number MARAD–2002–11299. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001. You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit/*. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Kathleen Dunn, U.S. Department of Transportation, Maritime Administration, MAR–832 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone 202–366–2307.

SUPPLEMENTARY INFORMATION: Title V of Pub. L. 105–383 provides authority to the Secretary of Transportation to administratively waive the U.S.-build requirements of the Jones Act, and other statutes, for small commercial passenger vessels (no more than 12 passengers). This authority has been delegated to the Maritime Administration per 49 CFR 1.66, Delegations to the Maritime Administrator, as amended. By this notice, MARAD is publishing information on a vessel for which a request for a U.S.-build waiver has been received, and for which MARAD requests comments from interested parties. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD'S regulations at 46 CFR part 388.

Vessel Proposed for Waiver of the U.S.-Build Requirement

(1) Name of vessel and owner for which waiver is requested. *Name of vessel:* SHIBUMI. *Owner:* Christian J. Lambertsen and Jacqueline J. Lambertsen.

(2) Size, capacity and tonnage of vessel. *According to the applicant:* ''65 foot pilot house ketch. 15 foot beam, 7 foot draft. Pleasure craft. 50 gross tons.''

(3) Intended use for vessel, including geographic region of intended operation and trade. *According to the applicant:* ''Small group charter for training in offshore large vessel handling and cruising.'' ''Near coastal waters of the East coast of the United States from Maine to Key West.''

(4) Date and Place of construction and (if applicable) rebuilding. *Date of construction:* 1973. *Place of construction:* Auckland, New Zealand.

(5) A statement on the impact this waiver will have on other commercial passenger vessel operators. *According to the applicant:* ''I know of no other local group offering the same services covering the same region.''

(6) A statement on the impact this waiver will have on U.S. shipyards. According to the applicant: ''None.''

Dated: January 10, 2002.

By Order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 02–939 Filed 1–14–02; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34147]

Paula J. Mudge-Gibson and Don L. Gibson—Continuance in Control Exemption—Chicago Heights Switching Company

Paula J. Mudge-Gibson and Don L. Gibson, noncarrier individuals (applicants), have filed a verified notice of exemption to continue in control of Chicago Heights Switching Company (CHSC), upon CHSC's becoming a carrier.

This transaction is related to a concurrently filed verified notice of exemption in STB Finance Docket No. 34146, *Chicago Heights Switching Company—Operation Exemption—Bulkmatic Railroad Corporation,* wherein CHSC seeks to operate a line of railroad subleased by Bulkmatic Railroad Corporation.[1]

The transaction was expected to be consummated on or shortly after December 28, 2001, the effective date of the exemption (7 days after the notice of exemption was filed).

Applicants own and control the Central Illinois Railroad Company (CIRY), which operates in the State of Illinois. Applicants state that: (i) The properties of CIRY and CHSC will not connect with each other or any railroads in their corporate family; (ii) the continuance in control is not part of a series of anticipated transactions that would connect the rail lines of CIRY and CHSC with each other or any railroads in their corporate family; and (iii) the transaction does not involve a Class I carrier. Therefore, the transaction is exempt from the prior approval requirements of 49 U.S.C. 11323. *See* 49 CFR 1180.2(d)(2).

Under 49 U.S.C. 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. Section 11326(c), however, does not provide for labor protection for transactions under sections 11324 and 11325 that involve only Class III rail carriers. Because this transaction involves Class III rail carriers only, the Board, under the statute, may not impose labor protective conditions for this transaction.

If the notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34147, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Thomas F. McFarland, Thomas F. McFarland, P.C., 208 South LaSalle Street, Suite 1890, Chicago, IL 60604–1194.

Board decisions and notices are available on our website at *www.stb.dot.gov.*

Decided: January 4, 2002.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 02–764 Filed 1–14–02; 8:45 am]

BILLING CODE 4915–00–P

[1] *See Bulkmatic Railroad Corporation-Acquisition Exemption-Bulkmatic Transport Company,* STB Finance Docket No. 34145 (STB served Jan. 15, 2002).

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34145]

Bulkmatic Railroad Corporation—Acquisition Exemption—Bulkmatic Transport Company

Bulkmatic Railroad Corporation, a noncarrier, has filed a verified notice of exemption under 49 CFR 1150.31 to acquire by sublease from Bulkmatic Transport Company approximately 3.9 miles of railroad right-of-way and trackage known as Bulkmatic Distribution Center, at Chicago Heights, IL (line).[1]

The transaction was scheduled to be consummated on January 1, 2002.[2]

If the notice contains false or misleading information, the exemption is void *ab initio.* Petitions to reopen the proceeding to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34145, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on David C. Dillon, Esq., Dillon & Nash, 111 West Washington Street, Suite 719, Chicago, IL 60602.

Board decisions and notices are available on our website at *www.stb.dot.gov.*

Decided: January 4, 2002.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 02–763 Filed 1–14–02; 8:45 am]

BILLING CODE 4915–00–P

[1] BRC has subleased the line from Bulkmatic Transport Company. *See Bulkmatic Railroad Corporation—Acquisition Exemption—Bulkmatic Transport Company,* STB Finance Docket No. 34145 (STB served Jan. 15, 2002).

[2] On December 26, 2001, a petition to stay the effective dates of the exemptions in both STB Finance Docket No. 34146 and STB Finance Docket No. 34145 was filed by Joseph C. Szabo, for and on behalf of the United Transportation Union-Illinois Legislative Board. By decision served December 27, 2001, the petition for stay was denied.

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34146]

Chicago Heights Switching Company—Operation Exemption—Bulkmatic Railroad Corporation

Chicago Heights Switching Company (CHSC), a noncarrier, has filed a verified notice of exemption under 49 CFR 1150.31 to operate, pursuant to an operating agreement with Bulkmatic Railroad Corporation (BRC), approximately 3.9 miles of railroad right-of-way and trackage known as Bulkmatic Distribution Center, at Chicago Heights, IL (line).[1]

The transaction was scheduled to be consummated on January 1, 2002.[2] This transaction is related to STB Finance Docket No. 34147, *Paula J. Mudge-Gibson and Don L. Gibson—Continuance in Control Exemption—Chicago Heights Switching Company,* wherein Paula J. Mudge-Gibson and Don L. Gibson have filed a verified notice of exemption to continue in control of CHSC upon its becoming a Class III rail carrier.

If the notice contains false or misleading information, the exemption is void *ab initio.* Petitions to reopen the proceeding to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to

[1] Chicago Heights Switching Company will be the operator of the line. *See Chicago Heights Switching Company-Operation Exemption-Bulkmatic Railroad Corporation,* STB Finance Docket No. 34146 (STB served Jan. 15, 2002).

[2] On December 26, 2001, a petition to stay the effective dates of the exemptions in both STB Finance Docket No. 34146 and STB Finance Docket No. 34145 was filed by Joseph C. Szabo, for and on behalf of the United Transportation Union-Illinois Legislative Board. By decision served December 27, 2001, the petition for stay was denied.

revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34146, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Thomas F. McFarland, Esq., Thomas F. McFarland, P.C., 208 South LaSalle Street, Suite 1890, Chicago, IL 60604–1194.

Board decisions and notices are available on our website at *www.stb.dot.gov.*

Decided: January 4, 2002.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 02–762 Filed 1–14–02; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE TREASURY

Departmental Offices/Federal Consulting Group; Proposed Collection; Comment Request

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 proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Federal Consulting Group within the Department of the Treasury is soliciting comments concerning the Government Web Site Customer Satisfaction Survey.

DATES: Written comments should be received on or before March 18, 2002 to be assured of consideration.

ADDRESSESES: Direct all written comments to the Federal Consulting Group, Attention: Bernard Lubran, 1700 G Street, NW., Washington, DC 20552, (202) 906–5642, *bernie.lubran@ots.treas.gov*.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to the Federal Consulting Group, Attention: Bernard Lubran, 1700 G Street, NW., Washington, DC 20552, (202) 906–5642, *bernie.lubran@ots.treas.gov.*

SUPPLEMENTARY INFORMATION:

Title: Government Web Site Customer Satisfaction Survey.

OMB Number: New.

Abstract: The following summary of the proposed new information collection activity is designed to establish a means to consistently measure and compare customer satisfaction with federal government agency web sites within the Executive Branch. The Federal Consulting Group of the Department of the Treasury has partnered with ForeSeeResults, a joint venture between Compuware Corporation and the CFI Group, to offer this survey instrument to federal government agencies (the ''partnership'').

ForeSeeResults is a leader in customer satisfaction and customer experience management on the web. It utilizes the methodology of the most respected, credible, and well-known measure of customer satisfaction in the country, the American Customer Satisfaction Index (ACSI). This methodology utilizes an econometric model and provides for a very precise measurement of customer satisfaction of web site users, identifies specific areas for improvement, and determines the impact of those improvements on customer satisfaction and future customer behaviors. The ACSI is a cross-industry, cross-agency methodology for obtaining comparable measures of customer satisfaction. Along with other economic objectives, the quality of output of goods and services is a part of measuring living standards. The ACSI's ultimate purpose is to help improve the quality of goods and services available to the American people.

The Government Web Site Customer Satisfaction surveys will be completed subject to the Privacy Act 1074, Public Law 93–579, December 31,1974 (5 U.S.C. 522a). The agency information collection will be used solely for the purpose of the survey. The partnership will not be authorized to release any agency information upon completion of the survey without first obtaining permission from the Federal Consulting Group and the participating agency. In no case shall any new system of records containing privacy information be developed by the Federal Consulting Group, participating agencies, or the contractor collecting the data.

This survey asks no questions of a sensitive nature, such as sexual behavior and attitudes, religious beliefs, and other matters that are commonly considered private.

Current Actions: Newly proposed collection of information.

Type of Review: New collection.

Affected Public: Individuals or households/Business or other for-profit/Not-for-profit institutions/Farms/Federal Government/State, Local or Tribal Government.

Estimated Number of Respondents: Usage by federal agencies of the Government Web Site Customer Satisfaction Survey is expected to vary as new agency web sites are added or deleted. However, projected estimates for fiscal years 2002 through 2004 are as follows:

Fiscal Year 2002—10 Customer Satisfaction Surveys

Respondents: 50,000; *annual responses:* 50,000; *average minutes per response:* 2.0; *burden hours:* 1,666.

Fiscal Year 2003—20 Customer Satisfaction Surveys

Respondents: 100,000; *annual responses:* 100,000; *average minutes per response:* 2.0; *burden hours:* 3,333

Fiscal Year 2004—30 Customer Satisfaction Surveys

Respondents: 150,000; *annual responses:* 150,000; *average minutes per response:* 2.0; *burden hours:* 5,000

Requst 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 shall have 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.

Dated: January 8, 2002.

Bernard A. Lubran,

Project Manager, Federal Consulting Group.

[FR Doc. 02–906 Filed 1–14–02; 8:45 am]

BILLING CODE 4810–25–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

January 8, 2002.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before February 14, 2002 to be assured of consideration.

Financial Management Service (FMS)

OMB Number: 1510–0061.

Form Number: None.

Type of Review: Extension.

Title: Cash Management Improvement Act (CMIA) Annual Report and Direct Cost Claims.

Description: States and Territories must report interest owed to and from the Federal government for major Federal assistance programs on an annual basis. The data is used by Treasury and other Federal agencies to verify State and Federal interest claims to assess State and Federal cash management practices and to exchange amounts of interest owed.

Respondents: State, Local or Tribal Government, Federal Government.

Estimated Number of Respondents/Recordkeepers: 56.

Estimated Burden Hours Per Respondent/Recordkeeper: 350 hours.

Frequency of Response: Annually.

Estimated Total Reporting Burden: 19,600 hours.

Clearance Officer: Juanita Holder, Financial Management Service, 3700 East West Highway, Room 135, PGP II, Hyattsville, MD 20782.

OMB Reviewer: Alexander T. Hunt, (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

Mary A. Able,

Departmental Reports, Management Officer.

[FR Doc. 02–947 Filed 1–14–02; 8:45 am]

BILLING CODE 4810–35–P

DEPARTMENT OF THE TREASURY

Fiscal Service

Surety Companies Acceptable on Federal Bonds: Odyssey America Reinsurance Corporation

AGENCY: Financial Management Service, Fiscal Service, Department of the Treasury.

ACTION: Notice.

SUMMARY: This is Supplement No. 16 to the Treasury Department Circular 570; 2001 Revision, published July 2, 2001, at 66 FR 35024.

FOR FURTHER INFORMATION CONTACT: Surety Bond Branch at (202) 874–6765.

SUPPLEMENTARY INFORMATION: A Certificate of Authority as an acceptable surety on Federal bonds is hereby issued to the following Company under 31 U.S.C. 9304 to 9308. Federal bond-approving officers should annotate their reference copies of the Treasury Circular 570, 2001 Revision, on page 35063 to reflect this addition:

Odyssey America Reinsurance Corporation. *Business Address:* 300 First Stamford Place, Stamford, Connecticut, 06902. *Phone:* (203) 977–8000. *Underwriting Limitation b/:* $47,483,000.

Certificates of Authority expire on June 30 each year, unless revoked prior to that date. The Certificates are subject to subsequent annual renewal as long as the companies remain qualified (31 CFR part 223). A list of qualified companies is published annually as of July 1 in Treasury Department Circular 570, with details as to underwriting limitations, areas in which licensed to transact surety business and other information.

The Circular may be viewed and downloaded through the Internet at *http://www.fms.treas.gov/c570/index.html.* A hard copy may be purchased from the Government Printing Office (GPO) Subscription Service, Washington, DC, Telephone (202) 512–1800. When ordering the Circular from GPO, use the following stock number: 769–004–04067–1.

Questions concerning this Notice may be directed to the U.S. Department of the Treasury, Financial Management Service, Financial Accounting and Services Division, Surety Bond Branch, 3700 East-West Highway, Room 6A04, Hyattsville, MD 20782.

Dated: December 31, 2001.

Wanda J. Rogers,

Director, Financial Accounting and Services Division, Financial Management Service.

[FR Doc. 02–969 Filed 1–14–02; 8:45 am]

BILLING CODE 4810–35–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8609

AGENCY: Internal Revenue Service (IRS), 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 proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8609, Low-Income Housing Credit Allocation Certification and Schedule A (Form 8609), Annual Statement.

DATES: Written comments should be received on or before March 18, 2002, to be assured of consideration.

ADDRESSES: Direct all written comments to George Freeland, Internal Revenue Service, room 5577, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, room 5242, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Low-Income Housing Credit Allocation Certification and Schedule A (Form 8609), Annual Statement.

OMB Number: 1545–0988.

Form Number: Form 8609 and Schedule A (Form 8609).

Abstract: Owners of residential low-income rental buildings may claim a low-income housing credit for each qualified building over a 10-year credit period. Form 8609 is used to obtain a housing credit allocation from the housing credit agency. The form, along with Schedule A, is used by the owner to certify necessary information required by the law.

Current Actions: There are no changes being made to Form 8609 or Schedule A at this time.

Type of Review: Extension of a current OMB approval.

Affected Public: Business or other for-profit organizations, individuals, and state, local or tribal governments.

Estimated Number of Respondents: 120,000.

Estimated Time Per Respondent: 23 hours, 5 minutes.

Estimated Total Annual Burden Hours: 2,770,200.

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 a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

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 shall have 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: January 9, 2002.

George Freeland,

IRS Reports Clearance Officer.

[FR Doc. 02–986 Filed 1–14–02; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the New York Metro Citizen Advocacy Panel

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the New York Metro Citizen Advocacy Panel will be held in Brooklyn, New York.

DATES: The meeting will be held Wednesday February 27, 2002.

FOR FURTHER INFORMATION CONTACT: Eileen Cain at 1–888–912–1227 or 718–488–3555.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an operational meeting of the Citizen Advocacy Panel will be held Wednesday February 27, 2002, 6:00 p.m. to 9:20 p.m. at the Internal Revenue Service, 625 Fulton Street, Brooklyn, NY 11201.

For more information or to confirm attendance, notification of intent to attend the meeting must be made with Eileen Cain. Mrs. Cain can be reached at 1–888–912–1227 or 718–488–3555. The public is invited to make oral comments from 9:00 p.m. to 9:20 p.m. on Wednesday February 27, 2002.

Individual comments will be limited to 5 minutes. If you would like to have the CAP consider a written statement, please call 1–888–912–1227 or 718–488–3555, or write Eileen Cain, CAP Office, P.O. Box R, Brooklyn, NY, 11201. The Agenda will include the following: various IRS issues. Note: Last minute changes to the agenda are possible and could prevent effective advance notice.

Dated: January 9, 2002.

Cathy VanHorn,

Director, CAP, Communication and Liaison.

[FR Doc. 02–987 Filed 1–14–02; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the New York Metro Citizen Advocacy Panel

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the New York Metro Citizen Advocacy Panel will be held in Brooklyn, NY.

DATES: The meeting will be held Wednesday March 20, 2002.

FOR FURTHER INFORMATION CONTACT: Eileen Cain at 1–888–912–1227 or 718–488–3555.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an operational meeting of the Citizen Advocacy Panel will be held Wednesday March 20, 2002, 6:00 p.m. to 9:20 p.m. at the Internal Revenue Service, 625 Fulton Street, Brooklyn, NY 11201.

For more information or to confirm attendance, notification of intent to attend the meeting must be made with Eileen Cain. Mrs. Cain can be reached at 1–888–912–1227 or 718–488–3555. The public is invited to make oral comments from 9:00 p.m. to 9:20 p.m. on Wednesday March 20, 2002.

Individual comments will be limited to 5 minutes. If you would like to have the CAP consider a written statement, please call 1–888–912–1227 or 718–488–3555, or write Eileen Cain, CAP Office, P.O. Box R, Brooklyn, NY, 11201. The Agenda will include the following: various IRS issues. **Note:** Last minute changes to the agenda are possible and could prevent effective advance notice.

Dated: January 9, 2002.

Cathy VanHorn,

Director, CAP, Communication and Liaison.

[FR Doc. 02–988 Filed 1–14–02; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0606]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Health Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Health Administration (VHA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments on the information to authorize VA to bill ''reasonable charges'' instead of ''reasonable costs'' for medical care or services provided or furnished to a veteran for a non-service-connected condition.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before March 18, 2002.

ADDRESSES: Submit written comments on the collection of information to Ann Bickoff, Veterans Health Administration (193B1), Department of Veterans Affairs,

810 Vermont Avenue, NW., Washington, DC 20420 or e-mail: *ann.bickoff@hq.med.va.gov.* Please refer to ''OMB Control No. 2900–0606'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Ann Bickoff at (202) 273–8310.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C., 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VHA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VHA's functions, including whether the information will have practical utility; (2) the accuracy of VHA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Regulation for Submission of Evidence—Title 38 CFR 17.101(a)(2).

OMB Control Number: 2900–0606.

Type of Review: Extension of a currently approved collection.

Abstract: A third-party payer that is liable for reimbursing VA for health care VA provided to veterans with non-service connected conditions continues to have the option of paying either the billed charges or the amount the health plan demonstrates it would pay to providers other than entities of the United States for the same care or services in the same geographic area. If the amount submitted for payment is less than the amount billed, VA will accept the submission as payment, subject to verification at VA's discretion. VA may request the third-party payer to submit evidence or information to substantiate the appropriateness of the payment amount (e.g., health plan policies, provider agreements, medical evidence, proof of payment to other providers demonstrating the amount paid for the same care and services VA provided). The information is needed to determine whether the third-party payer has met the test of properly demonstrating its equivalent private sector provider payment amount for the same care or services and within the same geographic area as provided by VA.

Affected Public: Business or other for-profit, Individuals or households, Not for Profit Institutions, Farms, and State, Local or Tribal Government.

Estimated Total Annual Burden: 800 hours.

Estimated Average Burden Per Respondent: 2 hours.

Frequency of Response: On occasion.

Estimated Number of Respondents: 400.

Dated: December 27, 2001.

By direction of the Secretary.

Mary Granito,

Management Analyst, Information Management Service.

[FR Doc. 02–989 Filed 1–14–02; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0116]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed revision of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments for information needed from penal institutions about incarcerated VA beneficiaries.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before March 18, 2002.

ADDRESSES: Submit written comments on the collection of information to Nancy J. Kessinger, Veterans Benefits Administration (20S52), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or e-mail: *irmnkess@vba.va.gov.* Please refer to ''OMB Control No. 2900–0116'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 273–7079 or FAX (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C., 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Notice to Department of Veterans Affairs of Veteran or Beneficiary Incarcerated in Penal Institution, VA Form 21–4193.

OMB Control Number: 2900–0116.

Type of Review: Revision of a currently approved collection.

Abstract: VA Form 21–4193 is used by penal institutions to furnish information about incarcerated VA beneficiaries. The information is used to determine reduction or termination of a beneficiary's VA compensation or pension rate when the beneficiary is incarcerated in a penal institution in excess of 60 days after conviction.

Affected Public: Individuals or households, and State, Local or Tribal Government.

Estimated Annual Burden: 416 hours.

Estimated Average Burden Per Respondent: 15 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 1,664.

Dated: December 20, 2001.

By direction of the Secretary.

Donald L. Neilson,

Director, Information Management Service.

[FR Doc. 02–991 Filed 1–14–02; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–NEW]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Health Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Health Administration (VHA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed new collection, and allow 60 days for public comment in response to the notice. This notice solicits comments on the information needed to guarantee loans for construction or rehabilitation of multifamily transitional housing for homeless veterans.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before March 18, 2002.

ADDRESSES: Submit written comments on the collection of information to Ann Bickoff, Veterans Health Administration (193B1), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420 or e-mail: *ann.bickoff@mail.va.gov.* Please refer to ''OMB Control No. 2900–NEW'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Ann Bickoff at (202) 273–8310.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C., 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VHA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VHA's functions, including whether the information will have practical utility; (2) the accuracy of VHA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: VA Multifamily Transitional Housing Loan Guaranty Application, VA Form 10–0365.

OMB Control Number: 2900–NEW.

Type of Review: New collection.

Abstract: VA is authorized to guarantee loans for construction or rehabilitation of multifamily transitional housing for homeless veterans. Loans may include amounts to acquire land, refinance existing loans, finance acquisition of furniture, equipment, supplies and materials and to supply working capital for the organization. The information collected is used to determine financial and program service provider eligibility and apply criteria to rate each application; and to obtain information necessary to ensure minimal defaults and delinquencies, interest subsidies, or other payments.

Affected Public: Not for Profit Institutions, and State, Local or Tribal Government.

Estimated Total Annual Burden: 200 hours.

Estimated Average Burden Per Respondent: 40 hours.

Frequency of Response: On occasion.

Estimated Number of Respondents: 5.

Dated: December 20, 2001.

By direction of the Secretary.

Donald L. Neilson,

Director, Information Management Service.

[FR Doc. 02–992 Filed 1–14–02; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0620]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Health Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C., 3501 *et seq.*), this notice announces that the Veterans Health Administration (VHA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before February 14, 2002.

FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT: Denise McLamb, Information Management Service (045A4), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 273–8030, FAX (202) 273–5981 or e-mail to: *denise.mclamb@mail.va.gov.* Please refer to ''OMB Control No. 2900–0620.''

SUPPLEMENTAL INFORMATION:

Title: Payment or Reimbursement for Emergency Services for Nonservice-Connected Conditions in Non-VA Facilities.

OMB Control Number: 2900–0620.

Type of Review: Extension of a currently approved collection.

Abstract: VA has established provisions regarding payment of or reimbursement for reasonable value of non-VA emergency services provided for nonservice-connected conditions of certain veterans who have no medical insurance and no other recourse for payment. VA will make payment or reimbursement only for emergency services provided in a hospital emergency department or a similar facility held out as providing emergency care to the public. Health care providers furnishing emergency treatment who believe they may have a basis for filing a claim with VA for payment should contact VA within 48 hours after the veteran begins receiving emergency treatment for emergency services other than emergency transportation. Such contact is not a condition of VA payment. However, the contact will assist the provider in understanding the condition for payment and assist the provider in planning for transfer of the veteran after stabilization. VA would use the information and certifications submitted to process claims for such reimbursement or payment.

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. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on October 26, 2001, at pages 54340–54341.

Affected Public: Individuals or households, business or other for-profit and not-for-profit institutions.

Estimated Annual Burden: 120,729 hours.

Estimated Average Burden Per Respondent: 30 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 241,457.

Send comments and recommendations concerning any aspect of the information collection to

VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503, (202) 395–7316. Please refer to ''OMB Control No. 2900–0620'' in any correspondence.

Dated: December 27, 2001.

By direction of the Secretary.

Mary Granito,

Management Analyst, Information Management Service.

[FR Doc. 02–990 Filed 1–14–02; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0103]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C., 3501 *et seq.*), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before February 14, 2002.

FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT: Denise McLamb, Information Management Service (045A4), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 273–8015, FAX (202) 273–5981 or e-mail: *denise.mclamb@mail.va.gov.* Please refer to ''OMB Control No. 2900–0103.''

SUPPLEMENTAL INFORMATION:

Title: Application for Dependency and Indemnity Compensation by Child, VA Form 21–4183.

OMB Control Number: 2900–0103.

Type of Review: Extension of a currently approved collection.

Abstract: VA Form 21–4183 is used by a child under age 18 to apply for dependency and indemnity compensation where the surviving spouse was not entitled or is no longer entitled to receive benefits or by a child age 18 or over regardless of the surviving spouse's entitlement. The form is used in lieu of VA Form 21–534, Application for Dependency and Indemnity Compensation or Death Pension by Widow(er) or Child, in order to help reduce the reporting burden of a child under 18 when information about the deceased veteran's spouse is not required.

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. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on July 6, 2001, at pages 35700–35701.

Affected Public: Individuals or households.

Estimated Annual Burden: 1,975 hours.

Estimated Average Burden Per Respondent: 15 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 7,900.

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to ''OMB Control No. 2900–0103'' in any correspondence.

Dated: December 17, 2001.

By direction of the Secretary.

Donald L. Neilson,

Director, Information Management Service.

[FR Doc. 02–993 Filed 1–14–02; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0590]

Agency Information Collection Activities Under OMB Review

AGENCY: Office of Acquisition and Materiel Management, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C., 3501 *et seq.*), this notice announces that the Office of Acquisition and Materiel Management, Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before February 14, 2002.

FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT: Denise McLamb, Information Management Service (045A4), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 273–8030 or FAX (202) 273–5981 or e-mail to: *denise.mclamb@mail.va.gov.* Please refer to ''OMB Control No. 2900–0590'' in any correspondence.

SUPPLEMENTAL INFORMATION:

Titles:

a. Veterans Affairs Acquisition Regulation (VAAR) Clause 852.237–7, Indemnification and Medical Liability Insurance.

b. Veterans Affairs Acquisition Regulation (VAAR) Clause 852.237–71, Indemnification and Insurance.

c. Veterans Affairs Acquisition Regulation (VAAR) Clause 852.207–70, Report of Employment Under Commercial Activities.

OMB Control Number: 2900–0590.

Type of Review: Revision of a currently approved collection.

Abstract:

a. Veterans Affairs Acquisition Regulation Clause 852.237–7, Indemnification and Medical Liability Insurance is used in lieu of Federal Acquisition Regulation clause 52.237–7, Indemnification and Medical Liability Insurance, in solicitations and contracts for the acquisition of non-personal health care services. VAAR 852.237–7 clause requires the apparent successful bidder/offeror, upon the request of the contracting officer, prior to contract award, to furnish evidence of insurability of the offeror and/or all health-care providers who will perform under the contract. Failure to collect the information would have a negative impact on VA's ability to ensure that VA will not be held liable for any negligent acts of the contractor or its employees and ensure that VA and VA beneficiaries are protected by adequate insurance coverage.

b. Veterans Affairs Acquisition Regulation Clause 852.237–71, Indemnification and Insurance, is used in solicitations for vehicle or aircraft services. To protect VA, VAAR 852.237–71 clause requires the apparent successful bidder/offeror, prior to contract award, to furnish evidence that the firm possesses the types and amounts of insurance required by the solicitation. The information will ensure that VA will not be held liable for any negligent acts of the contractor and ensures that VA beneficiaries and the public are protected by adequate insurance coverage.

c. Veterans Affairs Acquisition Regulation (VAAR) Clause 852.207–70,

Report of Employment Under Commercial Activities, is used in solicitations for commercial items and services where the work is currently being performed by VA employees and where those employees might be displaced as a result of an award to a commercial firm. VAAR 852.207–70 clause requires contractors awarded such contracts to provide, within 5 days of contract award, a list of employment openings, including salaries and benefits, and blank job applications forms. The clause requires the contractor, during the first 90 days of the contract performance, to report the names of all person hired or terminated under the contract.

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. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on September 28, 2001, at pages 49744—49745.

Affected Public: Business or Other for Profit, Individuals or Households, Not-for-Profit Institutions and State, Local or Tribal Government.

Estimated Annual Burden: 1,300 hours.

a. Veterans Affairs Acquisition Regulation (VAAR) Clause 852.237–7, Indemnification and Medical Liability Insurance—750 hours.

b. Veterans Affairs Acquisition Regulation (VAAR) Clause 852.237–71, Indemnification and Insurance—250 hours.

c. Veterans Affairs Acquisition Regulation (VAAR) Clause 852.207–70, Report of Employment Under Commercial Activities—300 hours.

Estimated Average Burden Per Respondent:

a. Veterans Affairs Acquisition Regulation (VAAR) Clause 852.237–7, Indemnification and Medical Liability Insurance—30 minutes.

b. Veterans Affairs Acquisition Regulation (VAAR) Clause 852.237–71, Indemnification and Insurance—30 minutes.

c. Veterans Affairs Acquisition Regulation (VAAR) Clause 852.207–70, Report of Employment Under Commercial Activities—30 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 2,600.

a. Veterans Affairs Acquisition Regulation (VAAR) Clause 852.237–7, Indemnification and Medical Liability Insurance—1,500.

b. Veterans Affairs Acquisition Regulation (VAAR) Clause 852.237–71, Indemnification and Insurance—500.

c. Veterans Affairs Acquisition Regulation (VAAR) Clause 852.207–70, Report of Employment Under Commercial Activities—200 (three reports per contract awarded).

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to ''OMB Control No. 2900–0590'' in any correspondence.

Dated: December 18, 2001.

By direction of the Secretary.

Donald L. Neilson,

Director, Information Management Service.

[FR Doc. 02–994 Filed 1–14–02; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0149]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C., 3501 *et seq.*), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before February 14, 2002.

FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT: Denise McLamb, Information Management Service (045A4), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 273–8030, FAX (202) 273–5981 or e-mail: *denise.mclamb@mail.va.gov.* Please refer to ''OMB Control No. 2900–0149.''

SUPPLEMENTAL INFORMATION:

Title: Application for Conversion (Government Life Insurance), VA Form 29–0152.

OMB Control Number: 2900–0149.

Type of Review: Extension of a currently approved collection.

Abstract: The form is used by the insured to convert to a permanent plan of insurance. VA uses the information to initiate the processing of the insured's request to convert his/her term insurance.

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. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on October 3, 2001, at page 50502.

Affected Public: Individuals or Households.

Estimated Annual Burden: 1,125 hours.

Estimated Average Burden Per Respondent: 15 minutes.

Frequency of Response: One time.

Estimated Number of Respondents: 4,500.

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503, (202) 395–7316. Please refer to ''OMB Control No. 2900–0149'' in any correspondence.

Dated: December 20, 2001.

By direction of the Secretary.

Donald L. Neilson,

Director, Information Management Service.

[FR Doc. 02–995 Filed 1–14–02; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0255]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before February 14, 2002.

FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT: Denise McLamb, Information Management Service (045A4), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 273–8030, FAX (202) 273–5981 or e-mail: *denise.mclamb@mail.va.gov.* Please refer to ''OMB Control No. 2900–0255.''

SUPPLEMENTARY INFORMATION:

Title: Application for Dependency and Indemnity Compensation or Death Pension (Including Accrued Benefits and Death Compensation Where Applicable) From the Department of Veterans Affairs (Supplement to Social Security Administration Forms SSA–4, 5, 7 and 10), VA Form 21–4182.

OMB Control Number: 2900–0255.

Type of Review: Extension of a currently approved collection.

Abstract: The form is used to determine the applicant's eligibility for accrued, dependency and indemnity compensation, death compensation and/or death pension benefits when applying for Social Security benefits.

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. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on July 5, 2001, at pages 35515–35516.

Affected Public: Individuals or households.

Estimated Annual Burden: 3,500 hours.

Estimated Average Burden Per Respondent: 15 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 14,000.

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to ''OMB Control No. 2900–0255'' in any correspondence.

Dated: December 20, 2001.

By direction of the Secretary.

Donald L. Neilson,

Director, Information Management Service.

[FR Doc. 02–996 Filed 1–15–02; 8:45 am]

BILLING CODE 8320–01–P

Federal Register

Tuesday,
January 15, 2002

Part II

Department of Defense

Department of the Army, Corps of Engineers

Issuance of Nationwide Permits; Notice

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

Issuance of Nationwide Permits; Notice

AGENCY: Army Corps of Engineers, DoD.

ACTION: Final notice.

SUMMARY: The Corps of Engineers is reissuing all the existing Nationwide Permits (NWPs), General Conditions, and definitions with some modifications, and one new General Condition. These final NWPs will be effective on March 18, 2002. All NWPs except NWPs 7, 12, 14, 27, 31, 40, 41, 42, 43, and 44 expire on February 11, 2002. Existing NWPs 7, 12, 14, 27, 31, 40, 41, 42, 43, and 44 expire on March 18, 2002. In order to reduce the confusion regarding the expiration of the NWPs and the administrative burden of reissuing NWPs at different times, we are issuing all NWPs on the same date so that they expire on the same date. Thus, all issued, reissued and modified NWPs, and General Conditions contained within this notice will become effective on March 18, 2002 and expire on March 19, 2007.

DATES: All NWPs and general conditions will become effective on March 18, 2002. All NWPs have an expiration date of March 19, 2007.

ADDRESSES: HQUSACE, ATTN: CECW–OR, 441 ''G'' Street, NW., Washington, DC 20314–1000.

FOR FURTHER INFORMATION CONTACT: Mr. David Olson, at (703) 428–7570, Mr. Rich White, at (202) 761–4599, or Mr. Kirk Stark, at (202) 761–4664 or access the U.S. Army Corps of Engineers Regulatory Home Page at: *http//:www.usace.army.mil/inet/functions/cw/cecwo/reg/*.

SUPPLEMENTARY INFORMATION:

Background

In the August 9, 2001 (66 FR 42070), **Federal Register** the Corps proposed to reissue all the existing Nationwide Permits (NWPs), General Conditions, and definitions with some modifications, and one new General Condition. We proposed to modify NWPs 14, 21, 27, 31, 37, 39, 40, 42, and 43, General Conditions 4, 9, 13, 19, 21, 26, and add a new General Condition 27.

The proposal intended to simplify and clarify permits that have no more than minimal effect on the environment, add additional requirements that will enhance protection of the aquatic environment, increase flexibility for the Corps field staff to target resources where most needed to protect the aquatic environment, reduce unnecessary burdens on the regulated public, and retain the key protections for the aquatic environment that were added last year (e.g. acreage limit of ½ acre of impact per project, the requirement for the Corps to be notified of any impacts over 1/10 acre, and important limits on impacts within mapped floodplains).

As a result of the comments received in response to the August 9, 2001, **Federal Register** notices and the public hearing on September 26, 2001, the Corps has made a number of changes to the proposed NWPs and General Conditions that are designed to further clarify the permits and strengthen environmental protection. These changes are discussed in the preamble.

In the December 13, 1996, issue of the **Federal Register**, the Corps announced its intention to replace NWP 26 with activity-specific NWPs before the expiration date of NWP 26. In the March 9, 2000, **Federal Register** notice (65 FR 12818—12899), the Corps published five new NWPs, modified six existing NWPs, modified six General Conditions, and added two new General Conditions to replace NWP 26. The five new NWPs (i.e., 39, 41, 42, 43, 44) and six modified NWPs (i.e., NWPs 3, 7, 12, 14, 27, and 40) would have expired five years from their effective date of June 7, 2000.

Today the Corps of Engineers is reissuing all the existing Nationwide Permits (NWPs), General Conditions, and definitions with some modifications, and one new General Condition. These final NWPs will be effective on March 18, 2002. All NWPs except NWPs 7, 12, 14, 27, 31, 40, 41, 42, 43, and 44 expire on February 11, 2002. Existing NWPs 7, 12, 14, 27, 31, 40, 41, 42, 43, and 44 expire on March 18, 2002. In order to reduce the confusion regarding the expiration of the NWPs and the administrative burden of reissuing NWPs at different times, we are issuing all NWPs on the same date so that they expire on the same date. Thus, all issued, reissued and modified NWPs, and General Conditions contained within this notice will become effective on March 18, 2002 and expire on March 19, 2007.

Grandfather Provision for Expiring NWPs at 33 CFR 330.6

Activities authorized by the current NWPs issued on December 13, 1996, (except NWPs 7, 12, 14, 27, 31, 40, 41, 42, 43, and 44), that have commenced or are under contract to commence by February 11, 2002, will have until February 11, 2003 to complete the activity. Activities authorized by NWPs 7, 12, 14, 27, 31, 40, 41, 42, 43, and 44, that were issued on March 9, 2000, that are commenced or under contract to commence by March 18, 2002, will have until March 18, 2003 to complete the activity.

Clean Water Act Section 401 Water Quality Certification (WQC) and Coastal Zone Management Act (CZMA) Consistency Agreement

In the August 9, 2001, **Federal Register** notice and concurrent with letters from Corps Districts to the appropriate state agencies, the Corps requested 401 certification and CZM consistency agreement. This began the Clean Water Act section 401 water quality certification (WQC) and Coastal Zone Management Act (CZMA) consistency agreement processes. Today's **Federal Register** notice provides a 60-day period for the states to complete the Clean Water Act section 401 water quality certification (WQC) and Coastal Zone Management Act (CZMA) consistency agreement processes. On August 9, 2001, we proposed to increase the normal 60-day period to complete the WQC and CZMA processes to 90 days. However, due to a majority of the NWPs expiring February 11, 2001, and schedule delays, we have had to keep the WQC and CZMA processes to 60 days. Also during this 60-day period, Corps divisions and districts will finalize their regional conditions for the new and modified NWPs.

Discussion of Public Comments

I. Overview

In response to the August 9, 2001, **Federal Register** notice, we received more than 2,100 comments. We reviewed and fully considered all comments received in response to that notice.

Many commenters expressed opposition to the proposed NWPs, but a few commenters indicated support for these NWPs. Most of the comments in opposition of the NWPs were two versions of identical post cards and a form letter that objected to proposed changes to general conditions 19 and 26, opposed the removal of linear limits for NWPs 21, 39, 40, 42, 43, and 44, and requested the withdrawal of NWP 21. Other commenters said that the NWPs were too difficult for the public to use, the NWPs exceeded the Corps jurisdiction, and the acreage and linear limits were too low for the NWPs to be useful. One commenter indicated that few changes proposed in the August 9, 2001, **Federal Register** notice will result in decreased workload for the Corps.

After considering the comments received in response to the August 9, 2001, **Federal Register** notice, we made several changes to the NWPs, general conditions, and definitions. These changes are discussed in detail in the preamble discussion for each NWP, general condition, and definition. We do not agree that the NWPs are too difficult for the regulated public to use. We have retained the ½ acre limit for many of the NWPs, to ensure that those NWPs authorize only activities with minimal adverse effects on the aquatic environment, individually and cumulatively. We have not adopted the proposed waiver process for the 300 linear foot limit for perennial streams in NWPs 39, 40, 42, and 43. We did adopt the waiver for intermittent streams in NWPs 39, 40, 42, and 43. NWPs 21 and 44 do not currently have a linear foot limitation, so the waiver does not apply. We believe that the changes to the NWPs will allow the Corps to more effectively authorize activities with minimal adverse effects on the aquatic environment.

II. General Comments

Many commenters objected to the NWP proposal, stating that it will place citizens at risk from flooding, promote wetland and stream destruction, degrade water quality, and result in the loss of critical habitat. Another commenter indicated that the NWPs need to be strengthened to ensure that marine, riparian, and riverine habitats, and the fish species that depend on those habitats, are adequately protected under the NWP process. One commenter said that the NWPs should authorize only those activities that have minimal impacts on water quality. This commenter said that the NWPs will lead to piecemealing and result in cumulative impacts detrimental to particular waterbodies. A commenter objected to the NWPs, stating that the NWPs authorize activities that expand existing developments. Another commenter said that the proposed NWPs will only benefit the development community and the Corps, while exposing the public and environment to unnecessary harm. One commenter stated that the Corps proposal to modify the NWPs would significantly weaken wetlands protection and severely hamper the ability of State fish and wildlife agencies to conserve wetlands and watersheds.

The terms and conditions of the NWPs, including the general conditions, ensure that the activities authorized by NWPs result in no more than minimal adverse effects on the aquatic environment, including wetlands and streams. General Condition 26, Fills Within 100-year Floodplains, addresses the use of certain NWPs to authorize activities in 100-year floodplains and ensures that such activities comply with FEMA-approved State and local floodplain management requirements. General Condition 11, Endangered Species, ensures that activities authorized by NWPs comply with the Endangered Species Act. Water quality certification is required for NWP activities authorized under section 404 of the Clean Water Act. In addition, district engineers can require water quality management measures to ensure that NWP activities result in no more than minimal adverse effects on water quality. NWPs authorize single and complete projects, and do not result in piecemealing of projects. District engineers consider cumulative adverse effects when reviewing requests for NWP verifications, including activities that result in the expansion of existing developments. The NWPs do not impede the efforts of State fish and wildlife agencies to conserve wetlands and watersheds.

Several commenters asserted that the NWP program contradicts the clear intent of Congress to establish a streamlined general permit process for activities with minimal adverse effects on the aquatic environment. A couple of commenters said that the NWPs regulate activities that are exempt from the Clean Water Act and its implementing regulations. These commenters requested more consistency between the NWPs and these statutory exemptions. One commenter stated that drainage districts are generally exempt from permit requirements, including pre-construction notification (PCN) requirements. This commenter said that the NWP conditions and notification requirements are too costly and could impair the ability of drainage districts to meet their obligations to protect citizens from flooding, and that the drainage ditches should be exempt from these regulations. One commenter stated that the Corps should recognize the important differences between wetland landscapes and the protection of non-aquatic areas that are dominated by ephemeral drainage systems in the desert regions of the southwest United States.

The NWPs provide an expedited review process for activities in waters of the United States that result in no more than minimal individual and cumulative adverse effects on the aquatic environment. Although the NWP program has undergone substantial changes in recent years, we believe those changes were necessary to ensure compliance with section 404(e) of the Clean Water Act. Section 404(e) authorizes the Corps to issue general permits, including NWPs. General permits authorize activities that are similar in nature and result in no more than minimal adverse effects on the aquatic environment, individually and cumulatively. The lower acreage limits and more restrictive terms and conditions of the NWPs are necessary to comply with section 404(e).

The NWPs do not regulate activities that are exempt from the permit requirements of the Clean Water Act. Certain activities that are conducted by drainage districts, such as the maintenance of drainage ditches, may be eligible for section 404(f) exemptions and therefore may not require authorization from the Corps. The construction of new drainage ditches may require a Department of the Army (DA) permit, if the proposed work involves discharges of dredged or fill material into waters of the United States and/or work in Section 10 waters. The NWPs do not change the section 404(f) exemptions. The NWPs authorize certain activities that require a DA permit pursuant to section 10 of the Rivers and Harbors Act and/or section 404 of the Clean Water Act. Some NWPs, such as NWPs 3 and 14, contain references to the section 404(f) exemptions. Project proponents can contact district engineers to determine whether specific activities qualify for the section 404(f) exemptions.

The NWPs allow district engineers flexibility when reviewing activities that involve discharges of dredged or fill material into ephemeral streams. Division engineers can regionally condition the NWPs to restrict or prohibit specific activities that result in the loss of ephemeral stream beds, or require project proponents to notify district engineers prior to construction for case-by-case review. The waiver process for the 300 linear foot limit for NWPs 39, 40, 42, and 43 allows district engineers to issue NWP verifications for activities that result in the loss of greater than 300 linear feet of intermittent (but not perennial) stream bed and have no more than minimal adverse effects on the aquatic environment.

Several commenters indicated that the proposed changes to the NWP program fails to address the significant problems with the new and modified NWPs that were published in the March 9, 2000, **Federal Register** (65 FR 12818). Two commenters stated that the restrictions in those NWPs have resulted in large burdens on the transportation construction industry and planning

officials. One commenter said that the elimination of the NWP 26 has resulted in large increases in delays associated with obtaining individual permits for transportation activities that were authorized by NWP 26. One commenter stated that these NWPs will result in longer delays and greater expenses for simple projects. This commenter said that NWP 26 should be reinstated to replace these cumbersome NWPs. One commenter asserted that the NWPs result in substantial burdens on the regulated public. Two commenters recommended that the Corps improve the NWP program by increasing acreage limits, increasing PCN thresholds, and reducing PCN information requirements.

The replacement of NWP 26 with activity-specific NWPs was necessary to ensure compliance with section 404(e) of the Clean Water Act. The terms and conditions of the NWPs published in the March 9, 2000, **Federal Register** notice were intended to ensure that the NWPs authorize only those activities that result in no more than minimal adverse effects on the aquatic environment. We recognize that certain activities that were previously authorized by NWPs now require individual permits, and that it takes more time to authorize those activities, including some transportation projects. We do not agree that the acreage limits and PCN thresholds of the NWPs should be increased, because the lower limits and thresholds ensure that the NWPs authorize only activities with no more than minimal adverse environmental effects.

One commenter stated that the Corps data shows that the number of acres of wetlands created under the mitigation requirements of the NWP program exceeds the number of acres permitted under the program. This commenter asked why the Corps has failed to do more to carry out the policies established in section 101(f) of the Clean Water Act to minimize paperwork, seek the best uses of manpower and funds, and to prevent needless delays at all levels of government.

The NWP program complies with the requirements of section 101(f) of the Clean Water Act, by providing an effective means of authorizing activities with no more than minimal individual and cumulative adverse effects on the aquatic environment.

Implementation

One commenter objected to the NWPs, stating that these permits remove the public, resource agencies, and the Corps from the permit review process. Another commenter said that NWP activities should be coordinated with natural resource agencies and the public. One commenter said that it is not appropriate for the Corps to rely on discretionary authority, regional conditions, and the PCN process to reduce the adverse impacts to the aquatic environment to a minimal level. This commenter stated that regional conditions are not consistently implemented across the country or to the degree necessary to ensure minimal effects.

The NWPs authorize minor activities that are usually not controversial and would result in little or no public or resource agency comment if they were reviewed through the standard permit process. Conducting full public interest reviews for NWP activities would substantially increase the Corps workload without substantial added value for the aquatic environment. NWP activities that require notification to the district engineer and result in the loss of greater than ½ acre of waters of the United States are coordinated with the appropriate Federal and state agencies (see paragraph (e) of General Condition 13). Discretionary authority, regional conditions, and the PCN process are essential elements of the NWP program, to ensure that NWP activities result in no more than minimal adverse effects on the aquatic environment. In response to a PCN, a district engineer can add special conditions to the NWP authorization to ensure that the activity will result in no more than minimal adverse effects on the aquatic environment. If the proposed work will result in more than minimal adverse effects on the aquatic environment, district engineers can exercise discretionary authority to require an individual permit. Regional conditions are not consistent throughout the country, because they address differences in aquatic resource functions and values in watersheds or other types of geographic regions.

One commenter stated that in order to ensure that the NWPs authorize only activities with minimal adverse effects on the aquatic environment, the NWPs should include a new general condition. This general condition would require public notices in all cases where notification is required and the submission of surveys of terrestrial and aquatic species and cultural and historic resources that may be affected by the NWP activity.

We do not agree that the general condition proposed in the previous paragraph is practical or necessary. General Condition 11, Endangered Species, addresses compliance with the Endangered Species Act. General Condition 12, Historic Properties, addresses compliance with the requirements of the National Historic Preservation Act. Project proponents may be required to provide surveys of endangered species or cultural resources to ensure compliance with these general conditions.

One commenter asserted that there is an unsubstantiated presumption that compensatory mitigation in any form effectively offsets the individual or cumulative adverse effects of NWP activities. One commenter indicated that, due to the small NWP acreage limits, the Corps has lost the ability to direct mitigation toward areas that would provide the most benefits on a watershed basis. One commenter said that mitigation should not be used to ensure that NWP activities result in minimal adverse effects on the aquatic environment. This commenter suggested that avoidance and practicable alternatives should be emphasized.

Compensatory mitigation is an important mechanism to ensure that the activities authorized by NWPs result in no more than minimal adverse effects on the aquatic environment, individually and cumulatively. Compensatory mitigation can be provided through individual aquatic resource restoration, creation, enhancement, or in exceptional circumstances, preservation projects, as well as mitigation banks, in lieu fee programs, and other types of consolidated mitigation efforts. General Condition 19 discusses mitigation for NWP activities, including the requirement for project proponents to avoid and minimize adverse effects on waters of the United States to the maximum extent practicable on the project site.

One commenter objected to the NWPs, stating that conditions imposed on the NWPs are rarely monitored for compliance. This commenter suggested that the Corps commit to an aggressive monitoring and enforcement program for activities authorized by NWPs. Another commenter said that the lack of compliance inspections has resulted in numerous instances where activities authorized by NWPs have resulted, through implementation failures and intentional violations, in substantial adverse effects. This commenter suggested that each NWP should be subject to a statistically sufficient number of compliance inspections to determine whether compliance is being achieved, and whether the NWP activities are resulting in more than minimal individual or cumulative adverse effects. One commenter said that enforcement efforts should not be

weakened. One commenter stated that the Corps needs to monitor and enforce the national and regional conditions of the NWPs.

We are committed to strong enforcement and compliance efforts for activities authorized by DA permits, including NWPs, but the amount of time dedicated to enforcement and compliance is dependent upon the value of the impacted resource and the available amount of district resources. The Corps is increasing its compliance efforts to further improve compliance. In consultation with other Federal agencies, the Corps is currently finalizing guidance that will address the need for improved compliance.

One commenter asserted that Corps personnel rarely verify the information provided in NWP verification requests, and speculated that project proponents may under-report the amount of impacts to waters of the United States to qualify for NWP authorization. This commenter suggested that the Corps commit to independent verification of the information submitted in NWP verification requests or verify the information for randomly selected subsets of verification requests. One commenter suggested that Corps produce educational brochures and web pages that describe the basic information that must be submitted in order to ensure that a NWP request is considered complete.

District personnel review requests for NWP verifications to determine if the information provided by the project proponents is accurate. The level of review is dependent on the amount of impacts proposed by the applicant and the resources available to Corps personnel. Site visits cannot be conducted for all NWP verification requests. District personnel utilize their knowledge of local conditions when reviewing NWP verification requests to assess whether the information provided in the NWP verification request is accurate. The Corps Headquarters homepage, see address above, and Corps district homepages contain information on the NWPs, including the NWPs, general conditions, regional conditions, state 401 and CZM conditions, and decision documents. The text of General Condition 13, Notification, lists the information necessary for a complete PCN. Several districts also provide brochures to assist project proponents who are preparing permit applications or NWP verification requests. District home pages on the Internet also have other information that is useful for permit applicants.

Acreage Limits

Three commenters suggested that higher acreage limits should be adopted for impacts to non-wetland waters and that district engineers should have the authority to issue project-specific waivers to NWP acreage limits. One commenter said that there should be higher acreage limits for master planned communities or similar planned development projects. One commenter said that a 500 linear foot limit for stream impacts should be added to the NWPs.

We do not agree that higher acreage limits should be implemented for NWP activities that result in the loss of non-wetland waters, or for master planned development projects. Open waters, such as streams, ponds, lakes, estuaries, and the oceans, are important components of the overall aquatic environment and provide valuable functions and environmental benefits. We also do not agree that a waiver process should be implemented for the acreage limits of NWPs. We do not believe it is necessary to impose a 500 linear foot limit on all losses of stream bed authorized by NWPs. The 300 linear foot limit for NWPs 39, 40, 42, and 43, and the waiver process for intermittent streams will ensure that those NWPs authorize no more than minimal impacts to stream beds. And such a limit is not necessary for the other NWPs. In addition, these acreage limit suggestions would require notice and comment, before they could be adopted.

One commenter stated that the standard permit process does not necessarily result in additional avoidance, minimization, or compensatory mitigation, but causes substantial project delays, higher costs, and increased risks to public safety. Two commenters suggested that the Corps implement an NWP program that imposes the acreage limits of the 1996 NWPs (*i.e.,* 3 acres) on the activity-specific NWPs published in the March 9, 2000, **Federal Register**. A number of commenters recommended reissuing NWP 26. One commenter said that the NWPs are too restrictive and they add unnecessary administrative burdens while providing questionable environmental benefits. Two commenters said that there is nothing in the administrative record that indicates the need for the ½ acre limit. Three commenters stated that the acreage limits and PCN thresholds are arbitrary and capricious and unsupported by sound science.

The standard permit process can result in additional avoidance and minimization because of the Section 404(b)(1) guidelines analysis required for those standard permit activities that involve discharges of dredged or fill material into waters of the United States. The terms and conditions of the NWPs, including the ½ acre limit for many of the NWPs, are necessary to ensure that the NWPs authorize only those activities with no more than minimal adverse effects on the aquatic environment, individually and cumulatively. We do not agree that NWP 26 should be reinstated, because the replacement of NWP 26 was necessary to ensure compliance with section 404(e) of the Clean Water Act.

One commenter stated that the ½ acre limit for certain NWPs has dramatically expanded the scope of the regulatory program, leading to increased costs and delays with few demonstrated environmental benefits. One commenter asserted that the acreage limits of the NWPs do not decrease losses of wetlands because projects are designed to impact the maximum amount to avoid the individual permit process. Several commenters said that the NWP program is no longer useful to industry and other regulated entities because the strict terms and conditions of the NWPs provide no incentives for project proponents to design projects to qualify for NWP authorization. This commenter said that there should be more reliance on regional conditions to ensure that there is no more than minimal adverse environmental effects, instead of unnecessarily restrictive national conditions. A number of commenters indicated that impacts on the environment will increase since few projects qualify for NWP authorization.

The ½ acre limit for certain NWPs has not increased the scope of the regulatory program, although it may result in more activities requiring individual permits. The terms and conditions of the NWPs are necessary to ensure that the NWPs authorize only those activities that result in no more than minimal adverse effects on the aquatic environment, individually and cumulatively. Division engineers can add regional conditions to the NWPs to address important aquatic resource functions and values in particular geographic areas, but the terms and national general conditions of the NWPs are necessary to address national concerns for the aquatic environment. The NWP program encourages avoidance and minimization of impacts to wetlands, and most project proponents do not request NWP authorization to fill the maximum amount of wetlands under the NWP acreage limits. General Condition 29 requires project proponents to avoid and minimize impacts to waters of the

United States to the maximum extent practicable on the project site. We believe that many project proponents will continue to design their projects to qualify for authorization under the NWPs, including avoiding and minimizing impacts to aquatic resources on the project site.

Pre-construction Notification Process

One commenter requested that the Corps reinstate the ⅓ acre PCN threshold, or demonstrate that a lower notification threshold is necessary to ensure that adverse effects on the aquatic environment are minimal.

The 1/10 acre PCN threshold for several of the NWPs is necessary so that district engineers can review those activities to ensure that they result in no more than minimal adverse effects on the aquatic environment, individually and cumulatively. Therefore, we have retained the 1/10 acre PCN threshold for certain NWPs. Additionally, the Corps does not believe the PCN requirements impose a significant burden on most project proponents.

A few commenters stated that NWPs are complex and the PCN process requires too much time. One commenter said that the time limit for determining if a PCN is complete is longer than the 15 day period for determining if a standard permit application is complete. This commenter recommended that the Corps delete the 30 day completeness review for PCNs. This commenter said that increasing the PCN review period to 45 days does not comply with the goal for an expedited permit process, and makes the NWP process resemble the standard permit process. One commenter said that the PCN review process provides disincentives for project proponents to design their projects to qualify for NWP authorization.

The 45 day PCN review period is necessary to allow district engineers to adequately review those activities that require PCNs. However, most NWP verifications do not take the full 45 days. The average time to verify a NWP activity is 19 days. Although the 30 day completeness review period for PCNs is less than the 15 day completeness review period for standard permit applications, the PCN process allows more effective authorization of activities with no more than minimal adverse effects on the aquatic environment. An individual activity authorized by an NWP does not require a public notice or the same level of review required for a standard permit activity. Project proponents requesting NWP verifications generally receive their authorizations more quickly than they would receive standard permits. The 45 day PCN review period includes the 30 day completeness review, and we do not agree that the 30 day completeness review period should be deleted. The completeness review period makes the PCN process more efficient by requiring district engineers to request additional information early in the PCN process. If a district engineer receives a complete PCN, then the decision to verify that the activity is authorized by NWP or exercise discretionary authority must be made within 45 days. We do not agree that the PCN process discourages project proponents from designing their projects to qualify for NWP authorization, because the NWP process is faster than the standard permit process.

Compliance With Section 404(e) of the Clean Water Act and the National Environmental Policy Act

Several commenters said that the NWPs do not comply with section 404(e) of the Clean Water Act because they authorize activities with more than minimal adverse effects on the aquatic environment. One commenter asserted that the NWPs should be limited to specific uses. Numerous commenters stated that the NWPs do not comply with the ''similar in nature'' requirement of section 404(e) of the Clean Water Act.

The terms and conditions of the NWPs, including the acreage limits and PCN review process, ensure that the NWPs authorize only those activities with no more than minimal individual and cumulative adverse effects on the aquatic environment. The NWPs undergo a thorough review process every five years to ensure compliance with the requirements of section 404(e) of the Clean Water Act. Each of the NWPs complies with the requirement for general permits to authorize activities that are ''similar in nature.''

One commenter indicated that the database may not be adequate enough to warrant the proposed changes to the NWPs and said that the Corps cannot assure the public that the proposed changes will not result in greater impacts to waters of the United States. Another commenter said that the database to justify the proposed changes is small compared to the overall age of the permit program. A few commenters suggested that the regulations should be modified to require each Corps district office to furnish quarterly reports to each state agency in the district that would summarize the number, type, and impacts of activities in waters of the United States for all NWP verifications issued. Several commenters said that the Corps needs to improve its database for the regulatory program.

The proposed changes to the NWPs published in the August 9, 2001, **Federal Register** will not result in more than minimal adverse effects on the aquatic environment. The proposed modifications are intended to improve the efficiency of the NWP program, and enhance protection of important aquatic resources. We do not agree that it is necessary to change the Corps regulations to require districts to provide states with quarterly reports concerning the impacts authorized by all NWP verifications. Corps headquarters is developing a new data collection and reporting system to replace the current system. The new system will improve data collection for the regulatory program, and will help the Corps compile summary data and evaluate trends. The new data collection system will improve the reliability of regulatory program data.

One commenter said that the Corps has not adequately assessed cumulative impacts and that virtually no mitigation has been required because of the smaller individual impacts of these NWPs. Another commenter objected to the NWPs, stating that district engineers cannot determine the magnitude of individual and cumulative environmental impacts. One commenter said that the NWPs should not be reissued because cumulative impacts have not been addressed at a regional or national level.

We maintain our position that assessing cumulative impacts across the nation is not possible or appropriate. We believe that no assessment of individual and cumulative impacts can be made a national level, because the functions and values of aquatic resources vary considerably across the country. Assessment of cumulative impacts is more appropriately conducted by Corps districts on a watershed basis, because they have better understanding of local conditions and processes. However, the NWP program is designed programmatically to ensure no more than minimal adverse effects, individually and cumulatively. This is accomplished through acreage limits, the PCN process, regional conditioning, and the exercise of discretionary authority to require individual permits. Each district generally tracks losses of waters of the United States authorized by Department of the Army permits, including verified NWPs, as well as required compensatory mitigation achieved through aquatic resource restoration, creation, and enhancement. The regional conditioning process, including

the preparation of supplemental Environmental Assessments by division engineers, also helps ensure that the NWPs authorize activities with no more than minimal adverse effects on the aquatic environment, individually and cumulatively.

One commenter stated that National Environmental Policy Act (NEPA) requires the Corps to evaluate the environmental impacts of every major Federal action, such as the issuance of section 404 permits, that significantly affects the quality of the human environment. Several commenters said that Environmental Impact Statements (EISs) are required for the NWPs, at both the national and district levels. One of these commenters asserted that these EISs should examine all reasonable alternatives to the NWPs, general conditions, and regional conditions. One commenter said that EISs should be completed for NWPs 13, 29, 39, 40, 42, and 44. Two commenters said that regional conditions for the NWPs should not be finalized until an EIS on the NWPs is completed. One commenter expressed disagreement with the Finding of No Significant Impact (FONSI) for the NWP program that was issued on June 23, 1998, which stated that the Corps is not required to do an EIS for the NWPs. One commenter said that an EIS is required to demonstrate compliance with section 404(e) of the Clean Water Act.

We maintain our position that the NWPs do not require an EIS, even though we are in the process of preparing a voluntary programmatic EIS for the NWP program. Since the NWPs authorize only those activities that have no more than minimal adverse effects on the aquatic environment, the NWP program does not reach the significance threshold required for the preparation of an EIS. The NWPs are subjected to a reissuance process every five years. This reissuance process involves a public notice and comment period, which provides the Corps with information to ensure that the NWPs continue to authorize only those activities with no more than minimal adverse effects on the aquatic environment, individually and cumulatively. Again, the NWP program does not reach the level of significant impacts that requires the preparation of an EIS. To comply with NEPA, Corps headquarters issues an Environmental Assessment (EA) for each NWP when it is issued, reissued, or modified. These EAs consider the environmental effects of each NWP from a national perspective. Each Corps division and district engineer will supplement these EAs to evaluate regional environmental effects of the NWPs. For the reasons above, the NWP program and the NWPs do not reach the level of significant impacts that requires the preparation of an EIS, and in fact are far below that level.

We do not agree that regional conditions for the NWPs should not be finalized until an EIS on the NWPs is completed. We also believe that the FONSI for the NWP program that was issued on June 23, 1998, is still valid despite the changes to the NWPs that have occurred since the FONSI was issued. There have been no substantial changes to the NWP regulations at 33 CFR part 330 or to the implementation of the NWP program since the FONSI was issued. The FONSI discussed, in general terms, the implementation of the NWP program, including the procedures used by the Corps to ensure that the NWPs authorize only those activities with no more than minimal individual and cumulative adverse effects on the aquatic environment. The Corps is not required to do an EIS to demonstrate compliance with section 404(e) of the Clean Water Act. The decision documents issued for each NWP address compliance with the section 404(b)(1) guidelines, which require an analysis for the issuance of general permits (see 40 CFR 230.7). Finally, although not required to prepare an EIS, the Corps is preparing a voluntary Programmatic EIS to assess the NWP Program to see if there are changes to the NWP program that would further ensure that there are no more than minimal adverse effects to the aquatic environment, individually and cumulatively. The Programmatic EIS is discussed below.

One commenter said that the Corps can not limit its analyses to only those effects of the NWPs that occur in jurisdictional waters at the location of the permitted activity. Another commenter said that an EIS is required each time an NWP is used to authorize a private development project.

For the purposes of NEPA and the Corps regulatory program, the scope of analysis is limited to address the impacts of the specific activity requiring a DA permit and those portions of the entire project over which the district engineer has sufficient control and responsibility to warrant Federal review (see 33 CFR part 325, Appendix B, paragraph 7(b)). We do not agree that an EIS is warranted whenever an NWP is used to authorize a private development project, because the NWPs authorize only those activities that occur within the Clean Water Act section 404 limited scope of review and that have no more than minimal adverse effects on the aquatic environment.

One commenter stated that the EAs for the NWPs must contain current data. Two commenters asserted that the decision documents, including the EAs and Statements of Finding, for the NWPs should be subjected to an agency coordination and public comment period before they are finalized. Another commenter said that the EAs fail to consider alternatives to the proposed NWPs. One commenter stated that the EAs prepared for the NWPs do not adequately describe or assess the significant cumulative effects the NWP program has on the environment. One commenter recommended that the Corps issue new EAs for each nationwide permit to demonstrate compliance with NEPA. One commenter objected to the preliminary EAs, stating that those documents do not demonstrate an ecological rationale for the proposed acreage limits of the NWPs. One commenter stated that the EAs do not adequately assess potentially significant environmental impacts of the NWPs.

We believe it was unnecessary to make the revised EAs for the NWPs proposed in the August 9, 2001, **Federal Register** available for agency review and public comment. The EAs for the new and modified NWPs issued today discuss, in general terms, the acreage limits for these NWPs, the types of waters subject to the new and modified NWPs, and the functions of those waters. The EAs also address projected impacts to waters of the United States that will occur through the use of these NWPs. These projected impacts are based on recent data. The EAs also contain discussions of alternatives analyses. Since aquatic resource functions and values vary considerably across the country, we cannot include detailed ecological analyses to support the acreage limits for these NWPs. In addition, due to NEPA requirements concerning the length of environmental documentation, the EAs for the new and modified NWPs must be limited to general discussions of potential impacts. Division engineers will be issuing supplemental EAs that will address regional issues at the district level. The ''Forty Most Frequently Asked Questions'' concerning NEPA developed by the Council on Environmental Quality (i.e., Question 36) and the Corps regulations at 33 CFR part 325, Appendix B, discuss the recommended length of EAs. Finally, the changes in the new NWPs, relative to the existing NWPs, are minimal and generally designed to simplify the permits and increase protection of the aquatic environment. EAs for the existing

permits have been publicly available since these permits were issued.

A few commenters said that the Corps must finalize the Programmatic Environmental Impact Statement (PEIS) for the NWPs before finalizing the NWP proposal published in the August 9, 2001, **Federal Register**. One commenter stated that the current NWPs should be extended until the PEIS is completed. One commenter stated that the draft PEIS for the NWP program does not address the specific effects of the NWPs on listed species, critical habitat or any other natural resources. Another commenter said that the draft PEIS lacks available data to assess the impacts of the NWP program because the Corps database is faulty. This commenter asserted that there should be no permitting until the Corps can adequately assess the success or failure of the regulatory program. One commenter said that the NWP PEIS does not provide sound scientific data that demonstrates that the NWPs have only minimal impacts on the environment.

In March 1999 the Corps began preparation of a voluntary PEIS to evaluate procedures and processes for the NWP program. The PEIS will not address the impacts of any specific NWPs. The PEIS is not a legally required EIS. The Council of Environmental Quality's regulations at 50 CFR 1506.1(c) do not prohibit the Corps from issuing the NWPs prior to completing the voluntary PEIS. The issuance of the NWPs will not preclude the ability of the Corps to modify the NWP program or modify individual NWPs in accordance with any need for changes identified in the PEIS. The Corps is in compliance with NEPA because a FONSI for the NWP program was issued on June 23, 1998, and the Corps issues decision documents, including EAs, for each NWP when the NWP is issued, reissued, or modified. Specific comments concerning the PEIS will be addressed through the PEIS process.

Jurisdictional Issues

In response to the August 9, 2001, **Federal Register** notice, we received numerous comments concerning the scope of the Corps regulatory authority. These comments addressed issues such as excavation activities in waters of the United States, isolated waters, and ephemeral streams as waters of the United States.

One commenter stated that the Corps should develop regulations that accurately reflect the regulatory exemptions for excavation because all maintenance activities associated with any existing structures or fill are exempt from Section 404 permit requirements. One commenter stated that the definition of ''loss of waters of the United States'' in the NWPs should be clarified to exclude excavation. As an example, this commenter said that if an activity involves non-jurisdictional excavation and temporary stockpiling of excavated material, those activities should not be included in the measurement of ''loss of waters of the United States''.

In the January 17, 2001, issue of the **Federal Register** (66 FR 4550), we promulgated a final rule that revised the Clean Water Act regulatory definition of the term ''discharge of dredged material'' to address recent Court decisions. It is important to note that not all excavation activities in waters of the United States result only in incidental fallback into waters of the United States. Excavation activities that result in the redeposit of dredged material into waters of the United States, other than incidental fallback, require a Section 404 permit. Excavated material that is temporarily stockpiled in waters of the United States before it is removed to a permanent deposit area requires a Section 404 permit. We have retained the excavation language in the new and modified NWPs and the definition of ''loss of waters of the United States'' because some of these activities may be authorized by NWPs. All excavation activities in navigable waters of the United States require Section 10 permits, even if those excavation activities result only in incidental fallback into Section 10 waters. NWPs issued under Section 10 of the Rivers and Harbors Act may authorize excavation activities in navigable waters of the United States.

Two commenters indicated that the NWPs should be modified to ensure compliance with the recent *Solid Waste Agency of Northern Cook County* v. *United States Army Corps of Engineers et al.* decision (U.S. Supreme Court No. 99–1178).

The *Solid Waste Agency of Northern Cook County v. United States Army Corps of Engineers et al.* decision related to the scope of CWA jurisdiction over non-navigable isolated intrastate waters. The NWPs do not establish jurisdiction that does not otherwise exist. They only authorize activities that require a permit. If an activity does not require a permit, the NWPs do not create a requirement for a permit. If an activity does require a permit and complies with the terms and conditions of an NWP, that activity may be authorized by the NWP.

A couple of commenters suggested that the Corps needs to improve its definition of ordinary high water mark (OHWM) because the current definition, which is based on physical evidence, does not provide any criteria regarding the frequency of flow necessary to establish an OHWM. These commenters stated that Corps personnel use the outermost banks to identify OHWMs, regardless of how frequently flows actually inundate the area between banks. Another commenter stated that Congress did not intend to extend Federal jurisdiction to discharges of dredge or fill material into areas that are ordinarily dry. This commenter indicated that a Corps district is asserting jurisdiction up to the limits of the 25-year floodplain. This commenter also suggested that the Corps limit its jurisdiction to areas with an OHWM within a less frequently flooded floodplain and that areas outside of the 1 to 5 year floodplain should not be considered to be within the OHWMs.

The Corps agrees that we should look at improving the definition of the OHWM. This will be the subject of a separate review. However, no schedule has been developed for this review. The frequency and duration at which water must be present to develop an OHWM has not been established for the Corps regulatory program. District engineers will use their judgment on a case-by-case basis to determine whether an OHWM is present. The criteria used to identify an OHWM are listed in 33 CFR 328.3(e).

Procedural Comments

One commenter said that it was unreasonable to: (1) Expect the public to travel to a public hearing to provide comments on the August 9, 2001, proposal in a government building in Washington DC; (2) schedule only one public hearing; (3) expect public comments to reach the Corps in a timely manner when the **Federal Register** notice had only a physical address for receiving public comments; and (4) expect the public to receive updated information regarding the rescheduling of the public hearing because of computer viruses and the absence of phone numbers or e-mail addresses in the **Federal Register** notice. This commenter also stated that it was not reasonable to expect public comments on proposed NWP regional conditions to be submitted in a timely manner because the physical addresses published in the August 9, 2001, **Federal Register** notice contained errors, the deadline for public comment on the regional conditions was not published in the **Federal Register**, and the comment period for proposed regional conditions preceded the

deadline for public comment published in the **Federal Register** notice. This commenter said that future public notices by the Corps should include an electronic mail address, a physical address, and a telephone number for submitting of non-electronic comments. This commenter also asserted that additional public hearings should be conducted throughout the country to provide adequate opportunities for the general public to provide public comment prior to the reissuance and modification of the NWPs.

In response to the August 9, 2001, **Federal Register** notice announcing the proposed changes to the NWPs, we received over 2,100 comments and had 19 people attend the public hearing in Washington, DC. We believe that the level of participation is consistent with other proposals. We understand that the events on September 11, 2001, has affected the general public and we have made reasonable efforts to accommodate the public. In response to these events, we postponed and rescheduled the September 12, 2001, public hearing and extended the 45-day comment period by 15 days. The new date of the public hearing and the extension of the comment period were announced on our web page at *http://www.usace.army.mil/inet/functions/cw/cecwo/reg* and published in the September 18, 2001 (66 FR 48121), and September 21, 2001 (66 FR 48665), issues of the **Federal Register**, respectively. We believe that sufficient time and notice was given to the public to either participate in the public hearing or submit written comments. A physical address, web address that allowed electronic submittal of comments, and a telephone number with a point of contact were included in the August 9, 2001, September 18, 2001, and September 21, 2001, issues of the **Federal Register**. While some addresses within the notice may have contained zip code errors, we continue to provide the best information possible. We disagree that additional public hearings need to be conducted and maintain our position that we have fully complied with the public hearing requirements of the Clean Water Act.

One commenter said that the August 9, 2001, **Federal Register** notice contained several significant changes to the NWPs that were not discussed in the preamble. This commenter cited the addition and removal of a particular word or clauses that may narrow the protection provided by the terms and conditions of an NWP, the general conditions, and the definitions. One commenter said that NWPs should be coordinated with state agencies and the public and that any permit conditions requested by state agencies should be incorporated into the NWPs.

The preamble to the August 9, 2001, **Federal Register** notice discussed the substantive changes that we proposed for the NWPs and general conditions. We do not believe it was necessary to explain all minor editing changes to the NWPs, general conditions, and definitions in the preamble. However, there were a few errors in the proposal that contained some substantive changes that we did not intend to propose as changes. These were not discussed in the proposal and have been changed back to the original March 9, 2000 language. These errors are discussed in the discussion of the NWP, general condition or definition where they occurred. Each Corps district issued public notices announcing the publication of the August 9, 2001, **Federal Register** notice for the proposal to reissue and modify the NWPs. The district public notice process included coordination with state agencies and the public, to solicit their comments on regional issues related to the reissuance and modification of the NWPs, including any proposed regional conditions. We do not agree that all conditions requested by state agencies should be incorporated into regional conditions. Division engineers approve only those regional conditions that are necessary to ensure that the NWPs authorize activities with minimal adverse effects on the aquatic environment, individually and cumulatively. However, state and Tribal Section 401 water Quality Certification and state Coastal Zone Consistency conditions are included as conditions to the NWPs

One commenter said that the August 9, 2001, proposal to reissue and modify NWPs should have had information concerning the cost of administering the NWP program. This commenter stated that costs of administering the NWP program can be reduced by requiring individual permits for all NWP activities that result in more than minimal adverse effects on the aquatic environment and require mitigation. Another commenter asserted that the August 9, 2001, **Federal Register** notice should have included statistics on the current NWP program, such as the number of activities authorized by NWP, the amount of staff time expended to process NWP verification requests, and the amount of staff time used for compliance and enforcement.

We did not believe it was necessary to discuss the costs of administering the NWP program in the August 9, 2001, **Federal Register** notice. Requiring individual permits for all NWP activities that may result in more than minimal adverse environmental effects before consideration of mitigation would not reduce costs. The individual permit process is more costly to implement than the NWP process. Increasing the number of individual permits processed by the Corps would increase the costs to implement the Corps regulatory program. We do not agree that it was necessary to include statistics on the NWP program or the amount of staff time expended to implement the NWP program in the August 9, 2001, notice.

Discretionary Authority

A few commenters objected to the NWPs because they place a large part of the responsibility on discretionary authority at the district and division levels to reduce the adverse individual and cumulative effects to the aquatic environment to a minimal level. One commenter suggested that more restrictive national standards on the NWPs should be imposed instead of relying upon the discretionary authority process. One commenter stated that the use of discretionary authority needs further guidance. Another commenter requested clear criteria district engineers should use to incorporate safeguards as a result of discretionary authority.

We disagree with these commenters because the PCN and discretionary authority processes provide substantial protection for the aquatic environment. The PCN requirements of the NWPs allows case-by-case review of activities that have the potential to result in more than minimal adverse effects to the aquatic environment. If the adverse effects on the aquatic environment are more than minimal, then a district engineer can either add special conditions to the NWP authorization to ensure that the activity results in no more than minimal adverse environmental effects or exercise discretionary authority to require an individual permit. We believe that district engineers are the best qualified to identify projects or activities at the local level that may result in more than minimal adverse effects to the aquatic environment. In addition, division engineers can add regional conditions to the NWPs to lower the PCN threshold or otherwise further restrict the use of the NWPs to ensure that the NWPs authorize only activities with no more than minimal adverse effects on the aquatic environment in a particular watershed or other geographic region. The functions and values of aquatic resources differ greatly across the

country. Therefore, minimal effects determinations for proposed NWP activities should be made at the local level by district engineers. We do not agree that guidance concerning the use of discretionary authority needs to be developed and implemented at the national level.

Compliance With the Endangered Species Act

A couple of commenters said that the Corps should initiate formal Endangered Species Act (ESA) consultation for the NWP program. One commenter suggested that NWPs be subject to national and district-level ESA assessments and formal consultation. One commenter indicated that the Corps is violation of section 7 of the ESA for failing to complete the mandatory formal consultation process with the U.S. Fish and Wildlife Service (FWS) and National Marine Fisheries Service (NMFS) prior to reissuing and implementing the NWPs.

The Corps has initiated formal programmatic ESA consultation with the U.S. FWS and NMFS for the NWP program in 1999. A draft Biological Opinion has been prepared, but a final Biological Opinion has not been issued to date. A section 7(d) determination that the NWP reissuance will not foreclose any options has been prepared. Further, we believe that the NWPs, through the requirements of General Condition 11, comply with ESA. Further where necessary for specific cases we use the interagency ESA section 7 consultation regulations at 50 CFR part 402 when determining compliance with ESA. General Condition 11 requires a non-federal permittee to notify the district engineer if any listed species or designated critical habitat might be affected or is in the vicinity of the proposed activity, or if the proposed work is located in designated critical habitat. General Condition 11 also states that the permittee shall not begin work on the activity until notified by the district engineer that the requirements of the ESA have been satisfied and that the activity is authorized by NWP. General Condition 11 further indicates that the NWP does not authorize the taking of any endangered species.

A few commenters indicated that NWPs create cumulative impacts that affect endangered species. One commenter suggested that the Corps prohibit the use of NWPs in proximity to areas containing habitat that may be used by threatened or endangered species. A couple of commenters objected to General Condition 11, stating that it places the responsibility of determining whether a proposed activity may affect a threatened or endangered species in the hands of the prospective permittee.

To address cumulative impacts that affect endangered species, division engineers can impose regional conditions on the NWPs and district engineers can add case-specific special conditions to NWP authorizations to address impacts to endangered or threatened species or designated critical habitat. For example, regional conditions can prohibit the use of NWPs in certain geographic areas or require PCNs for all activities in areas inhabited by endangered or threatened species. Some Corps districts have conducted programmatic ESA consultation to address activities regulated by the Corps that may affect Federally-listed endangered or threatened species. General Condition 11 requires non-federal permittees to notify the Corps if any Federally-listed endangered or threatened species or designated critical habitat might be affected by the proposed work. Those activities that will not affect any Federally-listed endangered or threatened species or designated critical habitat do not require notification to the district engineer. The regulations at 50 CFR part 402 do not require ESA consultation for those activities that will not affect endangered or threatened species or destroy or adversely modify designated critical habitat. The implementation of General Condition 11, regional conditions, and case-specific special conditions will ensure that the NWP program complies with the ESA.

Regional Conditioning of the Nationwide Permits

One commenter stated that the preamble of the August 9, 2001, **Federal Register** notice makes it clear that in taking into account these regional differences, district engineers can change notification thresholds or require notification for all activities within a particular watershed or waterbody. This commenter indicated that district engineers should also have the discretion to eliminate notification requirements, increase acreage limits, add permits, and authorize activities where the impacts to the environment will be minimal based upon the regional conditions.

Division engineers cannot modify the NWPs by adding regional conditioning to make the NWPs less restrictive. Only the Chief of Engineers can modify an NWP to make it less restrictive, if it is in the national public interest to do so. Such a modification must go through a public notice and comment process. However, if a Corps district determines that regional general permits are necessary for activities not authorized by NWPs, then that district can develop and implement regional general permits to authorize those activities, as long as those regional general permits comply with section 404(e) of the Clean Water Act.

One commenter stated that regional conditions are not uniformly applied by district engineers throughout the country and in some cases can potentially result in less protection for the aquatic resources. This commenter suggested that Corps districts adopt stronger regional conditions or institute stronger national conditions. One commenter agreed that regional conditions are an essential tool for protecting valuable aquatic resources and accounting for differences in aquatic resource functions and values across the country. One commenter stated that regional conditions have broadened the applicability of NWPs to make them less protective.

We believe that imposing more restrictive national terms and limitations on the NWPs is unnecessary. The terms and conditions of the NWPs published in this **Federal Register** notice, the PCN process, and the regional conditioning process will ensure that the NWPs authorize activities with no more than minimal adverse effects on the aquatic environment, individually and cumulatively. It is far more efficient to develop NWPs that authorize most activities that have no more than minimal adverse effects on the aquatic environment and provide division and district engineers with the authority to limit the use of these NWPs through discretionary authority or by adding conditions to the NWPs.

For particular regions of the country or specific waterbodies where additional safeguards are necessary to ensure that the NWPs authorize only those activities with no more than minimal adverse effects, regional conditions are the appropriate mechanism to address those concerns. For example, regional conditions can restrict the use of NWPs in high value waters for those activities that do not require submission of a PCN. Division and district engineers are much more knowledgeable about local aquatic resource functions and values and can prohibit or limit the use of the NWPs in these waters. We believe that regional conditioning of the NWPs provides effective protection for high value wetlands and other aquatic habitats.

One commenter stated that NWPs could affect treaty and other Indian

rights and would like to consult with the Corps on a government to government basis to develop regional or national conditions that will address the concerns. One commenter recommended regional conditions that would require notification of Tribes and provide appropriate Tribes with the opportunity to comment on particular NWP activities.

We believe that General Condition 8, Tribal Rights, addresses the issue of tribal rights and the use of NWPs. Division and district engineers can consult with Tribes to develop regional conditions that will ensure that tribal rights are adequately addressed by the NWP process. Division engineers can regionally condition the NWPs to require coordination with Tribes when proposed NWP activities may affect Tribal lands or trust resources.

One commenter said that regional conditions should be developed for all NWPs to conserve Essential Fish Habitat. A couple of commenters indicated that NWPs should not be used in any areas that have been ranked as high value wetlands or critical resource waters. One commenter indicated that NWPs should not be used to authorize Section 10 and Section 404 activities in the Lower Hudson River. One commenter indicated that regional conditions are troubling because there are no central, definitive sources for information concerning those conditions.

We agree that regional conditions are an effective mechanism to help ensure that the NWPs comply with the Essential Fish Habitat provisions of the Magnuson-Stevens Fishery Conservation and Management Act. We require division and district engineers to coordinate with regional offices of the National Marine Fisheries Service to develop and implement regional conditions to conserve Essential Fish Habitat. Areas with high value wetlands or critical resource waters can be subjected to regional conditions, to ensure that activities authorized by NWPs do not result in more than minimal adverse effects to those waters. General Condition 25 addresses the use of certain NWPs in designated critical resource waters. This general condition states that district engineers can designate additional critical resource waters after notice and opportunity for public comment. The Corps has a general map of Corps division and district boundaries that is available on the Internet at *http://www.usace.army.mil/where.html#Divisions.* This interactive map also provides links to the home pages of Corps districts. Due to the scale of this map and since some Corps district boundaries are based on watershed boundaries, prospective permittees should contact the nearest Corps district office to determine which Corps district will review their PCN, permit application. Most Corps districts post their regional conditions on their Internet home pages.

One commenter stated that the last paragraph on page 42070 of the August 9, 2001, **Federal Register** notice contains an incorrect statement. This paragraph states that: ''In addition to the ''notification'' provision, regional conditions may be developed by District Engineers to take into account regional differences in aquatic resource functions and values across the country and to put mechanisms into place to protect them. After identifying the geographic extent of ''higher'' quality aquatic systems, District Engineers can either change ''notification'' thresholds, or require ''notification'' for all activities within a particular watershed or waterbody to ensure that NWP use and authorization only occurs for activities with minimal adverse effects, individually and cumulatively.'' This commenter said that district engineers can only recommend regional conditions and that regional conditions must be approved by division engineers.

This commenter is correct, because regional conditions must be approved by division engineers after a public notice and comment period. District engineers can propose regional conditions at any time, but the division engineer must approve those regional conditions before they become effective.

Water Quality Certification/Coastal Zone Management Act Consistency Determination Issues

One commenter suggested that agencies should work together to make early agreements on certification conditions or denials of certification by states and tribes under section 401 of the Clean Water Act and section 307 of the Coastal Zone Management Act (CZMA). This would improve protection of the aquatic resources, benefit the regulated community, and reduce duplication of workload. Some commenters indicated that NWPs should be conditioned to prohibit construction by an applicant until all state and local permits are issued. A few commenters stated that the Corps should not issue a provisional NWP verification letter if the state denies Water Quality Certification because local regulators are easily persuaded to issue their permit.

We encourage States and Tribes to coordinate with Corps districts to complete and expedite water quality certification (WQC) and coastal zone certification for the NWPs. The proposed changes to the NWPs that were announced in the August 9, 2001, **Federal Register** notice are minor, and we believe that the proposed changes will not substantially affect the water quality certification and coastal zone consistency determination processes. Concurrent with the publication of the August 9, 2001, **Federal Register** notice, Corps districts and divisions were required to issue public notices to solicit comments on proposed regional conditions and initiate coordination with states and Tribes for the purposes of WQC and CZMA consistency determinations. The NWPs published in today's **Federal Register** notice have not been extensively modified from the proposal published in the August 9, 2001, **Federal Register**. These NWPs will become effective in 60 days. Since there have been few changes to the proposed NWPs, we believe that 60 days is sufficient time for states and Tribes to complete their WQC and CZMA consistency determinations. We believe that it is incumbent upon the Corps to let the applicant know when we have completed the Corps review and what the Corps decision is. It is up to the applicant to get the required individual State 401 water quality certification from the state, where the state has denied a water quality certification for the NWP as a whole.

Discussion of Comments and Final Permit Decisions

Nationwide Permits

The following is a discussion of the public comments received on the proposed nationwide permits and our final decisions regarding the NWPs, the general conditions, and the definitions. The Corps prepared decision documents on each of the NWPs, which are available on the Corps web site, indicated above. Following the discussion of the public comments are the final NWPs, the final general conditions, and the final definitions.

1. *Aids to Navigation.* There were no changes proposed to this nationwide permit. Since there were no comments on this nationwide permit. The nationwide permit is reissued without change.

2. *Structures in Artificial Canals.* There were no changes proposed to this nationwide permit. There were no comments on this nationwide permit. The nationwide permit is reissued without change.

3. *Maintenance.* We did not propose any change to this nationwide permit.

However, there were several comments on this NWP. One commenter suggested that 'terms' should be applied to maintenance of all flood protection works that the Corps built in partnership with the State, and that are now maintained by local entities or by ourselves.

We presume that this comment refers to ''term limits'' on the time that may elapse between maintenance events in flood protection projects. Although this idea may have merit in the context of the original project authorization, or with respect to maintenance agreements with local sponsors, we do not believe that such limits can or should be imposed through NWP 3. We do not intend this NWP to encourage or compel maintenance activities to be conducted more frequently than is necessary. However, the eligibility requirements of NWP 3(i) do encourage maintenance to be conducted before the structure or fill falls into such a state of disrepair that it can no longer be considered ''serviceable.''

Another commenter expressed the opinion that NWP 3 addressed activities that are exempt from regulations under section 404(f)(1) of the Clean Water Act

This is not correct. NWP 3 does not, in any way, extend Clean Water Act or River and Harbor Act jurisdiction to any area or activity that is not subject to these laws. Any activity that is exempt does not require a permit for the Corps including NWP 3.

One commenter suggested that while bioengineered projects are less environmentally damaging than riprap and offer benefits to salmon, the presence of wood in some bank protection structures has the potential to interfere with treaty fishing access by preventing the use of nets in areas. Another commenter stated that Tribes should be informed of all requests for this NWP that involve in-water work and granted 30 days to provide comments.

General Condition 8, Tribal Rights, does not allow an activity or its operation to impair reserved tribal rights, including but not limited to, reserved water rights and treaty fishing and hunting rights. Compliance with the general condition for NWP 3 regarding interference with treaty fishing rights, or other tribal rights, and the determination of any relevant and necessary modification of this NWP is the responsibility of our Division and District offices.

One commenter suggested that riprap should not be allowed in any waterbody where habitat-forming processes are limited, as identified by a state or federal watershed analysis for salmon and/or their habitat, and where the riprap would interfere with these processes. This commenter also suggested that the placement of riprap should be the minimum necessary to protect the structure.

We believe that NWP 3, as proposed, will limit the placement of riprap to the minimum necessary to provide adequate erosion protection. However, applicable law does not impose any restriction related to the habitat-forming processes mentioned by this commenter. In light of this, we believe that it would be inappropriate to impose such a policy under any Corps permit process. Although the consideration of such concerns may be proper in the context of authorizations for new work, we do not agree that it should be a compelling consideration in the context of the kinds of maintenance activities that are eligible for authorization under this NWP.

One commenter suggested that the Corps prohibit the addition of new riprap or, at a minimum, require ''Notification'' if new riprap is proposed, and that the Corps prohibit the placement of riprap or any other bank stabilization material in any special aquatic site, including wetlands. Another commenter stated the permit should prohibit ''removal of accumulated sediments'' in special aquatic sites.

Since this NWP only authorizes activities that restore an area to its previous condition, we do not believe it is appropriate to prohibit the maintenance of structures or fills simply because a special aquatic site may have formed in areas that require such repair. Similarly, with respect to the discharge of riprap or other bank stabilization materials, we do not believe that restoration of banks or of stabilization projects, within the limits of NWP 3, should be precluded by the presence of a special aquatic site.

One commenter suggested that this NWP should not be issued for maintenance work on culverts that fail to meet appropriate standards for the upstream and downstream passage of fish, or issued for culverts that do not allow for the downstream passage of substrate and wood. This commenter also suggested that if the proposed action is to remove the build-up of substrate at the upstream end of the culvert, or from the culvert itself, a condition of the permit should be that all substrate of spawning size and all wood of any size should be placed at the downstream end of the culvert.

We do not believe there are any national standards that we can apply to NWP 3 to assure that an adequate passage for fish and substrate materials is provided in the maintenance situations that can be authorized under this NWP. However, we agree that, to the extent that actions to enhance such fish and substrate passage can be incorporated into individual NWP 3 authorizations, they should be included as best management practices. We will encourage Corps districts to consider this issue when approving maintenance of culverts. Any redeposit of excavated spawning-size substrate may be authorized under NWP 18, but is subject to the limitations of that NWP

Several commenters indicated the Corps should withdraw section (iii) as the dredging and discharge allowed is double that authorized by NWPs 18 and 19 and, as such, will result in greater than minimal adverse effects. Several commenters also offered the opinion that restoring upland areas damaged by a storm, etc., has nothing to do with maintaining currently serviceable structures. Furthermore, some commenters suggested that it may be difficult to determine if the ''damage'' is due to a discreet event after a two-year period. Additionally, there is no acreage limit for this section and placement of ''upland protection structures'' will result in changes in the upstream and downstream hydromorphology of a stream.

We do not agree that the mere fact that the amount of the dredging or discharge authorized under this NWP, as compared to the authorization of similar activities under other NWPs, in any way indicates that the effects are more than minimal. The question of whether or not restoring upland areas has anything to do with maintaining currently serviceable structures is not relevant to the consideration of this NWP since no such relationship is required by the permit itself, or by the regulations governing the issuance of such permits. We do agree that, in some cases, it may be difficult to determine whether any damage is due to a discrete event. For this reason, the NWP prescribes only limited criteria in this regard, and it affords considerable discretion to the District Engineer to determine when there is a reasonable indication that the damage being repaired qualifies for authorization under NWP 3.

Two commenters indicated the permit can be used to expand the scope of other NWPs, including 13, 18, 19 and 31 which could result in more than minimal impact to the environment.

General condition 15 addresses the use of multiple NWPs for a project. This condition provides that more than one NWP can only be used if the acreage lost

does not exceed the acreage limit of the NWP with the highest specified acreage limit. Normally, when NWPs are combined for a project, the combined impacts are no more than minimal. We rely on our District offices to provide reasonable final assurance that the use of one or more NWPs, as they are applied in actual situations, do not result in more than minimal impacts. Districts have discretionary authority to require individual permits in situations where there is reason to believe that any NWP, individually or in combination with other NWPs, will result in more than minimal impacts.

One commenter suggested that the permit (inappropriately) encourages reconstruction in floodplains without questioning the need or desirability of doing so.

We believe that, inherent in the authorization of a structure or fill, is the reasonable right to maintain those structures or fills. With respect to the kinds of activities that are eligible for authorization under NWP 3, we do not agree that an assessment of need or desirability, is appropriate or necessary to ensure that the relevant effects are no more than minimal, including the effects on the floodplain.

Several commenters stated the lack of a definition of ''discreet event'' ignores the natural, hydrological processes at work in stream systems and allows landowners to prevent natural meandering processes within a waterway caused by normal storm events.

On the contrary, NWP 3 clearly recognizes that maintenance may be required either as a result of a discrete event such as a storm, or as a result of non-discrete forces. However, we do not agree that landowners should be prevented or unduly constrained from maintaining legitimately constructed structures or fills that are subject to the effects of natural hydrologic processes of adjoining waters.

A couple of commenters stated allowing riprap and gabions will result in the permanent channelization of natural streams by inhibiting their natural movement within the floodplain with major direct and secondary effects to the aquatic environment, as well as adverse hydrologic affects to downstream properties.

Since NWP 3 only authorizes activities that repair or return a project to previously existing conditions, we do not believe that it will result in any effects that did not previously accrue from the existence of the original structure or fill, and we believe that the maintenance activities authorized under this NWP will have no more than minimal adverse effects on the aquatic environment, individually and cumulatively.

One commenter stated that NWP 3(i) should be modified to also allow for the maintenance of existing structures or fill that did not require a permit at the time they were constructed.

NWP 31 does authorize regulated activities related to the repair, rehabilitation, or replacement of structures or fills that did not require authorization at the time they were constructed. As referenced in NWP 3(i), the regulations at 33 CFR 330.3 provide an elaboration on this point.

One commenter suggested that NWP 3(ii) should be modified to allow the Corps District Engineer to waive the 200' limitation in any direction from the structure when the aquatic resource impacts would remain minimal. It should also specify that areas that are only excavated with only incidental fallback, temporary stockpile areas, and temporary redeposits should not be included in the 200' limitation since such impacts would not cause a loss of waters of the US.

It is entirely reasonable to conclude that regulated discharges associated with the removal of accumulated sediments that occur more than 200 feet from a certain structure may have no more than minimal effects. However, our intent in qualifying such removal for eligibility under NWP was to authorize them as part of the maintenance of a specific structure, and not simply because the effects were no more than minimal. Although we cannot certify that 200 feet is, in any way, an absolute distance within which removals are clearly associated with the maintenance of the structure, we believe that it is a reasonable distance for asserting such association for the purposes of this NWP. Incidental fallback associated with otherwise unregulated activities is not regulated under section 404 of the Clean Water Act or under section 10 of the Rivers and Harbors Act. Temporary stockpiles and other temporary discharges of dredged or fill materials in waters of the US are regulated, but we believe that they can and should be avoided in most maintenance situations. Although they may not result in a permanent or net loss of waters of the US, and they may have no more than minimal adverse effects on the aquatic environment, we do not believe that they are necessary in most cases. They can also lead to discharges of pollutants into waters of the US that may or may not have minimal adverse effects, depending on the circumstances. For these reasons, we are not including such activities among those eligible for authorization under NWP 3.

One commenter suggested that NWP 3(iii) should be modified to allow the Corps District Engineer to waive the limitation which states that dredging may not be done primarily to obtain fill for restorative purposes when the aquatic resource impacts would remain minimal or when it is environmentally advantageous to allow some modification of pre-existing contours or discharges of additional fill material to prevent recurring damage and the associated repeated disturbance to continually repair the damage. This commenter further suggested that the District Engineer could then exercise more discretion in terms of requiring watershed based mitigation banks and in-lieu fee programs for additional impacts while requiring mitigation at a site of superior watershed importance.

This NWP focuses on the repair and restoration of currently serviceable structures and not on the source of such material. We are not convinced that allowing dredging to obtain the fill material would normally have no more than minimal impacts unless there were also detailed listing of dredging limitations and conditions. Further, to establish such limitations we would need to provide opportunity for public review and comment. In light of this, we do not agree that the suggested expansion of this NWP is appropriate. This NWP does allow some minor deviation, but modifications that are more than minor deviations cannot be considered to be ''maintenance'' as it is envisioned in this NWP and, depending on the nature and location of such prospective changes, separate authorization may be required.

One commenter stated that individuals should not be able to use this Nationwide Permit to increase the area impacted by bank stabilization structures.

NWP 3 does not authorize any significant increase in the original structure or fill. Only minor deviations that are necessary to effect repairs are eligible for authorization under this NWP.

One commenter insisted the notification requirement should be removed from NWP 3(ii) and NWP 3(iii) as these requirements create additional administrative burden with no increase in environmental protection or added value to the process. For NWP 3(iii), the commenter suggested that the requirement should be changed to a post-construction notification in order to expedite repairs necessary to public infrastructure.

We believe that these PCN requirements, as proposed, are a prudent means of assuring that the proposed maintenance activities are limited to those eligible for authorization under this NWP. We recognize that the PCN requirement imposes an additional burden on the project proponent, but we do not believe that it is inequitable or, in most circumstances, substantial. Emergency permit procedures are available to authorize such maintenance activities more quickly in emergency situations.

One commenter suggested that NWP 3 should be withdrawn as it is too broad for projects to be considered ''similar in nature'', or to be able to determine that the various projects, when considered individually or cumulatively, will result in minimal adverse environmental effects. The commenter also felt that its limitations are arbitrary and capricious and potentially could result in the exposure of highly toxic compounds.

We believe that NWP 3, as proposed, describes activities that are sufficiently similar in nature for the purposes of the NWP Program. Since this NWP only authorizes activities needed to return a project to a previously existing condition that either was authorized or that was implemented prior to the need for authorization, we do not agree that the effects will be more than minimal.

One commenter stated the Corps is unlikely to obtain adequate information on whether or not a change in use is contemplated, what the practicable alternatives are, or what materials are used unless an Individual Permit is required. In light of this, the commenter suggested that NWP 3 should be rewritten to prevent serious and widespread abuses.

We acknowledge that under this NWP we rely on the applicant's information on the intended use and on other aspects of the regulated activity. Since this NWP only authorizes activities that would return a project to previously existing conditions, we believe that the likelihood of serious or widespread abuses is exceedingly low. Further, we have the authority and use our authority to enforce compliance with permits, where necessary. The nationwide permit is reissued without change.

4. *Fish and Wildlife Harvesting, Enhancement, and Attraction Devices and Activities.* There were no changes proposed to this nationwide permit. There were no comments on this nationwide permit. The nationwide permit is reissued without change.

5. *Scientific Measurement Devices.* There were no changes proposed to this nationwide permit. One commenter stated the word ''primarily'' should be replaced with the word ''solely''. We believe that this change would unnecessarily restrict the NWP and require an individual permit in a few cases, simply because there was a secondary use or benefit of the scientific devise. Further, we do not believe that the requirement for an individual permit, for that reason, would result in any added value for the environmental. The nationwide permit is reissued without change.

6. *Survey Activities.* There were no changes proposed to this nationwide permit. There were no comments on this nationwide permit. The nationwide permit is reissued without change.

7. *Outfall Structures and Maintenance.* There were no changes proposed to this nationwide permit. One commenter suggested that notification should be limited to impacts greater than one acre, and that the District Engineer should have the authority to quickly issue this permit, without agency notification, by placing conditions limiting construction activities to periods of low-flow or no-flow in unvegetated ephemeral watercourses. Another commenter indicated the Corps should withdraw NWP 7(ii) since NWP 19 already provides for minor dredging, or limit the amount of material to be excavated to 25 cubic yards in order to be consistent with NWP 19.

The Corps believes that the limitations on the amount of fill that can be placed per linear foot is normally sufficient to ensure that the adverse effects on the aquatic environment will be minimal, individually and cumulatively. We agree that some impacts can be reduced by conducting certain activities in waters of the United Sates during low-flow or no-flow conditions. However, we also believe that a prohibition is not necessary or not practicable in many cases. We believe that this practice should be encouraged to further minimize any adverse effects on the aquatic environment. Therefore, we have modified general condition 3 to encourage this practice. We agree that there is some redundancy between NWP 7(ii) and NWP 19. However, we believe that NWP 7(ii) should not be eliminated since it is related to other activities authorized by NWP 7. Furthermore, the terms of NWP 7 are specific to that type of activity.

One commenter said this permit should prohibit the removal of accumulated sediments from small impoundments and special aquatic sites as these locally support rare, threatened or endangered water-dependent organisms.

The Corps does not believe that these areas normally support rare, threatened or endangered water dependent organisms, but this NWP does not authorize any regulated activity unless it complies with the Endangered Species Act. This NWP only allows the removal of accumulated sediments to maintain a preexisting depth, to facilitate water withdrawal at the location of the water intake.

One commenter insisted that NW7 should be withdrawn as it is too broad for projects to be considered ''similar in nature'', or to be able to determine that the various projects, when considered individually or cumulatively, will result in minimal adverse environmental effects. The commenter also suggested that its limitations are arbitrary and capricious. The Corps believes that the description of the type of activities will ensure that those activities authorized by this NWP will be similar in nature. Further, we believe that these activities normally will have no more than minimal adverse effects on the aquatic environment, individually or cumulatively. Further, Division and District Engineers will condition such activities where necessary to ensure that these activities will have no more than minimal adverse effects on the aquatic environment, individually and cumulatively.

The nationwide permit is reissued without change, however condition 3 was modified based on a comment on this NWP as indicated above.

8. *Oil and Gas Structures.* There were no changes proposed to this nationwide permit. However, one commenter recommended that NWP 8 should be withdrawn as it is too broad for projects to be considered ''similar in nature'', or to be able to determine that the various projects, when considered individually or cumulatively, will result in minimal adverse environmental effects. The commenter indicated that this permit category has the potential for catastrophic secondary, indirect, and cumulative adverse impacts, including adverse impacts to federally listed threatened or endangered species.

The Corps believes that this NWP is sufficiently restrictive to protect the environment. The only structures that can be authorized under this NWP are those within areas leased by the Department of the Interior, Minerals Management Service. The general environmental concerns are addressed in the required NEPA documentation that the Service must prepare prior to issuing a lease. Further, Corps involvement is only to review impacts on navigation and national security as stated in 33 CFR 322.5(f). The

nationwide permit is reissued without change.

9. *Structures in Fleeting and Anchorage Areas.* There were no changes proposed to this nationwide permit. However, one commenter suggested changing the permit to read: ''Buoys, floats and similar non-structural devices placed within anchorage or fleeting areas to facilitate moorage of vessels where the USCG has established such areas for that purpose.''

The Corps believes that this change is not needed. The current language is sufficient to ensure that the category of activities will be similar in nature. We believe that the suggested language would not allow certain structures that are necessary for moorage of vessels to be authorized within anchorage and fleeting areas. The types of structures permitted by this NWP within USCG established anchorage or fleeting areas are only those for the purpose moorage of vessels. We believe that this limits the type of structure sufficiently to be considered similar in nature. The nationwide permit is reissued without change.

10. *Mooring Buoys.* There were no changes proposed to this nationwide permit, and there were no comments on this nationwide permit. The nationwide permit is reissued without change.

11. *Temporary Recreational Structures.* There were no changes proposed to this nationwide permit. However, one commenter recommended withdrawing NWP 11 as it is too broad for projects to be considered ''similar in nature'', or to be able to determine that the various projects, when considered individually or cumulatively, will result in minimal adverse environmental effects. The commenter also stated that the permit category has the potential for catastrophic secondary, indirect, and cumulative adverse impacts, including adverse impacts to Federally listed threatened or endangered species. Another commenter suggested that temporary buoys, markers, small floating docks, and similar structures can interfere with the exercise of treaty fishing access and, therefore, in an area subject to treaty fishing, notification to affected tribes is required. The commenter further stated the regional conditions should be added, to require that such structures shall be removed from salmon spawning areas prior to commencement of the spawning season.

We believe that the listing of the type of activities will ensure that those activities authorized by this NWP will be similar in nature. Further, we believe that normally these activities will have no more than minimal adverse effects on the aquatic environment, individually and cumulatively. Further, Division and District Engineers will condition such activities where necessary to ensure that these activities will have no more than minimal adverse effects on the aquatic environment, individually and cumulatively. We agree that this NWP, as with all NWPs, should not authorize any activity that may impair reserved tribal rights, including, but not limited to, those reserved water rights, and treaty fishing and hunting rights, as stated in general condition 8. District and division engineers will consider the need to add regional conditions or case-specific conditions where necessary to protect such tribal rights. The nationwide permit is reissued without change.

12. *Utility Line Activities.* No changes to this nationwide permit were proposed. Several commenters raised issues and suggested changes related to size and threshold limits and construction practices. One commenter said that the permit should contain height and depth requirements for utility line installation. Another commenter suggested that a strict cap limit on the size of the utility line should be established. One commenter suggested that the Corps should require revegetation, as well as restoration, of the landscape's original contours for all NWP12 projects. One commenter suggested that sidecasting of material into wetlands should be prohibited, as should the construction of permanent access roads. One commenter suggested that the Corps should limit temporary sidecasting to 30 days, rather than 90 to 180 days as currently written. The commenter also suggested that, because temporary impacts can have more than minimal adverse effects, they should be limited to ½-acre, and total impacts should be limited to 0.3 acres. One commenter recommended raising the acreage limit from ½ acre to one acre. Another commenter said that the ½ acre limit is arbitrary and capricious.

Based on our experience, the Corps believes that the current thresholds and construction limitations are adequate to protect the aquatic environment while allowing needed projects to proceed, with restrictions. Furthermore, district engineers can further restrict specific activities, such as limiting sidecasting to 30 days where necessary. At this time, we do not believe that it is necessary or appropriate to increase or reduce the thresholds.

Several commenters suggest changes to the preconstruction notification (PCN) requirement. One commenter recommended requiring a PCN for all lines greater than 6″ in diameter. Two commenters indicated that the absence of a clear definition of ''mechanized land clearing'' and a reasonable threshold for requiring PCNs creates regulatory uncertainty and an unnecessary burden on gas utility and pipeline construction projects. They further indicated that the notification requirement would be more reasonable and consistent with other NWP criteria if it only applied when mechanized land clearing affects more than a reasonable acreage of forested wetland. Another commenter recommended removing the PCN requirements for any mechanized land clearing that occurs in forested wetlands for utility rights-of-way. One commenter stated the Corps should exempt all utility projects other than sewer lines from the notification criteria because it is an unnecessary burden on non-sewer, energy-related utility projects, which typically will cross a water at right angles as opposed to running parallel to a stream bed that is within a jurisdictional area. Also, one commenter suggested we substitute a Corps-only PCN for activities resulting in the loss of between ½ and one acre of waters of the U.S. and a broader PCN for activities resulting in the loss of more than one acre. One commenter recommended reducing the PCN time period for a Corps response from 45 to 30 days.

The Corps believes that the current PCN requirements continue to be the appropriate criteria for determining when a PCN is required. We do not believe that an additional PCN requirement related to the size of the utility line is appropriate since the impacts of the utility line are temporary, and since restoration to preconstruction contours is required. We believe that projects involving mechanized land clearing require a PCN so that the Corps can ensure that the effect are no more than minimal. We also believe that the requirement for agency coordination of PCNs for activities that affect more than ½ acre for all NWPs, including this one, should remain in place to avoid confusion and to be consistent for all other NWPs. We believe that the 45 day response time for PCN is appropriate. It provides adequate time for those NWP activities that need some extra time to review. Corps Districts do not routinely use the 45 day period. Currently the average review time for NWP verifications is 18 days.

One commenter stated that natural gas distribution and pipeline projects typically only result in incidental fallback and, as such, should not require a 404 permit.

The Corps disagrees that such projects exclusively result in only incidental fallback. The Corps recognizes that

some excavation activities are likely to result in only incidental fallback that does not require a Corps permit under section 404 of the Clean Water Act. However, the Corps regards the use of mechanized earth moving equipment in waters of the US as resulting in a discharge of dredged material unless project specific evidence shows that the activity results in only incidental fallback. (See 33 CFR 323.2(d)(2)(i)). The determination whether a permit is required will be made on a case-by-case basis. In addition, the backfill for the pipeline is a regulated discharge which requires authorization under section 404 of the Clean Water Act.

A few commenters suggested that the NWP, as proposed, would eliminate the ½ acre threshold for several activities. They indicated that the proposed NWP states that ''activities authorized by paragraph (i) *and* (iv) may not exceed a total of ½-acre loss of waters of the U.S.'' whereas the existing NWP states that ''activities authorized by paragraphs (i) *through* (iv) may not exceed a total of ½-acre loss of waters of the United States.'' Since the current NWP language more clearly indicates that the total loss may not exceed ½-acre, they recommended that the current language should be retained.

The Corps agrees with this comment. The change was an error and the Corps did not intend to change this NWP. The current language will be retained.

Several commenters indicated that the discharge of dredged or fill material under this NWP could adversely affect a number of species listed under the Endangered Species Act.

The Corps believes that General Condition 11 is adequate to protect endangered species. No NWP authorizes any activity that does not comply with the Endangered Species Act.

One commenter recommended that the Corps prohibit ''stacking'' NWP 12 authorizations to allow multiple crossings, or to allow the use of NWP 12 in combination with any other NWP.

This NWP can only be used once for a pipeline crossing of a water of the United States. A pipeline project may cross more than one stream. However, each of these separate and distinct crossings is considered a single and complete crossing in accordance with Corps regulations at 33 CFR 330.2(i).

A few commenters recommended that the use of NWP12 for water intakes should not be approved because the low head dams typically associated with such structures can violate general condition 4. Some commenters also indicated that water withdrawal projects have different requirements than standard utility line crossings resulting in alterations to natural flow regimes that cannot be considered under this NWP.

NWP 12 specifies that all activities authorized by this NWP must comply with General Condition 4. Furthermore, NWP 12 cannot be used to authorize low head dams. Such structures would require an individual permit or some other general permit.

Two commenters requested the Corps revoke NWP12(ii) since they believed that it is unnecessary to construct such facilities in wetlands. They believe that providing an easily attainable authorization for such construction will actually encourage the placement of utility lines in wetland areas, resulting in an increase in the loss of wetlands.

We agree that any unnecessary construction of utility line substations in wetlands should be avoided. However, where such construction cannot be avoided as a practical matter, we believe that the limitations we have imposed in the NWP will ensure that any adverse effects on the aquatic environment will be no more than minimal, individually and cumulatively.

One commenter suggested that NWP 12 should be conditioned to require BMP's on private lands only, since federal and state land managers are more likely to impose conditions on properties under their control.

We believe that the term and conditions are adequate to ensure that any adverse effects on the aquatic environment will be no more than minimal, individually or cumulatively. The Corps districts will add regional or case specific conditions where they determine a need for such conditions.

One commenter said that NWP 12 should be withdrawn as it is too broad for projects to be considered ''similar in nature'', or to be able to determine that the various projects, when considered individually or cumulatively, will result in minimal adverse environmental effects. The permit category has the potential for catastrophic secondary, indirect, and cumulative adverse impacts, including adverse impacts to federally listed threatened or endangered species.

We believe that the minor nature of these types and categories of activities are similar in nature. We further believe that the conditions and specified thresholds will ensure that the activities will have no more than minimal adverse effects on the aquatic environment, individually and cumulatively. The thresholds have been developed based on years of experience and were developed to consider most effects that could occur in many areas of the country. However, Division and District Engineers will condition such activities where necessary to ensure that those activities will have no more than minimal adverse effects on the aquatic environment, individually and cumulatively. Activities authorized by this NWP must comply with general condition 11 to ensure that the activity is in compliance with the Endangered Species Act.

One commenter suggested we remove the sentence ''waters of the United States temporarily affected by filling, flooding, excavation, or drainage, where the project area is restored to preconstruction contours and elevations, are not included in the calculation of permanent loss of water of the United States.''

The Corps has established the threshold limits for all NWPs to be for permanent loss of waters of the US. Further we have establish the thresholds to provide for the Corps to be able to look at those projects to ensure that there will be no more minimal adverse effects on the aquatic environment, individually or cumulatively. Because the temporary discharges do not result in long lasting impacts and any short term impacts are less per acre than permanent, adding those temporary impacted acreage to permanent acreage would not provide an accurate measure of the potential impacts that may result in more than minimal effects.

One commenter recommended that a threshold of ½-acre should be used below which no compensatory mitigation should be required, unless a District Engineer determines otherwise. Another commenter suggested the changes in values and functions associated with the permanent conversion of maintaining gas line rights-of-way are more likely to be beneficial than detrimental. Because of the benefits, as well as the very limited extent of vegetation change, a mitigation ratio of 1:1 should be adopted for wetland disturbances above ½-acre. One commenter suggested we remove the paragraph that characterizes the conversion of a forested wetland to an herbaceous wetland as a ''permanent adverse effect'' that requires mitigation. Compensatory mitigation should not be required as well-maintained herbaceous wetlands are of significant value and often provide greater ecological functions. Additionally, many utility construction and maintenance activities result in only temporary effects on wetlands.

The Corps believes that mitigation should be required to ensure that any adverse effects on the aquatic environment will be no more than

minimal, individually or cumulatively. We have proposed to modify General Condition 19 concerning mitigation requirements for the NWPs. See the preamble discussion on General Condition 19 for our response to mitigation comments. The nationwide permit is reissued without change.

13. *Bank Stabilization.* The Corps proposed no changes to this NWP. One commenter said that this NWP should be withdrawn because it is too broad to meet the ''similar in nature'' requirement of general permits and it authorizes activities that may result in more than minimal adverse environmental effects. This commenter also stated that this NWP has the potential for substantial secondary, indirect, and cumulative adverse impacts, including adverse impacts to federally listed threatened or endangered species and environmental damage at riprap extraction sites. Another commenter stated that the Corps needs to develop a method to document, analyze, and minimize environmental impacts from all bank stabilization activities. One commenter stated that this NWP authorizes activities that adversely affect natural stream processes, is contrary to current practices and philosophies of natural stream rehabilitation, and impedes future restoration work. A couple of commenters suggested that the Corps adopt a ''no net loss in natural stream banks'' policy, requiring the removal of one linear foot of bank stabilization for every linear foot of new bank stabilization. Two commenters stated that the Corps should direct its bank stabilization and bank restoration programs toward the goal of maintaining and restoring natural stream processes to the Nation's rivers and streams.

This NWP complies with the ''similar in nature'' requirement of general permits, including nationwide permits, even though there are numerous methods of bank stabilization that can be authorized by this NWP. The terms and conditions, including the notification requirements and the ability of division and district engineers to impose regional and case-specific conditions on this NWP, will ensure that the activities authorized by this NWP will result in no more than minimal individual and cumulative adverse effects on the aquatic environment. For those NWP 13 activities that require notification, district engineers will review the proposed work to ensure that those activities result in no more than minimal adverse effects to the aquatic environment. We do not agree that it would be appropriate to adopt a ''no net loss'' goal for stream banks. Stream bank stabilization activities are necessary to protect property and ensure public safety. Stream restoration is not always feasible in developed areas and other types of bank stabilization may be more appropriate in those areas.

One commenter said the NWP should encourage consideration of more environmentally acceptable methods of bank stabilization first, and if those methods are not appropriate, then hard erosion control measures such as riprap or bulkheads could be authorized. A commenter recommended that this NWP authorize techniques that employ more natural methods of bank protection channelward of the ordinary high water mark, which may or may not include the use of hard armoring materials.

We do not agree that it is necessary to establish preferences for bank stabilization methods in the terms and conditions of this NWP. In certain situations, riprap or bulkheads may be the only practicable methods of bank stabilization. This NWP can be used to authorize bank stabilization activities channelward of the ordinary high water mark, as long as the terms and conditions of the NWP are met.

One commenter stated that the 500 linear foot limit of this NWP should be reduced to 100 linear feet, to prevent significant degradation of salmon habitat. Two commenters said that NWP 13 should not authorize bank stabilization activities in excess of 300 linear feet. One commenter indicated that NWP 13 should be modified to allow district engineers to waive the 500 linear foot limit when impacts to aquatic resource are minimal or when it is environmentally advantageous to allow additional bank stabilization to prevent recurring damage. Such a waiver would reduce repeated disturbances associated with continuously repairing damaged bank stabilization measures that were shortened to meet the limit. This commenter also said that this waiver would allow district engineers to exercise more discretion in terms of requiring watershed based mitigation banks and in-lieu fee programs for additional impacts and requiring mitigation at a site of greater watershed importance.

Based on our experience of using this limit for over 25 years, we believe that 500 linear feet is the appropriate limit. However, this limit can be waived as indicated in the first sentence of the last paragraph of NWP 13 which states that bank stabilization activities in excess of 500 feet in length may be authorized if the project proponent notifies the district engineer in accordance with General Condition 13 and the district engineer determines that the proposed work results in minimal individual and cumulative adverse environmental effects. Division engineers can regionally condition this NWP to prohibit or restrict its use in streams inhabited by salmon. For those activities that require notification, district engineers will review the proposed work to ensure that the adverse environmental effects are no more than minimal.

One commenter said that projects proposing bank stabilization structures of more than 300 feet should be elevated to the Individual Permit level.

Past experience with the limits of this NWP leads us to believe that the currently proposed 500-foot limit generally will not result in more than minimal impacts.

Two commenters recommended the Corps prohibit stacking of NWP 13 with itself or any other NWP. Two commenters stated the Corps should prohibit the use of waste concrete for bank stabilization material due to the environmental problems, such as toxic paints from sidewalks, rebar from construction, and petroleum products from automobiles. One commenter indicated that the placement of wood in bank stabilization projects has the potential to interfere with treaty fishing access and affected tribes should be notified of activities authorized by this NWP.

This NWP authorizes single and complete bank stabilization activities. We do not agree that it would be appropriate to prohibit the use of NWP 13 with other NWPs, but we do prohibit using a NWP more than once for a single and complete project. General Condition 15 addresses the use of more than one NWP for a single and complete project. General Condition 18 addresses the use of suitable material for discharges of dredged or fill material into waters of the United States. This general condition prohibits the use of materials that contain toxic pollutants in toxic amounts. General Condition 8, Tribal Rights, indicates that no activity or its operation may impair reserved tribal rights, including, but not limited to, reserved water rights and treaty fishing and hunting rights. This NWP can further be regionally conditioned by division engineers to ensure that bank stabilization activities do not interfere with specific treaty fishing access. This nationwide permit is reissued without change.

14. *Linear Transportation Projects.* In the August 9, 2001, **Federal Register** notice, we proposed to modify NWP 14

to authorize private transportation projects in non-tidal waters to have a maximum acreage of ½-acre instead of the current ⅓-acre, and to eliminate the 200 linear-feet prohibition.

Numerous commenters agreed with the proposal to treat both public and private transportation projects the same for tidal and non-tidal waters and increase the impact limit to ½-acre in non-tidal areas. Most agreed that the Corps was unjust in differentiating between private and public projects in the past. Two commenters recommended that the ½ acre threshold be increased to assist the applicant with projects that may still have minimal impacts however will go over the allowed threshold and stated this will decrease the amount of individual permits. Several commenters disagreed with the proposal to treat both public and private transportation projects the same and indicated that private individuals are less likely to have access to critical resource and ecological information to assist them in designing their project with minimal impacts to the aquatic environment. Some commenters recommended that the ½-acre threshold be changed to ½-acre overall. One commenter stated that the change in the acreage threshold conflicts with the general requirement of the Nationwide Permits to have minimal adverse impacts on the aquatic environment. One commenter stated that this NWP supports a non-water dependant activity and therefore activities proposed under this NWP should be reviewed as an Individual Permit. One commenter recommended that the Corps withdraw all proposed changes.

We have determined that the impacts to the aquatic environment for transportation projects will be essentially the same whether the project is public or private and on the average we would expect the private transportation projects to be smaller. We believe that private projects go through local, state, and other permitting processes and have the same access to resource and ecological information as public projects. Furthermore, the terms and conditions will ensure that NWP 14 will have no more than a minimal adverse effect on the aquatic environment. We believe that a distinction needs to be made for transportation crossings based on whether they cross tidal or non-tidal waters. We are not changing the maximum acreage of NWP 14, but are applying the maximum acreage to non-tidal waters rather than public projects. We have determined that the maximum loss of waters of the US for this NWP should be ½ acre in non-tidal waters of the US and ⅓ acre in tidal waters of the US. Both limits along with the terms and conditions of the NWP will ensure that this NWP does not authorize activities with more than minimal adverse effects on the aquatic environment.

Many commenters objected to the removal of the 200 linear-foot restriction because this type of impact could not be considered minimal. The commenters stated that streams have no adjacent wetlands therefore allowing several hundred feet of stream to be impacted before the ½ acre threshold is reached, that requiring a linear measure ensures that impacts will be minimal, and no justification was provided in the **Federal Register** for proposing this change. Numerous commenters agree with the removal of the 200 linear-foot restriction and have stated that the PCN threshold, as well as the acreage limit, will continue to provide protection to the environment. One commenter recommended that a 100 linear-foot restriction be adopted.

We proposed to remove the 200 linear-feet prohibition from NWP 14 to eliminate varied interpretations and to simplify the basis for use of the permit. We have determined that the removal of this prohibition will have little practical effect as the limiting factor contained in the terms and conditions of NWP 14 is most often the acreage limitation. We believe that very few projects exceeding the 200 linear-feet would remain below the ⅒-acre ''notification'' threshold. For example, a 200′ by 22′ wide transportation crossing would impact 4,400 sq. ft. (i.e., ⅒-acre). We have determined that the ''notification'' threshold (i.e. ⅒-acre for areas without special aquatic sites, and all proposed projects that would involve fill in special aquatic sites) allows the Corps to do a case-by-case review. Therefore, we have concluded that these measures, along with the other terms and conditions of the NWPs and other mechanisms such as regional conditions and the discretionary authority, will ensure that any NWP 14 activity that complies with the acreage threshold will have no more than a minimal adverse effect on the aquatic environment.

Two commenters recommend that all proposed changes be implemented and individual Corps Districts not be allowed the use of discretionary authority to restrict these changes nor require an individual permit for multiple stream crossings. One commenter recommended that mitigation always be required for impacts under NWP 14.

We believe that the use of discretionary authority by District Engineers is necessary to ensure that impacts to the aquatic environmental that are more than minimal receive the proper review. The requirement for a compensatory mitigation proposal applies to those activities that require notification. Further, for projects not requiring a PCN, District Engineers may determine, on a case-by-case basis, that compensatory mitigation is necessary to offset losses of waters of the United States because the work, without compensatory mitigation, will result in more than minimal adverse effects on the aquatic environment. This could occur if the project proponent submits a voluntary verification request to the Corps or if a concern is raised to the Corps by a third party.

Numerous commenters agreed with the preamble clarification that features integral to linear transportation projects are covered under NWP 14 and stated this clarification will reduce confusion without adversely affecting environmental values. One commenter objected to the clarification of features integral to linear transportation projects and stated that the addition of these activities expands the possibility of impacts, which often could be avoided. One commenter recommended that the term ''stormwater detention basin'' (as used in the preamble to the proposed NWPs) be changed to read ''stormwater management basin'' and ''water quality enhancement measure'' be changed to read ''water quality/wetland enhancement measures''. The commenter stated that this change would allow additional stormwater best management practices to be authorized by this permit.

We do not believe that the features described in preamble of the August 9, 2001, issue of the **Federal Register**, expanded the activities that can be authorized by NWP 14. We have maintained that NWP 14 may not be used to authorize non-linear features commonly associated with transportation projects, such as vehicle maintenance or storage buildings, parking lots, train stations, or hangars. We believe the examples listed in the preamble are dependent integral components of typical linear projects and were added for clarification. We maintain the authority to assert discretionary authority when evaluating the magnitude of adverse effects on the aquatic environment (33 CFR 330.1(d), 330.4(e) & 330.5). These examples and other integral features not listed could be authorized. We agree that stormwater management features and wetlands features integrally related to the linear

transportation project could be authorized by this NWP. In addition, other NWPs may be combined with this NWP to authorize related activities subject to general condition 15.

Several commenters addressed the Corps definition of single and complete project under NWP 14. One commenter recommends that any proposed roadway fill in special aquatic sites, including wetlands require a PCN with agency coordination. One commenter recommended that the definition of ''single and complete project'' be amended to include all portions of the linear project that do not have independent utility. One commenter recommended that multiple stream crossings should be deemed to be part of a single road project. One commenter recommended that additions to previously permitted projects be reviewed under the individual permit to avoid piece-mealing.

Notification is required for all discharges of dredged or fill material into special aquatic sites and discharges resulting in the loss of greater than 1/10 acre of waters of the United States. We believe most activities authorized by this NWP will require notification to the district engineer and the determination as to whether to require an individual permit should be made on a case-by-case basis. For example, if NWP 14 is used more than once by different project proponents to cross a single waterbody, the district engineer will assess the adverse effects on the aquatic environment and determine if those adverse effects are minimal. As with any NWP, the district engineer can exercise discretionary authority and require an individual permit if the adverse effects on the aquatic environment will be more than minimal. The definition of the term ''single and complete project'' for linear projects can be found in Corps regulation at 33 CFR 330.2(i).

Many commenters recommend that NWP 14 not be authorized within tidal wetlands or waters and wetlands adjacent to tidal waters as these areas have great ecological importance and already suffer from development pressures. One commenter recommended an individual permit be required for activities within tidal wetlands and wetlands adjacent to tidal waters. One commenter recommended the language in section a. (2) be changed to read ''linear transportation projects in tidal waters and non-tidal wetlands adjacent to tidal waters''.

We agree that tidal waters or water and wetlands adjacent to tidal water can have great ecological importance and have suffered from development pressures. However, the current language is sufficient to protect such areas. We have developed terms and conditions to keep adverse impacts at a minimal level. Further, in many cases a PCN is required and Districts will add case specific conditions and mitigation when needed to ensure that adverse impacts will be minimal. Some projects will need to be processed as an individual permit. The district offices will make that determination when necessary to ensure that the adverse effects to the aquatic environment will be no more than minimal.

One commenter recommends that the Corps prohibit the construction of new transportation or spur projects under this NWP. Due to the development potential associated with road projects, a thorough alternative analysis, along with agency and public review should be required.

The main purpose of this NWP is to authorize new linear transportation crossing of waters of the US. It may also authorize new crossings involved in relocating of existing linear transportation projects. This NWP does not authorize a transportation project as a whole, which does not require authorization by the Corps of Engineers. However, we will address alternatives to crossings to avoid and minimize adverse effects in accordance with General Condition 19, to ensure that adverse effects on the aquatic environment are no more than minimal.

One commenter recommends, condition ''f'' be clarified to ensure less than minimal effects on the environment. The clarification should state ''all stream crossings be engineered to transport flows and sediment during both bank full and flood flows''. Furthermore the clarification should state the permit does not authorize crossings that block flows in or restrict the stream's access to the floodplain. The commenter further recommended that the condition require equalization culverts be installed as part of crossings that affect flood plains.

We agree that activities authorized by this NWP can have adverse effects related to flow and movement of water through and under the crossings. For that reason, the term f. of the NWP was added to emphasize the need for projects authorized by this permit to adequately address water movement impacts. This provision refers to General Conditions 9 & 21. We believe that along with these two conditions, the effects of crossings on the movement of water will be no more than minimal.

15. *U.S. Coast Guard Approved Bridges.* There were no changes proposed to this nationwide permit. However, one commenter recommended that NWP 15 be withdrawn as it is too broad for projects to be considered ''similar in nature'', or to be able to determine that the various projects, when considered individually or cumulatively, will result in minimal adverse environmental effects. The commenter also stated that the permit category has the potential for catastrophic secondary indirect, and cumulative adverse impacts, including adverse impacts to federally listed threatened or endangered species.

We believe that the listing of the type of activities and that they are related to bridge construction only will ensure that those activities authorized by this NWP will be similar in nature. Further, we believe that normally these activities will have no more than minimal adverse effects on the aquatic environment, individually and cumulatively. However, Division and District Engineers will condition such activities where necessary to ensure that these activities will have no more than minimal adverse effects on the aquatic environment, individually and cumulatively. The nationwide permit is reissued without change.

16. *Return Water From Upland Contained Disposal Areas.* There were no changes proposed to this nationwide permit. A few commenters suggested that, in order to assure that the lands and waters draining the disposal areas are not contaminated from pollutants entrained in the dredged material, the NWP should be tightened to require individual permit review unless the discharge/leachate from the dredged material is controlled through a NPDES permit. Another commenter stated that NWP 16 should be withdrawn as it is too broad for projects to be considered ''similar in nature'', or to be able to determine that the various projects, when considered individually or cumulatively, will result in minimal adverse environmental effects. The commenter also stated that the permit category has the potential for catastrophic secondary indirect, and cumulative adverse impacts, including adverse impacts to federally listed threatened or endangered species.

Consistent with 33 CFR 323.2(d)(1)(ii), this NWP authorizes the return water as the discharge of dredged material. As such, an NPDES permit is not required. However, a 401 certification is required and we believe will adequately control the quality of the return flow. We believe that the listing of the type of activities will ensure that those activities authorized by this NWP will be similar in nature. Further, we believe that normally these activities will have no more than

minimal adverse effects on the aquatic environment, individually and cumulatively. Further, Division and District Engineers will condition such activities where necessary to ensure that these activities will have no more than minimal adverse effects on the aquatic environment, individually and cumulatively. General Condition 11 ensures that the activity will comply with the Endangered Species Act. The nationwide permit is reissued without change.

17. *Hydropower Projects.* There were no changes proposed to this nationwide permit. There were no comments on this nationwide permit. The nationwide permit is reissued without change.

18. *Minor Discharges.* There were no changes proposed to this nationwide permit. One commenter said that NWP 18 should be withdrawn as it is too broad for projects to be considered ''similar in nature'', or to be able to determine that the various projects, when considered individually or cumulatively, will result in minimal adverse environmental effects. The permit category has the potential for catastrophic secondary indirect, and cumulative adverse impacts, including adverse impacts to federally listed threatened or endangered species. Also, the thresholds of 25 cubic yards and 1/10th acre are arbitrary and capricious. Another commenter stated that NWP 18 should be modified to allow the Corps District Engineer to waive the 25 cubic yard limitation when the aquatic resource impacts would remain minimal or when it is environmentally advantageous and efficient to allow the discharge of additional material as a single project and direct mitigation to a watershed based mitigation bank.

We believe that the minor nature of these types of small discharge activities authorized by this NWP will be similar in nature. Further, we believe that normally these activities will have no more than minimal adverse effects on the aquatic environment, individually and cumulatively. However, Division and District Engineers will condition such activities where necessary to ensure that these activities will have no more than minimal adverse effects on the aquatic environment, individually and cumulatively. While we believe that the small quantity limits are necessary to ensure that on a national basis that the adverse effect on the aquatic environment will be no more than minimal individually and cumulatively, we also recognize that in some areas and in some situations that larger quantities would also have no more than minimal individually and cumulatively. In these situations the Corps Divisions and districts may issue, after notice and comment, regional general permits for larger quantity limits. General Condition 11 ensures that the activity will comply with the Endangered Species Act. The nationwide permit is reissued without change.

19. *Minor Dredging.* There were no changes proposed to this nationwide permit. One commenter said that NWP 19 should be withdrawn as it is too broad for projects to be considered ''similar in nature'', or to be able to determine that the various projects, when considered individually or cumulatively, will result in minimal adverse environmental effects. The permit category has the potential for catastrophic secondary indirect, and cumulative adverse impacts, including adverse impacts to federally listed threatened or endangered species. Also, the thresholds of 25 cubic yards is arbitrary and capricious.

We believe that the minor nature of these types of small dredging activities authorized by this NWP will be similar in nature. Further, we believe that normally these activities will have no more than minimal adverse effects on the aquatic environment, individually and cumulatively. However, Division and District Engineers will condition such activities where necessary to ensure that these activities will have no more than minimal adverse effects on the aquatic environment, individually and cumulatively. Also these activities do not require a permit under section 404 of the Clean Water Act if they result in only incidental fallback (see 33 CFR 323.2 (d)). While we believe that the small quantity limits are necessary to ensure on a national basis that the adverse effects on the aquatic environment will be no more than minimal individually and cumulatively, we also recognize that in some areas and in some situations that larger quantities would also have no more than minimal adverse effects, individually and cumulatively. In these situations the Corps Divisions and districts may issue, after notice and comment, regional general permits for larger quantity limits. General Condition 11 ensures that the activity will comply with the Endangered Species Act. The nationwide permit is reissued without change.

20. *Oil Spill Cleanup.* There were no changes proposed to this nationwide permit. One commenter suggested that NWP 20 should be withdrawn as it is too broad for projects to be considered ''similar in nature'', or to be able to determine that the various projects, when considered individually or cumulatively, will result in minimal adverse environmental effects. The permit category is a prime example of the secondary, indirect, and cumulative adverse impacts, including adverse impacts to federally listed threatened or endangered species in locations beyond the location of the spill which could result from activities authorized under NWP 8.

We believe that the minor nature of these types of small discharge activities authorized by this NWP will ensure that they are similar in nature. Further, we believe that normally these activities will have no more than minimal adverse effects on the aquatic environment, individually and cumulatively. However, Division and District Engineers will condition such activities where necessary to ensure that these activities will have no more than minimal adverse effects on the aquatic environment, individually and cumulatively. This NWP only addresses the need to clean up oil spills regardless of the source of the spill and only when the clean up involves a discharge of dredged or fill material. The effects of the oil spill itself will be considered by the lead Federal or state agency involved in the clean up exercise. General Condition 11 ensures that the activity will comply with the Endangered Species Act. The nationwide permit is reissued without change.

21. *Surface Coal Mining Activities.* The Corps proposed two changes to this NWP to ensure the proper focus of the NWP and to make certain adequate mitigation will be required resulting in no more than minimal adverse effects on the aquatic environment. Both of these changes will increase protection of the aquatic environment. First, the Corps proposed to require a specific determination by the District Engineer on a case-by-case basis that the proposed activity complies with the terms and conditions of this NWP and that adverse effects to the aquatic environment are minimal both individually and cumulatively after consideration of any required mitigation before any project can be authorized. Second, the Corps proposed to add clarification to NWP 21 that the Corps will require mitigation when evaluating surface coal mining activities in accordance with General Condition 19. In addition, the Corps Section 404 review will address the direct and indirect effects to the aquatic environment from the regulated discharge of fill material.

Definition of Fill and Waste

Two commenters stated that the Corps issuance of NWP 21 to authorize valley

fills is illegal in that the Corps current definition of fill specifically precludes pollutants discharged into the water primarily to dispose of waste, as that activity is regulated by EPA under section 402 of the Clean Water Act. (33 CFR section 323.2(e)). One of these commenters quoted from the Bragg v. Robertson decision where the 4th District Court, in ruling upon certain claims against the State under SMCRA, stated in dicta that the overburden or excess spoil was a pollutant and waste material and not fill material subject to Corps authority under section 404 of the CWA when it is discharged into waters of the U.S. for the primary purpose of waste disposal. The other commenter added that even if the Corps had jurisdiction to issue permits for valley fills composed of mining spoils under the April 2000 proposed rule, to amend the definition of ''fill material'', it would not have jurisdiction to authorize the discharge of coal processing waste into refuse impoundments under Section 404. In addition, the commenter asserted that even if the Corps finalizes the proposed rule regarding the definition of fill, it must, under NEPA, perform an EIS before implementing the rule. Because this has not been done and the current rule prohibits fills composed of waste material, the commenter claimed NWP 21 is inapplicable to authorize the placement of mining spoil or coal refuse in waters of the U.S.

Another commenter added that the final notice reissuing NWPs must clearly and unambiguously prohibit placement of coal processing wastes and underground development wastes in ''coal waste dams'' or ''tailings piles'' into waters of the U.S., and must further prohibit the placement of coal mine ''spoil'' material in such waters as ''waste disposal'' unless the final design of the valley fill structure is demonstrated to be necessary to support the approved post-mining land use and is thus placed for a beneficial purpose.

Definition of Fill Rule: On April 20, 2000, the Corps and EPA issued a joint proposal to revise the definition of fill found at 33 CFR 323.2(e) and 40 CFR 232.2 (65 FR 21292, April 20, 2001). The proposed revision would clarify that fill material means material (including, but not limited to rock, sand and earth) that has the effect of: (i) Replacing any portion of water of the US with dry land; or (ii) Changing the bottom elevation of any portion of a water of the US.

Among other things the proposed rule would clarify that placement of excess coal mining overburden, resulting from mountaintop mining/reclamation activities, in waters of the U.S. (valley fills) is considered a discharge of fill material. The agencies are reviewing approximately seventeen thousand comments received in response to the proposed rule and are in the process of drafting the final rule. NWP 21 is available to authorize discharges of fill material meeting the terms of the permit. Issues related to the applicability of Clean Water Act section 404 to ''coal waste dams,'' ''tailings piles''' coal mine ''spoil'' and coal slurry impoundments turn on the jurisdictional question of what constitutes fill material, an issue that will be clarified in that rulemaking. Because the proposed nationwide permits do not seek to resolve those questions, these comments are outside the scope of this proceeding. With regard to valley fills, in a memorandum dated September 26, 2001, the Corps directed all involved field elements to inform the public and initiate regulating valley fills in all states, pursuant to section 404 of the CWA. The memorandum attaches a legal analysis that concludes that Corps regulation of valley fills may be pursued under the current regulations. The Corps decided to regulate valley fills because of the need for consistent administration of the Regulatory Program, assuring equity for the public. In addition, the Corps will require appropriate compensatory mitigation, as necessary, for the loss of aquatic resources.

Bragg Settlement Agreement: On December 23, 1998, a settlement agreement was signed to end litigation against the federal government that challenged whether applicable federal programs were being appropriately applied to regulate valley fills in West Virginia (*Bragg* v. *Robertson*, Civil Action No. 2:98–0636 (S.D. W.Va)). The Court approved the agreement on June 17, 1999 (54F.Supp. 2d 653). The settlement agreement was facilitated, in part, by the Army establishing that the Corps would regulate valley fills in West Virginia pursuant to section 404 of the CWA. While on appeal, the Fourth Circuit Court of Appeals vacated a subsequent decision issued by the District Court addressing Surface Mining Control and Reclamation Act (SMCRA) claims in the case (see 248 F.3d 275); that Fourth Circuit decision left intact the 1998 settlement agreement. See 248 F.3d at 288, n.1 (noting District Court's approval of the settlement agreement). A portion of the settlement agreement stated that excess rock resulting from a surface coal mining and reclamation operation which would bury a stream segment draining a watershed of 250 acres or more would generally be considered to have more than minimal adverse effects on waters of the U.S. Consistent with the terms of this agreement, to which the Corps is a party, the Corps will generally use its discretionary authority to require standard permits for coal mining activities in West Virginia where the material would bury a stream segment draining a watershed of 250 acres or more. The Corps notes that this agreement was negotiated among various Federal agencies and the state of West Virginia and relates to certain types of coal mining operations in that state. The Corps believes there are many different types of coal mining operations in other parts of the country and that the conditions of the settlement agreement may not be applicable to many of these other operations. For this reason, the terms of the agreement have not been incorporated into the permit, which by definition is nationwide in applicability.

Further, we are gathering data and, in conjunction with other federal agencies, are preparing a programmatic mountaintop mining/valley fill (MTM/VF) EIS to better understand the environmental effects of mountaintop mining and valley fills, as well as programmatic changes that may be necessary to address those impacts. The Corps will reevaluate NWP21 when the mountain top mining EIS is completed. The Corps intends to use the results of this EIS and all other information that may be available at that time, including information resulting from individual verification of all NWP 21 projects as required under the revised terms and conditions, to make sure that NWP 21 results in no more than minimal impacts (site-specifically and cumulatively) on the aquatic environment. Therefore, at this time we are not adding additional conditions from the Bragg agreement to the NWP itself. Thus, we do not believe that we should add specific conditions from the settlement agreement to this NWP, which has a term of five years. However, the Corps wishes to reiterate that it will abide by all terms of the settlement agreement in West Virginia as long as it remains in effect.

It is important to the Corps that surface coal mining activities authorized by this NWP do not cause more than minimal adverse effects to the aquatic environment after considering mitigation. As such, the District Engineer will ensure that the discharge of fill material in waters of the US associated with coal mining activities will have no more than minimal adverse effects on the aquatic environment.

EIS/EA for NWP

A few commenters stated that the Corps 1996 EA did not adequately account for the increasing size and scale of valley fills and their impacts. One of these commenters suggested that this NWP should not be reauthorized until the new EA or EIS is completed which may find that impacts due to this nationwide are more than minimal.

Three commenters stated that reissuance of NWP 21 was inconsistent with the Corps obligation under NEPA, since the Draft Nationwide Permit Program Programmatic EIS (PEIS) dated July, 2001, does not adequately address the effects of eliminating NWP 21 and other NWPs which have been controversial due to their substantial environmental effects.

The PEIS addressed the effects of different permit processing scenarios (standard, regional general and nationwide general permits) on the Corps permit program in terms of workload, cost and protection for the environment. It did not include alternatives changing only some nationwide permits to standard permits or regional general permits or any other combination of specific NWPs permits. This combining of different scenarios would have resulted in a very large number of alternatives to analyze.

One commenter stated that the PEIS fails to fully incorporate and analyze the substantial body of scientific knowledge and information that has been amassed as part of the aforementioned MTM/VF EIS relative to the effects of mountain removal mining and valley fill construction on Appalachian streams and rivers. This commenter requests that all available technical and scientific studies, and the draft MTM/VF EIS be incorporated into the DPEIS and that a supplemental PEIS be prepared concerning the proposal to reissue NWP 21, which includes the alternative of reissuance of other nationwide permits with the exception of NWP 21 and other controversial NWPs.

The MTM/VF EIS will not be completed for some time. However, the Corps fully intends to use all relevant information, including the results of this EIS, to make sure that NWP 21 results in no more than minimal impacts (site-specifically and cumulatively) on the aquatic environment.

One commenter noted that the Corps is currently involved in an EIS limited to two states, Kentucky and West Virginia, for a subset of the activities authorized under NWP 21 and which will not determine the effects of all activities associated with this permit. This commenter states that the Corps must perform an EIS on all impacts associated with NWP 21 including, but not limited to, mountaintop removal valley fills, contour mining valley fills, and coal refuse discharges. They also state that particularly, given the concentrated use of NWP 21 in only a few districts, it is clear that the Corps permitting decisions have had impacts exceeding both the ''significant'' standard under NEPA and the ''minimal adverse effects'' standard under Section 404(e).

As previously stated, the Corps is committed to ensuring that NWP 21 does not result in more than minimal adverse effects to the aquatic environment. We believe that the changes proposed and adopted will ensure minimal adverse effects on the aquatic environment. We will review the additional information provided within the MTM/VF EIS, upon its completion, to be sure that this continues to be the case.

Scope of Analysis

One commenter opposed reissuance of NWP 21 based on this activity's non-water dependency and associated secondary/cumulative impacts such as acid rain from burning of coal and its affect on the human environment. This commenter is concerned over the adverse impacts of acid deposition on the human environment. Another commenter claims that coalfield communities near these operations are dwindling as large out of state coal corporations employ fewer and fewer workers and severe flooding in the area caused by the mining activities makes it extremely difficult to live near these mining operations.

These impacts are outside of the Corps scope of analysis pursuant to the National Environmental Policy Act. The Corps evaluation of valley fills is focused on impacts to aquatic resources. Overall mining is permitted under separate Federal laws, SMCRA.

Another commenter, also concerned with secondary and indirect impacts of coal mining activities, objected to the statement in the preamble that the ''Corps review is limited to the direct and indirect, and cumulative effects of fills in waters of the U.S''. This commenter states that the scope of analysis should extend beyond the effects of fills in waters of the U.S. However, another commenter not only agreed that the scope of analysis should be limited to the direct and indirect and cumulative effects of only the fills in waters of the U.S. but also that wording should be included in the permit language to inform all interested parties that the Corps would not be considering the impacts of the actual coal mining operation itself, especially one occurring on a mountain top.

Impacts associated with surface coal mining and reclamation operations are appropriately addressed by the U.S. Department of the Interior Office of Surface Mining or the applicable state agency, if program delegation has occurred, pursuant to the Surface Mining Control and Reclamation Act. Under these circumstances, the Corps NEPA implementing regulations clearly restrict the Corps scope of analysis to impacts to aquatic resources. We concur with the commenter that the scope of analysis should be limited to only impacts to the aquatic environment.

Duplication/ Executive Order 13212

One commenter was opposed to any change to NWP 21 because of possible duplication of the intensive review performed by the Office of Surface Mining in coordination with the Corps and other state and Federal agencies related to approval of reclamation plans for surface coal mining activities. This commenter is concerned that such duplication now proposed will complicate the approval process for mine operations and make approval more cumbersome and bureaucratic resulting in unnecessary duplication and delays for approval of energy related projects which would be in direct conflict with Executive Order 13212 Actions to Expedite Energy Related Projects. One commenter discussed at great lengths the implication of EO 13212 which was signed on May 18, 2001. The commenter asserted coal reserves serve an indispensable role in the nation's energy equation and are used primarily for generating the nation's electricity, and that a reliable general permit program is vital to a coal producer's ability to meet the nation's growing coal needs. This commenter is concerned that the proposed changes to this NWP will cause delays and unnecessary duplication. One commenter suggested that all proposed projects falling under this NWP be coordinated with the SMCRA and should consider any required SMCRA mitigation when making its determinations regarding appropriate mitigation under Section 404. One commenter suggested that the Corps utilize the SMCRA environmental protection, mitigation and findings standards as a general basis for determining that surface coal mining operations regulated by SMCRA will have minimal impact and meet NWP 21 applicability standards. By using SMCRA standards when making determinations of applicability to NWP

21, the commenter indicated the Corps review can be expedited consistent with EO 13212. Further, the commenter indicated that under SMCRA, the DMME is prohibited from issuing a coal surface mining permit unless the agency first finds, in writing, that the proposed mining operation will minimize impacts to the hydrologic balance within the permit area and will not result in material damage to the hydrologic balance outside the permit area.

As stated above, the Corps has determined that the SMCRA process does not currently adequately address impacts to the aquatic environment as required under Section 404, therefore this NWP does not duplicate the mining permit process but does rely on it for help in the analysis. We encourage Corps Districts to work with state and Federal mining agencies to coordinate early in the process so that the SMCRA permit includes adequate mitigation to offset impacts to the aquatic environment.

Two commenters agreed with the proposed changes in this NWP because of the differing goals of the SMCRA/DMME and the CWA, specifically concerning compensatory mitigation. The commenters indicated that while most NPDES permits include conditions to protect against stream impacts, they do not often address wetland impacts. In addition, according to one commenter, there are no clear standards for stream replacement, leading to poor reconstruction techniques with little or no restoration of habitat function.

The Corps is working on stream functional assessment protocols to help in identifying the functions lost through impacts and the functions gained or enhanced through mitigation.

Two commenters suggested that NWP 21 should be significantly restricted or eliminated, since it wrongfully assumes the state or federal regulatory agency under SMCRA is engaging in a process comparable to section 404 of the CWA and the 404(b)(1) Guidelines of assuring avoidance and minimization of impacts on special aquatic sites and other waters of the US, when in fact no other agency engages in such review.

The Corps has not assumed that other state or Federal agencies are engaging in a comparable Section 404 type process. In accordance with the Section 404(b)(1) Guidelines, analysis of offsite alternatives is not required in conjunction with general permits.

A few commenters were opposed to the requirement for a written determination of compliance without a time clock, i.e. 45 days, for the Corps to respond or the applicant can begin work. One of these commenters is concerned that under the proposed NWP, the applicant could wait weeks or months until he receives express authorization from the district to begin which would result in delays and additional paper exercise for a project deemed to be of minimal impact. Another scenario a commenter provided would be to wait months just to be told the project does not qualify for NWP 21 and that a standard permit would be required. This commenter suggests that the Corps could abuse the lack of time constraints when it cannot meet its own deadlines. A few commenters suggested that the Corps rely solely on the notification requirement for determining whether or not any specific activity complies with the terms and conditions of the NWP within the 45 day time limit.

Under the current regulatory program, all coal mine operators must notify the Corps which may involve agency coordination subject to a 45 day time clock to submit comments to the Corps. Under the proposed NWP, the applicant must wait before initiating construction until he receives express authorization from the District Engineer. Corps districts will make decisions in a timely matter. We believe that a careful case specific minimal impacts determination is necessary for this NWP, but it may sometimes take more than 45 days. Because of the potential for more than minimal adverse effects with these projects this approach is necessary.

Impacts from NWP 21

A majority of the commenters opposed the reissuance of NWP 21 because of potential impacts. Specifically, the major concern stated by most commenters was that the mountaintop removal mining and disposing of the overburden in valleys (valley fills) would result in the burying of streams thereby disturbing the natural processes and water quality in the entire watershed and result in the permanent loss of habitat. One commenter stated concern that this NWP activity will displace Federally protected threatened and endangered species. Another commenter raised concerns about impacts to water supplies used for drinking and recreation from the valley fills.

This NWP requires compliance with all of the general conditions for the nationwide permits. One commenter pointed out that in one state alone 15–25% of the mountains have been leveled, that the overburden from these mines placed in ''valley fills'' have destroyed more than 1,000 miles of streams, and that one mine can destroy 10 square miles of mountain and fill as many as 12 stream valleys. This commenter concludes that these kinds of impacts cannot be considered ''minimal in effect'' to qualify for a NWP. One commenter stated that the ''field assessment'' of the nationwide permit program provided an inadequate analytical basis for documenting the extent and severity of aquatic and terrestrial impacts of the implementation of NWP 21.

One commenter contends that the Corps has admitted to its inability to assess direct, indirect, and cumulative impacts associated with specific coal mining projects. Therefore, the Corps cannot be in a position to state whether any application for an authorization under NWP 21 would or would not have more than minimal adverse impacts, either individually or cumulatively.

Another commenter stated that a draft EPA finding indicates that the ''impacts of mountaintop mining and valley fill activities in eastern Kentucky were evident based on stream biological and habitat indicators. Mining related sites generally had higher conductivity, greater sediment deposition, smaller particle sizes, and a decrease in pollution sensitive macoinvertebrates * * * in turn, these streams and rivers may support fewer fish and other taxa which are recreationally or commercially important.''

These studies are draft documents and have not been finalized or the conclusions agreed upon by the cooperating agencies.

One commenter stated that the Corps has ignored OSM studies and are not considering effect of valley fills on flooding. However, another comment challenged the Corps statement under notification that the Corps is ''discouraging extensive channelizing or relocation of stream beds because of potential adverse effects on the stream and the potential to intensify downstream flooding''. This commenter contended that the Corps does not have an adequate basis for this statement concerning downstream flooding and requests that it be taken out.

The basis for this conclusion is that whether increased downstream flooding will occur is a site specific circumstance based on downstream channel capacity and geometry coupled with the influence of man induced alternations to channels and flood plains. These issues will be evaluated during the case specific minimal effects determination.

This commenter added that available studies document lower flood rates in areas of surface mining activities than in similar unmined watersheds and that some mining activities result in alteration to landscape that can provide

significant runoff retention. And, for example, the commenter added, open pits and drainage control structures can provide runoff retention and longer travel times for overland flow and increased infiltration provided by backfills can also retard or lessen peak flows.

The preliminary draft MMEIS, which includes an assessment of scientific studies related to providing a better understanding of flooding potential related to mountaintop mining, concluded that no corroborating evidence exists to support the allegations that surface mining operations increased flooding potential downstream.

Two commenters questioned the Corps proposal of this NWP and the determination that it meets the requirement that the adverse environmental impacts are individually and cumulatively minimal while admitting (in the proposed regulation) that it is still gathering data to better understand the effects of valley fills on the aquatic environment.

The Corps is continually gathering data on all its nationwide general permits to ensure that the effects of the program on the aquatic environment are minimal, both individually and cumulatively. The changes in procedures proposed and adopted here will ensure minimal effects through case specific review and mitigation.

Thresholds for NWP 21

A few of these commenters suggested reissuing this NWP but precluding its use for mining operations involving mountain-top removal.

We disagree, this permit is designed for use by mountaintop mining operations as well as other surface coal mining activities.

Several commenters added that since this nationwide has no size/acreage limits, extensive linear feet of streams could be impacted. Two commenters recommended using the same stream threshold limitations as stated in NWP 39, 40, 42, and 43 (300-foot limitation) for consistency purposes and since stream impacts from filling should be evaluated the same regardless of the activity involved.

The 300 linear foot limit is retained for NWPs 39, 40, 42, and 43, however justification, on a case-by-case basis, can be made to allow additional linear impacts for intermittent streams. The Corps believes that coal mining is different from activities authorized under NWPs 39, 40, 42 and 43 in that coal mining projects are reviewed for environmental impacts under several other authorities (SMCRA, CWA section 402). For this reason, the determination of whether a project will result in more than minimal adverse effects is best made on a case-by case basis.

Two commenters cite from the Draft PEIS that in 2000 alone, 13,907 acres of impacts to streams and wetlands were authorized under NWP 21 making up 72% of all NWP impacts for that year and one of these commenters recommends protective measures and/or environmental thresholds due to the potential losses. One of these applications resulted in the direct filling of over six miles of streams and indirect impacts to an additional three miles with no data to suggest that these impacts were minimal. For this reason, this commenter and others have suggested including the provisions adopted in the Bragg v. Robertson settlement of a 250-acre watershed threshold while waiting the findings of the EIS process to determine the appropriateness of that threshold limit. They believe the 250 acre standard would provide better protection than no threshold at all, as is currently the case. Two commenters suggested that if NWP 21 must be reissued, it should be conditioned such that valley fill projects affecting intermittent and/or perennial streams will be ineligible for authorization and would be evaluated as standard permits. They state that this would be consistent with the Corps July 2000 guidance to the field, which provides that the 250 acre standard should be used in evaluating all PCN for NWP 21. However, two commenters support the Corps decision not to include the 250 acre threshold because it is temporary in nature and limited only to West Virginia. Further, they asserted that limit was not based upon any scientific analysis but rather a product of an agreement arrived at in an arbitrary way, having no correlation with environmental protection. These commenters also cited projects with a 500 acre watershed, which improved the pre-mining conditions. One commenter suggested that if NWP 21 must be reissued, it should be conditioned such that valley fill projects affecting intermittent and/or perennial streams will be ineligible for authorization and be evaluated as standard permits.

The Corps believes that a scientific basis for the 250 acre limit designated in the Bragg v. Robertson settlement has not been adequately established and the limit may not be appropriate for all situations. High quality streams exist above this point on the landscape and lower quality streams exist below this point. We believe it is better for the environment to look at specific sites and watersheds and make quality determinations than to try and fit all watersheds into a rigid pre-determined categorization that may or may not reflect the site specific aquatic conditions. The Corps is further concerned that universal use of the 250 acre limit could encourage a proliferation of smaller valley fills in lieu of fewer larger fills, and that this may not be the best outcome for the aquatic environment. The Corps has identified a data error in the PEIS. The 13,907 acres of impact actually were less that 50 acres.

One commenter suggested that environmental thresholds be established if not with this authorization, definitely with the next and that these thresholds be determined through a public review process.

Thresholds may be added by individual Districts as regional conditions for this permit through the public review process. In addition, we will review this NWP when the MTM/VF EIS is complete along with all other relevant information and will develop criteria or propose any changes that may be needed.

Mitigation

Many of those commenters objecting to the reissuance of NWP 21 stated that the mitigation, even with Corps review and approval, could not sufficiently compensate for these impacts and therefore this NWP would be a violation of the Clean Water Act requirements that general permits result in only minimal adverse impacts to the aquatic environment. One of these commenters stated that stream restoration experts have concluded that it is not possible to recreate streams on most mined areas, therefore, the loss of these stream miles and the functions they provide to the aquatic ecosystems downstream is a permanent loss and, for the purposes of a Section 404 impact assessment, the stream losses cannot be adequately compensated. One commenter, although supporting the requirement of mitigation beyond what the State requires under the project's coal mining permit, still opposes NWP 21 because it illegally jumps from avoidance and past minimization directly to mitigation. This commenter also voiced concern over a lack of alternative analysis for placement of fill into waters of U.S. by any state or Federal agency for these proposed valley fills. Another commenter recommended that any mitigation plan be coordinated and approved by all involved regulatory and commenting resource agencies prior to the NWP approval.

We feel we are avoiding and minimizing impacts to the extent practicable and that adequate mitigation, especially in the form of enhancement or rehabilitation of existing streams through activities such as stabilizing old mined sites to reduce stream sedimentation and reduction in acidic water releases, can be used to determine that a project has minimal impacts, both individually and cumulatively, on the aquatic environment. These activities can result in a substantial improvement in downstream water quality and aquatic habitat within a watershed.

A few commenters agreed with the proposed changes to NWP 21 because of the varying goals of the SMCRA and the CWA program and the wetland mitigation plan requirement. One commenter stated that the review proposed would be valuable in ensuring the requirement of equity between coal mining activities and other wetland impacting activities, and indicated that while most NPDES permits include conditions to protect against stream impacts, they do not usually address wetland impacts. In addition, there are no clear standards for stream replacement, leading to poor reconstruction techniques with little or no restoration of habitat functions.

As stated above, the Corps is in the process of designing stream function protocols to aid in evaluating mitigation projects.

This commenter recommends that the following language be included into the permit language: ''Compensatory mitigation will be required to offset losses of waters of the U.S., consistent with General Condition 19''.

We do not agree this is necessary, as General Condition 19 applies to all nationwide permits and does not need to be specifically repeated in this NWP, however, we agree with the intent of this statement.

Two commenters suggested that at the very least, bonding of mitigation measures should be required in all cases. One of these commenters argued that performance bonds under 30 U.S.C. 1269 should not be used by the Section 404 program because of the limitations imposed on these bonds. For instance, neither state regulatory authorities nor OSM have authority to impose bond liabilities on regulated mines beyond those specified in the mining law which are established by law as that amount needed to assure completion of the reclamation plan required under 30 U.S.C. 1268 and not section 404 of the CWA. Also, if there was a violation of the Corps mitigation conditions, the Corps would not have authority to direct the expenditure of those funds.

Requiring a bond by the Corps in certain cases is consistent with existing policy and the Corps will continue to do so as it deems appropriate.

General Condition 4

One commenter stated that the purpose of valley fills is not to impound water but rather to dispose of overburden or waste material. Furthermore, the commenter asserted that a valley fill is an activity that completely eliminates the possibility of movement and survival of aquatic life. The commenter asserted the Bragg Settlement contains nothing that even remotely purports to modify any Corps regulation * * *. The Corps must still comply with these and all other statutory and regulatory requirements''. The commenter indicated that completely filling streams by valley filling affects the necessary life movements of all aquatic life that must move within or between those streams. Furthermore, the commenter asserted, valley filling violates the General Condition because not only does it preclude movement of species, but destroys the species themselves.

Generally, proposed projects are located at the upper limits of the watersheds and are not interfering with aquatic species migration.

It is our position that this NWP is useful in expediting the processing of permits for some surface coal mining operations provided that adequate compensatory mitigation accompanies the activity so that there is an overall net improvement in functions of the aquatic environment. Our scope of analysis will continue to be limited to the impacts to the aquatic environment. The locations of the mines are dependent on location of the coal seams.

The existing permit relies primarily on any state-required mitigation under SMCRA to address impacts to the aquatic environment. The Corps has determined that this is not appropriate, as the requirements of SMCRA differ from those of the CWA and reliance on SMCRA authorization may not result in adequate mitigation for adverse impacts to the aquatic environment. Therefore, the reissued permit provides for Corps determination of appropriate mitigation in accordance with General Condition 19. Corps review is limited to the direct, indirect, and cumulative effects of fills in waters of the U.S. In order to ensure that appropriate mitigation is performed, and that no activities are authorized that result in greater than minimal adverse impacts, either individually or cumulatively, the revised permit also requires not only notification, but also explicit authorization by the Corps before the activity can proceed. The Corps believes that both of these changes will strengthen environmental protection for projects authorized by this permit. This permit will be reissued as proposed.

22. *Removal of Vessels.* There were no changes proposed to this nationwide permit. There were no comments on this nationwide permit. The nationwide permit is reissued without change.

23. *Approved Categorical Exclusions.* There were no changes proposed to this nationwide permit. One commenter indicated that although the Office of the Chief of Engineers may have been furnished notice of a list of activities, and concurred, a list of activities did not appear to have been included in the referenced August 9, 2001, **Federal Register** notice on which the reissuance of the NWP Program will be based. The commenter further stated that the absence of this critical information mirrors the Corps piece-mealing approach to Regulatory implementation of the CWA that is found in the issuance of Corps permits in the southeastern U.S. The commenter also stated that because of the lack of this information, the public is unable to determine whether new information supporting reversal may have become available since the decisions that these activities do not have a significant effect on the human environment. Another commenter stated that this permit illegally delegates to other federal agencies the ability to decide whether their projects will result in more than minimal impacts. The permit effectively has no ceiling on individual or cumulative impacts and covers a broad range of activities. An additional commenter suggested that the NWP 23 activities listed are extremely dissimilar in nature and impact. It is not possible for the agencies to have made a reasonable evaluation of the cumulative impacts of all of the activities in this permit.

When the Corps considers whether an agency's categorical exclusions have no more than minimal adverse effects on the aquatic environment and whether they could be authorized by this NWP, the Corps first seeks public comment and publishes the proposal in the **Federal Register**. The Corps then determines whether the agencies categorical exclusions have no more than minimal adverse effects on the aquatic environment. The Corps has not approved all agency categorical exclusions, has added further conditions and has required pre-

construction notifications to ensure that there are no more than minimal adverse effects on the aquatic environment, individually and cumulatively. Furthermore, Corps districts and divisions have the discretionary authority to require regional conditions, case-specific conditions or individual permits where the adverse effects may be more than minimal.

One commenter indicated that all projects requiring stream channelization should be evaluated through the Individual Permit process. Another commenter suggested projects affecting more than 1/10th acre of wetland should require a pre-construction notification to the Corps and those affecting 1/3 acre should require an Individual Permit. A commenter recommended all bridge projects that are not longer than 1.5 times bankfull width should be elevated to an individual permit process.

General condition 21 contains provisions to minimize adverse impacts related to water movement, including channelization and passage of high water flows. When reviewing an agency's categorical exclusion for approval under this NWP the Corps considers the need for a pre-construction notification. We have required a pre-construction notification where we believe that it was necessary to ensure that the adverse effects would be no more than minimal, and we have required the individual permit process, where needed. The nationwide permit is reissued without change.

24. *State Administered Section 404 Programs.* There were no changes proposed to this nationwide permit. One commenter stated that applicants will find it difficult to keep up with a complex matrix of non-uniform approaches to regulating water bodies if states across the country run their section 404 programs differently.

The Corps recognizes that nationally there may be different approaches by the states toward regulating section 404 discharges into those waters. However, the Corps will not change the way the states regulate in those waters by requiring a Corps individual permit process. Currently, this NWP is only applicable in the States of Michigan and New Jersey, which have assumed the Clean Water Act section 404 authority in Navigable Waters of the United States based on historic use only. In those waters, which are subject to section 10 of the Rivers and Harbors Act based solely on the historic use for interstate waterborne commerce, the state administers the Section 404 program while the Corps has a permit role under Section 10. Those waters do not have current nor are they susceptible to use for water borne commerce. The Corps believes that the states are considering and adequately addressing the environmental impacts of these projects. The Corps further believes that there are no impacts affecting waterborne commerce needing Section 10 review. Therefore, there is no need to process an individual permit for these activities. The nationwide permit is reissued without change.

25. *Structural Discharges.* There were no changes proposed to this nationwide permit. There were no comments on this nationwide permit. The nationwide permit is reissued without change.

26. [*Reserved*] One commenter indicated that, if reissued, NWP 26 must be modified to significantly lower the threshold of activities not requiring an individual permit.

There are no plans to reissue NWP 26. This NWP expired on June 7, 2000. The number 26 is being reserved to avoid the need to renumber all of the subsequent NWPs. We believe that renumbering NWPs 27 through 44 would be confusing and unnecessary.

27. *Wetland and Riparian Restoration and Creation Activities:* In the August 9, 2001, **Federal Register** notice, we proposed to modify this NWP by combining two categories of land (''any Federal land'' and ''any private or public land'') into a single category: ''any other public, private, or tribal lands''. Therefore, there would be three categories of land that would be eligible for NWP 27 activities, instead of four categories. This change will not affect how or if any activities will be authorized by this NWP.

Many commenters supported the Corps proposal to combine the four categories of lands into three categories. A commenter recommended limiting the use of this NWP to activities conducted or sponsored by Federal or state agencies. One commenter suggested adding the National Marine Fisheries Service and the National Ocean Service to paragraph (a)(1). This commenter also recommended adding ''the construction of oyster habitat over unvegetated bottom in tidal waters'' to the list of examples of activities authorized by this permit. This commenter said that these changes would result in a reduction in Corps workload, and authorize activities conducted under National Marine Fisheries Service and National Ocean Service restoration grant programs.

To simplify the descriptions of the types of lands eligible for this NWP, we are combining paragraphs (a)(2) and (a)(4) of NWP 27 to read as ''any other public, private, or tribal land'' in paragraph (a)(3). The previous text of paragraph (a)(3) has been moved to paragraph (a)(2).

We do not agree that this NWP should be limited to activities conducted or sponsored by Federal or state agencies, because such a restriction would affect the ability of the Corps to effectively authorize aquatic habitat restoration or creation (establishment) activities conducted by individuals, non-government organizations, or local governments. We have added ''the construction of oyster habitat over unvegetated bottom in tidal waters'' to the list of examples of activities authorized by this NWP. Since the construction of oyster habitat in tidal waters could potentially affect navigation, it is important to consider General Condition 1. The construction of oyster habitat in tidal waters cannot have a more than minimal adverse effect on navigation.

We have modified paragraph (a)(1) to include restoration activities undertaken through the programs of the National Marine Fisheries Service and the National Ocean Service. In addition, we have modified the text of this NWP by adding the phrase '' * * *, to the extent that a Corps permit is required, * * *'' after the phrase ''Activities authorized by this NWP include * * *''.

One commenter stated that, even though activities authorized by permit would result in an increase of wetland habitat, NWP 27 should have an upper limit to require more detailed review of restoration and creation projects that involve larger impacts to wetlands. Another commenter said that an acreage limit is needed for this NWP because there are inadequate assurances that it authorizes only activities with minimal adverse environmental effects. This commenter suggested imposing a 250 linear foot limit and a 1/4 acre limit on wetland impacts for restoration activities and a five acre limit for wetland enhancement projects. This commenter also recommended requiring notification and agency coordination for all activities undertaken by private individuals that impact wetlands or more than 100 linear feet of stream, with the notification including documentation of the hydrologic analyses used to design the project. Another commenter said that the ''wetland enhancement, restoration or creation agreement'' described in paragraph (a)(1) should be reviewed and approved by the Corps and other resource agencies and each agreement should have enforceable conditions.

We do not agree that acreage or linear limits are necessary for this NWP, since it authorizes activities that restore, enhance, or create aquatic habitats. The

terms of this NWP, as well as the notification requirements described in paragraph (b), will ensure that the activities authorized by this NWP result only in minimal adverse effects on the aquatic environment. District engineers will review pre-construction notifications for activities on public and private land not conducted under the terms of paragraphs (a)(1) or (a)(2) and determine whether those activities will result in minimal adverse effects on the aquatic environment. Agency coordination is not necessary for NWP 27 activities undertaken by private individuals because Corps personnel have the expertise necessary to evaluate proposed NWP 27 activities. We do not believe that it is necessary for the Corps and other resource agencies to review agreements between landowners and the U.S. Fish and Wildlife Service or Natural Resources Conservation Service. We concur that these agreements should have enforceable conditions.

One commenter suggested adding the phrase ''* * * and the planting of appropriate wetland species'' after the phrase ''* * * activities needed to reestablish vegetation * * *'' and changing ''* * * mechanized land clearing to remove undesirable vegetation * * *'' to ''* * * mechanized land clearing to remove non-native invasive, exotic or nuisance vegetation * * *''.

We concur with these recommendations and have made these changes to the text of the NWP.

One commenter objected to the reissuance of this NWP, stating that it lacks effective oversight, especially for activities on public and private lands, its use has not been effectively monitored in the Corps regulatory database, and the terms ''restoration'' and ''enhancement'' are inadequately defined. To address these concerns, this commenter suggested that all projects must be subjected to strict, enforceable success criteria; all failed projects must be corrected to offset any adverse impacts to waters of the United States; all permitted projects must be overseen by a qualified restoration specialist; only those activities with high likelihood of success should be approved; include a more extensive list of activities not authorized by NWP 27; prohibit the use of NWP 27 to construct compensatory mitigation projects; and limit NWP 27 to one use per applicant per stream. One commenter said that this NWP should not authorize the construction of mitigation banks.

As with all NWPs, the use of this NWP is monitored by each of the Corps districts, to ensure that it authorizes only those activities with individual and cumulative adverse effects on the aquatic environment.

Since the publication of five new and six modified NWPs in the March 9, 2000, issue of the **Federal Register** (65 FR 12818), the terms ''restoration'' and ''enhancement'' have been defined in the ''Definitions'' section of the NWPs. Since that time, the Federal government has adopted new definitions for purposes of tracking losses and gains of wetlands under the previous Administration's Clean Water ActionPlan. The new definitions also apply to mitigation activities for other types of aquatic habitats. Under the new definition for restoration, there are two types activities: re-establishment and rehabilitation. Re-establishment involves the rebuilding of a former wetland, resulting in a net gain in wetland acres. Rehabilitation involves the manipulation of a degraded wetland to repair natural or historic functions, but does not result in a net gain in wetland acres. Enhancement is the manipulation of a wetland for a specific purpose, resulting in increases in some wetland functions and declines in other wetland functions, with no gain in wetland acres.

Where strict criteria are necessary to ensure the success of stream or wetland restoration projects, district engineers can add special conditions to NWP 27 authorizations to specify success criteria. If those success criteria are not met, district engineers can use their enforcement authority to require the permittee to identify the reasons for failure and implement necessary remedial measures. We do not agree that it is necessary for activities authorized by this NWP to be overseen by qualified restoration specialists. The text of NWP 27 clearly states what is not authorized by the NWP; we do not believe any additional clarification is necessary. Since NWP 27 authorizes activities that provide benefits for the aquatic environment, it would not be appropriate to limit the use of this NWP to one time per project proponent per stream channel.

We maintain our position that NWP 27 should authorize the construction of compensatory mitigation sites, including mitigation banks, provided those sites result in net increases in aquatic resource functions and values. NWP 27 requires compensatory mitigation for impacts to waters of the United States caused by the authorized work, as well as notification to the district engineer in accordance with General Condition 13. A mitigation bank can also be authorized by NWP 27, as long as the mitigation bank has been approved under the 1995 Interagency Mitigation Banking Guidelines.

One commenter recommended that the use of this permit should be limited to restoring streams to their historic, undegraded states to prevent their use as a flood control projects. Another commenter said that district engineers should have the authority to waive the prohibition against conversions of certain types of streams or natural wetlands to other aquatic habitat types that could provide more environmental benefits for local watersheds.

NWP 27 does not authorize flood control projects. This NWP authorizes stream restoration activities, which may include grading stream banks and riparian areas so that those riparian areas are flooded more frequently by the streams. In other words, flood storage capacity may be increased by a stream restoration project, but the increase in flood storage capacity is not the main goal of the project. We do not agree that this NWP should allow flexibility to waive prohibitions against certain conversion activities, since conversions of streams, wetlands, and other waters may result in more than minimal adverse effects to the aquatic environment. If such conversions would provide net benefits for watersheds, then those activities could be authorized by other types of permits, including standard permits.

A commenter suggested that NWP 27 should be modified to prohibit the creation of open water areas in existing wetlands and the relocation of existing wetlands. One commenter supported the provision that states this NWP does not authorize the conversion of natural wetlands into another aquatic use, but recommended prohibiting the ''relocation of aquatic habitat types on the project site'' and prohibiting the use of riprap or other armoring material. One commenter said that activities authorized by this NWP should not be allowed to alter the basic functions and habitat of ''high quality wetlands'' and that all projects should have a long-term management plan with a binding contract between the landowner and the Federal and state fish and wildlife agencies, not the Natural Resources Conservation Service.

We maintain our position that the relocation of non-tidal waters, including non-tidal wetlands, on the project site should be authorized by this NWP, provided there are net gains in aquatic resource functions and values. We do not agree that this NWP should prohibit the use of riprap because riprap contains crevices and other habitat features for small organisms. Other armoring materials can provide habitat

for aquatic organisms. The use of armoring materials for stream and wetland restoration activities is at the discretion of the district engineer. We do not agree that it is necessary to have a long-term management plan with a binding agreement between landowners and the Federal and state fish and wildlife agencies for all activities authorized by this NWP.

One commenter said that some activities authorized by this NWP do not comply with the Clean Water Act. One example offered by this commenter is the conversion of waters of the United States to storm water treatment facilities and sewage treatment facilities, under the guise of restoration and mitigation. This commenter states that NWP 27 should be revoked because the activities authorized by this NWP are not similar in nature and it is unreasonable to conclude that all of the cumulative adverse impacts on the human environment could be considered for such a category of dissimilar activities.

This NWP does not authorize the construction of storm water management facilities or sewage treatment facilities. Storm water management facilities and sewage treatment facilities may be authorized by NWP 43 or individual permits. The activities authorized by NWP 27 comply with the similar in nature requirement for general permits. This NWP authorizes aquatic habitat restoration, creation, and enhancement activities that provide benefits for the aquatic and human environments. NWP 27 is reissued with the modification discussed above.

28. *Modifications of Existing Marinas.* There were no changes proposed to this nationwide permit. There were no comments on this nationwide permit. The nationwide permit is reissued without change.

29. *Single-family Housing.* There were no changes proposed to this nationwide permit. One commenter stated that the Corps has failed to demonstrate with substantial evidence that the acreage limits applicable to this and many other NWPs is sufficiently protective of the environment. The commenter also stated that the Corps must validate, with evidence and an environmental impact analysis, the acreage limits it sets for all NWPs. Another commenter said that single-family housing is not a water dependent activity, and therefore it is presumed that alternative locations are available for these activities. That commenter also stated that activities authorized by this permit are not similar and result in more than minimal adverse environmental effects, even individually, much less cumulatively and, that the acreage limits are arbitrary and capricious. Another commenter recommended a full environmental impact statement and, at a minimum, only use the permit to authorize homes, without attendant features, with a 1/10 acre limit and that the Corps establish a process to monitor cumulative impacts over time. The commenter also recommended the Corps prohibit use of this permit in high growth counties and that it not be used to authorize placement of septic tanks or leach fields in wetlands.

The Corps believe that the listing of the type of activities authorized by this NWP will ensure that those activities authorized by this NWP will be similar in nature. Further, we believe that normally these activities will have no more than minimal adverse effects on the aquatic environment, individually and cumulatively. Further, Division and District Engineers will condition such activities where necessary to ensure that these activities will have no more than minimal adverse effects on the aquatic environment, individually and cumulatively. Therefore we find that the NWPs do not require an EIS. However, we do prepare environmental assessments to assess potential impacts. NWP 29 was originally issued with a 1/2 acre maximum limit. We reviewed this threshold in 1999 and decided to reduce the maximum acreage limit for NWP 29 to 1/4 acres. We continue to believe that this is the appropriate maximum acreage limit. The environmental assessment for this NWP is published on our webpage for review. It is true that the activities authorized by the NWP are not water dependent as defined in the Section 404(b)(1) guidelines. However, the alternatives test does not apply to NWPs as stated in the 404(b)(1) guidelines. Therefore, it is not presumed that alternative locations are available for these activities. Furthermore, the EPA and the Corps issued additional guidance on March 6, 1995 regarding compliance with the Section 404(b)(1) guidelines for small landowners. These activities comply with this guidance. This guidance is also available on the Corps webpage. The nationwide permit is reissued without change.

30. *Moist Soil Management for Wildlife.* There were no changes proposed to this nationwide permit. One commenter suggested that this permit be revised to allow local public agencies to conduct these activities, especially when they would result in environmentally useful activities. Another commenter stated that, because the activities authorized by this permit are not similar, the permit should be withdrawn. They go on to say that since the general public cannot determine what activities are authorized by this permit, direct, indirect, or secondary impacts cannot be determined to result in minimal adverse environmental impacts.

We agree that this NWP should also allow local agencies to conduct these activities on public property. Therefore we have modified the NWP to allow activities on local government agency owned or managed property to also be authorized by this NWP. We believe that the terms and conditions will ensure that the adverse effect on the aquatic environment will be minimal. Further we believe this change will provide for additional opportunities for activities to provide needed environmental benefits. Also should some of these activities have the possibility to have adverse environmental effects, the Corps districts or divisions have the discretionary authority to require activity specific conditions or regional conditions. We believe that the listing of the type of activities will ensure that those activities authorized by this NWP will be similar in nature. Further, we believe that normally these activities will have no more than minimal adverse effects on the aquatic environment, individually and cumulatively. Further, Division and District Engineers will condition such activities where necessary to ensure that these activities will have no more than minimal adverse effects on the aquatic environment, individually and cumulatively. The nationwide permit is reissued with the change described above.

31. *Maintenance of Existing Flood Control Facilities.* The Corps proposed to modify NWP 31 to clarify Corps policy and requirements regarding mitigation for maintenance activities. We also proposed to clarify documentation requirements for the baseline determination, and allow maintenance of areas that are a part of the flood control facility without constructed channels provided that the Corps approves Best Management Practices to ensure that adverse environmental effects are no more than minimal.

Two commenters insisted that the language of this NWP must be clear that exempt facilities are not now regulated and they suggested that facilities built prior to, or that were not subject to mitigation as part of the CWA, should not now be subject to mitigation requirements for routine maintenance. They suggested that the language of the currently proposed NWP conflicts with the Corps policy indicating that routine maintenance impacts are temporary and generally not worthy of mitigation. They

questioned how one mitigates for ''unspecified discharges''. They also agree with the Corps Civil Works policy that one-time mitigation should be required as part of the project and should address all permanent and temporary impacts, and that this should be required at the time the project is initially constructed. Most commenters agreed that a one time mitigation requirement for these maintenance projects may be appropriate.

We do not agree that discharges of dredged or fill material in waters of the United States that are part of a pre-Clean Water Act flood control facility are exempt from permit or mitigation requirements. Although discharges associated with the construction of facilities that pre-date the Clean Water Act are not subject to any retroactive authorization requirement, waters of the U.S. flowing through such facilities are not excluded from jurisdiction under the Act. As such, discharges of dredged or fill materials into these waters remain subject to section 404 requirements. NWP 31 conveys the section 404 authorization for discharges associated with flood control facility maintenance activities, provided (1) That a maintenance baseline is established, (2) that the adverse effects of discharges associated with establishing that baseline are adequately mitigated, and (3) that discharges associated with subsequent maintenance activities do not alter the maintenance baseline. We believe that mitigation need only be imposed once, as part of the establishment of the maintenance baseline, to ensure that the loss of waters of the U.S. that are attributable to discharges associated with the establishment of that baseline are no more than minimal. Once this is accomplished, regulated discharges that are associated with maintaining the established baseline, and that do not incur losses beyond those addressed in conjunction with the establishment of that baseline, are authorized under NWP 31 without the need for further mitigation.

We believe that the utilization of the ''maintenance baseline'' procedure is consistent with Corps policy to the effect that ''routine maintenance impacts are temporary and generally not worthy of mitigation.'' The maintenance baseline establishes the limits within which regulated maintenance-related discharges are authorized by NWP 31, and excluded from additional mitigation requirements. We agree that, ideally, all mitigation for permanent and temporary impacts resulting from the construction of flood control facilities, and from the inevitable maintenance, should be imposed only once, at the time of initial construction. The Clean Water Act does not provide an exemption for discharges into the waters of the U.S. specifically for maintenance of flood control facilities. Unless section 404 authorization for discharges associated with regulated construction and maintenance activities has been conveyed through some other means, such as through the Federal Project authorization process, authorization through the Corps permit process is required. As previously indicated, although section 404 authorization is not required for discharges associated with flood control facility construction that pre-dates the Clean Water Act, the Act does not exempt discharges in waters of the U.S. that may accompany the maintenance of these facilities. We believe that NWP 31, with the inclusion of the maintenance baseline provision, is a reasonable and appropriate procedure for conveying the section 404 authorization required for maintenance-related discharges that have not been previously authorized through other means. Finally, the question as to how one mitigates for ''unspecified discharges'' is, we believe, based on a misprint in the original **Federal Register** notice. The preamble, at page 42077 of this notice indicates that we intended to ''* * * proactively *prescribe* mitigation for * * * unspecified discharges * * *'' (emphasis added). This sentence should have read ''* * * proactively *proscribe* mitigation for * * * unspecified discharges * * *''

One commenter suggested that the mitigation requirement should consider future, cumulative impacts as these impacts would likely result in more than minimal adverse impacts to aquatic resources.

We believe that mitigation requirements associated with NWP 31, as proposed, are sufficient to account for future, cumulative impacts. As envisioned, mitigation will be required for adverse effects on the aquatic environment that are attributable to regulated discharges associated with the establishment of the baseline physical parameters (i.e., the maintenance baseline) of the flood control facility. Maintenance-related discharges that do not exceed the established maintenance baseline will not result in losses of aquatic resources beyond those addressed at the time the maintenance baseline is established. Discharges that exceed the established maintenance baseline are not eligible for authorization under NWP 31.

One commenter stated that baseline criteria are often difficult to produce, especially for much smaller drainage/utility districts which may not have nor maintain such records. Two other commenters indicated their support for revisions to this permit which recognize that cyclic maintenance is inherent in the continued operation of flood control facilities, and that regulated discharges will inevitably occur as a result of this activity. They also support the revisions allowing discharges in emergency situations. They suggested that the Corps should clarify that, in situations where baseline information is unavailable due to the age of the facility, lack of construction drawings will not preclude use of this NWP.

We acknowledge that producing records of baseline parameters may not be possible in all cases, but we can not waive this requirement. In these cases, a new maintenance baseline must be established before the maintenance-related discharges in the subject facility are eligible for authorization under NWP 31.

One commenter suggested that the proposal to authorize maintenance activities on natural features is a departure from previous practice and creates the greatest risk for more than minimal adverse environmental impacts. Also, they state that they believe it is critical that the Corps articulate its basis for extending authorization into areas that previously have been prohibited under this NWP, as well as an explanation as to why it believes that adequate protection will be provided through the use of BMPs. They want the Corps to clarify under what circumstances it considers a natural segment to be ''incorporated'' into a flood control facility, as the term may be interpreted broadly to the detriment of aquatic resources. Lastly, they also believe that the open ended nature of the provision may lead to greater than minimal impacts and confusion after the activities are completed, when mitigation is required, and urge the Corps to make clear that this provision only applies to situations satisfying the minimal effects test in light of existing regulatory provisions that already provide for emergency permitting.

The incorporation of natural areas into an overall flood control facility is accomplished through the establishment of a maintenance baseline that includes these areas. Although the current NWP 31 differs from its predecessor with respect to the treatment of these natural areas, this NWP does not authorize discharges that exceed this baseline. As such, NWP 31 does not authorize any regulated discharge that results in the further loss of jurisdictional aquatic areas in the flood control facility, including those in the subject natural

areas. Upon incorporation in the maintenance baseline, the physical parameters of the natural area can be maintained, but not exceeded, through maintenance activities that may involve regulated discharges that are authorized by NWP 31. For example, scoured banks in a natural area may be restored to the baseline condition (but *only* restored, not exceeded) through a discharge of fill material that is authorized under NWP 31. Beyond this, the application of Best Management Practices (such as a time-of-year restriction on the discharge) may further minimize adverse effects on the aquatic environment. As with all NWPs, Corps Districts may ''override'' the use of this NWP by requiring individual permits in situations where the District believes that adverse effects are likely to exceed the minimal level. In light of these factors, we do not agree that the concerns presented in this comment warrant further modification of NWP 31.

One commenter objects to the ''one-time mitigation requirement'' as the Corps has not satisfactorily demonstrated that compensatory mitigation is successful in replacing the lost functions and values destroyed through the original construction of the flood control facility. They also state that it is impossible to pre-determine the magnitude of potential adverse impacts when there are no limits on the acreage of impacts or cubic yardage of excavation authorized under this permit.

Excavation in waters of the U.S. that results in only incidental fallback is not regulated under section 404 of the Clean Water Act, and such activities are not subject to mitigation requirements imposed under that law. Regardless, in the context of the NWPs, the mitigation of the adverse effects of regulated activities need only offset those effects such that ''no more than minimal'' adverse effects remain, and not necessarily to guarantee that losses are exhaustively compensated. NWP 31 authorizes maintenance-related discharges that are subject to regulation under section 404. The establishment of the maintenance baseline, in effect, identifies the location and physical dimensions of waters of the U.S. that have been incorporated in the flood control facility. Discharges that result in losses of these waters (i.e., that exceed the maintenance baseline) are not eligible for authorization under NWP 31. In light of this, we believe that the ''one time mitigation requirement'' imposed in conjunction with the establishment of the maintenance baseline is sufficient for the purpose of this NWP.

One commenter indicated that there are far too many unclear considerations in this permit for it to protect water quality and critical aquatic habitat. They recommend the Corps (1) Process emergency activities through individual permits, (2) maintain and strengthen existing mitigation requirements for unavoidable impacts and amend as needed to comport with aquatic habitat changes, (3) develop a clear definition of acceptable maintenance baselines and a clear explanation of what constitutes suitable documentation, and (4) include adequate conditions that further protect water quality and aquatic habitat and must allow comment from the public prior to adoption and implementation.

Although we respect the concerns that are implicit in this comment, we do not agree that further modification or elaboration of NWP 31 (or of our emergency permit procedures) is a necessary or appropriate way to address them. In adopting generic permits such as NWP 31, and in designing emergency procedures for nationwide application, we try to avoid being unnecessarily prescriptive or restrictive. Our intent is to afford Corps Division and District offices with significant discretion and latitude as to the final application of the NWP program and the emergency procedures, in order to allow them to tailor the actual application of the NWPs to the nuances of local situations that we can not anticipate. Toward this end, we strive to make the generic NWPs as broad as possible within the constraints imposed by the law and related regulations, in order to maximize the potential applicability of these permits. At the same time, we provide our Division and District offices with the authority to further condition, modify, suspend, or revoke these permits in response to regional or local conditions that demand such actions to ensure that effects remain at or below the ''minimal'' level. The corollary to that authority is the Division and District responsibility to ensure that the ''no more than minimal'' threshold is not exceeded by individual activities authorized under a NWP.

One commenter recommended that the Corps consider a review of potential cost to the applicant in establishing a maintenance baseline on a given project. They also opined that any review of whether a project has been abandoned should consider more than just time in that decision-making process due to the fact that the financial resources to perform that maintenance in what might be considered a timely manner are not always available.

Although we are aware of the importance of cost considerations to all applicants for Corps permits, we have no authority to waive requirements under the law because of these considerations. The establishment of a maintenance baseline is the key component of NWP 31 because it delineates parameters of waters of the U.S. that are incorporated into the flood control facility, within which regulated discharges are eligible for authorization under the NWP. As such, we can not factor cost considerations into the requirements for establishing a maintenance baseline. We believe that NWP 31, as proposed, does not compel an abandonment determination to be based exclusively on the time that elapses between maintenance events. This provision of NWP 31 takes into account whether the capacity has been significantly reduced, and whether maintenance was needed but not performed, in addition to consideration of the length of time during which the capacity has been significantly reduced, and during which needed maintenance was not performed. The non-specific nature of the facets of this provision is deliberate, as is the absence of a consideration of environmentally beneficial features, such as wetlands, that may have developed between maintenance events. Our awareness of some of the practical realities of operating and maintaining flood control facilities encourages us to believe that the bar should be set fairly high for determining that such a facility has been abandoned for the purposed of NWP 31.

One commenter suggested that the development of the ''maintenance baseline'' to be employed at these facilities should account for channel and habitat characteristics associated with a hydrogeomorphic approach.

The establishment of the maintenance baseline is related to ensuring that losses of waters of the United States, beyond those addressed in conjunction with such establishment, do not occur as a result of regulated discharges that are authorized by the NWP. We do not believe that formalized assessment methodologies are necessary to accomplish this. The implication of this suggestion is that NWP 31 procedures should be used to determine baseline channel and habitat characteristics, which could then be maintained through subsequent authorizations under the NWP. We do not believe that this is practical or appropriate. Many maintenance activities that are not subject to regulation under section 404 of the Clean Water Act, such as excavation that results in only incidental fallback, are likely to affect channel and habitat characteristics as much as, or more than, the kinds of

discharges that are regulated under NWP 31. We do not believe that it is appropriate to use this NWP to regulate effects that are not attributable to regulated activities.

Two commenters stated that the periodic maintenance of flood control facilities is required for the operation of those facilities and will not have a significant adverse impact on the environment when conducted within the maintenance baselines for such facilities. They support the clarification proposed for NWP 31 that maintenance of these facilities do not require compensatory mitigation when approved BMPs are utilized.

We believe that the maintenance baseline procedure, in combination with the imposition of BMPs, will preclude the need for mitigation for regulated discharges associated with routine and recurrent maintenance activities in most cases. However, in designing nationwide generic permits such as NWP 31, we ultimately rely on our Division and District offices to provide the final surety that the specific regulated activities that are authorized under the NWPs do not result in more than minimal effects. To ensure that the ''minimal effect'' threshold is not exceeded in individual cases, we believe that the Divisions and Districts must continue to have the authority to impose mitigation requirements in addition to BMPs as a means of achieving this.

Three commenters stated that the Corps should not regulate temporary discharges associated with maintenance activities within the flood control facilities since there is not a permanent impact. They state that NWP 31 should make it clear that temporary stockpiles and redeposits associated with otherwise unregulated excavation is not a loss of a water of the U.S. that requires compensatory mitigation. They also state this holds true for other maintenance activities associated with the flood control facility that are not within Corps jurisdiction, i.e., mowing or brush hogging. In addition, they assert, if the flood control facility was constructed by the Corps and turned over to a local or state agency for maintenance, and did not mitigate for the maintenance of its project, the receiving agency should not be burdened with the Corps omission. They also suggest that ensuring that mitigation and/or ESA surveys would not be required if the maintainer reduced the frequency of routine maintenance might be a valuable mitigation tool in and of itself. Lastly, the Corps should provide a means that minimal impact NWP 31 activities could be authorized without a PCN.

We agree that, in situations where there is no permanent loss of waters of the U.S., no mitigation for such temporary effects is required. However, this does not exempt temporary discharges from the need for section 404 authorization, even when those discharges are only incidental to otherwise unregulated activities. Generally, we believe that it is not appropriate to impose mitigation for effects attributable to unregulated activities, such as excavation that results in only incidental fallback, but to the extent that significant regulated discharges may accompany some unregulated maintenance activity, mitigation may be required to ensure that there are no more than minimal adverse effects. We believe that such determinations must be made on a case-by-case basis, as individual NWP authorizations are confirmed.

We do not intend to impose any restriction on the frequency of routine maintenance. We believe that such decisions should be left to those responsible for the operation and maintenance of flood control facilities, since they must often must balance budget limitations against the projected need for maintenance.

We do not intend to impose, on local sponsors, any requirement to mitigate for impacts attributable to the construction of a Corps-constructed flood control facility. However, many such facilities were constructed prior to the implementation of the Clean Water Act, so no section 404-related mitigation was required. Although Clean Water Act requirements are not retroactively imposed on the construction of these facilities, the Corps has no authority to exempt current discharges of dredged or fill material that occur in conjunction with the maintenance of the facility, or to waive any requirement for necessary mitigation.

Reiterating the concern of the previous comment, another commenter stated that, absent sufficient reasoning for requiring a PCN, the Corps should delete the PCN requirement from this permit as it is costly to the applicant both from a time and money standpoint.

We are not currently confident that we could prescribe conditions and limitations on potential NWP 31-authorized discharges sufficient to ensure that their adverse effects can reasonably be determined to be no more than minimal in most cases, in the absence of site-specific verification through the PCN process. Conversely, we are not certain that the PCN requirement for this NWP could not be relaxed at some point in the future, as we gain greater experience with use of the NWP. In light of this uncertainty, we believe that the inclusion of the PCN requirement is prudent, for the current issuance of this NWP, but the Corps will continue to evaluate its appropriateness for future reissuances.

One commenter supported the concept of maintenance baseline, however, to assure the impacts are minimal, suggests that the state regulatory agencies and state and federal resource agencies be involved in the review and approval of the maintenance baseline, as well as mitigation for the projects.

The Corps believes that establishment of the maintenance baseline is essentially a technical exercise. Since the maintenance baseline for NWP 31 purposes, as proposed, is a description of the physical characteristics of the flood control project that has been or is being constructed through some independent authorization, we do not agree that coordination with state or Federal agencies is necessary or warranted for the establishment of the baseline. Coordination may be necessary or appropriate for authorization of the project itself, depending on the terms and conditions of the legal authority under which project authorization occurs.

Two commenters indicated the need to define ''best management practices'' and ''maintenance baselines'' so that a true assessment of impacts resulting from the proposed changes to the NWP can be made. They also suggested that the Corps should work with local communities to restore floodplain functions, where possible, and maintain existing wetlands to help moderate peak flows.

We believe that the concepts of ''best management practices'' and of the ''maintenance baseline'' do not need further definition in order to adequately understand the impacts of this NWP. Through the Regulatory Program, and through other Civil Works and Military Programs, the Corps does work with local communities to restore floodplain functions and to maintain and restore wetlands, but these comments are outside the scope of NWP considerations.

One commenter indicated the changes to this permit could allow any stream that has been deemed incorporated into a ''flood control facility'' to be routinely maintained with little or no mitigation required. He suggested that mitigation should be required for all maintenance activities.

In issuing this NWP, it is our intent to provide for identification of the

extent of waters of the U.S. that exist within the flood control facility, and to authorize maintenance-related, regulated discharges in a manner that does not result in a net loss of these waters. We believe that it is appropriate to include streams that have been incorporated into flood control facilities through the establishment of a maintenance baseline. As long as the maintenance baseline is not exceeded, we believe that the authorization of maintenance-related discharges, with little or no mitigation, is adequate and appropriate, both in areas that include structural features and in those that do not. In light of the fact that only the discharge associated with maintenance activities requires a CWA section 404 permit and other maintenance activities may not be regulated even if conducted in section 404-only waters, we do not believe that mitigation for all maintenance activities is necessary or appropriate. It is not our intent to use this or any NWP to require mitigation for unregulated activities. Despite this, Corps Division and District offices are authorized to impose mitigation requirements that they determine are necessary to keep effects at a minimal level.

One commenter suggested that maintenance baselines be re-evaluated periodically to determine if it still reflects existing conditions. Two other commenters opposed the specifications for one-time mitigation stating that habitat and species composition changes over time, warranting additional mitigation. Also, a separate and new permit should be created through coordination with the US Fish and Wildlife Service for emergency flood control work.

The maintenance baseline is intended to be a fixed description of physical parameters that cannot be exceeded by regulated discharges authorized under NWP 31. Changes in conditions in the flood control facility are expected to occur, and NWP 31 is intended to authorized regulated discharges associated with maintenance activities that can return the facility to the maintenance baseline condition, but not exceed them. As such, we believe that the maintenance baseline must remain fixed, and that it would be inappropriate to raise or lower the bar in connection with periodic reviews. If the operator of the facility wished to change the baseline, however, they could apply to the Corps to do so and appropriate mitigation would be required at the time a new baseline is established. We believe that the current emergency procedures, along with the revisions to NWP 31 related to emergency maintenance, are sufficient to provide necessary and appropriate environmental consideration in emergency situations. In light of this, we do not agree that a new permit should be created.

One commenter who opposed NWP 31 stated that they were concerned with the requirement for mitigation stating that if adverse impacts truly were minimal, then mitigation should not be needed.

After the establishment of the maintenance baseline, we believe that the adverse impacts attributable to regulated discharges associated with maintenance activities will, indeed, be minimal, and mitigation will not be required. However, if the loss of waters of the U.S. in a particular reach of a flood control facility has not previously been mitigated, and a regulated discharge associated with a needed maintenance activity will result in such loss, we believe that ''once only'' mitigation may be required as a prerequisite to NWP 31 eligibility, and that it should be imposed in conjunction with the establishment of the maintenance baseline.

One commenter questioned whether BMPs would adequately protect areas covered under this NWP from environmental degradation and loss of fish and wildlife habitat values.

BMPs are intended to minimize the adverse effects of regulated activities. With respect to NWP 31, the application of BMPs in conjunction with the maintenance baseline provisions is expected to ensure that the effects of activities authorized under this NWP are no more than minimal. They are not necessarily intended to prevent environmental degradation and the loss of habitat values that may be attributable to factors that are not caused by maintenance activities.

One commenter suggested redrafting NWP 31 to clarify what is already exempt under statute and regulation and to narrow its application to debris basins and retention/detention basins, to the portion of constructed soft bottom channels beyond the limits reasonably related to maintenance of the sides of the channel, to natural watercourses that are part of a flood control facility, and to any other part of an existing flood control facility that is not a structure or a constructed fill.

Since our intent in issuing this NWP is to assure that its applicability is as broad as possible within the constraints of the NWP program, we do not agree that is necessary to impose further limitations that are not supported by any clear indication that such limitations are necessary to ensure that the effects will be no more than minimal.

One commenter contends that it should not be mandated that the baseline, with supporting mitigation, be required after-the-fact whenever emergency maintenance has occurred, but instead, the actual facts associated with the emergency related activities should be considered. If no impacts, or only minor impacts, occurred there should be no need to undertake the burdensome task of establishing a baseline. He also suggests that the imposition of administrative burdens to address minor maintenance activities essential to keeping flood control structures in safe operating conditions, cannot be justified and is not required under Section 404.

Regardless of the circumstances, the requirement to establish a maintenance baseline is only imposed in conjunction with the prospective use of NWP 31. If the applicant is not willing or able to establish a maintenance baseline, other Corps permit processes can be applied to consider authorizations for discharges associated with maintenance activities, but necessary mitigation would be required in any case. Since neither emergency circumstances nor the minor nature of a particular activity is exempted from regulation under the law, we can not exempt them through the NWP process. We believe that NWP 31, as proposed, is a reasonable and prudent way to minimize the burdens imposed on applicants, within the constraints of applicable law and regulation.

One commenter requested clarification of terms such as ''reasonably foreseeable discharges'' and ''routine maintenance'' and ''cyclic maintenance'', as well as a clarification of the intent of this rule. He suggested that the rules should provide for permitting authorization for structures constructed by agencies other than the Corps, with maintenance activities focused on restoration to a specific baseline.

We believe that the intent of this NWP, which is to authorize discharges associated with maintenance activities in flood control facilities, is adequately indicated in the NWP, as written. We do not believe that the terms ''reasonably foreseeable discharges,'' ''routine maintenance'' or ''cyclic maintenance'' need to be further defined, since the applicability of NWP 31 does not depend on any precise definition of these terms. As designed, NWP 31 does focus on the maintenance of a predetermined baseline. However, we believe that the inclusion, in this NWP, of provisions to authorize the

construction of structures in jurisdictional areas is not warranted. The authorization of structures is limited to that provided by other applicable NWPs and standard permits. NWP 31 authorizes regulated discharges associated with maintenance activities for the purposes of section 404 of the Clean Water Act and section 10 of the Rivers and Harbors Act.

One commenter stated that riverine systems that do not have constructed channels cannot be considered flood control structures and the activities proposed by this NWP would result in more than minimal impacts to the environment. He suggests, if the NWP is issued that, at least regionally, use of this NWP should be prohibited in areas that are not constructed channels.

As proposed, NWP 31 addresses the maintenance of flood control facilities, and not just structures. This NWP authorizes discharges associated with maintenance activities, but it does not subject otherwise unregulated activities or non-jurisdictional areas to the requirements of applicable law. The effects being addressed in connection with this NWP are those that result from regulated discharges in jurisdictional areas. Upon the establishment of the maintenance baseline, the effects of subsequent maintenance-related discharges that do not exceed that baseline will, generally, be no more than minimal.

One commenter indicated that the NWP would result in a significant workload increase for the Corps as most projects did not have a baseline prepared and as a result, a significant quantity of one-time-only mitigation might be identified when these first baselines are determined. This mitigation would have to be reviewed and approved by the Corps. This mitigation preparation and execution would also put a financial and manpower hardship on local sponsors. He suggests a grandfather clause so that the projects would qualify for NWP 31 with no requirement for baseline determinations and/or supplemental mitigation.

Since the Corps has no authority to exempt discharges associated with maintenance activities from regulation under the law, or from corresponding mitigation requirements, we can not adopt a grandfather clause to waive these requirements. Although we recognize that the establishment of a maintenance baseline, and the imposition of related mitigation requirements, will impose a significant burden in some cases, we believe that this one-time procedure is a viable way of generally assuring that the effects of subsequent maintenance-related discharges are no more than minimal.

One commenter suggested that the proposed NWP does not address provisions of, and possible conflict with, a recent proposed policy guidance document for authorization of maintenance activities through the USACE Civil Works Department. He suggests specific language providing that revised as-builts and updated environmental surveys be submitted rather than an EIS to authorize maintenance activities under the Civil Works Program. The commenter would like to see the processes for modification of existing manuals to NEPA and CWA standards be more standardized and expedited.

This comment is apparently more concerned with the specifics of prospective policy guidance on the maintenance of Corps flood control facilities, than with NWP 31 as proposed. We believe that any consideration of issues related to the effects of such policy guidance must be deferred until such time as the policy guidance is actually issued.

One commenter objected that the requirements of the proposed NWP 31 extend jurisdiction to areas outside of those regulated by the CWA, *i.e.,* areas which are the upland portions of detention facilities and areas above the normal high water level in stream channels. If this approach is adopted, the commenter suggests the extent of information required is so detailed and extensive as to make it unruly.

NWP 31 does not extend Clean Water Act jurisdiction to areas or activities that are not subject to that law. Unregulated activities, and work in non-jurisdictional areas, do not require section 404 authorization under NWP 31 or any other Corps permit process. The maintenance baseline provision of NWP 31 does, by necessity, include considerations of non-jurisdictional areas, but this prerequisite only applies in the context of NWP 31. Other permit avenues, such as individual permit procedures, remain available to consider maintenance activities that require section 404 authorization in circumstances in which the maintenance baseline information requirements can not be accommodated by the applicant.

One commenter requested that the Corps revise the NWPs to eliminate the use of the term ''incidental fallback,'' to avoid any requirement for the case-by-case demonstration of proposed equipment use, and to avoid reliance on the ''rebuttable presumption'' approach to defining ''discharge of dredged material.''

We do not believe that this change is necessary. Like all NWPs, NWP 31 authorizes only regulated discharges and does not alter or enlarge program jurisdiction. For example, incidental discharges are addressed in the regulations themselves at 33 CFR 323.2(d), and not the NWPs.

The nationwide permit is reissued as proposed.

32. *Completed Enforcement Actions* There were no changes proposed to this nationwide permit. One commenter suggested that NWP 32 should be withdrawn as it is too broad for projects to be considered ''similar in nature'', or to be able to determine that the various projects, when considered individually or cumulatively, will result in minimal adverse environmental effects, and that it's limitations are arbitrary and capricious (*e.g.,* 5 acres, 1 acre).

The Corps believes that the description of the type of activities will ensure that those activities authorized by this NWP will be similar in nature. Further, we believe that normally these activities will have no more than minimal adverse effects on the aquatic environment, individually and cumulatively. Further, Division and District Engineers will condition such activities where necessary to ensure that these activities will have no more than minimal adverse effects on the aquatic environment, individually and cumulatively.

Another commenter recommended changes to NWP 32 which would allow restoration-based settlements for natural resource injuries by adding the following text: (iii) The terms of a final court decision, consent decree, settlement agreement, or non-judicial settlement agreement resulting from a natural resource damage claim brought by a trustee or trustees for natural resources (as defined by the National Contingency Plan at 40 CFR subpart G) under section 311 of the Clean Water Act (CWA), section 107 of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA or Superfund), section 312 of the National Marine Sanctuaries Act (NMSA), section 1002 of the Oil Pollution Act of 1990 (OPA), or the Park System Resource Protection Act at 16 U.S.C. 19jj. For (i), (ii), and (iii) above, the compliance is a condition of the NWP itself.

The Corps agrees with the commenter. These are Federal environmental legal resolutions that we believe should proceed without the delays caused by processing individual permits that would have no added value to resolutions under these laws. However, we have added a clarification that this

NWP only applies to the extent that a Corps permit is required.

The nationwide permit is reissued with the change discussed above.

33. *Temporary Construction, Access and Dewatering* There were no changes proposed to this nationwide permit. One commenter suggested that NWP 33 should be withdrawn as activities authorized under this permit cannot be considered ''similar in nature'' and do not result in temporary or minimal adverse environmental effects to waters of the U.S.

The Corps believes that the description of the type of activities will ensure that those activities authorized by this NWP will be similar in nature. Further, we believe that normally these activities will have no more than minimal adverse effects on the aquatic environment, individually and cumulatively. Further, Division and District Engineers will condition such activities where necessary to ensure that these activities will have no more than minimal adverse effects on the aquatic environment, individually and cumulatively.

The nationwide permit is reissued without change.

34. *Cranberry Production Activities* There were no changes proposed to this nationwide permit. One commenter recommended that the Corps not reissue this permit as it violates section 404(e) of the CWA and the section 404(b)(1) Guidelines. The commenter stated that cranberry growers are allowed to ''buy down'' impacts of conversion with compensatory mitigation and that compensatory mitigation is allowed to take the form of preservation. The commenter further stated that some have indicated that cranberry production can degrade water quality, harm fisheries, and reduce water quantity, each of which can significantly, adversely affect the aquatic environment.

The Corps believes that this NWP is fully in compliance with section 404(e) of the Clean Water Act. Further the Corps believes that it is appropriate to require mitigation for adverse effects of a project and that the mitigation can be considered when determining that the adverse effects of a project are minimal.

The nationwide permit is reissued without change.

35. *Maintenance Dredging of Existing Basins* There were no changes proposed to this nationwide permit. Two commenters pointed out that there was a change in the proposed NWP 35 which was not mentioned in the Preamble. Another commenter recommended withdrawing this permit as it is not reasonable to conclude that the cumulative impacts of all of the activities authorized under this category would not result in greater than minimal adverse environmental effects. The commenter stated it is reasonable to conclude that this category of activities would be incapable of being in compliance with CZM programs.

The Corps agrees that there were differences in the NWP from the 1996 NWP. However, the Corps did not intend to propose a change to this NWP. This was an error. This NWP will be adopted as it has existed since 1996. We continue to believe that the cumulative effects of activities authorized by this NWP will be no more than minimal individually and cumulatively. Furthermore, Corps districts or divisions may add case-specific or regional conditions where necessary to further ensure that the adverse effects to the aquatic environment are no more than minimal, individually and cumulatively. The states will review the activities authorized by this NWP and will agree or disagree that these activities comply with their State CZM programs. If the States disagree, then activities that otherwise qualify for the NWP will need to get an individual State CZM concurrence before they can proceed. If the state conditions its CZM agreement, then those state CZM condition will become conditions of the NWP.

The nationwide permit is reissued without change from the 1996 NWP.

36. *Boat Ramps* There were no changes proposed to this nationwide permit. One commenter suggested that NWP 36 should be withdrawn as it is unreasonable to conclude that the cumulative impacts of all of the activities authorized under this category would not result in greater than minimal adverse environmental effects. The commenter expressed is doubt that the adverse indirect/secondary impacts of extracting the source materials and subsequent degradation of water quality associated with the use of the construction of boat ramps has been considered by the COE.

We continue to believe that the cumulative effects of activities authorized by this NWP will be no more than minimal, individually and cumulatively. Furthermore, Corps districts or divisions may add case-specific or regional conditions where they believe necessary to further ensure that the adverse effects to the aquatic environment are no more than minimal, individually and cumulatively. The Corps will also consider adverse effects at borrow areas where appropriate. It should be noted that normally the materials for the small boat ramps are obtained from existing borrow areas or sources that exist independently of the small projects. Any individual water quality issues will be addressed by the states through water quality certifications, NPDES permits or other programs. In some cases the Corps may directly address water quality issues when appropriate.

The nationwide permit is reissued without change.

37. *Emergency Watershed Protection and Rehabilitation* The Corps proposed to modify this NWP to include the Department of the Interior (DOI), Wildland Fire Management Burned Area Emergency Stabilization and Rehabilitation Program (DOI Manual, part 620, Ch. 3) to this NWP. The existing NWP only included the Natural Resource Conservation Service (NRCS) and U.S. Forest Service (USFS) Programs for emergency watershed protection and rehabilitation. The Department of the Interior has similar responsibilities as the Forest Service, such as suppression of wildland fires and the rehabilitation of the burned land.

Several commenters suggested additional changes to this NWP, including limiting the time that the NWP can be used after an emergency situation, such as 2 years, and broadening the NWP to cover State and local emergency activities. One commenter suggested that there were abuses, such as converting waters of the U.S. in the guise of restoration. Another commenter recommended retaining the word ''exigency'' in the permit language until such time that NRCS completes their final PEIS and modifies their regulations accordingly to ensure that the impacts from this category of NWP will not exceed the minimal impact threshold.

The Corps believes that the time constraint and the expansion to include State and local emergency activities would need to be proposed before a change could be adopted. Furthermore, we believe that the suggested time constraint is not needed and we are not aware of any such abuses. The Corps will monitor the use of this NWP and will propose any changes that may be necessary to ensure that any adverse effects on the aquatic environment are no more than minimal, individually or cumulatively. The Corps believes that the terminology used to describe the NRCS emergency situations will not result in materially different activities that are now covered by the NWP. Should there be a change the Corps can modify the NWP accordingly.

One commenter suggested a grammatical change, removing the

''Work done or funded by'' from the beginning of subsections ''b'' and ''c'' in order to be consistent with subsection ''a''. We concur with this comment and have accordingly changed the NWP.

The nationwide permit is reissued as proposed and with the change described above.

38. *Cleanup of Hazardous and Toxic Waste* There were no changes proposed to this nationwide permit. One commenter indicated that this NWP covers many different activities that are not similar activities. The commenter added that the NWP also lacks any indication of a time constraint that would constitute an ''emergency'' response, which may have occurred up to five years later in some cases. The commenter also stated that there have been adverse effects that occur under the guise of so-called ''Restoration''.

The Corps believes that the description of the type of activities will ensure that those categories of activities authorized by this NWP will be similar in nature. Further, we believe that normally these activities will have no more than minimal adverse effects on the aquatic environment, individually and cumulatively. In addition, Division and District Engineers will condition such activities where necessary to ensure that these activities will have no more than minimal adverse effects on the aquatic environment, individually and cumulatively. The addition of a time constraint would need to be proposed before a change could be adopted. Furthermore, we believe that a time constraint is not needed and we are not aware of any such abuses. The Corps will monitor the use of this NWP and will propose any changes that may be necessary to ensure that any adverse effects on the aquatic environment are no more than minimal, individually or cumulatively. The nationwide permit is reissued without change.

39. *Residential, Commercial, and Institutional Developments* The Corps proposed these changes to this NWP: (1) Simplify the subdivision provision, without substantively changing its effects, (2) delete the one-cfs restriction on stream impacts, and (3) allow a project specific waiver of the 300 linear-feet prohibition following a written determination by the Corps that any adverse environmental effects would be no more than minimal.

Simplify the Subdivision Provision

Several commenters supported simplifying the subdivision provision while several others indicated that the existing subdivision provision should remain. Several commenters expressed concerns about repeated use of the NWP within a subdivision and supported applying the aggregate of all fills in waters of the U.S. to the ½ acre threshold. Some commenters did not want the restriction to apply to future individual lot owners while others wanted to ensure that it did. One commenter asked whether the new subdivision language would apply to all subdivisions or would some be grandfathered. Another expressed concern about Corps workload and record keeping impacts due to grandfathered subdivision dates. One commenter requested that individual lot owners within a subdivision be exempted from the subdivision provision. Another commenter indicated that the 1/10 acre notification requirement should be retained in the subdivision provision.

The Corps continues to believe that to make the subdivision provision effective, it needs to be simplified. The subdivision provision will apply to all, but only to, residential subdivisions, regardless of when they were built. This will create some additional workload in older residential subdivisions not yet completed. However, in appropriate cases Corps divisions and districts may consider regional general permits or abbreviated permit processes. Also Corps divisions and districts may add regional conditions to require notification or other restrictions when appropriate. The subdivision provision will apply to all lots within a residential subdivision. Furthermore, when authorizing future residential subdivisions the Corps will consider the status of lots that maybe filled in the future and add them to the total for determining compliance with the aggregate ½ acre threshold. The simplified subdivision provision will simplify Corps record keeping and workload. But more importantly it will further compliance with this condition and thus provide additional environmental protection while allowing those subdivisions with minimal impact to proceed without unnecessary costs and delays.

Delete the One-cfs Restriction on Stream Impacts: Many commenters objected to the removal of the one cfs restriction on stream impacts and requested that it be restored to ensure that developments are not located on flood prone property without full individual permit review, including public notice and comment. One commenter recommended a preferred modification involving retaining the provision and proposed specific conditions under which this provision might be waived e.g. severe degradation. Another commenter was concerned that removal of this provision could jeopardize streams considered degraded by the Corps when that degradation might be eliminated or reduced through simple changes in management practices. Two commenters supported the elimination of the one cfs restriction agreeing that it was inconsistent with the intent of the NWP, but one of them further went on to say that the prohibition is unnecessary, confusing and results in many minimal impact projects having to undergo the individual permit process, and that the condition is arbitrary as there is no data to support the application of this condition. One commenter stated that removing the one cfs prohibition would allow a developer to completely remove most functions provided by a stream, however, this much impact should not be authorized by the Corps.

The Corps agrees with those commenters that the one cfs restriction is unnecessarily prohibitive. There is a need on occasion to have some unavoidable elements of relocation and channelization below the one cfs point on a stream for a project covered by NWP 39. In these cases there would be no value added to the environment by processing an individual permit. Further, the added complication and costs of making a determination of another point on a stream in addition to the five cfs point, unnecessarily adds a burden to the Corps and the applicant. We further believe that there are several other general conditions that protect important stream values; such as General Condition 21 Management of Waters Flows, General Condition 20 Spawning Areas, General Condition 17 Shellfish beds and General Condition 9 Water Quality to name a few.

300 Linear Foot Prohibition with a Waiver: This issue is discussed elsewhere in this preamble.

Compliance with 404(e): Several commenters indicated that the NWP was not in compliance with Section 404(e). One commenter said that since a residential development is not a water dependent activity, it is presumed that alternative locations are available for these activities.

We believe that the minor nature of these types and categories of activities will ensure that they are similar in nature. We further believe that the conditions and specified thresholds will ensure that the activities will have no more than minimal adverse effects on the aquatic environment, individually and cumulatively. The thresholds have been developed and greatly reduce from 10 acres in 1984 down to ½ acre in 2000, based on years of experience and were developed to consider most effects

that could occurs in many areas of the country. However, Division and District Engineers will condition such activities where necessary to ensure that those activities will have no more than minimal adverse effects on the aquatic environment, individually and cumulatively. A case specific off-site alternatives analysis is not required for activities with minimal adverse effects that are authorized by NWPs, as provided for the Clean Water Act section 404(b)(1) Guidelines. However, on-site avoidance and minimization is required by General Condition 19.

Other Comments

Many commenters opposed the preamble discussion regarding the phasing of subdivisions. The Corps has defined the concept of single and complete projects for the purpose of authorizing activities by nationwide permits. This term is defined in Corps regulations at 33 CFR 330.2(i). The preamble discussion states how the Corps is implementing the regulations. The Corps is not proposing to change the nationwide permit regulations at this time.

Two commenters requested conditions requiring a pre-construction notification for all wetland impacts to allow the Corps to determine the appropriateness of using the NWP for wetlands impacts. One of those commenters recommended that permittees be required to verify compliance with the NWP general conditions. A pre-construction notification is a requirement for impacts to greater than 1/10 acre of non-tidal waters of the U.S., excluding non-tidal wetlands adjacent to tidal waters. This NWP can not authorize activities in tidal waters of the U.S. and not in non-tidal wetlands adjacent to tidal waters and not for permanent above grade fills below the headwaters in the 100 year flood plain as provided for in general condition 26. We believe that this will ensure that the impacts will be no more than minimal. Furthermore, Corps divisions and districts will add regional conditions as appropriate to further ensure that cumulative effects will be no more than minimal. The Corps believes that it would be an unnecessary and unreasonable burden on an applicant to demonstrate compliance with all conditions. The Corps districts will request verification of compliance for those conditions that the Corps believes are applicable to a project but for which the applicant did not supply sufficient information.

This NWP is reissued as proposed except with the modified 300 linear foot waiver discussed below.

40. *Agricultural Activities.* The Corps proposed to modify this NWP by providing a waiver for the 300 linear foot limit on relocating existing serviceable drainage ditches constructed in non-tidal streams. Several commenters opposed this NWP, with some suggesting that it be withdrawn. Some commenters suggested additional restrictions to the NWP. These restrictions included changing the maximum acreage threshold (e.g. 1% of the farm tract, .3 acres, 1/2 acre for the entire farm holding or all the tracts under one ownership, 1/4 acres, and 1/10 acre); prohibiting conversion of waters of the US. to agricultural production; requiring that all impacts must be fully mitigated; and requiring that the Corps must review and approve all mitigation. Additional suggestions included requiring a pre-construction notification to include a hydrologist report documenting the extent of both primary and secondary impacts; limiting the linear footage of fill in all streams to 250 feet; prohibiting the discharge of fill into playas, prairie potholes, and vernal pools, withdrawing the provision that states that ''discharges of dredged or fill materials into waters of the US. associated with the construction of compensatory mitigation are authorized by the NWP, but are not calculated in the acreage loss of waters of the US'; and requiring that the Corps make its own minimal effects determination consistent with section 404 of the Clean Water Act.

Many of these suggestions would require that the Corps publish proposed changes to this NWP for public comments. The Corps can consider and propose any such appropriate changes after this NWP is reissued. However, at this time we believe that the threshold that we established in 1996 continues to be appropriate for this NWP. The Corps will review appropriate activities for compliance with this NWP including requiring appropriate mitigation and ensuring that the authorized activities will have no more than minimal adverse effects on the aquatic environment, individually and cumulatively. Further, we also believe that the PCN requirements are adequate to allow the Corps to make such determinations. We also believe that the PCN requirements will ensure that any jurisdictional activities in playas, prairie potholes, and vernal pools will have no more than minimal adverse effects on the aquatic environment, individually and cumulatively. However, for activities authorized by paragraph a. of this NWP, we will rely on NRCS to make those decisions. We believe that this is adequate and appropriate considering NRCS's responsibilities under the Swampbuster provisions of the Farm Bill. The threshold limits for all NWPs are based on the amount of impacts to waters of the US of the proposed activity. We do not allow that limitation to be modified by considering mitigation to decrease that number. However, we do consider the net effects including the project effects, mitigation and impacts caused by the mitigation in deciding whether the activity will have no more than minimal adverse effects on the aquatic environment, individually and cumulatively.

Most commenters stated that the activities authorized under this permit would pose a serious threat of contamination to wetlands and nearby streams from animal waste and should be withdrawn.

We understand these concerns. However, these issues are normally considered and will be addressed as part of the states' Section 401 water quality certification or by a Section 402 permit.

Most commenters stated that the scope of this permit violates the minimal impact standards as it unnecessarily exceeds the 1/4 acre limit for filling wetlands under the ''minimal effects'' provisions of the Farm Bill, and, as such, should be withdrawn.

The Corps disagrees. Nothing in this NWP will override the provisions of the Farm Bill. Where an activity is covered by the Farm Bill, it must meet the requirements of the Farm Bill as well as the requirements of the Corps NWPs. The NRCS is responsible for determining compliance with the Farm Bill, while the Corps is responsible for determining compliance with the NWP.

One commenter recommended withdrawing this NWP as the activities authorized by it are not water dependent activities, are very dissimilar in nature and result in major adverse impacts to the human environment. Additionally, the impact thresholds are arbitrary and capricious.

We believe that the minor nature of these types and categories of activities will ensure that they are similar in nature. We further believe that the conditions and specified thresholds will ensure that the activities will have no more than minimal adverse effects on the aquatic environment, individually and cumulatively. The thresholds have been developed based on years of experience and were developed to consider most effects that could occurs in many areas of the country. However, Division and District engineers will condition such activities where necessary to ensure that those activities

will have no more than minimal adverse effects on the aquatic environment, individually and cumulatively. This nationwide permit is reissued with a modified 300 linear foot waiver as discussed below.

41. *Reshaping Existing Drainage Ditches.* There were no changes proposed to this nationwide permit. Three commenters said that this NWP should not be reissued. One commenter stated that there is no demonstrated need for this NWP. Three commenters objected to the reissuance of the NWP because there are no acreage or linear foot limits. One of these commenters suggested adding a 500 linear foot limit and a 250 linear foot pre-construction notification threshold. One commenter said that the sidecasting of drainage ditch soils may have significant adverse impacts on the hydrologic regimes of adjacent wetlands. Another commenter indicated that impacts due to temporary sidecasting of excavated material result in more than minimal adverse effects on the human environment.

This NWP authorizes the reshaping of existing, serviceable drainage ditches in a manner that benefits the aquatic environment. Without this NWP, project proponents would likely have to obtain an individual permit to reshape drainage ditches in a manner that helps improve water quality in a watershed. Requiring an individual permit for this activity would discourage landowners from conducting this activity. We do not agree that acreage or linear limits are necessary because of the nature of the authorized activity. The pre-construction notification threshold of 500 linear feet will allow district engineers to review ditch reshaping activities that may result in more than minimal adverse effects to the aquatic environment. In response to a pre-construction notification, a district engineer can require special conditions to ensure that adverse effects on the aquatic environment are minimal or exercise discretionary authority to require an individual permit for the work.

One commenter asserted that this NWP will encourage the drainage, degradation, and further loss of waters and wetlands. One commenter recommended revocation of this NWP within ''Tulloch'' ditches because the permit provides additional opportunities for developers to fill wetlands with little oversight by the Federal government. This commenter also suggested modifying NWP 41 to require planting of native trees and shrubs on ditch banks after construction to reduce the potential for water quality degradation.

This NWP authorizes only temporary sidecasting of excavated material into waters of the United States. Therefore, activities authorized by this NWP will not have significant, permanent impacts on the hydrology of adjacent wetlands or the human environment. This NWP does not encourage the loss of waters and wetlands because it is limited to activities in existing, serviceable drainage ditches and reshaping activities cannot increase the area drained by the ditches. We do not agree that it is necessary to require planting of native trees and shrubs after construction. Drainage ditches require periodic maintenance to remove accumulated sediments and any trees and shrubs planted next to drainage ditches would have to be removed during maintenance activities.

One commenter said that if this NWP is used to authorize activities in waters that support salmonids, then a regional condition should be added to the NWP. The recommended regional condition would require delineations of pools and riffles and require that the reshaping activity be conducted in a manner that does not reduce the volume and surface area of pools or other suitable habitat.

Division engineers can add regional conditions to this NWP to address concerns for salmonid species.

One commenter objected to the reissuance of this NWP, stating that it does not define the term ''drainage ditch'' narrowly, it does not require an applicant to prove that the proposed ditch reshaping activity will not increase the area drained by the ditch, it does not require mitigation when work is designed to improve water quality. This commenter said that the NWP should clarify that pre-existing waterways are not drainage ditches, even if they have been channelized. This commenter recommended adding the following text to NWP 41: ''This general permit is limited to reshaping that would restore more natural stream characteristics by activities similar to increasing the area of riparian vegetation through re-grading or by recreating stream meanders.'' Other suggestions by this commenter include requiring applicants to obtain NRCS minimal effects determinations and best management practices certifications and requiring mitigation for adverse impacts to aquatic resources authorized by this NWP.

This NWP does not define the term ''drainage ditch''. District engineers can determine, on a case-by-case basis, what constitutes a ''drainage ditch''. The Corps has modified the language of this permit slightly to clarify that drainage ditches constructed in uplands are generally not waters of the US, consistent with earlier guidance on this issue (FR 51:219, p 41217). We do not believe that it is necessary to require compensatory mitigation for activities authorized by this NWP, since the activities authorized by NWP 41 are designed to improve water quality. We do not agree that the recommended text in the previous paragraph should be added to NWP 41 because this NWP authorizes the reshaping of existing drainage ditches, not stream restoration activities. Requiring applicants to obtain minimal effects determinations and best management practices certifications from NRCS is unnecessary, since this NWP is limited to the reshaping of existing, currently serviceable drainage ditches that have minimal individual and cumulative adverse effects on the aquatic environment. This nationwide permit is reissued without change.

42. *Recreational Facilities* In the August 9, 2001, **Federal Register** notice, we proposed to modify this NWP by allowing on a case-by-case basis, a waiver of the prohibition on impacts exceeding 300 linear feet of stream bed. In addition, we requested suggestions regarding criteria, standards, and best management practices that should be applied to this NWP for recreational facilities to ensure that adverse effects on the aquatic environment are minimal.

One commenter requested that the Corps broaden the applicability of this NWP to include improvements to ski facilities, because ski area expansion is too narrow. This commenter also expressed support for expanding the scope of this NWP to include the construction of hotels and restaurants, because these facilities are important components of skiing facilities. One commenter supported the use of this NWP to authorize the construction of hiking, biking, and horse trails.

This NWP can be used to authorize the construction of certain improvements to ski facilities, provided those improvements comply with the terms and conditions of the NWP. We do not agree that NWP 42 should be expanded to include the construction of hotels and restaurants. These facilities may be authorized by other NWPs, such as NWP 39, which authorizes discharges of dredged or fill material into non-tidal waters of the United States to construct commercial buildings and attendant features, or other types of Corps permits.

Two commenters said that this NWP should be withdrawn. One of these commenters said that the NWP authorizes activities that are not similar in nature that result in more than minimal adverse impacts to the aquatic

environment. Six commenters asserted that this NWP should not authorize the construction of golf courses or ski areas. One commenter objected to the authorization of these facilities under NWP 42 because they are unlikely to substantially deviate from natural landscape contours. Another commenter said that the authorization of golf courses and ski areas discourages developers from looking for alternatives that have less impact on the aquatic environment. One commenter objected to the inclusion of campgrounds in the list of activities that may be authorized by this NWP. Four commenters stated that support facilities, such as buildings, stables, parking lots, and roads should not be authorized by this NWP. One commenter asked if this NWP can be used to authorize the construction of recreational ponds.

This NWP authorizes activities that are similar in nature because it is limited to discharges of dredged or fill material into waters of the United States to construct recreation facilities. The terms and conditions of the NWP, with the case-by-case review of those activities that require pre-construction notification to district engineers, will ensure that the activities authorized by this NWP result in minimal adverse effects on the aquatic environment. Pre-construction notification is required for discharges of dredged or fill material resulting in the loss of greater than 1/10 acre on non-tidal waters of the United States or the loss of greater than 300 linear feet of perennial and intermittent streams. The pre-construction notification process allows district engineers to review those activities that may result in more than minimal adverse effects to the aquatic environment. In response to a pre-construction notification, a district engineer can require special conditions to ensure that adverse effects on the aquatic environment are minimal or exercise discretionary authority to require an individual permit for the work.

Golf courses and expanded ski facilities can be constructed so that they are integrated into the natural landscape, without substantial amounts of grading and filling. This NWP authorizes only the expansion of existing ski areas. Paragraph (a) of General Condition 19 requires permittees to avoid and minimize adverse effects to waters of the United States on-site to the maximum extent practicable. We do not agree that campgrounds should be excluded from this NWP. We believe that the construction of small support facilities, such as storage buildings and stables, are necessary attendant features for the operation of the recreational facilities authorized by this NWP. This NWP may authorize the construction of small recreational ponds, provided the construction of those impoundments does not substantially change natural landscape contours.

One commenter said that this NWP should have a 1/3 acre limit, including a 250 linear foot limit for stream impacts. Another commenter said that the 1/2 acre limit was too high. One commenter stated that the pre-construction notification threshold should be 1/3 acre or 1/4 acre, instead of 1/10 acre. A commenter said that all activities authorized by this NWP should require pre-construction notification, and that this NWP should not authorize activities in special aquatic sites. One commenter recommended replacing the word ''loss'' in the text of the NWP with the phrase ''fill or impact (including temporary and permanent impacts)''.

We do not agree that the acreage limit should be reduced to 1/3 acre, or that there should be a 250 linear foot limit for stream impacts. In addition, we believe that the 1/10 acre pre-construction notification threshold adequately ensures that all activities that could result in more than minimal adverse effects on the aquatic environment are reviewed by district engineers on a case-by-case basis. We do not agree that it is necessary to require pre-construction notification for all activities authorized by this NWP or to prohibit use of this NWP in special aquatic sites. Where there are concerns that this NWP may authorize activities with more than minimal adverse effects on the aquatic environment, division engineers can regionally condition this NWP to reduce the acreage limit or require notification for all activities. It is not necessary to replace the word ''loss'' with the phrase ''fill or impact (including temporary and permanent impacts)'' because the word ''loss'' addresses waters of the United States adversely affected by filling, flooding, excavation, or drainage.

Several commenters objected to allowing case-by-case waivers to the 300 linear foot limit for losses of stream beds. One of these commenters said that small and ephemeral streams are important for protecting water quality, preventing flooding, and providing habitat for many species. Another commenter said that the waiver should not be granted until the district engineer solicits comments from the other Federal and state resource and regulatory agencies.

This waiver is discussed in more detail below in this **Federal Register** notice.

One commenter stated that the definition of ''recreational facilities'' is too broad and the NWP does not adequately address impacts at the project site and downstream. One commenter said that the Corps should not attempt to establish criteria, standards, or best management practices because the Corps has already determined that the NWP authorizes only activities with minimal adverse environmental effects. A commenter suggested that the Corps require best management practices for storm water management, limits on the clearing of vegetation for project construction, the establishment and maintenance of 100 foot wide forested buffers adjacent to aquatic resources, and limits on the use of impervious surfaces for trails and walkways. One commenter requested that the NWP contain more flexibility to allow limited use of impervious surfaces to accomplish complete accessibility for the physically challenged on multi-use trails.

We believe that the definition of ''recreational facilities'' used in this NWP, in addition to the terms and conditions of NWP 42 and the NWP general conditions, are sufficient to ensure that the NWP authorizes only activities with minimal adverse effects on the aquatic environment. The August 9, 2001, **Federal Register** notice sought public input on ways to continue to ensure that this NWP authorizes minimal impact recreational facilities. Compliance with General Condition 9, Water Quality, may require storm water management for a particular recreational facility. The maintenance and establishment of vegetated buffers may be required by district engineers as compensatory mitigation. Specific limits on the use of impervious surfaces are determined by district engineers on a case-by-case basis in response to a pre-construction notification. The construction of multi-use trails that provide accessibility for physically challenged individuals can be authorized by this NWP.

One commenter said that regional conditions should be adopted to prevent the cumulative adverse impacts to wood recruitment in waters inhabited by salmon. This commenter also suggested that regional conditions should be adopted to prohibit the construction of trails or paths along the tops of banks unless the facility is constructed so that there is no loss of riparian vegetation and any removed vegetation is allowed to grow back. This commenter also said that this NWP should not be stacked

with NWP 13 because these two NWPs exert synergistic significant adverse impacts on wood recruitment.

Division engineers can impose regional conditions on this NWP to address cumulative impacts, including impacts to salmon habitat. We do not agree that there should be a restriction prohibiting the use of NWP 13 with this NWP for a single and complete project. Bank stabilization may be required to maintain the integrity and safety of a recreational facility.

The nationwide permit is reissued with a modified 300 linear foot waiver as discussed below.

43. *Stormwater Management Facilities* In the August 9, 2001, **Federal Register** notice, we proposed to modify this NWP by allowing on a case-by-case basis, a waiver of the prohibition on impacts exceeding 300 linear feet of stream bed. There were no other changes proposed to this nationwide permit.

Three commenters stated that this NWP should be withdrawn. One of these commenters said that NWP 43 was unnecessary because the construction of stormwater management (SWM) facilities is authorized by other NWPs. Two commenters stated that new SWM facilities should not be constructed in streams, including ephemeral and intermittent streams. Another commenter said that SWM facilities are not water dependent, SWM facilities should not be constructed in waters of the United States, and the activities authorized by this NWP result in more than minimal adverse effects on the human environment. One commenter said that this NWP should not authorize activities in special aquatic sites.

Although other NWPs, such as NWP 39, can authorize the construction of SWM facilities, certain types of SWM facilities, such as regional SWM ponds that are not associated with a particular development, may not be authorized by other NWPs. In some cases, the construction of SWM facilities in waters of the United States may be necessary and may provide more protection to the aquatic environment. Division engineers can regionally condition this NWP to prohibit its use in high value waters. For those activities that require notification, district engineers can add case-specific conditions to ensure that the adverse effects on the aquatic environment are minimal or exercise discretionary authority and require individual permits for activities with more than minimal adverse effects.

One commenter said that the acreage limit for this NWP should be 3 acres and another commenter suggested a ¼ acre limit for the construction of new facilities. One commenter requested a higher acreage limit for activities in non-perennial streams, stating that the pre-construction notification process would provide the Corps the opportunity to ensure that project impacts are not more than minimal.

We believe that the ½ acre limit for the construction of new SWM facilities will ensure that this NWP authorizes activities with minimal adverse effects on the aquatic environment. We do not agree that there should be a higher acreage limit for discharges of dredged or fill material into intermittent and ephemeral streams.

One commenter stated that coordination with Federal and state resource and regulatory agencies should be conducted before the district engineer issues a waiver of the 300 linear foot limit. Another commenter supported waiving the 300 foot limit, but recommended that the Corps clarify that the presence of an ordinary high water mark is required when determining that a waterbody is a water of the United States.

We have adopted a modified condition allowing district engineers to issue case-by-case waivers to the 300 linear foot limit for losses of intermittent stream beds, for activities that result in no more than minimal adverse effects on the aquatic environment. This modified waiver is discussed in more detail in another section of this **Federal Register** notice.

One commenter recommended that the NWP authorize normal operations and maintenance activities so that the multi-objective aspects, including flood mitigation, of the project can be met and the community can realize project benefits. A commenter recommended adding a condition that restricts this NWP to the maintenance of existing SWM facilities. Another commenter said that the NWP should include a condition requiring maintenance of base flows during periods of low flow, to protect the downstream environment. This commenter also said that the NWP should be conditioned to prohibit the construction of concrete or stone-lined channels. One commenter asserted that the text of NWP 43 should clearly state that non-jurisdictional activities are not included in the acreage loss of waters of the United States.

NWP 43 authorizes the maintenance of existing, currently serviceable SWM facilities. Regular maintenance of SWM facilities is an important mechanism for ensuring effective stormwater management, including flood control. We do not agree that this NWP should be limited to maintenance activities. Paragraph (g) of NWP 43 refers to General Condition 21, Management of Water Flows, which requires the maintenance of pre-construction downstream flows. We do not agree that it is necessary to condition the NWP to prohibit the construction of concrete or stone-lined channels. Division engineers can regionally condition this NWP to prohibit these types of activities. During the review of a pre-construction notification, district engineers can exercise discretionary authority if the proposed work involves the construction of a concrete or stone-lined channel and the proposed work will result in more than minimal adverse effects on the aquatic environment. We do not believe it is necessary to explicitly state in the text of the NWP that non-jurisdictional activities are not included in the acreage loss of waters of the United States, although this is true for all NWPs generally.

One commenter said that areas within SWM facilities should not be considered as compensatory mitigation if regular maintenance is required. Another commenter said that this NWP should not authorize the use of SWM facilities as compensatory mitigation sites.

Areas of a SWM facility that are not subject to regular maintenance can be used as compensatory mitigation sites (see paragraph (e)(3)).

The nationwide permit is reissued with a modified 300 linear foot waiver as discussed below.

44. *Mining Activities.* There were no changes proposed to this nationwide permit. Many commenters said that this NWP should be withdrawn. Several of these commenters believe that the activities authorized by this NWP result in more than minimal adverse effects on the aquatic environment, including water quality, navigation, and aquatic habitat. Some commenters said that these activities should be reviewed under the standard permit process.

This NWP authorizes mining activities that have no more than minimal individual and cumulative adverse effects on the aquatic environment. The terms and conditions of this NWP, including the NWP general conditions, will ensure that these mining activities will have no more than minimal adverse environmental effects. For example, mining activities in navigable waters must comply with General Condition 1, Navigation. All activities authorized by this NWP require notification to the district engineer prior to commencement of mining activities. The pre-construction notification process allows district engineers to review mining activities on a case-by-case basis, to ensure that the proposed work has no more than

minimal adverse effects on the aquatic environment. In response to a pre-construction notification, the district engineer can add special conditions to the NWP authorization to ensure that the adverse effects on the aquatic environment are no more than minimal or exercise discretionary authority to require an individual permit for the work.

One commenter stated that this NWP does not satisfy the ''similar in nature'' requirement for general permits, including NWPs. Another commenter asserted that the activities authorized by this NWP are not water dependent and that alternatives are available.

This NWP complies with the ''similar in nature'' requirement of general permits because it is limited to aggregate and hard rock/mineral mining activities. The water dependency test in the Section 404(b)(1) guidelines does not require each activity in waters of the United States to be water dependent to fulfill its basic project purpose. General Condition 19, Mitigation, requires permittees to avoid and minimize adverse effects to waters of the United States to the maximum extent practicable on the project site. The NWPs do not require an analysis of off-site alternatives. As long as the mining activity results in no more than minimal adverse effects to the aquatic environment and complies with all terms and conditions, the activity can be authorized by NWP.

One commenter said that this NWP should be withdrawn because it is of limited use to the aggregate mining industry. A commenter objected to this NWP, stating that the Corps has not demonstrated why the NWP should be limited to activities in isolated waters and wetlands adjacent to headwaters. One commenter asserted that the ½ acre limit for this NWP is too restrictive because of the extensive pre-construction notification and mitigation requirements. This commenter also said that the Corps cannot condition this NWP to prohibit beneficiation and mineral processing within 200 feet of an open waterbody. Another commenter recommended increasing the acreage limit to three acres for impacts to non-wetland waters and allowing district engineers to waive the 1 cubic foot per second limit on a case-by-case basis.

The terms and conditions of this NWP, including the ½ acre limit and the scope of applicable waters, are intended to ensure that activities authorized by this NWP result in no more than minimal adverse effects to the aquatic environment, individually and cumulatively. We have the authority to condition this NWP to prohibit beneficiation and mineral processing within 200 feet of an open waterbody, if such a restriction is necessary to ensure that the NWP authorizes only activities with no more than minimal adverse effects on the aquatic environment. We do not agree that a waiver for the 1 cubic foot per second limit for aggregate mining in headwater streams would be appropriate. That restriction is necessary to ensure that the NWP does not authorize aggregate mining activities with more than minimal adverse effects to headwater streams. Aggregate and hard rock/mineral mining activities that do not qualify for authorization under this NWP can be authorized by individual permits.

Two commenters stated that this NWP must be reevaluated in light of the *Solid Waste Agency of Northern Cook County* v. *United States Army Corps of Engineers et al.* (U.S. Supreme Court No. 99–1178) (SWANCC). One commenter said that many mining operations do not involve discharges of dredged or fill material into waters of the United States and the Corps should reassess areas where it has exceeded its statutory authority. One commenter recommended modifying this NWP to clarify that non-jurisdictional excavation activities channelward of the ordinary high water mark and activities outside of the ordinary high water mark and adjacent wetlands do not require a Section 404 permit.

The *Solid Waste Agency of Northern Cook County* v. *United States Army Corps of Engineers et al.* decision related to the scope of CWA jurisdiction over nonnavigable isolated intrastate waters. Aggregate and hard rock/mineral mining activities may occur in jurisdictional waters and thus could be authorized by this NWP. Activities that occur in non-jurisdictional waters, as determined by applicable regulations and case law (including SWANCC) do not require a section 404 permit. The nationwide permit is reissued without change.

Project Specific Wavier of 300-Linear Feet Prohibition in NWPs 39, 40, 42, and 43

In the August 9, 2001, **Federal Register** notice, the Corps proposed to allow a waiver, on a case-by-case basis, of the prohibitions in NWPs 39, 40, 42, and 43 against discharges resulting in the loss of greater than 300 linear feet of stream bed. The waiver could be issued only after the district engineer reviewed a pre-construction notification for the proposed work and determined that the activity would result in no more than minimal adverse effects on the aquatic environment.

Several commenters stated that the absolute 300 linear foot limit on the amount of stream that can be filled under these NWPs should be retained. They were concerned that the proposed waiver would lead to severe stream destruction from the construction of developments, agricultural activities, and other activities and said that the existing, strong linear limits on stream bed impacts should be retained. Some of these commenters added that the 300 linear foot limit provides predictability and certainty to the regulated community and state permitting agencies as well as reducing workload for Corps staff. A few commenters stated that the proposed waiver would lead to many variations in the way permit decisions are made between Corps districts and even between Corps project managers within the same district who use their own definitions of minimal impacts. One of these commenters indicated that NWP verification requests should be simple to review and approve, with clear thresholds and consistency in the review process. Another commenter stated that the waiver would require the Corps to rely on the expertise of applicants to provide information and allow developers to excavate or fill as much as one mile of a stream under a general permit when the intent of NWP program is to authorize only those activities with minimal adverse impacts. Numerous commenters supported the proposed waiver. Some of these commenters said that the waiver would allow greater flexibility and efficiency in permit processing and would eliminate the need for individual permits to fill more than 300 linear feet of stream bed where the impacts are minimal.

The waiver adds flexibility to the Corps permit process, by allowing district engineers to efficiently authorize activities that have minimal adverse effects on the aquatic environment. Requiring individual permits for minimal impact activities that would otherwise qualify for authorization under NWPs 39, 40, 42, and 43 because they involve the loss of greater than 300 linear feet of stream bed would increase the Corps workload, with no added environmental benefits. Since aquatic resource functions and values vary across the United States, we recognize that there will be differences in the implementation of the waiver. However, we do not agree that the waiver makes the protection provided by the NWP process less consistent. District engineers will use their knowledge of the local aquatic environment, as well

as the information submitted in pre-construction notifications, to make their case-by-case determinations whether the waiver is applicable for a particular activity.

Some commenters emphasized the functions and values of the small headwater streams in the overall health of the aquatic environment and stated that filling these streams will result in significant impacts. These commenters stated that the cumulative loss of intermittent streams and the downstream impacts of piping these streams can cause significant irreversible environmental and ecological losses. Another commenter added that small streams usually exist within extensive riparian corridors and are incorrectly called drainage ditches to devalue their worth. This commenter is concerned that the waiver would result in the degradation of headwater streams, allow channelization of more streams, and result in more losses of wetlands. One commenter stated that allowing filling of streams could impact the States' efforts to restore wetlands, streams, and watershed functions.

We recognize that headwater streams often provide important functions and values, but there are situations where the loss of these streams will result only in minimal adverse effects on the aquatic environment. We believe that such situations would not likely occur in intermittent streams, but rather in perennial streams. We have thus decided not to adopt the waiver of the 300 linear foot limit for perennial streams. The absolute prohibition on the use of these permits where more than 300 linear feet are impacted remains in place for perennial streams. We have decided to adopt the waiver process for intermittent streams, thereby allowing district engineers to waive, on a case-by-case basis, the 300 linear foot limit for the loss of intermittent stream beds under NWPs 39, 40, 42, and 43. It is important to note that, in order for the waiver to occur, the district engineer must make a written determination that the proposed work will result in no more than minimal adverse effects on the aquatic environment. If the district engineer does not provide written confirmation of the waiver, then the 300 linear foot limit for the loss of intermittent stream beds remains in place and the project proponent must obtain another type of Corps permit for the proposed activity.

Further, if the proposed work will result in more than minimal adverse effects on the aquatic environment, the district engineer will determine that the waiver is not applicable and require the project proponent to obtain an individual permit. As an added level of protection to valuable headwater streams, division engineers can regionally condition the NWPs to further restrict or prohibit their use in high value waters. The waiver will not impact States' efforts to restore waters and watersheds, since the waiver can only be issued after case-by-case review.

Some commenters asked how the Corps would determine whether an activity resulted in minimal environmental impacts to justify waiving the 300 linear foot limit. One commenter asked if the cumulative effects of the waiver would be evaluated each time the waiver was used. A few commenters said that the Corps cannot justify eliminating and waiving the 300 linear foot limit until the Corps can demonstrate that there are no cumulative adverse impacts resulting from activities authorized by NWPs.

District engineers will use their knowledge of local aquatic environments and case-specific circumstances to determine when proposed activities will result in minimal adverse effects on the aquatic environment. District engineers monitor the use of NWPs on a watershed or regional basis to determine whether the cumulative adverse effects of these activities are more than minimal.

One commenter said that the 300 linear foot limit for the NWPs should be reduced to 200 linear feet. This commenter also recommended that mitigation should be required for all projects that result in a net loss of aquatic habitat, acreage, or function.

We do not agree that the 300 linear foot limit should be reduced to 200 linear feet. The mitigation requirements for the NWPs are addressed in General Condition 19, Mitigation. For activities authorized by NWPs, project proponents are required to avoid and minimize adverse effects to waters of the United States on-site to the maximum extent practicable. District engineers will determine, on a case-by-case basis whether compensatory mitigation is required to offset losses of waters of the United States and ensure that the adverse effects on the aquatic environment are minimal.

Several commenters discussed the example provided in the August 9, 2001, **Federal Register** notice (page 42079) which described a 6-inch wide by 1-inch deep ephemeral stream running for several thousand feet. One commenter inferred that the Corps was devaluing all such streams and that the loss of these streams would result in more than minimal impacts. This commenter said that relatively intact ephemeral streams perform a diversity range of hydrologic, biogeochemical, and habitat support functions that directly affect down-gradient streams. Another commenter stated that these small headwater tributaries provide important habitat for aquatic life, including fish spawning areas. This commenter also said that these streams are important habitat for amphibians and reptiles during those short periods when water is flowing or ponded, and that the continued loss of this habitat is cumulatively damaging. Another commenter stated that headwater streams should be protected, and added that continued permitting of these activities under the NWP program must include careful individual site review by qualified aquatic biologists. Two commenters said that minimal impact determinations for the waiver of the 300 linear foot limit should require on-site inspections.

The example provided in the August 9, 2001, **Federal Register** notice was intended as an illustrative example to show that some impacts exceeding 300 linear feet may still be minimal. It was not intended to suggest that all ephemeral streams are of low value, or that all impacts to ephemeral streams are by definition minimal. As a practical matter, ephemeral streams are not covered by the 300 linear feet limitation, so a formal waiver is not needed for ephemeral streams. However, even a project that impacts only an ephemeral stream could be required to obtain an individual permit if the District Engineer determined that individual or cumulative adverse effects were more than minimal. Under the waiver process, the district engineer would have to make a written determination that the loss of an intermittent stream segment exceeding 300 linear feet would result in minimal adverse effects on the aquatic environment. We do not agree that it is necessary to require on-site determinations in all cases by district engineers prior to issuing a waiver. District engineers can utilize their experience, information provided in pre-construction notifications, and other sources of information before determining the applicability of the waiver.

Three commenters suggested allowing the resource agencies to review all waiver applications. One of these commenters said that the public should be allowed to comment on these minimal effect determinations. Several commenters were opposed to the requirement for a written determination of a waiver without a time clock.

We do not agree that it is necessary to conduct agency coordination or a public comment process for requests to

waive the 300 linear foot limit for intermittent streams for NWPs 39, 40, 42, and 43. District engineers have the expertise to determine on a case-by-case basis whether these activities will result in more than minimal adverse effects on the aquatic environment. We do not believe it is necessary to adopt a separate time clock for waiver requests. If a project proponent submits a complete pre-construction notification for a NWP 39, 40, 42, and 43 activity, and the proposed work involves filling or excavating more than 300 linear feet of intermittent stream bed, the project proponent cannot assume that the proposed work is authorized by these NWPs unless a written waiver is obtained from the district engineer. District engineers should respond to requests for the 300 linear foot waivers for intermittent streams within the 45 day pre-construction notification period.

NWPs 39, 40, 42 and 43 are issued with a waiver for the 300 linear foot limit for intermittent stream beds. These NWPs cannot be used to authorize the loss of more than 300 linear feet of a perennial stream bed. As a clarification, there are no absolute quantitative limitations on linear impacts to ephemeral streams, as long as the adverse effects on the aquatic environment are no more than minimal.

Nationwide Permits General Conditions

1. *Navigation.* There were no changes proposed to this General Condition. There were no comments on this General condition. The General Condition is adopted without change.

2. *Proper Maintenance.* There were no changes proposed to this General Condition. There were no comments on this General Condition. The General Condition is adopted without change.

3. *Soil Erosion and Sediment Controls.* There were no changes proposed to this General Condition. There were no comments on this General Condition. However, there was a comment on NWP 7 that the Corps determined was related to this condition. The change is discussed in the Preamble discussion of NWP 7. We agreed with the comment.

The General Condition is adopted with a change to encourage permittees to perform work in waters during low-flow or no-flow conditions.

4. *Aquatic Life Movements.* In the August 9, 2001, **Federal Register** notice, the Corps proposed to modify this General Condition to clarify the intent of the condition was to protect aquatic life cycle movements.

One commenter stated that the current General Condition 4 was difficult to understand. Numerous commenters supported the clarification of this General Condition. Several commenters suggested that the statement ''substantially disrupt life cycle movements'' be replaced with ''prevent life cycle movements'', because substantial gives the impression that the impacts may be more than minimal. One commenter suggested that General Condition 4 should be revised to read, ''No activity conducted under a NWP may substantially disrupt the necessary life-cycle movements of those species of aquatic life indigenous to the water body, including those species that normally migrate through the area, culverts placed in streams must be installed to maintain low flow conditions''. One commenter recommended that General Condition 4 should restrict any activity that could impact or impair aquatic life stages or movement of organisms dependent upon waters or wetlands. One commenter stated that there is no need to change the wording of General Condition 4, if the Corps would consider that all movements by an organism are related to its life cycle. One commenter requested clarification of this condition concerning the application of the condition to other organisms, which do not have all of their life cycles within the aquatic environment (amphibians).

We have retained the word ''substantially'' in the text of this General Condition, which is related to the movement of the species not to the impact on the species. Removal of this word would change the standard to any movement no matter how minimal or inconsequential the movement would be. We believe that most work in waters of the United States will result in some disruption in the movement of some aquatic organisms through those waters. District Engineers will determine, for those activities that require notification, if the disruption of aquatic life-cycle movements is more than minimal and either add conditions to the NWP to ensure that the adverse effects are no more than minimal or exercise discretionary authority and require an individual permit.

A few commenters stated that culverts must be installed in streams to maintain low and high flow conditions to allow fish passage. One commenter added that the hydraulic analysis to determine that range of high flows through the culvert shall be based upon anticipated flows in the basin at build-out.

The Corps believes that it is important to maintain low flow conditions, but that it is not reasonable or necessary to require hydraulic analysis for every culvert that would be authorized by NWPs. Corps district can enforce this condition where necessary.

One commenter stated that activities for which the primary purpose is to impound water should be evaluated as individual permits and not authorized under NWPs since ponds significantly disrupt the necessary life cycle of aquatic life.

We believe there are impoundment projects which would substantially disrupt the movement of specific individuals of aquatic life, but which would not adversely affect the populations of the species nor have more than minimal impacts on the aquatic environment. Such activities would need to be processed as individual permits.

This General Condition is adopted as proposed.

5. *Equipment.* There were no changes proposed to this General Condition. There were no comments on this General Condition. The General Condition is adopted without change.

6. *Regional and Case-by-Case Conditions.* There were no changes proposed to this General Condition. One commenter stated that the public was not given adequate time to evaluate the regional conditions as they were not published in the **Federal Register**. Furthermore, the comment period for the regional conditions did not coincide with the comment period of the proposal to modify and reauthorize the NWP program. Therefore, the public was not provided an opportunity to evaluate and provide comment on the comprehensive and cumulative impacts of the NWPs.

Regional conditions are proposed and evaluated by the individual Corps division offices by a public notice and comment process. Case-by-case conditions are developed by Corps District or Division offices, to ensure that specific activities meet the NWP conditions and have no more than minimal adverse effect on the aquatic environment, individually and cumulatively. Division offices need to know what the final NWPs are before they can develop final regional conditions. Therefore, the review of any proposed regional conditions can not occur simultaneously with the review of the NWPs. Finally, this condition is to reinforce that those regional and case-by-case conditions are legally binding conditions of the NWPs.

The General Condition is adopted without change.

7. *Wild and Scenic Rivers.* There were no changes proposed to this General condition. There were no comments on

this General condition. The General Condition is adopted without change.

8. *Tribal Rights.* There were no changes proposed to this General condition. One commenter stated that tribal rights have been impaired due to cumulative impacts by the NWP program and suggested that a regional condition should be implemented to prohibit use of NWPs in south Florida until a regional EIS has been completed. The comments have been forwarded to the appropriate Corps District. The General Condition is adopted without change.

9. *Water Quality.* The Corps proposed to clarify this condition as it relates to detailed studies and documentation requirements. We also proposed to add language that clarifies that permittees may meet the requirement of this condition by complying with state or local water quality practices.

Numerous commenters agreed with the proposed change to General Condition 9. Many commenters stated the current more burdensome requirements, detailed studies, and design plans, only serve to expend the time and resources of the applicant. Several commenters indicated concern that the Corps may infringe upon the water quality authority of the State. One commenter recommended that General Condition 9 be revised to mandate compliance with the most stringent applicable standards whether they are federal, state, or local. One commenter stated that the Corps should not defer authority by making state or local permits a contingency of an NWP. Several commenters disagree with the proposed changes to this condition stating that many local jurisdictions lack the skilled personnel to develop and/or enforce adequate water quality standards and without evaluation of the state or local practices, the Corps cannot insure that impacts to the aquatic environment are minimal. One commenter stated that the proposed clarification should be withdrawn because the General Condition is less stringent than the existing condition and will result in poorer water quality. One commenter suggested that this condition should be expanded to specifically exclude the use of any NWP for a project adjacent to or in any water of the U.S. designated on a State 303(d) list.

We believe the changes will not reduce protection of the aquatic environment. Although the language of this condition could be interpreted to require detailed studies and design to develop water quality plans for every permit action, that was never our intent. While we do believe that inclusion of water quality management measures in project design is very important, we do not believe that comprehensive water quality planning should be a requirement of Corps NWPs, except in a few cases. In most cases, the Corps relies on state or local water quality programs. Where such programs do exist, the Corps will normally review the project to ensure that appropriate water quality features, such as stormwater retention ponds, are designed into the project. In some cases, the Corps may require more extensive design features to ensure that open water and downstream water quality are not substantially degraded. Normally, we believe that the permittee will comply with the requirements of this condition by obtaining state or local water quality approval or complying with state or local water quality practices, where such practices exist. The Corps proposed a condition in 1998 to restrict NWPs in State 303(d) (impaired) waters. We decided not to adopt that condition as explained in the March 9, 2000 preamble. We could not now adopt such a condition without proposing it for public review and comment.

The General Condition is adopted as proposed.

10. *Coastal Zone Management.* There were no changes proposed to this General Condition. There were no comments on this General Condition. The General Condition is adopted without change.

11. *Endangered Species.* There were no changes proposed to this General Condition. One commenter stated that a sentence has been omitted from this condition in the proposed preamble with no notification of the change. The omitted sentence, the last line of 11(a), states that, ''As a result of formal or informal consultation with the FWS or NMFS, the District Engineer may add species-specific regional endangered species conditions to the NWPs''. The commenter stated that omitting this statement shifts the burden of identifying and protecting potentially impacted endangered and threatened species and their critical habitat onto the permit applicant. The commenter requested that this change be dropped because the Corps has not met the legal requirements to adopt it.

The commenter is correct. This sentence is included in the currently in force June 6, 2000, version of this General Condition, but not in the August 9, 2001, proposed version. The Corps did not intend to propose any changes to this General Condition. The omission was in error. The omitted sentence has been reinserted in this condition.

One commenter stated that this condition may lead to compliance with the ESA however, is not likely to fully minimize or substantially reduce the significance of harm to listed species and their critical habitat. One commenter suggested this condition be re-titled to read ''Threatened and Endangered Species'', the condition be simplified and clarified, and the U.S. Fish & Wildlife Service and the National Marine Fisheries Service web sites be placed in this condition.

We believe this condition as stated provides not only the legal protection but also the actual protection required under the ESA. The ''Endangered Species Act'' covers both threatened and endangered species as does the General Condition title ''Endangered Species''. We do not believe that it is necessary to include other agency websites here. These are readily accessible on the internet.

The General Condition is adopted without change (but with the inadvertently omitted sentence restored).

12. *Historic Properties.* There were no changes proposed to this General Condition. Two commenters recommended that the Corps coordinate with the SHPOs in accordance with the National Historic Preservation Act (NHPA) and requested that a FONSI should not be issued until consultation under NHPA has been completed.

Division and districts will coordinate with SHPOs and Tribal Historic Preservation Officers where appropriate and add any regional conditions or case specific conditions that may be necessary to satisfy the NHPA in specified areas. There is no requirement to coordinate with SHPO in developing a FONSI and we do not believe that such coordination is necessary.

The General Condition is adopted without change.

13. *Notification.* In the August 9, 2001 issue of the **Federal Register**, we proposed under Contents of Notification, to provide applicants the option to provide drawings, sketches or plans sufficient for Corps review of the project to determine if the project meets the terms of an NWP, to allow a waiver of the 300 linear-foot prohibition [following written verification from the Corps], and to delete for NWPs 12, 14, 29, 39, 40, 42, 43, and 44 the requirement to provide ''notification'' to the Corps for permanent above grade fills in waters of the U.S. These latter two changes were to make notification requirements consistent with changes discussed elsewhere in this notice.

Several commenters supported the proposed clarification for the submittal of drawings. Few commenters disagreed with the clarification but some said that drawings or sketches should be a mandatory requirement for notification and requiring this information would reduce Corps workload while insuring that impacts to the aquatic environment are minimal. One commenter recommended that photographs be required with notification.

It was not the intent of this proposed clarification to modify the required contents of notification or to make submittal of non required information mandatory but rather to encourage applicants to provide us as complete a submittal as possible to expedite our review of their application. We did state that the Corps has the discretion on a case-by-case basis to require additional information as necessary to determine if the activity complies with the terms and conditions of the NWP.

Several commenters agreed with the proposal to delete the notification requirements for above grade fill in waters of the United States. One commenter recommended expanding notification requirements to include above grade fills in NWPs 3, 12, 14, 21, 31, 39, 40, 42, and 44 and stated that the applicant should submit documentation as to why there is no practicable alternative to the proposed discharge and provide a copy to EPA, F&WS, and NMFS. One commenter stated that a statement of avoidance and minimization should be submitted with NWPs 12, 14, 40, 41, and 42.

The Corps believes it is not necessary for permittees to routinely notify the Corps for above grade fills in waters of the US as long as they are complying with general condition 26. Comments on this issue are further discussed under general condition 26.

One commenter recommended that the review period for NWPs 3, 12, and 33 be amended to 30 days instead of 45 to expedite energy-related projects. One commenter supported the 45-day time frame for review of notification but believed 60 days is more realistic. A couple of commenters requested this condition be amended to require the Corps to issue or deny the NWP within 45 days of receipt of a complete notification and the 45-day timeframe should also apply to the 300-foot stream waiver provision.

The Corps normally does not take the full 45 day time period to verify NWPs. For energy related activities Corps districts will expedite the decision as to whether to verify the activity under an NWP. It is not necessary to make that a permit condition. Corps districts are required to make a decision to verify or deny the NWP within 45 days, or the applicant may proceed. However, this does not apply to waiving the 300 linear foot prohibition for intermittent streams or the verification of NWP 21 or the 500 linear foot limit for NWP 13. In these cases, the applicant may not proceed before receiving written verification. This is to ensure that the district has adequate time to make a satisfactory evaluation before deciding whether to authorize use of an NWP.

One commenter stated that the Corps has amended the language in condition 13(a) without providing notification in the preamble. The March 9, 2000 **Federal Register** stated ''where required by the terms of the NWP, the prospective permittee must notify the District Engineer with a pre-construction notification (PCN) as early as possible''. The August 9, 2001 notice stated ''The District Engineer must determine if the notification is complete within 30 days of the date of receipt and can request additional information necessary for the evaluation of the PCN only once''. The commenter indicated this change will increase the incentive of permit applicants to withhold relevant information necessary for full evaluation of a PCN and the change must be withdrawn.

The Corps did not intend to propose this change. It was an error. The general condition will be issued with the existing language adopted on March 9, 2000.

One commenter disagreed with the agency coordination threshold of ½ acre and stated that all PCNs should require a 30-day agency coordination to ensure minimal impacts. One commenter stated that simply noting in the record that an agency concern has been considered, without a response to the agency, is not agency coordination and is not full consideration of their comments. Furthermore, the commenter stated that any recommendations that are not adopted, after coordinating a decision with the agency, should be fully documented and become part of the administrative record.

We disagree. The requirement for agency coordination is to fully consider agency comment with no specification to document or respond to the commenting agency, though normally the Corps does respond to commenting agencies when significant concerns are raised. Further, it has been determined in coordination with the other Federal agencies that ½ acre is a satisfactory threshold for required coordination. Coordination does occur with other Federal agencies on a case specific as needed basis.

One commenter recommended that the Corps consider removing the mandatory delineation of special aquatic sites, including wetlands, or at the least adding a reasonable threshold for such documentation to all PCNs. One commenter recommended the addition of NWPs 3, 11, 13, 19, 27, 31, and 36 to the requirement for submittal of delineation of special aquatic sites with the PCN.

We do not believe that we should either increase or decrease the specific activities for which a mandatory delineation is required. We do not believe it is necessary for many NWPs, for example; requiring a delineation for NWPs 3 and 31 would be unnecessary for maintenance activities authorized by these NWPs. Also districts may require a delineation of wetlands (or any other appropriate documentation) in cases where they determine it is necessary to evaluate the impacts of the project or to determine the mitigation requirements.

One commenter disagreed with the requirement to submit information regarding the original design capacities and configurations where maintenance excavation is proposed under NWP 7, (b)(5) because if the maintenance excavation is non-jurisdictional, the applicant should not be required to submit such information, and the Corps should not review non-regulated activities. One commenter recommended that the Corps clarify (b)(16) to state that activities that consist of non-jurisdictional excavation or temporary stockpiling during the excavation process are not included in the compensatory mitigation requirements or in the calculation of acreage of waters lost.

Maintenance excavation activities in section 404-only waters do not require a CWA section 404 permit unless they result in more than incidental fallback. If there are regulated excavation activities that can be authorized under NWP 7, then the applicant will need to provide information necessary for the Corps to evaluate the PCN for compliance with the terms and conditions of the NWP. Non jurisdictional activities should not be considered in mitigation requirements. However, related impacts of the project will be considered when determining if the adverse effects are more than minimal. Also the acreage impacts for directly related excavation activities will be included in calculating the acreage limits for the NWP. The concern addressed by the acreage limit is with the direct effects of the activity. Temporary stockpiling is a regulated activity and is considered for possible mitigation requirements where the

impacts are measurable. However, the acreage is not included in calculating the acreage limit because the impacts are temporary.

One commenter recommended that the Corps revise the notification requirement in (b)(10) for NWP 31 to require the applicant to obtain the Corps approval prior to construction for any disposal site within waters of the United States. The commenter stated that the proposed condition requires location of disposal site at time of notification, which is not always an option for long-term maintenance activities.

NWP 31 does not authorize the disposal of the excavated material into waters of the US unless the disposal site is submitted with the PCN. The District Engineer can review a disposal site to assure that it is not in waters of the US or, if it is in a water of the US, to determine if the adverse effects are more than minimal and, if so, disapprove the disposal site.

One commenter recommended that the Corps accept the use of established state agency coordination documents concerning annual work plans as sufficient notification for maintenance activities.

Once a maintenance baseline has been approved, the applicant must then notify the Corps of maintenance activities, either case-specific or generically. The state agency documents you describe may be sufficient, but such a decision would need to be made on a case-by-case basis by the appropriate Corps District Engineer.

One commenter recommended that NWPs 3, and 31 also be added to (b)(5) and a delineation of affected special aquatic sites including wetlands, along with the location of dredge material disposal site, should be provided.

NWP 3 allows for the maintenance of currently serviceable structures and fills, consequently wetlands and other special aquatic site should not be affected by the maintenance activity. However, while this is also true for most NWP 31 activities, NWP 31 also allows the maintenance of unconfined channels that have wetlands in them from time to time. Therefore, (b)(10) does require delineation of special aquatic sites, including wetlands to be included in PCNs for NWP 31. The location of disposal sites for NWP 31 PCNs is required by (b)(10). NWP 3 does not provide for authorization of disposal sites in waters of the US, except for part (ii), which requires that the District Engineer specifically approve any such disposal site under a separate authorization.

One commenter disagreed with the restoration plan requirement in (b)(11) for NWP 33 because excavation is not regulated. The commenter added that the regulated discharge is temporary and the only required restoration should be the removal of the temporary deposit.

The restoration plan must address temporary activities including both filled and excavated areas. If a Corps permit is required for some of the temporary work and the permittee seeks authorization by NWP 33, then the affected waters of the U.S. must be restored by the permittee and a restoration plan submitted to the Corps.

One commenter recommended that the requirement for the submittal of a maintenance plan under (b)(15) be deleted. Excavation in Sec. 404 waters does not required authorization from the Corps. The maintenance plan is to ensure that cyclical maintenance does not cause more than a minimal effect and that cyclical activities only be mitigated for once.

The Corps believes that it is necessary to maintain stormwater management facilities. The Corps also believes that to ensure that the adverse effects are minimal it is necessary that an adequate mitigation plan be developed by the permittee. This requirement provides the necessary assurances that such a necessary maintenance plan is developed.

In the preamble to the August 9, 2001, **Federal Register** notice, the Corps proposed for NWPs 21, 39, 40, 42, and 43, to add language to the notification General Condition 13 from the permit. For all projects using NWP 21 and for projects using NWPs 39, 40, 42, and 43 that propose impacting intermittent stream beds in excess of 300 linear feet, the Corps must be notified and explicit authorization in writing obtained from the Corps before the project can proceed. There were no comments on this proposal. The Corps has added language to General Condition 13 as proposed. This added language does not change any requirement of the NWPs.

The General Condition is adopted as proposed.

14. *Compliance Certification.* There were no changes proposed to this General Condition. There were no comments on this General Condition. The General Condition is adopted without change

15. *Use of Multiple Nationwide Permits.* There were no changes proposed to this General Condition. One commenter stated that the use of more than one NWP for a single and complete project is prohibited. One commenter stated that the Corps should include a General NWP condition that precludes the use of multiple NWPs and NWPs in combination with individual permits for multiple Section 10 or 404 activities located in close proximity to one another. The commenter asserted the Corps is in noncompliance with Section 404(e) and NEPA when stacking of NWPs is allowed. One commenter suggested that the District Engineer be authorized to waive the highest specified acreage limit when stacking NWPs, not to exceed the overall minimal impact threshold in order to avoid an individual permit.

We will continue to allow use of multiple NWPs to authorize a single and complete project provided it will result in no more than minimal adverse effects on the aquatic environment, individually and cumulatively. We do not agree that allowing use of multiple NWPs is in violation of Section 404(e) or NEPA. We continue to believe that in order to allow the use of multiple NWPs for a single and complete project, it is necessary to not exceed the highest acreage limit of any of the NWPs.

The General Condition is adopted without change.

16. *Water Supply Intakes.* There were no changes proposed to this General Condition. There were no comments on this General Condition. The General Condition is adopted without change

17. *Shellfish Beds.* There were no changes proposed to this General Condition. There were no comments on this General Condition. The General Condition is adopted without change.

18. *Suitable Material.* There were no changes proposed to this General Condition. There were no comments on this General Condition. The General Condition is adopted without change.

19. *Mitigation.* The following discussion does not alter or supersede requirements under the section 404(b)(1) Guidelines or guidance applicable to individual permits, such as the 1990 EPA/Department of the Army MOA concerning the determination of mitigation under the Guidelines. The Corps proposed to revise this General Condition to allow a case-by-case waiver of the requirement for one-for-one mitigation of adverse impacts to wetlands. This change is intended to allow Corps Districts to require the mitigation for project impacts that best protects the aquatic environment. In the case of wetland destruction, one-for-one replacement or restoration is often the most environmentally appropriate form of mitigation, and the Corps will continue to require this form of mitigation in the majority of cases. However, the Corps believes the one-for-one acreage requirement as currently written is too restrictive in that it does not allow the Corps to mitigate aquatic impacts to

streams and other non-wetland aquatic resources.

Proposed Waiver of One-for-One Mitigation Requirement

Numerous commenters opposed the case-by-case waiver of the requirement for one-for-one mitigation of adverse impacts to wetlands. Instead they requested that the Corps maintain one-for-one and/or strengthen existing mitigation requirements. Several commenters stated that wetland loss continues to occur despite the regulatory programs efforts and ''no net loss'' policy, and that the proposed waiver would allow extreme flexibility in implementing mitigation policy which would be counter to current Federal mitigation guidance and ''no net loss''. Rather the proposal would further invite net losses of wetlands. As such, many commenters recommended that the Corps require compensation for impacts to wetlands at higher than a one-for-one ratio, or at a minimum, clearly outline the Corps discretion to require greater than one-for-one ratios.

The Corps is committed to the no overall net loss of wetlands goal, and will continue to require more than one for one mitigation for wetland loss in its nationwide permit program. The underlying policy of the Corps, since 1990, has been to offset impacts to wetlands at a one for one ratio on a functional basis. Based on the possibility of failure of mitigation, as pointed out in the recent NRC/NAS Report on the Corps Regulatory Program, the Corps has for many years required more than one for one mitigation on an acreage basis. The proposed change to condition 19 is intended to result in a more ecologically and watershed based approach to mitigation. Wetlands remain one of the most critical ecological assets in most watersheds in the Country, but other vital aquatic ecosystems, such as free-flowing streams, are subject to impacts that must also be offset. The changes to Condition 19 will allow the Corps biologists to make the right decision on mitigation for each project within the watershed context. However, to reinforce its commitment to the no net loss policy, the Corps will also direct its District Offices to ensure that their verified NWPs achieve at least one-for-one mitigation of all wetlands impacts, on an acreage basis for the District as a whole. In documenting compliance with this requirement, districts should not include preservation of existing wetlands in their district-level tally of compensating wetlands mitigation. Preservation, while it may be important for the aquatic environment and may be appropriate in some cases as mitigation, does not compensate for lost wetlands.

The Corps has also slightly modified the wording of paragraph (f) of this general condition from what was proposed to clarify that the requirement to mitigate wetland impacts is not waived only the requirement to provide wetland mitigation. The stream buffers themselves may provide mitigation for wetland impacts. The wording is also revised to clarify that the District Engineer may reduce as well as completely waive the requirement for wetland mitigation for wetland impacts.

One commenter stated that the waiver would conflict with the Corps policy that nationwide permits have only minimal adverse effects on the aquatic environment. Another commenter stated that wetlands offer too many important services to be sacrificed by implementing this waiver. One commenter suggested that guidelines should first be developed that identify the circumstances which warrant the use of a waiver mechanism and outline its proper implementation.

The waiver will not sacrifice wetlands; it will ensure the best mitigation for each permit decision that is made. The Corps cannot establish specific guidelines beyond what we have for waiver of the one for one acreage requirement. The Corps has exceptional biological and ecological expertise in the districts and we trust those professionals to make the proper judgments in each case.

One commenter suggested that the Corps coordinate with regulatory natural resource agencies for out-of-kind mitigation when the one-for-one mitigation requirement is waived.

The Corps 1,150 district employees in the Regulatory Program are predominantly biologists and ecologists. These exceptional professionals have the capability to make the ecological mitigation judgments, and with 40,000 nationwide permit decisions made every year the other agencies do not have the capability to substantively comment on every project.

Many commenters agreed with the proposed waiver of the one-for-one-mitigation requirement, stating it would provide the Corps with increased flexibility when determining appropriate mitigation. One commenter, while agreeing with the proposal, suggested the applicant should be required to justify why a less than one-for-one mitigation is appropriate by clearly articulating why a mitigation area's functions and values are greater than what was lost.

We agree that proper mitigation decisions will be made under the revisions to Condition 19. The Corps will make a decision in writing when the one for one acreage ratio for mitigation will not be met. In most cases, that decision will be based on the applicant's information, however, we do not believe we should require a process that may not in some cases be needed. Applicants should note however that providing sound justification with a waiver request will increase the chances of the waiver being granted.

Vegetated Buffers

Many commenters were opposed to the use of vegetated buffers to mitigate wetland losses. Several stated that allowing vegetated buffers to count as mitigation would be counter to current Federal mitigation guidance and the goal of ''no net loss''. One commenter suggested the proposal constitutes a major change in mitigation policy by establishing a sort of ''ecological trading'', allowing the offsetting of impacts to wetlands with compensation through non-wetland environmental improvements. Other commenters stated that this proposal was against Corps policy that nationwide permits have minimal adverse effects on the aquatic environment.

The Corps believes that vegetated buffers are a critical element of the overall aquatic ecosystem in virtually all watersheds. Of course, some arid areas do not have vegetated buffers even in a natural state and the Corps will not require vegetated buffers where they would not naturally occur. However, nationwide this is uncommon. The Corps believes we need to protect open waters better than we have in the past, and vegetated buffers are a critical element of that protection. Many vegetated buffers to open waters are in fact wetlands. Some vegetated buffers are uplands, but are critical to open water protection. The Corps believes in a watershed approach, with the ability of the Corps districts to make the best decision for the aquatic ecosystem and watershed where the permitted impacts will occur. Mitigation, including vegetated buffers is used to ensure that no more than minimal adverse effects on the aquatic environment will occur.

Several commenters indicated that it was inappropriate to suggest that vegetated buffers in uplands could act as compensatory mitigation for the placement of fill in waters of the U.S. A few commenters stated that, as a means of increasing value of mitigation, vegetated buffers are beneficial and are often incorporated into compensatory mitigation plans to offset the adverse effect of an individual permit authorization. However vegetated

buffers alone will not fully compensate for wetland loss, do not replace wetland/aquatic environment value and function, and should not be regarded as compensatory mitigation for the placement of fill in waters of the U.S., but instead should be added to the one-for-one mitigation requirement.

The Corps takes a holistic watershed approach to mitigation of impacts to waters of the U.S., which includes impacts to non-wetlands. Vegetated buffers, both upland and wetland are a critical part of that watershed approach. The Corps needs the flexibility to make the best mitigation decision for each watershed.

A few commenters were concerned that vegetated buffers may be used more often than one-for-one wetland mitigation (e.g. restoration, enhancement, and/or creation), supporting a continual loss of wetland habitats. Concerned for cases in which less than one-for-one mitigation of lost wetlands incorporates the establishment and/or preservation of vegetative buffers as part of that mitigation, commenters suggested a careful analysis of the functions and values of the vegetated buffers as compared to the impacted wetlands be performed.

The Corps will use the modified Condition 19 to make the best decision for the watershed where the permitted effects occur. The Corps will continue to require more than one for one mitigation for wetlands, it is just not required for every permit decision, because that does not always make sense for the aquatic environment.

One commenter suggests that functional assessments of mitigation with the purpose of justifying ratios less than one-for-one based on a projected functional boost provided by the buffer is inappropriate. Rather, the Corps should also address functional impacts to wetlands under the permit process and require mitigation for loss of functional value from permitted impacts to vegetated buffers.

The Corps does use a functional basis when requiring mitigation, but since models to assess aquatic ecosystem functions, including but not limited to wetlands, are not yet comprehensive, the decision requires professional judgment. The Corps 1,150 Regulatory Program employees are predominantly biologists and ecologists, so we have the capability to make sound ecological decisions.

One commenter stated the proposed regulations do not require proof that vegetated buffers or other methods of mitigation would replace lost functions and values of an impacted wetland. This commenter added that they were not convinced the Corps would be able to assess lost functions resulting from impacts to particular wetlands or those functions gained by incorporating vegetated buffers.

The Corps makes its mitigation decisions on an aquatic ecological function basis using professional judgment. With thousands of decisions each year many involving less than 0.1 acre of impact, it is not practical, nor a responsible expenditure of resources to require absolute proof that the mitigation will offset the impacts. Programmatically, the Corps will improve its enforcement, and mitigation banks and in lieu fees are an important part of that improved mitigation performance.

One commenter disagreed with the Corps statement regarding the greater effectiveness of vegetated buffers at protecting open waters due to their relative proximity to open waters over those wetland distant to open waters. Instead, the commenter suggests that the relative effectiveness of vegetated buffers and wetlands at protecting open waters depends more on the nature of water flow through an area than on the proximity of the buffer or wetland to the water body.

There is no doubt that vegetated buffers protect open waters in terms of removing non point source water pollution. Vegetated buffers also stabilize the shoreline of open waters and in most cases provide important aquatic habitat such as shading or providing hiding places during high water. The Corps believes that establishing or maintaining existing vegetated buffers to open waters is critical to overall protection of the nations aquatic ecosystems. The Corps agrees, however, that the relative importance of wetlands and vegetated buffers at any particular site is dependent on site-specific factors. This is why Corps field staff must have flexibility to determine appropriate mitigation on a site-specific basis.

One commenter stated that vegetative buffers must not be used in lieu of wetlands mitigation, but there must be a preference for restoring, enhancing, or creating buffers as a component of appropriate mitigation. The commenter further stated that the Corps must require a minimum 100-foot-wide riparian or wetland buffer (instead of the proposed 25 to 50 feet), to be increased as necessary in proportion to the size and shape of waters they surround to obtain the desired performance.

The Corps will take a watershed approach with mitigation, which will include vegetated buffers as a critical element of mitigation. The Corps must be reasonable in the width of the vegetated buffer required. While a wider buffer clearly provides more protection, even a narrow vegetated buffer provides important protection for the aquatic environment. In determining appropriate buffer widths, the Corps must balance environmental protection with what is reasonable given the scope of the project and the level of impacts that need to be mitigated.

One commenter stated that the Corps proposal is counter to Federal policy and Corps guidance that favors mitigation banks in the context of general permitting.

The Corps believes the proposed changes to Condition 19 are consistent with Corps policy. Mitigation banks are one important form of mitigation, but there are many others. The proposed changes will enhance, not limit, the opportunity to use mitigation banks by providing greater flexibility to Corps field staff to determine the most environmentally beneficial mitigation.

One commenter expressed concern that vegetated buffer areas, especially non-jurisdictional habitats, used as mitigation, would not be afforded the same protection by existing laws as mitigation sites in which jurisdictional areas are created, enhanced, restored, or preserved.

Vegetated buffers established or preserved in uplands are subject to the same protection as aquatic areas are through permit conditions. The Corps will generally require that all mitigation, including upland areas that are parts of vegetated buffers, are placed in conservation easements or protected in some other manner.

One commenter recommended that the Corps only consider other forms of mitigation as part of an overall compensatory mitigation requirement once no net loss of function and acreage is obtained, and that a conservation easement or deed restriction be required for all such mitigation.

The Corps will take a holistic watershed approach to mitigation without arbitrarily favoring any type of mitigation. The Corps biological and ecological capability in the districts will be used to make the best mitigation decisions.

A few commenters disputed the appropriateness of the ''normal'' requirement of upland buffers as compensatory mitigation to open waters since it exceeds the Corps statutory authority to regulate these areas. A few commenters expressed concern that requiring vegetated buffers as mitigation may be invalid where the condition

bears no relationship to the impacts of the discharge on a particular site.

Vegetated buffers required by the Corps as mitigation on open waters is within the Corps authority because they are providing water quality benefits to the open water areas and often the vegetated buffer provides aquatic habitat such as shading to maintain cool water stream. All mitigation, whether vegetated buffers or wetland mitigation, must be related to the impacts authorized. The Corps views that relationship in the context of the overall aquatic environment on a watershed basis.

One commenter suggested that the Corps' advocacy of the use of vegetated buffers for mitigation of impacts to waters of the U.S. is an abandonment of a long-standing policy of ''no net loss'' and requirement of in-kind wetlands mitigation, and called for an adequate basis for this change in policy.

The proposed modification to Condition 19 does not change the Corps commitment to no overall net loss of wetlands. The Corps has required no overall net loss of wetlands since the early 1990s and will continue to do so under the revised condition. The changes to Condition 19 simply allow the Corps to make the best mitigation decision on a case-by-case basis from a watershed perspective. Requiring one-for-one mitigation in every single permit does not support a watershed approach to mitigation because it focuses excessively on one type of mitigation. Although the Corps believes that flexibility is needed on a project specific basis to determine the appropriate mitigation, we will continue to ensure that the NWP Program results in no overall net loss of wetlands. On an individual permit basis, the Corps often requires greater than one-for-one mitigation on an acreage basis, due to the value of the replacement acreage, temporal effects and risk factors. As noted above, to further ensure that no net loss is achieved, we are establishing a requirement that all Corps districts must meet an annual goal of at least one-for-one wetlands mitigation on an acreage basis for verified nationwide permit activities within each district for each fiscal year. The Corps will collect information documenting compliance with this requirement and make it available on the internet.

Numerous commenters agreed with eliminating the mandatory one-for-one mitigation requirement to qualify for an NWP, stating that it would provide Corps with increased flexibility in determining mitigation requirements that may be more appropriate and environmentally beneficial. A couple of commenters also favored the proposed waiver because they believe the very low PCN thresholds for the NWPs creates situations where many small projects become subject to review for which one-to-one mitigation would be overly burdensome and impracticable.

The Corps agrees with these comments.

One commenter supported the proposed use of buffers as mitigation, but cautioned the Corps to avoid suggesting any minimum width prescriptions or specific replacement ratios. Another commenter cautioned that, in situations where less than one-for-one mitigation of permanent impacts to wetlands is allowed, and the establishment and/or preservation of vegetative buffers as mitigation is proposed, then a careful analysis must be conducted and include a determination of the function and value of the proposed vegetated buffers as compared to the impacted wetlands. The commenter indicated that determining the width of vegetated buffers is extremely subjective, and that mitigation containing these features should be scrutinized to ensure the vegetated buffers have sufficient width and length to provide habitat in and of themselves, not just for the waters of the U.S. they border. Another commenter stated that alternative mitigation measures, such as vegetated buffers, should be valued and compared to permitted losses only to the degree that they enhance or create wetland functions beyond what would exist without them (*e.g.* a 10-acre buffer placed around a 5-acre wetland would not necessarily offset 10, or even 5 acres, of wetland impacts; rather, if the 5-acre wetland were improved 20 percent in habitat value the buffer would receive credit for mitigating only 1 acre of wetlands impact.)

The Corps must make its mitigation decisions based on the information available and based on the significant knowledge and understanding of the aquatic environment that the district staff of biologists and ecologists possess. The Corps can not always quantify precise offset determinations, and it would not make sense to do so in the nationwide permit program because project specific impacts are generally limited to less than one half acre, and are often one tenth of an acre or less.

A few commenters agreed with using vegetated buffers as mitigation, but opposed using upland buffers as additional compensatory mitigation, suggesting that they are neither a wetland nor aquatic resource, and therefore it is not justifiable to include a requirement of upland vegetated buffers as additional compensatory mitigation. The commenters suggested that if the Corps normally includes a requirement for establishment, maintenance, and legal protection of vegetated buffers, then the total mitigation requirement shall not exceed that necessary for wetland impacts. (*i.e.* if total proposed wetland impacts are ½ acre and one-for-one mitigation is required, then the total amount of mitigation that should be required, inclusive of any upland buffers, should not exceed ½ acre). One commenter suggested that the Corps establish a maximum percentage of overall compensation that ''alternative forms'' of compensation (such as vegetated buffers) may comprise.

As stated above, the Corps is committed to a holistic watershed approach to mitigation and that cannot be accomplished with rigid quantitative requirements. The Corps regulates the entire aquatic environment, not just wetlands. Mitigation must consider the entire aquatic ecosystem as well. The Corps has and will continue to programmatically require greater than one-for-one acreage of wetland mitigation to account for differences in function and values, temporal losses and potential failure of mitigation. The Corps will continue to require greater than one-for-one acreage mitigation for wetlands programmatically, but some projects should not and will not require such mitigation, because it is not what is best for the aquatic environment.

One commenter stated that upland (riparian) buffers could be used as mitigation for stream or other non-wetland impacts, but should not be allowed to compensate for wetlands. Another commenter stated that the use of upland buffers as compensatory mitigation is acceptable, provided that it is at the option of the permittee and that the amount of land required for mitigation is proportionate to the impacts.

The Corps will require mitigation for permitted impacts based on a watershed approach and what is best for the aquatic ecosystem in that watershed. This approach will often involve a mix of vegetated buffers and other wetland mitigation. In some cases it will involve only one type of mitigation. In all cases, mitigation will be based on what is best for the overall aquatic environment in the particular watershed involved. The Corps always tries to ensure that mitigation requirements are proportionate to impacts, though the areas affected may be greater or less depending on site-specific circumstances.

One commenter cautioned that incorporating vegetated buffers as mitigation measures may prove problematic, especially if a particular organism relies on vegetated buffer habitat that is injurious to another organism using the same aquatic system.

The Corps recognizes this concern. It is one example of why the Corps must use its professional judgment based on a holistic watershed approach to determine appropriate mitigation.

One commenter warned that, vegetated buffers present a promising tool with real benefits to water quality and public resource, but are not always compatible with existing functioning federally authorized flood protection systems. In some instances, they may reduce channel capacities and conflict with maintenance activities; in others, they may improve flow.

The Corps will consider the aquatic environment and the practicability of requiring vegetative buffers. The Corps will not require vegetative buffers where it would have adverse effects on projects such as flood control projects.

Several commenters stated that guidelines and clarification on the appropriate use of non-wetland vegetated buffers as mitigation for impacts to wetlands should be developed—perhaps by the Corps and other appropriate natural resource agencies, or through some form or rulemaking—prior to extending them credit as compensatory mitigation. A few commenters stated that the Corps should develop guidelines to support the need to establish buffers and standards and criteria for determining appropriate buffer types and widths based on intended benefit, adjacent land use, density of vegetative cover, etc., and that this documentation should be put forth for public comment. One commenter stated that the current guidance regarding upland vegetated buffers is lax, suggesting little other than prohibition of using mowed lawns and encouraging use of native vegetation. As such, golf course roughs, where the height of vegetation is actively managed, and areas subject to human disturbance could be proposed as compensatory mitigation for the loss of wetlands. Similarly, landscaped areas of development projects could be proposed as compensatory mitigation as well.

The Corps can not establish detailed guidelines for vegetated buffers on a nationwide basis. No such guidance exists for wetland mitigation either. Such detailed guidance for wetland mitigation would not be sensible just as detailed guidance for vegetated buffers would not make sense. The Corps has adequate protections in the condition to ensure that vegetated buffer mitigation will be properly used by the districts. As stated many times above, the Corps is taking a holistic watershed approach to mitigation which relies on the exceptional expertise of our 1,150 district employees, who are predominantly biologists and ecologists.

Corps Preference for Restoration Over Preservation

Many commenters stated that the preference for restoration of wetland impacts over preservation must be maintained. Several commenters indicated that restoration should be the preferred option, since, for certain, a net loss of wetlands will always occur when preservation is chosen as mitigation. One commenter stated that preservation does not necessarily ensure replacement of functions and values of lost wetlands. A couple of commenters stated that many of the existing wetlands that are appropriate for preservation are already protected by law. Therefore, preservation should only be used in extreme situations, such as when the wetlands are under threat or not afforded protection (isolated wetlands), or when the wetlands to be preserved are large or are of high significance. One commenter suggested that if and when preservation of high quality wetlands is preferred, it should force the project to be reviewed under an individual permit instead of a nationwide permit, allowing the state, the public and other resource agencies to review the proposed project.

The Corps is increasingly taking a holistic watershed approach to mitigation of impacts in our Regulatory Program, including the nationwide permit program. The Corps district experts must have the flexibility in policy to make decisions that support a holistic watershed approach. Preservation is often a very important component of a watershed approach. Some of the most important and high functioning wetlands are potentially subject to many activities that are not regulated by the Corps or any other governmental body. Therefore, absent the protection by preservation of these high value areas through mitigation they will be degraded over time. Restoration is the main method of mitigating impacts to the aquatic environment permitted by the Corps and it will continue to be the primary mitigation approach. The Corps has slightly modified the wording in paragraph (c) of this general condition from what was proposed to clarify that this preference for restoration applies regardless of what wetlands mitigation ratio is required at a specific site.

However, preservation is also a very important tool in the Corps ability to mitigate impacts on a holistic watershed basis. Protection of the aquatic environment through preservation of high value aquatic areas is critical to protecting the nation's aquatic ecosystems. The view that preservation is not appropriate because the areas are not ''new'' is shortsighted and has proven to be mistaken because of the significant impacts to wetlands that are not protected through preservation, particularly when the preservation includes adjacent uplands and open waters as a preserved matrix of environmental assets that work together to produce high value habitat. However, the Corps recognizes that preservation does not provide new acres and thus cannot compensate for wetlands loss on an acreage basis. As noted above, the Corps will instruct district offices not to include preservation in their documentation of compliance with the minimum one-for-one district level mitigation requirement.

A few commenters stated that preservation of wetlands is preferable to restoration. The evolving emphasis on watershed assessment and protection underscores the need and importance of preserving aquatic ecosystems. One commenter pointed out that if sites are established, and functioning well, it would appear that preserving them should be critical in attempts to maintain the present and future value of wetlands. If vegetated buffers, or the enhancement of uplands, adjoining wetlands are important enough to be considered as mitigation credit, then preservation of existing wetlands adjacent to a mitigation site should be at least similarly credited.

We agree with these commenters to the extent that they identify the importance of a holistic approach to mitigation. However, as noted above, restoration will continue to be the primary mitigation approach, and preservation will not be counted in the district-level one-for-one mitigation requirement.

One commenter opposed the use of preservation of onsite avoided wetlands or wetland buffers as compensatory mitigation since it credits the avoidance of impacts, which is the first step in mitigation sequencing, a second time in the form of compensation for unavoidable impacts. The commenter did state that off-site preservation was acceptable, however, since it did not conflict with the on-site mitigation sequencing process.

Whether the Corps requires preservation and gives project-level mitigation credit for onsite or offsite

preservation depends on the size, functional value and relationship of the area to other aquatic areas. For example, preservation of an extremely high value wetland on the border of a permitted development site where that high value wetland is part of a larger high value wetland system is a very positive mitigation approach in terms of holistic watershed protection of the aquatic environment, particularly if it increases the chances that the entire system will be preserved. On the other hand, preservation of a small moderate value wetland that will be surrounded by paved parking areas and may lose its hydrology because of overall site development may not make environmental sense, on-site or off-site.

Several commenters stated that there should be no established Federal preference of either restoration or preservation, and both are equally appropriate. One commenter suggested that a preference for restoration over preservation could result in an opportunity to preserve a highly functioning wetland being overlooked. Other commenters urged greater acceptance of preservation when the area to be preserved is of high value, subject to significant impacts, and included in a wider planning framework, and restoration/creation are not feasible and wetlands are in abundance, locally, compared to other important resources. Several of the commenters stated that the decision to use either preservation or restoration (or a combination of the two) should be flexible and left up to the individual Corps Districts to decide on a case-by-case, local or watershed basis, depending on which type would be most appropriate.

We agree with these commenters.

One commenter stated that there should be guidance showing the need for preservation before it is used over any other type of mitigation for wetland losses.

This does not support the holistic watershed approach the Corps is working to establish, and would not be a good use of Corps resources. We want Corps districts to focus their limited resources on what makes sense for the aquatic environment in a particular watershed.

One commenter stated that the use of either preservation or restoration is contrary to the ''no net loss'' policy and the goal of the CWA to restore and maintain the physical, chemical and biological integrity of the Nations waters. The General Condition should require that project impacts be fully offset unless the applicant demonstrates that full offset is impracticable. At a minimum, mitigation must offset all impacts that are more than minimal, both individually and cumulatively.

The Corps has and will continue to require mitigation that is necessary to reduce project impacts to the minimal adverse effect level. The Corps will continue to meet the no overall net loss goal for wetlands because most wetland mitigation is at a greater than one for one acreage basis to ensure that the functional impacts authorized are offset by the mitigation. In addition, districts will be required to document at least one-for-one mitigation at the district level.

One commenter stated that the preference for restoration over preservation affects the entire Section 404 program and the preamble of the NWPs is not the appropriate forum to discuss and change that policy.

The Corps does not agree that it is inappropriate to discuss this policy, as it relates to the implementation of the NWP program. The Corps is not proposing to change this policy. The preference for restoration over preservation is preserved in the language of paragraph (c) of GC 19.

Mitigation Bonding

Several commenters stated that unless a comparable bonding program exists within the Districts, bonding of mitigation measures under NWPs should be established that obligate a permittee to complete the mitigation, bond the mitigation activity and success period, and allow the Corps to execute the bond in the event of forfeiture.

The Corps is currently reviewing guidance which addresses bonding and otherwise protecting mitigation sites and ensuring they will be successful. The principles in that guidance will apply to the nationwide permit program. Bonding is just one tool available to the Corps in its efforts to ensure that required mitigation is established and is successful.

Other Comments on General Condition 19

Several commenters suggested the Corps should require natural resource agency review of all mitigation plans, especially mitigation proposing the use of vegetated buffers. One commenter requested rewording of General Condition19c to read* * *'' unless the District Engineer determines [in consultation with the appropriate natural resource agencies through a PCN coordination process such as that described in General Condition 13,] that some other form of mitigation* * *''

The Corps does not agree. We believe that such a change would result in excessive review that would not result in benefits for the aquatic environment. The commenting agencies do not have the staff necessary to evaluate all such projects either. The Corps has the technical expertise and capability to make these determinations. Where appropriate, the Corps does and will continue to consult with other agencies.

Many commenters stated that numerous studies from around the country, including recent studies conducted by the National Academy of Science and General Accounting Office, showed that mitigation is not fully successful, and does not compensate for wetlands lost to permitted fills. Therefore, reducing mitigation requirements that already aren't working is unsupportable.

The Corps is not reducing the mitigation requirements necessary in the nationwide permit program. The requirement remains that mitigation adequate to ensure no more than minimal adverse effects on the aquatic environment will be required. The Corps agrees with the NRC/NAS report that we must improve the success of mitigation. One method the Corps has used, and will continue to use, to deal with the failure of some mitigation is higher ratios of mitigation for most impacts. Consolidating mitigation into larger sites through mitigation banks, in lieu fees, and other large mitigation areas as well as protecting a matrix of environmental assets in mitigation areas including wetlands, open waters and uplands will also serve to improve mitigation in the long term.

Several commenters indicated that the Corps must improve data collection from mitigated projects and reporting cumulative wetland losses to evaluate and ensure that impacts to waters of the US have been minimized and the goals of the program achieved.

We agree that we need to improve our data collection and tracking of mitigation and will soon bring a new data system on line to facilitate such tracking. By better documenting the mitigation requirements included in NWPs and tracking the fulfillment of these requirements, the Corps will better ensure that the impacts authorized are offset to the level that no more than minimal adverse effects will result.

One commenter stated that the proposal continues to elevate one form of mitigation—compensation—above all others by automatically requiring that type of mitigation in every instance. Thus, the program fails to consider whether avoidance and/or minimization has been sufficiently incorporated into a project to the maximum extent necessary to ensure that adverse effects

to the aquatic environment are minimal. Then, in a gesture toward easing the burden of compensatory mitigation, the Corps allows different types of compensation, such as vegetated buffers, to be used in lieu of providing one-for-one wetlands compensation. The Corps should treat ALL forms of mitigation uniformly, not just all forms of compensation, especially those such as the use of upland buffers which are not subject to regulation or jurisdiction. This omission removed any incentive to incorporate avoidance and minimization efforts. The Corps is urged to remove preferential treatment given to compensatory mitigation, over avoidance and minimization, by deleting all mandatory compensation requirements.

We disagree with these comments because deleting all compensatory mitigation requirements would substantially reduce protection of the aquatic environment by reducing mitigation, much of which is very successful. The Corps will instead take a watershed approach to mitigation, as discussed above.

One commenter stated the acreage of fill placed in waters of the U.S. to construct compensatory mitigation must be included in the calculation of acreage and impacts. These fills should not be discounted, because compensatory mitigation does not always succeed, and can result in the conversion of one type of water of the U.S. to another.

The Corps considers the overall impacts of a proposed project. Fill in waters of the US involved with mitigation projects is very small in volume in essentially all cases. If there were a case where potentially substantial impacts would be involved in the mitigation project the Corps will consider that impact. However, the acreage used to construct compensatory mitigation projects is not counted in the acreage limit of the NWPs.

A few commenters stated that in-kind mitigation must be mandatory for all unavoidable impacts to wetlands, non-wetland aquatic habitats, and terrestrial habitats.

We disagree. The Corps will take a watershed and holistic approach when requiring mitigation.

A few commenters stated that mitigation ratios recommended by EPA Region 4 must be adopted as the absolute minimum ratios for wetland mitigation.

The Corps disagrees with nationwide mandatory ratios on a permit-specific basis although, as noted above, ratios exceeding one-for-one are often required. The underlying requirement for mitigation in the nationwide permit program is that the mitigation reduces the permitted adverse effects on the aquatic environment to the minimal adverse effect level.

A few commenters stated that there should be a requirement for detailed mitigation plans as part of each PCN, which at a minimum identify specific mitigation sites, detailed mitigation development/management plans, assurances against mitigation failure; success criteria, detailed monitoring plans, details of protection afforded to guarantee functions replaced by the mitigation will be protected and maintained in accordance with objectives, and identification of the party responsible for the mitigation.

We believe we have required the proper level of documentation for PCNs submitted to the Corps. If the Corps determines on a case by case basis that additional information is necessary to ensure that any permitted impacts will be offset by mitigation the district can require such information.

Several commenters stated that mitigation buy downs to meet the 404(e)(1) minimal effects requirement should be prohibited in the context of NWPs. A couple of commenters questioned the capability of any type of mitigation to compensate for the complete loss of an aquatic environments. One commenter pointed out that there is significant scientific evidence, the validity of which is recognized by the Corps and other federal agencies,which shows that wetlands mitigation often fails, meets mixed success, or does not replace lost functions/values. Thus, mitigation cannot assure minimal effects. The commenter adds that if minimal effects are not achieved through the use of NWPs, then their use should be prohibited since they cannot satisfy the CWA's requirement of minimal cumulative adverse effects. One commenter suggested that any activities having adverse impacts sufficient to warrant compensatory mitigation be converted to an individual permit. However, another commenter stated that some compensatory mitigation plans which have been reviewed under individual permit public notice were inappropriate for the resources lost, and would not adequately replace lost functions and values, and therefore they see no reason to believe that compensatory mitigation proposed for NWPs—which lacks public review and agency comment—would be any better.

The Corps understands that some mitigation projects fail. We are working to improve the success of mitigation we require. The test for mitigation for adverse effects on the aquatic environment under the nationwide permit program is to ensure no more than minimal adverse effects after considering the required mitigation. For general permits, by regulation, impacts to the aquatic environment are to be avoided to the extent practicable on the project site. These regulations are not being changed. General Condition 19 deals with mitigation when it is required, after impacts to aquatic areas have been avoided to the extent practicable.

One commenter suggested that language regarding compensatory mitigation be narrowed to prevent its use in open water habitats in navigable public waterways. The commenter states that there is an unwarranted assumption that compensatory mitigation can be relied on to compensate for alteration or destruction of naturally occurring aquatic ecosystems, including open waters. The commenter adds that habitats should not be tradeable; each is unique and artificial habitats are not as good as the real thing. Eliminating open water by constructing wetlands or altering the habitat as mitigation can destroy species which are dependent upon open water.

These comments identify one of the many reasons that the Corps is changing its approach in Condition 19 to more effectively allow the Corps expert biologists and ecologists to make project specific decisions on impacts to be authorized and mitigation that will be required.

One commenter suggested that NWPs should require mandatory mitigation for all unavoidable impacts to non-wetland aquatic habitats and to terrestrial habitats since these areas have significant ecological value as do wetlands.

The Corps regulates the aquatic environment not uplands. We may require upland vegetated buffers as mitigation to the extent the vegetated upland buffers to open waters protect or enhance aquatic functions and habitat. The Corps agrees we need to more effectively mitigate impacts permitted to waters other than wetlands. That is precisely why the Corps is modifying Condition 19 to allow flexibility in mitigation decisions that are holistic and take a watershed approach.

One commenter stated that the Corps should emphasize the importance of accurate assessments and expressly indicate whether it has taken into account new data on mitigation methods.

The Corps continually works to improve its mitigation approaches at the Corps district level. The Corps districts are where the local technical expertise

resides and they continually adjust the program based on new information.

One commenter stated that the Corps should reassert its policy and preference of utilizing mitigation banking versus in-lieu-fee or other types of compensation for mitigation in the context of General permits.

The Corps needs to use all mitigation options in its tool box, including mitigation banks and in lieu fees. These methods are extensively used and will continue to be extensively used because they are effective and simple for the applicant.

One commenter stated that mitigation bankers acknowledge financial considerations and not always ecological considerations in locating mitigation banks. This does not ensure that functions and values lost within a local watershed will be replaced, a fact acknowledged by the Corps in the last version of the NWPs—mitigation banks are usually constructed and maintained by entrepreneurs, who locate mitigation banks in areas where they believe the established credits will sell quickly''.

The Corps requires mitigation that will offset the permitted adverse effects on the aquatic environment. The Corps identifies service areas for mitigation banks based on reasonably focusing mitigation in watersheds where impacts are permitted. We will continue to approve mitigation bank service areas in a manner that recognizes the need to offset impacts in the same watershed to the extent practicable. The fact that mitigation banks are designed to be financially successful does not mean that they will not also be ecologically successful. On the contrary, ecological success is a prerequisite for financial success.

One commenter stated that the Corps should prohibit the use of in-lieu-fee mitigation since it does not ensure no net loss of wetlands, and at best may provide some protection for existing wetlands. The time constraints of the review and approval process for NWP's limits adequate analysis of this type of mitigation. In the absence of meaningful resource agency and public review, in-lieu-fee mitigation is not consistent with the goals of the CWA of ''restoring/maintaining the chemical, biological * * *''

This commenter appears not to understand in lieu fee programs approved by the Corps. The majority of in lieu fee mitigation involves some type of restoration, creation or enhancement of aquatic areas. Some of the mitigation is preservation, but not all mitigation under in lieu fees involves only preservation. In lieu fee arrangements are getting better as time goes forward. The GAO report that raised concerns about the Corps use of in lieu fees was incomplete in that it limited its in lieu fee program analysis to in lieu fees programs that were in place as of 1997, when the approach was still very new. Substantial improvement has occurred since 1997 in the Corps use of in lieu fees.

One commenter objected to any changes and additions to mitigation requirements after the environmental documents have been completed and a Record of Decision issued, stating that it is a violation of Congress' mandate for streamlining as well as a violation of NEPA and should be prohibited in the permitting process.

The environmental documentation will be finalized as we issue the nationwide permits in final form. No changes to the new permits will occur after that, unless they are revised or reissued following opportunity for public comment.

One commenter indicated that offsite mitigation greatly reduces overall aquatic habitat quality and natural functioning. Mitigated wetlands have been demonstrated time after time to ''show a decrease in native plant species diversity'', and are ''not functionally equivalent to reference sites'' in terms of ''flood retention, water quality improvement and habitat provision.''

The Corps will take a holistic watershed approach to mitigating impacts permitted. Onsite mitigation is typically best for water quality measures including vegetated buffers and stormwater management. However, onsite mitigation for loss of habitat, such as wetlands is usually less preferable to offsite. Moreover, consolidated mitigation such as that in mitigation banks and in lieu fee operations is generally more successful than project specific mitigation. All of these principles are consistent with the findings of the recently issued NRC/NAS report. In fact, the changes to General Condition 19, are intended to facilitate the adoption of some of the report's recommendations, by moving toward a watershed approach.

One commenter objected to the use of in-lieu-fee agreements for compensatory mitigation, especially in areas where land prices are high and in-lieu fees low. Money must sit in an account for many years before any use can be made of it, while the nation suffers temporal loss of wetlands and the in-lieu-fee cannot provide adequate compensation.

The Corps is improving its in lieu fee arrangements to ensure that ecological mitigation will occur within 2 years of accepting funds from permittees.

A commenter stated that mitigation should be required for any length of piping or filling of streams covered by NWP. The US has lost thousands of miles of headwater and streams from the landscape. It is time to recognize the ecological services provided by these ecosystems [in addition to wetland].

The proposed changes to General Condition 19 are specifically designed to improve our ability to consider and properly mitigate impacts to streams. We agree that too often in the past stream impacts may have been overlooked. Decisions on the level of mitigation required by the Corps will be made on a case-by-case basis by the Corps districts.

The General Condition is adopted with the wording clarifications discussed above.

20. *Spawning Areas*. There were no changes proposed to this General Condition. However, one commenter recommended that the statement ''important spawning area'' should be rewritten to say ''spawning areas that support federally-listed or special status fish''. Another commenter agreed that this General Condition 20 is acceptable but stated that it would not sufficiently protect the areas intended. This commenter suggested that discharges into spawning areas should be prohibited year round and not just during spawning season. The commenter requested that the second paragraph, which states ''Activities that result in the physical destruction of an important spawning area are not authorized'' be changed to ''Activities that could result in the physical destruction of an important spawning area, up or downstream, are not authorized''.

We disagree with these comments. It is not appropriate to narrow this condition to cover only Federally-listed or special status fish. General Condition 20 prohibits the physical destruction of important spawning areas. However, it does allow temporary effects provided they occur outside of the spawning season. We believe this adequately protects such spawning areas and ensures that there will be no more than minimal adverse effects on the aquatic environment, individually and cumulatively.

The General Condition is adopted without change.

21. *Management of Water Flows*. The Corps proposed to revise the wording of this General Condition to clarify that normally detailed studies and monitoring would not be required, but may be required in appropriate cases. Several commenters agreed with the proposed clarification. One commenter

supported the clarification but believed the Corps is exceeding its authority by regulating water flow and suggested the Corps delete the requirement to maintain preconstruction flow or clarify how compliance with this requirement will be judged. A few commenters opposed the proposed clarification because without flow information it will be hard to determine if the impacts are only minimal to the aquatic environment, including indirect impacts. One commenter recommended that each applicant be required to submit a written description of how the requirements of General Condition 21 will be met. One commenter suggested that General Condition 21 should state that the Corps defers to state and local authorities when local regulations are in place.

Authorized activities or improvements to aquatic systems typically will cause deviation from pre-construction flow conditions. NWPs authorize only those activities that will have no more than minimal adverse effect on the aquatic system including water flows. Typically, well-established design features are included as part of projects without a need for detailed engineering studies. State or local agencies often require these design features. Consequently, we believe that detailed studies and monitoring would not normally be required by this condition. Where appropriate, the Corps will review projects to ensure that design features that address flows are included, such as limited channelization, proper design for culverts, and retention ponds, but generally will not require detailed studies of post-project flow. However, in some cases, detailed studies may be required where there is a potential for substantial impacts. Compliance with state and local flow management requirements, where these exist, is usually sufficient to satisfy this General Condition.

The General Condition is adopted as proposed.

22. *Adverse Effects from Impoundments.* There were no changes proposed to this General Condition. One commenter stated that impacts associated with impoundments result in more than minimal impacts, should be evaluated as an individual permit, and General Condition 22 should be deleted.

We disagree. Some small impoundments do not result in more than minimal impacts. However, where they do result in more than minimal adverse effects to the aquatic environment, individually or cumulatively, an individual permit will be required.

The General Condition is adopted without change.

23. *Waterfowl Breeding Areas.* There were no changes proposed to this General Condition. Two commenters suggested this condition be amended to prohibit discharges into breeding areas for migratory waterfowl as well as other migratory birds.

The Corps believes this would place an unreasonable and overly restrictive limitation on this NWP and that the condition, as worded, provides sufficient protection of aquatic resources.

The General Condition is adopted without change.

24. *Removal of Temporary Fills.* There were no changes proposed to this General Condition. One commenter suggested this condition be amended to require any temporary fills be removed in their entirety and affected areas returned to their preexisting elevations immediately upon removal of the fill.

The condition as stated requires that the affected area be returned to preexisting elevation concurrent with the removal of the fill. We do not agree that this condition should require immediate restoration in all cases. Corps districts can add a time period for when the restoration to preexisting elevations should take place, when necessary.

The General Condition is adopted without change.

25. *Designated Critical Resource Waters.* There were no changes proposed to this General Condition. One commenter in favor of General Condition 25 suggested it be amended to include ''source waters used for drinking water or ground water recharge'' in the definition of ''critical resource waters''. The commenter added that there should be no provision for discretionary authority for discharges of dredged or fill material into designated critical resource waters or wetlands within the NWP program.

Concerns regarding impacts to sources for drinking water and ground water recharge are more appropriately addressed through regional conditioning of the NWPs or case-specific review of PCNs for specific and identified waters. Division engineers can regionally condition the NWPs to prohibit or limit their use in such high value waters. District engineers should continue to exercise discretionary authority and require individual permits for activities proposed in such valuable waters when they will result in more than minimal adverse effects on the aquatic environment.

One commenter recommended that the Corps exempt utility activities within designated critical resource waters affecting ½ acre or less from the prohibition in General Condition 25 because utility projects have only minimal impacts and should be allowed under NWP 12 without requirement of notification or consultation.

While utility line activities that comply with NWP 12 normally do have no more than minimal adverse effect on the aquatic environment, individually and cumulatively, we remain concerned that this will often not be the case in designated critical resource waters. Therefore, unless there is evidence to the contrary, we believe that the restriction on NWP 12 should remain.

One commenter recommended the title of General Condition 25 be changed to ''Critical Resource Waters''. The commenter also recommended that the condition be changed to read ''Discharges within or affecting Critical Resource Waters, including wetlands adjacent to those waters, are not authorized under the NWP program except as specified in National Wild and Scenic Rivers, provided that the activity complies with General Condition 7''.

The Corps does not agree with the suggested title change. In order to apply this condition to critical waters those waters need to be designated so the Corps and the public know where the condition is applicable. The Corps continues to believe that an activity can occur in designated critical habitat if it is compliance with the Endangered Species Act.

The General Condition is adopted without change.

26. *Fills Within the 100-year Floodplain.*

The Corps proposed to delete the ''notification'' requirement, to delete the requirement to document that the project meets Federal Emergency Management Agency (FEMA) approved requirements and to modify the condition to require that all projects authorized by the NWPs must comply with any applicable FEMA approved state or local floodplain management requirements. In addition, we proposed to remove the prohibitions in paragraphs 26(a) and 26(b) for NWPs 12, 14, and 29, and the prohibition in 26(b) for NWP 43. We also requested comment on allowing projects to proceed under this condition below the headwaters where the project provides additional flood storage.

Many commenters supported the Corps proposal to remove the notification requirement and the requirement to document that the project meets FEMA approved requirements for fills within the 100-year floodplain. One commenter stated that this revision would reduce

redundancy since they must comply with E.O. 11988 for all structures associated with roadway construction and routinely provide documentation to federal and state agencies for review. A few commenters stated that the Corps is beyond its statutory authority and the existing documentation requirements have done nothing to affect compliance with FEMA approved floodplain management requirements. One commenter recommended that the Corps delete the notification requirement for NWP 12.

The Corps continues to believe that the notification should be removed from this condition. We agree that this change would reduce some paper work redundancy at various levels of government while retaining the restrictions on floodplain development. We agree that the notification requirement for NWPs under this condition, including NWP 12, should be removed.

Many commenters objected to the change. One commenter stated that documenting compliance with FEMA approved requirements is very important and strong motivation for ensuring that projects meet local floodplain regulations.

The Corps has found that requiring applicants to document that they have met FEMA approved requirements has done little to change or enhance compliance with these requirements. We believe that a General Condition clearly requiring that ALL permittees comply with FEMA approved requirements will be just as effective.

One commenter stated that the Corps added additional wording without providing proper notice in the preamble of the notice and failed to provide the legally required explanation for their action. Specifically, the first sentence of the current General Condition 26 states that, ''For purposes of this General Condition, 100-year floodplains will be identified through Federal Emergency Management Agency's (FEMA) Flood Insurance Rate Maps or FEMA-approved local floodplain maps'', and the first sentence of proposed General Condition 26 states that, ''For purposes of this General Condition, 100-year floodplains will be identified through the *existing* Federal Emergency Management Agency's (FEMA) Flood Insurance Rate Maps or FEMA-approved local floodplain maps.

The word ''existing'' was addressed and discussed in the preamble of the March 9, 2000, NWPs. The word ''existing'' was placed in the proposed NWPs to clarify questions raised by Corps personnel and the public.

One commenter stated that the Corps should not rely on often out-of-date and inaccurate floodplain maps and suggested that General Condition 26 should apply to all 100-year floodplains, including those not mapped by FEMA. One commenter requested clarification where no FEMA floodplain maps exist. One commenter suggested that where no FEMA maps exist, permits should require applicants to obtain a determination from a registered hydrologist that their project is not within the 100-year floodplain.

To effectively implement the requirements of this General Condition and to be consistent with other Federal programs, 100-year floodplains will be identified through the latest Flood Insurance Rate Maps (FIRMs) published by FEMA or FEMA-approved local floodplain maps. We believe that these maps are adequate for the purposes of this General Condition. Further, utilizing existing FIRMs and FEMA-approved local floodplain maps eliminates the additional burdens on local governments or landowners that existed in the proposed condition. If there are no FIRMs or FEMA-approved local floodplain maps available for the area where the proposed work is located, then the requirements of this General Condition do not apply. In such cases, the Corps will still consider the impacts of proposed projects through the PCN review process. In addition, we believe that the prospective permittee should not routinely be required to incur the cost of having a licensed professional engineer or hydrologist certify whether or not the proposed work is within a 100-year floodplain, particularly considering the very small scale of many permitted projects. Where appropriate, the District Engineer can require additional documentation on a case-by-case basis.

Several commenters agreed with the Corps proposal allowing DE's the discretion to approve projects in the floodplain below the headwaters where the project could improve flood storage. One commenter agreed provided the project complies with FEMA approved requirements. One commenter stated that floodplains are the best sites for creating stormwater management facilities. One commenter agreed and stated that these types of activities and facilities authorized under NWP 43 increase floodplain capacity. One commenter suggested that if NWP 43 is not removed from part (b) of General Condition 26, the DE should be authorized to waive this restriction on a project specific basis. One commenter requested that the Corps define increased flood storage. One commenter agreed with the Corps observation that some activities authorized by NWP 39, 40, and 42–44 provide additional flood storage capacity and recommends that such projects below the head waters should be allowed to proceed even if they result in permanent above grade fills.

The Corps has decided not to make this change at this time. We need to consider the specific language that would be needed to effectively implement this option. If we can develop acceptable language, we will consider proposing such a provision for public notice and comment.

A dozen or so commenters objected to the Corps proposal to remove NWP43 from part (b) of General Condition 26. A couple of commenters stated that the proposal could result in unacceptable threats to life and property. One commenter stated additional case-by-case review will increase workload. The commenter requested our rationale for considering that NWP 43 projects such as golf courses could provide additional flood storage. One commenter cited that other public interest factors should be evaluated, which highlights the need for completing a comprehensive PEIS. One commenter stated that the change was made without discussing it in the preamble and with no explanation supported by substantial evidence. This commenter requested that the Corps place NWP 43 back into part b of General Condition 26. One commenter stated that while providing additional flood storage is generally beneficial, there may be situations where such actions could cause adverse hydraulic or other impacts on the floodplain and increase risk of damage to existing floodplain properties. The commenter suggests that the Corps allow discretion on these projects only if the action is in furtherance of a local stormwater or watershed plan that has already assessed the hydrologic and hydraulic and other impacts of the action. One commenter stated the prohibitions of General Condition 26(a) and (b) do not allow for NWP 43 to be authorized in a floodplain but does allow projects to be authorized in a floodway. The commenter requested further clarification and explanation.

We are keeping the prohibition on the of NWP 43 in the floodplain below the headwaters. However, allowing NWP 43 to be used for projects above the headwaters but keeping them out of the floodway would be counterproductive. We believe that above the headwaters the only feasible alternative will often be to place them in the floodway. General Condition requires that the project avoid and minimize impacts to

waters. For stormwater management facilities this means keeping them out of the waters and the floodway, if practicable. Since the purpose of stormwater management facilities is to minimize flooding impacts, when they must be located in the floodway, there is no value added to the aquatic environment by requiring a more costly and lengthy individual permit process.

One commenter suggested that parts (a) and (b) of General Condition 26 should be removed because the requirements in pact (c) that the applicant must comply would be a sufficient safeguard. A few commenters stated that General Condition 26 should be removed because it is a duplication of activities regulated by local floodplain administrators. One commenter stated that the 100-year floodplain restrictions have increased the time required for reviewing small projects and leave the Corps less time and resources to focus on projects that may have significant impacts.

We continue to believe that the NWPs listed in General Condition 26(a) and (b) need to be restricted in the flood plain. This provides an added measure of protection of floodplains beyond that in paragraph 26(c). There has been some increase in workload due to the general condition. We believe that the adopted modifications to this General Condition will reduce that workload somewhat, which will allow the Corps to focus those resources on areas where the Corps can provide added protection to the aquatic environment.

One commenter stated that General Condition 26 is unnecessary and duplicative of existing FEMA requirements and would like the Corps to provide any data to show any correlation between wetlands loss and flooding. One commenter suggested that the Corps delete General Condition 26 for all permits and retain the flexibility to authorize all projects resulting in minimal adverse effects to proceed under NWPs, regardless of where those waters are located within the landscape. The same commenter recommended that any project located within a floodplain that meets FEMA requirements and the minimal impact test should be allowed to proceed under a NWP. One commenter stated that General Condition 26 is redundant and believes that the ban on permanent fills should not extend to all waters, specifically ephemeral streams above headwaters.

We agree that we are using the FEMA requirements that are applied to flood insurance programs for projects that occur in the flood plain. To this extent General Condition 26 is somewhat duplicative with that program. However, we believe that General Condition 26 plays an important role in reinforcing the FEMA program to minimize impacts to flood plains.

Several commenters objected to the changes to General Condition 26 and some commenters requested that the Corps retain General Condition 26 without any changes. A couple of commenters stated that the Corps must consider other aspects of flood plains such as water quality, ground water recharge, fish, wildlife, plant resources, and open space. Several commenters objected to development within 100-year flood plain. A couple of commenters objected to development within the floodplain. One commenter stated that the proposal would no longer discourage above grade fills with the floodplain. One commenter suggested that NWPs should not be used in counties designated as federal flood hazard areas at least once in the past 10 years. One commenter objected to the use of NWP 39, 40, 42, 43, and 44 within the 100-year floodplain. One commenter suggested that NWPs located within a floodplain should be required to demonstrate that the project is essential and has no alternative, the public should be able to comment on these types of projects, and they should be reviewed as an individual permit. One commenter stated that FEMA approved requirements are inadequate in many locations. A hand full of commenters suggested that the Corps should not allow the use of expedited permits for any filling activities in the entire 100-year floodplain.

We are very concerned with the loss of life and property resulting from unwise development in the floodplain. The Corps has recently advocated the strengthening of floodplain policy and the use of non-structural measures to reduce flood damages. We believe that the changes to the NWP program published today and two years ago will play an important role in reducing damages associated with development in the floodplain. Specifically, we are now requiring that ALL projects comply with FEMA approved state and local floodplain management requirements. We will monitor carefully the effectiveness of the new floodplain condition to ensure that it has the intended impact on reducing floodplain development.

A couple of commenters agreed with the Corps proposal to remove the prohibitions of General Condition 26 (a) and (b) from NWP 12, 14, and 29. One commenter suggested that part (b) of General Condition 26 should be changed to allow the use of NWP 39, 40, 42, or 43 with a PCN requirement. A few commenters suggested that the Corps retain prohibitions of General Condition 26 (a) and (b) for NWPs 12, 14, 29. One commenter objected to removing the prohibitions because it will increase damage and destruction of aquatic habitat and should not be permitted. A few commenters agreed with the Corps proposal to remove the prohibitions of General Condition 26 (a) and (b) from NWP 12 and 14. One commenter recommended that the prohibitions of General Condition 26 (a) and (b) should be retained for NWP 29 because local FEMA authorizes can come under tremendous pressure to stretch the regulations for certain projects. One commenter agreed with the Corps proposal to remove the prohibitions of General Condition 26 (a) and (b) from NWP 12 but wants to keep the prohibitions for NWP 14 & 29. The commenter stated that homes and other structures create a potential for increased downstream flooding due to floodplain storage capacity and transmission line projects occupy very little volume of the 100-year floodplain and would have only a minimal effect on floodplain storage capacity. One commenter suggested reducing the PCN requirements and raising the acreage thresholds for NWP 12. Numerous commenters objected to the removal of the prohibitions of General Condition 26(a) and 26(b) from NWP 29. A couple of commenters objected because it could result in unacceptable threats to life and property. A couple of commenters objected because it will have long-term negative consequences, including the potential to heighten downstream flooding. One commenter stated that the removal will make it easier to build homes and developments in floodplains, will place families at greater risk, and cost taxpayers for the inevitable cycle of flooding and rebuilding. A couple of commenters suggested that NWP 12 and 29, in light of the requirements of General Condition 21, continue to be subject to all of the limitations in General Condition 26. Given that these permits are subject to General Condition 21, the commenters stated concerns that improper use of these permits could adversely impact flooding, because linear projects are likely to obstruct flood flows while single-family housing can result in cumulative losses of flood storage. Both commenters stated that if the Corps removes the prohibition of General Condition 26(a) and (b) from NWP 12 and 29, the Corps should closely monitor activities authorized under these permits over time to ensure

that cumulative impacts on flooding are in fact minimal.

The Corps believes that it is appropriate to remove NWPs 12, 14 and 29 from the prohibition below headwaters and retain the prohibition for NWPs 39, 40, 42, 43, and 44. The permanent above grade fill authorized by these NWPs are small and do not occur very often especially in the same watershed. Furthermore, these activities must comply with the applicable FEMA approved requirements. We believe that activities authorized by these NWPs that are in full compliance with FEMA approved requirements will have no more than minimal impacts on the flood plain.

The General Condition is adopted as proposed.

27. *Construction Period.*

We proposed a new General Condition for activities for which the Corps has received notification and a construction schedule has been reviewed, and verification issued by the Corps. The condition will allow the Corps to establish project completion dates beyond the expiration of the NWPs.

Several commenters stated that they are in favor of this new condition. Some commenters suggested that this condition be applicable to all permit authorizations that are currently in effect including activities, which were authorized under NWP 26 and are still under the grandfather rule, and the District Engineer should be urged to authorize extensions providing conditions have not changed substantially. One commenter in favor of General Condition 27 requested that the Corps revise the condition to have a definite extension period and remove the language ''reasonable period''. One commenter in favor of General Condition 27 suggested that it be amended specifically to include an extension of the completion date for multi-phase linear transportation projects that have been verified and the extension request should be submitted 30 days prior to the previously approved completion date. One commenter suggested that the life of the permit be extended instead of adopting General Condition 27. One commenter stated that General Condition 27 will reduce protection for listed species and critical habitat. Two commenters suggested that there is no need to extend an NWP beyond the current expiration date because the permittee is offered sufficient time within the current time parameters to complete an authorized project. Two commenters stated that General Condition 27 violates the terms and conditions of the Clean Water Act and this condition would establish National policy on what is considered a reasonable timeframe to complete a minimal impact activity. One commenter recommended that the permit be modified to change the extension date of those activities not verified by the Corps from 12 months to 3 months and that all future projects be verified by the Corps.

The NWPs authorize many activities that have no more than minimal adverse effects on the aquatic environment and generally involve projects that need a relatively short period for construction. For some projects, obtaining a Corps permit is one of the many steps necessary to complete that project. It may be two, three or more years after obtaining the Corps permit before the work can be completed. Under the existing NWPs, if such projects obtain a Corps NWP verification near the expiration date of the NWP, the permittee can not necessarily rely on that permit to continue in effect through the lengthy and costly process of developing and planning the project. This causes uncertainty regarding the NWP authorization for the project because the construction phase was not completed before the NWP authorization expired. Many logistical issues may delay construction projects sometimes for considerable periods. We believe that the district office that is reviewing the project is best able to determine a reasonable time to complete the work. Projects will vary in the amount of time it takes to complete the activity. We believe that general condition 11 will ensure that NWP authorized activities will comply with the Endangered Species Act. The Crops is not proposing to change the completion period for unverified NWP activities.

The General Condition is adopted as proposed.

Definitions

There were no comments on the definitions not listed below. There were no changes proposed to those definitions. Those definitions are adopted without change.

Floodway. There were no changes proposed to this definition. One commenter believes that the definition of floodways is very broad.

The Corps is using the definition of flood way as it is determined by the Federal Emergency Management Agency for the purposes of the national flood insurance program. This is the standard that is most used by Federal agencies for compliance with Executive Order 11988, Floodplain Management. It is the definition of the term that is used in general condition 26 of the NWPs. The definition is adopted without change.

Independent Utility. There were no changes proposed to this definition. One commenter said that the definition of the term ''independent utility'' should exclude highway projects, because a single project within the limits of the particular logical termini may need to be reviewed and authorized under the same NWP multiple times.

We do not agree that the definition of this term should exclude highway projects. The Corps issues permits for a highway to cross a waterbody not for the highway itself. Normally the separate crossings will have independent utility. Only in rare circumstances would a highway project be considered a single and complete project as discussed in Corps regulations at 33 CFR 330. The terms and conditions of the NWPs, as well as the PCN process and the ability of district engineers to exercise discretionary authority, will ensure that highway projects authorized by NWPs, such as NWP 14, result in minimal adverse effects on the aquatic environment. The definition is adopted without change.

Loss of waters of the US. The Corps proposed to clarify this definition, consistent with the explanation provided in the preamble to the March 9, 2000, NWPs **Federal Register** notice, which reflects the current practice for measuring the acreage and linear foot impacts for determining compliance with the threshold limits of the NWPs. In other words, this clarification does not change the current application of this term.

One commenter noted that the Corps proposed to change the definition of ''loss of waters of the US'' without discussing the proposed change in preamble of the August 9, 2001, **Federal Register** notice. The commenter suggested that the definition remain as defined in the March 9, 2000, **Federal Register** notice that announced the issuance of new and modified NWPs to replace NWP 26. The definition in the March 9, 2000, notice stated that ''* * * the loss of stream bed includes the linear feet of stream bed that is filled or excavated.'' The commenter suggested explicitly including perennial, intermittent, and ephemeral reaches in this definition. One commenter stated that the proposed change to limit the definition of ''loss of waters of the US'' to perennial or intermittent stream could weaken protection for ephemeral streams.

The Corps believes that it is necessary to clarify, that for determining the acreage and linear thresholds for the NWPs, ephemeral waters and streams

are not included in the measurement. This was previously explained on page 12881 of the March 9, 2000, preamble of the NWPs, but not included in the permit language. We now believe that it is important to include this language in the formal definition to avoid the confusion that was created by having this information in a Preamble discussion only and not in the definition itself. However, the Corps had proposed modifying language that we now believe did not fully and clearly address the issue. Therefore we are retaining the current language of this definition, but adding a new sentence at the end of the definition. The new sentence will clearly state that for measuring the threshold limitation only will we not include impacts to ephemeral waters. As with the proposed change, the new sentence will not change the current application of this term.

Note that in excluding ephemeral streams from the definition of ''Loss of Waters of the US'' for the purposes of determining compliance with NWP acreage and linear foot limitations, we are not suggesting that ephemeral streams are not jurisdictional waters under the Clean Water Act.

One commenter requested clarification concerning the placement of box culverts and the definition of ''loss of the water of the US''. This commenter said that if the placement of a culvert in waters of the US does not change the bottom elevation, then the activity should not be considered to result in a loss of waters of the US.

The placement of a culvert in waters of the United States would be considered a loss of waters of the United States, even if the activity would not result in a change in the bottom elevation. The definition of the term ''loss of waters of the US'' includes activities that change the use of the waterbody. The placement of a culvert in a stream or other water of the United States changes the use of that waterbody, and therefore the area changed by the installation of the culvert would be considered when determining whether the proposed work exceeded the acreage limit of an NWP.

The definition is adopted with the change discussed above.

Minimal effects. The Corps did not propose to define this term. Several commenters said that the term ''minimal effects'' should be defined. One commenter requested that the Corps develop an evaluation criteria for determining when an activity results in more than minimal impacts.

We maintain our position that the term ''minimal effects'', as used in the context of the NWP program, cannot be simply defined. Aquatic resource functions and values vary considerably across the country, and the minimal adverse effects criterion for general permit must be subjectively applied by district engineers. Site-specific factors, such as the quality of waters that may be impacted by the proposed work, the functions and values of those waters, the geographic setting, and other factors must be considered when determining whether a particular activity results in minimal adverse effects on the aquatic environment. Further, in order to adopt such a term the Corps would have to publish a proposed definition for public notice and comment. A definition of this term is not being adopted.

Open water. There were no changes proposed to this definition. One commenter stated that the definition of the term ''open water'' should be refined. This commenter said that sparsely vegetated areas of obligate emergent vegetation still meet the definition of a wetland and that vegetated shallows are special aquatic sites, such as seagrass beds. Sparsely vegetated waters inhabited by emergent vegetation may be identified as wetlands, provided the area meets the criteria required by the *1987 Corps of Engineers Wetlands Delineation Manual* (Technical Report Y–87–1) and associated guidance. Vegetated waters inhabited by non-emergent vegetation, such as beds of submersed aquatic vegetation often found in estuaries, lakes, and ponds, are considered open waters for the purpose of the NWP program.

The definition is adopted without change.

Mechanized Land Clearing. The Corps did not propose to define this term. One commenter stated that the term ''mechanized land clearing'' is not defined in the ''Definitions'' section of the NWPs and recommends that the Corps adds a definition for this term.

We do not agree that it is necessary to include a definition of the term ''mechanized land clearing'' in the NWPs. Matters related to mechanized landclearing have been most recently addressed in the changes to 33 CFR 323.2 that were published in the January 17, 2001, issue of the **Federal Register** (66 FR 4550). A definition of this term is not being adopted.

Stream Definitions. There were no changes proposed to these definitions. One commenter said that the definitions of ephemeral and intermittent streams do not address streams that may flow for longer periods due to snowmelt, artificial discharges, or other water sources beside groundwater and precipitation. This commenter also suggested that artificial water discharges should not be used for the definitions of ephemeral and intermittent streams and if a water course is naturally ephemeral and a water treatment plant outfall is constructed, the watercourse should continue to be defined as ephemeral for Section 404 purposes.

When determining whether a particular stream segment is perennial, intermittent, or ephemeral, district engineers should consider the source of hydrology and the normal circumstance of that hydrology. They will make these determinations on a case-by-case basis. We believe that these definitions are sufficient for the Corps Regulatory Program. The stream definitions are adopted without change.

Executive Order 13212—Energy-related Projects Issues

One commenter indicated that NWPs have already been designed to expedite permit processing and any new energy related projects (i.e. drilling oil in the Arctic National Wildlife Refuge, construction of new nuclear power plants, or electric power generation dams) not covered by existing NWPs should receive full consideration under the National Environmental Policy Act (Act) and not be authorized by NWPs. One commenter said that states have provisions similar to Executive Order 13212 and this commenter believes that the current coordination process and the expedited review process provided by the NWPs are sufficient. One commenter asserted that the expiration of NWP 26 reduced the ability of the Corps to efficiently authorize energy-related projects. This commenter suggested that other NWPs be amended to expedite energy-related projects or revisit the development of a regional permit for such activities.

President George W. Bush signed Executive Order 13212 (66 FR 28357–28358, May 22, 2001) on May 18, 2001, directing new policy actions to expedite the increased supply and availability of energy to our Nation. This Executive Order directs all agencies to take appropriate actions, to the extent consistent with applicable law, to expedite projects that will increase energy production, transmission, or conservation, while maintaining protection of the environment. We believe that the NWP program provides an opportunity to expeditiously authorize energy-related activities that have no more than minimal adverse effects on the aquatic environment, individually and cumulatively. Energy related projects that have more than minimal individual and cumulative

adverse effects on the aquatic environment cannot be authorized by NWPs and will be expeditiously reviewed under the individual permit process.

Executive Order 13211—Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use (Statement of Energy Effects)

The NWP Program is designed to regulate certain activities having no more than minimal adverse effects with little, if any, delay or paperwork. NWPs allow smaller, repetitive, low impact projects with no more than minimal adverse effects on the aquatic environment, to be reviewed and authorized in a shorter period than larger complex projects that require an Individual Permit review. Many energy related projects, such as petroleum pipelines and electric utility lines, are expeditiously authorized by Nationwide Permits. The Corps is adopting changes to the Nationwide Permits that will maintain the expedited process for these energy related projects. Therefore, the Corps concludes that the proposed NWPs will not significantly affect the supply, distribution, and use of energy and fully complies with Executive Order 13211.

Regional Conditioning of Nationwide Permits

Concurrent with this **Federal Register** notice, District Engineers are issuing local public notices. In addition to the changes to some NWPs and NWP conditions required by the Chief of Engineers, the Division and District Engineers may propose regional conditions or propose revocation of NWP authorization for all, some, or portions of the NWPs. Regional conditions may also be required by state Section 401 water quality certification or for state coastal zone consistency. District engineers will announce regional conditions or revocations by issuing local public notices. Information on regional conditions and revocation can be obtained from the appropriate District Engineer, as indicated below. Furthermore, this and additional information can be obtained on the internet at *http://www.usace.army.mil/where.html#State* by clicking on the appropriate District office.

Alabama

Mobile District Engineer, ATTN: CESAM–OP–S, 109 St. Joseph Street, Mobile, AL 36602–3630

Alaska

Alaska District Engineer, ATTN: CEPOA–CO–R, P.O. Box 898, Anchorage, AK 99506–0898

Arizona

Los Angeles District Engineer, ATTN: CESPL–CO–R, P.O. Box 532711, Los Angeles, CA 90053–2325

Arkansas

Little Rock District Engineer, ATTN: CESWL–PR–R, P.O. Box 867, Little Rock, AR 72203–0867

California

Sacramento District Engineer, ATTN: CESPK–CO–R, 1325 J Street, Sacramento, CA 95814–2922

Colorado

Albuquerque District Engineer, ATTN: CESPA–OD–R, 4101 Jefferson Plaza NE, Albuquerque, NM 87109–3435

Connecticut

New England District Engineer, ATTN: CENAE–R, 696 Virginia Road, Concord, MA 01742–2751

Delaware

Philadelphia District Engineer, ATTN: CENAP–OP–R, Wannamaker Building, 100 Penn Square East Philadelphia, PA 19107–3390

Florida

Jacksonville District Engineer, ATTN: CESAJ–CO–R, P.O. Box 4970, Jacksonville, FL 32202–4412

Georgia

Savannah District Engineer, ATTN: CESAS–OP–F, P.O. Box 889, Savannah, GA 31402–0889

Hawaii

Honolulu District Engineer, ATTN: CEPOH–EC–R, Building 230, Fort Shafter, Honolulu, HI 96858–5440

Idaho

Walla Walla District Engineer, ATTN: CENWW–OD–RF, 210 N. Third Avenue, Walla Walla, WA 99362–1876

Illinois

Rock Island District Engineer, ATTN: CEMVR–OD–P, P.O. Box 2004, Rock Island, IL 61204–2004

Indiana

Louisville District Engineer, ATTN: CELRL–OP–F, P.O. Box 59, Louisville, KY 40201–0059

Iowa

Rock Island District Engineer, ATTN: CEMVR–OD–P, P.O. Box 2004, Rock Island, IL 61204–2004

Kansas

Kansas City District Engineer, ATTN: CENWK–OD–R, 700 Federal Building, 601 E. 12th Street, Kansas City, MO 64106–2896

Kentucky

Louisville District Engineer, ATTN: CELRL–OP–F, P.O. Box 59, Louisville, KY 40201–0059

Louisiana

New Orleans District Engineer, ATTN: CEMVN–OD–S, P.O. Box 60267, New Orleans, LA 70160–0267

Maine

New England District Engineer, ATTN: CENAE–R, 696 Virginia Road, Concord, MA 01742–2751

Maryland

Baltimore District Engineer, ATTN: CENAB–OP–R, P.O. Box 1715, Baltimore, MD 21203–1715

Massachusetts

New England District Engineer, ATTN: CENAE–R, 696 Virginia Road, Concord, MA 01742–2751

Michigan

Detroit District Engineer, ATTN: CELRE–RG, P.O. Box 1027, Detroit, MI 48231–1027

Minnesota

St. Paul District Engineer, ATTN: CEMVP–CO–R, 190 Fifth Street East, St. Paul, MN 55101–1638

Mississippi

Vicksburg District Engineer, ATTN: CEMVK–OD–F, 4155 Clay Street, Vicksburg, MS 39183–3435

Missouri

Kansas City District Engineer, ATTN: CENWK–OD–R, 700 Federal Building, 601 E. 12th Street, Kansas City, MO 64106–2896

Montana

Omaha District Engineer, ATTN: CENWO–OP–R, 106 South 15th Street, Omaha, NE 68102–1618

Nebraska

Omaha District Engineer, ATTN: CENWO–OP–R, 106 South 15th Street, Omaha, NE 68102–1618

Nevada

Sacramento District Engineer, ATTN: CESPK–CO–R, 1325 J Street, Sacramento, CA 95814–2922

New Hampshire

New England District Engineer, ATTN: CENAE–R, 696 Virginia Road, Concord, MA 01742–2751

New Jersey

Philadelphia District Engineer, ATTN: CENAP–OP–R, Wannamaker Building, 100 Penn Square East, Philadelphia, PA 19107–3390

New Mexico

Albuquerque District Engineer, ATTN: CESPA–OD–R, 4101 Jefferson Plaza NE, Albuquerque, NM 87109–3435

New York

New York District Engineer, ATTN: CENAN–OP–R, 26 Federal Plaza, New York, NY 10278–0090

North Carolina

Wilmington District Engineer, ATTN: CESAW–RG, P.O. Box 1890, Wilmington, NC 28402–1890

North Dakota

Omaha District Engineer, ATTN: CENWO–OP–R, 106 South 15th Street, Omaha, NE 68102–1618

Ohio

Huntington District Engineer, ATTN: CELRH–OR–F, 502 8th Street, Huntington, WV 25701–2070

Oklahoma

Tulsa District Engineer, ATTN: CESWT—PE–R, 1645 S. 101st East Ave, Tulsa, OK 74128–4609

Oregon

Portland District Engineer, ATTN: CENWP–PE–G, P.O. Box 2946, Portland, OR 97208–2946

Pennsylvania

Baltimore District Engineer, ATTN: CENAB–OP–R, P.O. Box 1715, Baltimore, MD 21203–1715

Rhode Island

New England District Engineer, ATTN: CENAE–R, 696 Virginia Road, Concord, MA 01742–2751

South Carolina

Charleston District Engineer, ATTN: CESAC–CO–P, P.O. Box 919, Charleston, SC 29402–0919

South Dakota

Omaha District Engineer, ATTN: CENWO–OP–R, 106 South 15th Street, Omaha, NE 68102–1618

Tennessee

Nashville District Engineer, ATTN: CELRN–OP–F, P.O. Box 1070, Nashville, TN 37202–1070

Texas

Ft. Worth District Engineer, ATTN: CESWF–PER–R, P.O. Box 17300, Ft. Worth, TX 76102–0300

Utah

Sacramento District Engineer, ATTN: CESPK–CO–R, 1325 J Street, CA 95814–2922

Vermont

New England District Engineer, ATTN: CENAE–R, 696 Virginia Road, Concord, MA 01742–2751

Virginia

Norfolk District Engineer, ATTN: CENAO–OP–R, 803 Front Street, Norfolk, VA 23510–1096

Washington

Seattle District Engineer, ATTN: CENWS–OP–RG, P.O. Box 3755, Seattle, WA 98124–2255

West Virginia

Huntington District Engineer, ATTN: CELRH–OR–F, 502 8th Street, Huntington, WV 25701–2070

Wisconsin

St. Paul District Engineer, ATTN: CEMVP–CO–R, 190 Fifth Street East, St. Paul, MN 55101–1638

Wyoming

Omaha District Engineer, ATTN: CENWO–OP–R, 106 South 15th Street, Omaha, NE 68102–1618

District of Columbia

Baltimore District Engineer, ATTN: CENAB–OP–R, P.O. Box 1715, Baltimore, MD 21203–1715

Pacific Territories (American Samoa, Guam, & Commonwealth of the Northern Mariana Islands)

Honolulu District Engineer, ATTN: CEPOH–EC–R, Building 230, Fort Shafter, Honolulu, HI 96858–5440

Puerto Rico & Virgin Islands

Jacksonville District Engineer, ATTN: CESAJ–CO–R, P.O. Box 4970, Jacksonville, FL 32202–4412

Dated: January 4, 2002.

Approved:

Robert H. Griffin,

Brigadier General, U.S. Army, Director of Civil Works.

Nationwide Permits, Conditions, Further Information, and Definitions

A. Index of Nationwide Permits, Conditions, Further Information, and Definitions

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Nationwide Permit General Conditions

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B. Nationwide Permits

1. *Aids to Navigation.* The placement of aids to navigation and Regulatory markers which are approved by and installed in accordance with the requirements of the U.S. Coast Guard (USCG) (See 33 CFR, chapter I, subchapter C part 66). (Section 10)

2. *Structures in Artificial Canals.* Structures constructed in artificial canals within principally residential developments where the connection of the canal to navigable water of the US has been previously authorized (see 33 CFR 322.5(g)). (Section 10)

3. *Maintenance.* Activities related to:

(i) The repair, rehabilitation, or replacement of any previously authorized, currently serviceable, structure, or fill, or of any currently serviceable structure or fill authorized by 33 CFR 330.3, provided that the structure or fill is not to be put to uses differing from those uses specified or contemplated for it in the original permit or the most recently authorized modification. Minor deviations in the structure's configuration or filled area including those due to changes in materials, construction techniques, or current construction codes or safety standards which are necessary to make repair, rehabilitation, or replacement are permitted, provided the adverse environmental effects resulting from such repair, rehabilitation, or replacement are minimal. Currently serviceable means useable as is or with some maintenance, but not so degraded as to essentially require reconstruction. This NWP authorizes the repair, rehabilitation, or replacement of those structures or fills destroyed or damaged by storms, floods, fire or other discrete events, provided the repair, rehabilitation, or replacement is commenced, or is under contract to commence, within two years of the date of their destruction or damage. In cases of catastrophic events, such as hurricanes or tornadoes, this two-year limit may be waived by the District Engineer, provided the permittee can demonstrate funding, contract, or other similar delays.

(ii) Discharges of dredged or fill material, including excavation, into all waters of the US to remove accumulated sediments and debris in the vicinity of, and within, existing structures (e.g., bridges, culverted road crossings, water intake structures, etc.) and the placement of new or additional riprap to protect the structure, provided the permittee notifies the District Engineer in accordance with General Condition 13. The removal of sediment is limited to the minimum necessary to restore the waterway in the immediate vicinity of the structure to the approximate dimensions that existed when the structure was built, but cannot extend further than 200 feet in any direction from the structure. The placement of rip rap must be the minimum necessary to protect the structure or to ensure the safety of the structure. All excavated materials must be deposited and retained in an upland area unless otherwise specifically approved by the District Engineer under separate authorization. Any bank stabilization measures not directly associated with the structure will require a separate authorization from the District Engineer.

(iii) Discharges of dredged or fill material, including excavation, into all waters of the US for activities associated with the restoration of upland areas damaged by a storm, flood, or other discrete event, including the construction, placement, or installation of upland protection structures and minor dredging to remove obstructions in a water of the US. (Uplands lost as a result of a storm, flood, or other discrete event can be replaced without a Section 404 permit provided the uplands are restored to their original pre-event location. This NWP is for the activities in waters of the US associated with the replacement of the uplands.) The permittee must notify the District Engineer, in accordance with General Condition 13, within 12-months of the date of the damage and the work must commence, or be under contract to commence, within two years of the date of the damage. The permittee should provide evidence, such as a recent topographic survey or photographs, to justify the extent of the proposed restoration. The restoration of the damaged areas cannot exceed the contours, or ordinary high water mark, that existed before the damage. The District Engineer retains the right to determine the extent of the pre-existing conditions and the extent of any restoration work authorized by this permit. Minor dredging to remove obstructions from the adjacent waterbody is limited to 50 cubic yards below the plane of the ordinary high water mark, and is limited to the amount necessary to restore the pre-existing bottom contours of the waterbody. The dredging may not be done primarily to obtain fill for any restoration activities. The discharge of dredged or fill material and all related work needed to restore the upland must be part of a single and complete project. This permit cannot be used in conjunction with NWP 18 or NWP 19 to restore damaged upland areas. This permit cannot be used to reclaim historic lands lost, over an extended period, to normal erosion processes.

This permit does not authorize maintenance dredging for the primary purpose of navigation and beach restoration. This permit does not authorize new stream channelization or stream relocation projects. Any work authorized by this permit must not cause more than minimal degradation of water quality, more than minimal changes to the flow characteristics of the stream, or increase flooding (See General Conditions 9 and 21). (Sections 10 and 404)

Note: This NWP authorizes the repair, rehabilitation, or replacement of any previously authorized structure or fill that does not qualify for the Section 404(f) exemption for maintenance.

4. *Fish and Wildlife Harvesting, Enhancement, and Attraction Devices and Activities.* Fish and wildlife harvesting devices and activities such as pound nets, crab traps, crab dredging, eel pots, lobster traps, duck blinds, clam and oyster digging; and small fish attraction devices such as open water fish concentrators (sea kites, etc.). This NWP authorizes shellfish seeding provided this activity does not occur in wetlands or sites that support submerged aquatic vegetation (including sites where submerged aquatic vegetation is documented to exist, but may not be present in a given year.). This NWP does not authorize artificial reefs or impoundments and semi-impoundments of waters of the US for the culture or holding of motile species such as lobster or the use of covered oyster trays or clam racks. (Sections 10 and 404)

5. *Scientific Measurement Devices.* Devices, whose purpose is to measure and record scientific data such as staff gages, tide gages, water recording devices, water quality testing and improvement devices and similar structures. Small weirs and flumes constructed primarily to record water quantity and velocity are also authorized provided the discharge is limited to 25 cubic yards and further for discharges of 10 to 25 cubic yards provided the permittee notifies the District Engineer in accordance with the ''Notification'' General Condition. (Sections 10 and 404)

6. *Survey Activities.* Survey activities including core sampling, seismic exploratory operations, plugging of seismic shot holes and other exploratory-type bore holes, soil survey, sampling, and historic resources surveys. Discharges and structures associated with the recovery of historic resources are not authorized by this NWP. Drilling and the discharge of excavated material from test wells for oil and gas exploration is not authorized by this NWP; the plugging of such wells is authorized. Fill placed for roads, pads and other similar activities is not authorized by this NWP. The NWP does not authorize any permanent structures. The discharge of drilling mud and cuttings may require a permit under section 402 of the CWA. (Sections 10 and 404)

7. *Outfall Structures and Maintenance.* Activities related to:

(i) Construction of outfall structures and associated intake structures where the effluent from the outfall is authorized, conditionally authorized, or specifically exempted, or are otherwise in compliance with regulations issued under the National Pollutant Discharge Elimination System Program (Section 402 of the CWA), and

(ii) Maintenance excavation, including dredging, to remove accumulated sediments blocking or restricting outfall and intake structures, accumulated sediments from small impoundments associated with outfall and intake structures, and accumulated sediments from canals associated with outfall and intake structures, provided that the activity meets all of the following criteria:

a. The permittee notifies the District Engineer in accordance with General Condition 13;

b. The amount of excavated or dredged material must be the minimum necessary to restore the outfalls, intakes, small impoundments, and canals to original design capacities and design configurations (i.e., depth and width);

c. The excavated or dredged material is deposited and retained at an upland site, unless otherwise approved by the District Engineer under separate authorization; and

d. Proper soil erosion and sediment control measures are used to minimize reentry of sediments into waters of the US.

The construction of intake structures is not authorized by this NWP, unless they are directly associated with an authorized outfall structure. For maintenance excavation and dredging to remove accumulated sediments, the notification must include information regarding the original design capacities and configurations of the facility and the presence of special aquatic sites (e.g., vegetated shallows) in the vicinity of the proposed work. (Sections 10 and 404)

8. *Oil and Gas Structures.* Structures for the exploration, production, and transportation of oil, gas, and minerals on the outer continental shelf within areas leased for such purposes by the DOI, Minerals Management Service (MMS). Such structures shall not be placed within the limits of any designated shipping safety fairway or traffic separation scheme, except temporary anchors that comply with the fairway regulations in 33 CFR 322.5(l). (Where such limits have not been designated, or where changes are anticipated, District Engineers will consider asserting discretionary authority in accordance with 33 CFR 330.4(e) and will also review such proposals to ensure they comply with the provisions of the fairway regulations in 33 CFR 322.5(l). Any Corps review under this permit will be limited to the effects on navigation and national security in accordance with 33 CFR 322.5(f)). Such structures will not be placed in established danger zones or restricted areas as designated in 33 CFR part 334: nor will such structures be permitted in EPA or Corps designated dredged material disposal areas. (Section 10)

9. *Structures in Fleeting and Anchorage Areas.* Structures, buoys, floats and other devices placed within anchorage or fleeting areas to facilitate moorage of vessels where the USCG has established such areas for that purpose. (Section 10)

10. *Mooring Buoys.* Non-commercial, single-boat, mooring buoys. (Section 10)

11. *Temporary Recreational Structures.* Temporary buoys, markers, small floating docks, and similar structures placed for recreational use during specific events such as water skiing competitions and boat races or seasonal use provided that such structures are removed within 30 days after use has been discontinued. At Corps of Engineers reservoirs, the reservoir manager must approve each buoy or marker individually. (Section 10)

12. *Utility Line Activities.* Activities required for the construction, maintenance and repair of utility lines and associated facilities in waters of the US as follows:

(i) Utility lines: The construction, maintenance, or repair of utility lines, including outfall and intake structures and the associated excavation, backfill, or bedding for the utility lines, in all waters of the US, provided there is no change in preconstruction contours. A ''utility line'' is defined as any pipe or pipeline for the transportation of any gaseous, liquid, liquescent, or slurry substance, for any purpose, and any cable, line, or wire for the transmission for any purpose of electrical energy, telephone, and telegraph messages, and radio and television communication (see Note 1, below). Material resulting from trench excavation may be temporarily sidecast (up to three months) into waters of the US, provided that the material is not placed in such a manner that it is dispersed by currents or other forces. The District Engineer may extend the period of temporary side casting not to exceed a total of 180 days, where appropriate. In wetlands, the top 6″ to 12″ of the trench should normally be backfilled with topsoil from the trench. Furthermore, the trench cannot be constructed in such a manner as to drain waters of the US (e.g., backfilling with extensive gravel layers, creating a french drain effect). For example, utility line trenches can be backfilled with clay blocks to ensure that the trench does not drain the waters of the US through which the utility line is installed. Any exposed slopes and stream banks must be stabilized immediately upon completion of the utility line crossing of each waterbody.

(ii) Utility line substations: The construction, maintenance, or expansion of a substation facility associated with a power line or utility line in non-tidal waters of the US, excluding non-tidal wetlands adjacent to tidal waters, provided the activity does not result in the loss of greater than ½-acre of non-tidal waters of the US.

(iii) Foundations for overhead utility line towers, poles, and anchors: The construction or maintenance of foundations for overhead utility line towers, poles, and anchors in all waters of the US, provided the foundations are the minimum size necessary and separate footings for each tower leg (rather than a larger single pad) are used where feasible.

(iv) Access roads: The construction of access roads for the construction and maintenance of utility lines, including overhead power lines and utility line substations, in non-tidal waters of the US, excluding non-tidal wetlands adjacent to tidal waters, provided the discharges do not cause the loss of greater than ½-acre of non-tidal waters of the US. Access roads shall be the minimum width necessary (see Note 2, below). Access roads must be constructed so that the length of the road minimizes the adverse effects on waters of the US and as near as possible to preconstruction contours and

elevations (e.g., at grade corduroy roads or geotextile/gravel roads). Access roads constructed above preconstruction contours and elevations in waters of the US must be properly bridged or culverted to maintain surface flows.

The term ''utility line'' does not include activities which drain a water of the US, such as drainage tile, or french drains; however, it does apply to pipes conveying drainage from another area. For the purposes of this NWP, the loss of waters of the US includes the filled area plus waters of the US that are adversely affected by flooding, excavation, or drainage as a result of the project. Activities authorized by paragraph (i) through (iv) may not exceed a total of ½-acre loss of waters of the US. Waters of the US temporarily affected by filling, flooding, excavation, or drainage, where the project area is restored to preconstruction contours and elevation, is not included in the calculation of permanent loss of waters of the US. This includes temporary construction mats (e.g., timber, steel, geotextile) used during construction and removed upon completion of the work. Where certain functions and values of waters of the US are permanently adversely affected, such as the conversion of a forested wetland to a herbaceous wetland in the permanently maintained utility line right-of-way, mitigation will be required to reduce the adverse effects of the project to the minimal level.

Mechanized land clearing necessary for the construction, maintenance, or repair of utility lines and the construction, maintenance and expansion of utility line substations, foundations for overhead utility lines, and access roads is authorized, provided the cleared area is kept to the minimum necessary and preconstruction contours are maintained as near as possible. The area of waters of the US that is filled, excavated, or flooded must be limited to the minimum necessary to construct the utility line, substations, foundations, and access roads. Excess material must be removed to upland areas immediately upon completion of construction. This NWP may authorize utility lines in or affecting navigable waters of the US even if there is no associated discharge of dredged or fill material (See 33 CFR part 322).

Notification: The permittee must notify the District Engineer in accordance with General Condition 13, if any of the following criteria are met:

(a) Mechanized land clearing in a forested wetland for the utility line right-of-way;

(b) A Section 10 permit is required;

(c) The utility line in waters of the US, excluding overhead lines, exceeds 500 feet;

(d) The utility line is placed within a jurisdictional area (i.e., water of the US), and it runs parallel to a stream bed that is within that jurisdictional area;

(e) Discharges associated with the construction of utility line substations that result in the loss of greater than ⅒-acre of waters of the US; or

(f) Permanent access roads constructed above grade in waters of the US for a distance of more than 500 feet.

(g) Permanent access roads constructed in waters of the US with impervious materials. (Sections 10 and 404)

Note 1: Overhead utility lines constructed over Section 10 waters and utility lines that are routed in or under Section 10 waters without a discharge of dredged or fill material require a Section 10 permit; except for pipes or pipelines used to transport gaseous, liquid, liquescent, or slurry substances over navigable waters of the US, which are considered to be bridges, not utility lines, and may require a permit from the USCG pursuant to section 9 of the Rivers and Harbors Act of 1899. However, any discharges of dredged or fill material associated with such pipelines will require a Corps permit under Section 404.

Note 2: Access roads used for both construction and maintenance may be authorized, provided they meet the terms and conditions of this NWP. Access roads used solely for construction of the utility line must be removed upon completion of the work and the area restored to preconstruction contours, elevations, and wetland conditions. Temporary access roads for construction may be authorized by NWP 33.

Note 3: Where the proposed utility line is constructed or installed in navigable waters of the US (*i.e.,* Section 10 waters), copies of the PCN and NWP verification will be sent by the Corps to the National Oceanic and Atmospheric Administration (NOAA), National Ocean Service (NOS), for charting the utility line to protect navigation.

13. *Bank Stabilization.* Bank stabilization activities necessary for erosion prevention provided the activity meets all of the following criteria:

a. No material is placed more than the minimum needed for erosion protection;

b. The bank stabilization activity is less than 500 feet in length;

c. The activity will not exceed an average of one cubic yard per running foot placed along the bank below the plane of the ordinary high water mark or the high tide line;

d. No material is placed in any special aquatic site, including wetlands;

e. No material is of the type, or is placed in any location, or in any manner, to impair surface water flow into or out of any wetland area;

f. No material is placed in a manner that will be eroded by normal or expected high flows (properly anchored trees and treetops may be used in low energy areas); and,

g. The activity is part of a single and complete project.

Bank stabilization activities in excess of 500 feet in length or greater than an average of one cubic yard per running foot may be authorized if the permittee notifies the District Engineer in accordance with the ''*Notification*'' General Condition 13 and the District Engineer determines the activity complies with the other terms and conditions of the NWP and the adverse environmental effects are minimal both individually and cumulatively. This NWP may not be used for the channelization of waters of the US. (Sections 10 and 404)

14. *Linear Transportation Projects.* Activities required for the construction, expansion, modification, or improvement of linear transportation crossings (e.g., highways, railways, trails, airport runways, and taxiways) in waters of the US, including wetlands, if the activity meets the following criteria:

a. This NWP is subject to the following acreage limits:

(1) For linear transportation projects in non-tidal waters, provided the discharge does not cause the loss of greater than ½-acre of waters of the US;

(2) For linear transportation projects in tidal waters, provided the discharge does not cause the loss of greater than ⅓-acre of waters of the US.

b. The permittee must notify the District Engineer in accordance with General Condition 13 if any of the following criteria are met:

(1) The discharge causes the loss of greater than ⅒-acre of waters of the US; or

(2) There is a discharge in a special aquatic site, including wetlands;

c. The *notification* must include a compensatory mitigation proposal to offset permanent losses of waters of the US to ensure that those losses result only in minimal adverse effects to the aquatic environment and a statement describing how temporary losses will be minimized to the maximum extent practicable;

d. For discharges in special aquatic sites, including wetlands, and stream riffle and pool complexes, the *notification* must include a delineation of the affected special aquatic sites;

e. The width of the fill is limited to the minimum necessary for the crossing;

f. This permit does not authorize stream channelization, and the authorized activities must not cause more than minimal changes to the hydraulic flow characteristics of the stream, increase flooding, or cause more

than minimal degradation of water quality of any stream (see General Conditions 9 and 21);

g. This permit cannot be used to authorize non-linear features commonly associated with transportation projects, such as vehicle maintenance or storage buildings, parking lots, train stations, or aircraft hangars; and

h. The crossing is a single and complete project for crossing waters of the US. Where a road segment (*i.e.,* the shortest segment of a road with independent utility that is part of a larger project) has multiple crossings of streams (several single and complete projects) the Corps will consider whether it should use its discretionary authority to require an Individual Permit. (Sections 10 and 404)

Note: Some discharges for the construction of farm roads, forest roads, or temporary roads for moving mining equipment may be eligible for an exemption from the need for a Section 404 permit (see 33 CFR 323.4).

15. *U.S. Coast Guard Approved Bridges.* Discharges of dredged or fill material incidental to the construction of bridges across navigable waters of the US, including cofferdams, abutments, foundation seals, piers, and temporary construction and access fills provided such discharges have been authorized by the USCG as part of the bridge permit. Causeways and approach fills are not included in this NWP and will require an individual or regional Section 404 permit. (Section 404)

16. *Return Water From Upland Contained Disposal Areas.* Return water from upland, contained dredged material disposal area. The dredging itself may require a Section 404 permit (33 CFR 323.2(d)), but will require a Section 10 permit if located in navigable waters of the US. The return water from a contained disposal area is administratively defined as a discharge of dredged material by 33 CFR 323.2(d), even though the disposal itself occurs on the upland and does not require a Section 404 permit. This NWP satisfies the technical requirement for a Section 404 permit for the return water where the quality of the return water is controlled by the state through the Section 401 certification procedures. (Section 404)

17. *Hydropower Projects.* Discharges of dredged or fill material associated with (a) small hydropower projects at existing reservoirs where the project, which includes the fill, are licensed by the Federal Energy Regulatory Commission (FERC) under the Federal Power Act of 1920, as amended; and has a total generating capacity of not more than 5000 kW; and the permittee notifies the District Engineer in accordance with the ''Notification'' General Condition; or (b) hydropower projects for which the FERC has granted an exemption from licensing pursuant to section 408 of the Energy Security Act of 1980 (16 U.S.C. 2705 and 2708) and section 30 of the Federal Power Act, as amended; provided the permittee notifies the District Engineer in accordance with the ''Notification'' General Condition. (Section 404)

18. *Minor Discharges.* Minor discharges of dredged or fill material into all waters of the US if the activity meets all of the following criteria:

a. The quantity of discharged material and the volume of area excavated do not exceed 25 cubic yards below the plane of the ordinary high water mark or the high tide line;

b. The discharge, including any excavated area, will not cause the loss of more than 1/10-acre of a special aquatic site, including wetlands. For the purposes of this NWP, the acreage limitation includes the filled area and excavated area plus special aquatic sites that are adversely affected by flooding and special aquatic sites that are drained so that they would no longer be a water of the US as a result of the project;

c. If the discharge, including any excavated area, exceeds 10 cubic yards below the plane of the ordinary high water mark or the high tide line or if the discharge is in a special aquatic site, including wetlands, the permittee notifies the District Engineer in accordance with the ''Notification'' General Condition. For discharges in special aquatic sites, including wetlands, the notification must also include a delineation of affected special aquatic sites, including wetlands (also see 33 CFR 330.1(e)); and

d. The discharge, including all attendant features, both temporary and permanent, is part of a single and complete project and is not placed for the purpose of a stream diversion. (Sections 10 and 404)

19. *Minor Dredging.* Dredging of no more than 25 cubic yards below the plane of the ordinary high water mark or the mean high water mark from navigable waters of the US (i.e., Section 10 waters) as part of a single and complete project. This NWP does not authorize the dredging or degradation through siltation of coral reefs, sites that support submerged aquatic vegetation (including sites where submerged aquatic vegetation is documented to exist, but may not be present in a given year), anadromous fish spawning areas, or wetlands, or the connection of canals or other artificial waterways to navigable waters of the US (see 33 CFR 322.5(g)). (Sections 10 and 404)

20. *Oil Spill Cleanup.* Activities required for the containment and cleanup of oil and hazardous substances which are subject to the National Oil and Hazardous Substances Pollution Contingency Plan (40 CFR part 300) provided that the work is done in accordance with the Spill Control and Countermeasure Plan required by 40 CFR 112.3 and any existing state contingency plan and provided that the Regional Response Team (if one exists in the area) concurs with the proposed containment and cleanup action. (Sections 10 and 404)

21. *Surface Coal Mining Activities.* Discharges of dredged or fill material into waters of the US associated with surface coal mining and reclamation operations provided the coal mining activities are authorized by the DOI, Office of Surface Mining (OSM), or by states with approved programs under Title V of the Surface Mining Control and Reclamation Act of 1977 and provided the permittee notifies the District Engineer in accordance with the ''Notification'' General Condition. In addition, to be authorized by this NWP, the District Engineer must determine that the activity complies with the terms and conditions of the NWP and that the adverse environmental effects are minimal both individually and cumulatively and must notify the project sponsor of this determination in writing. The Corps, at the discretion of the District Engineer, may require a bond to ensure success of the mitigation, if no other Federal or state agency has required one. For discharges in special aquatic sites, including wetlands, and stream riffle and pool complexes, the notification must also include a delineation of affected special aquatic sites, including wetlands. (also, see 33 CFR 330.1(e))

Mitigation: In determining the need for as well as the level and type of mitigation, the District Engineer will ensure no more than minimal adverse effects to the aquatic environment occur. As such, District Engineers will determine on a case-by-case basis the requirement for adequate mitigation to ensure the effects to aquatic systems are minimal. In cases where OSM or the state has required mitigation for the loss of aquatic habitat, the Corps may consider this in determining appropriate mitigation under Section 404. (Sections 10 and 404)

22. *Removal of Vessels.* Temporary structures or minor discharges of dredged or fill material required for the removal of wrecked, abandoned, or disabled vessels, or the removal of man-

made obstructions to navigation. This NWP does not authorize the removal of vessels listed or determined eligible for listing on the National Register of Historic Places unless the District Engineer is notified and indicates that there is compliance with the ''Historic Properties'' General Condition. This NWP does not authorize maintenance dredging, shoal removal, or riverbank snagging. Vessel disposal in waters of the US may need a permit from EPA (see 40 CFR 229.3). (Sections 10 and 404)

23. *Approved Categorical Exclusions.* Activities undertaken, assisted, authorized, regulated, funded, or financed, in whole or in part, by another Federal agency or department where that agency or department has determined, pursuant to the Council on Environmental Quality Regulation for Implementing the Procedural Provisions of the National Environmental Policy Act (NEPA) (40 CFR part 1500 *et seq.*), that the activity, work, or discharge is categorically excluded from environmental documentation, because it is included within a category of actions which neither individually nor cumulatively have a significant effect on the human environment, and the Office of the Chief of Engineers (ATTN: CECW-OR) has been furnished notice of the agency's or department's application for the categorical exclusion and concurs with that determination. Before approval for purposes of this NWP of any agency's categorical exclusions, the Chief of Engineers will solicit public comment. In addressing these comments, the Chief of Engineers may require certain conditions for authorization of an agency's categorical exclusions under this NWP. (Sections 10 and 404)

24. *State Administered Section 404 Program.* Any activity permitted by a state administering its own Section 404 permit program pursuant to 33 U.S.C. 1344(g)–(l) is permitted pursuant to section 10 of the Rivers and Harbors Act of 1899. Those activities that do not involve a Section 404 state permit are not included in this NWP, but certain structures will be exempted by section 154 of Pub. L. 94–587, 90 Stat. 2917 (33 U.S.C. 591) (see 33 CFR 322.3(a)(2)). (Section 10)

25. *Structural Discharges.* Discharges of material such as concrete, sand, rock, etc., into tightly sealed forms or cells where the material will be used as a structural member for standard pile supported structures, such as bridges, transmission line footings, and walkways or for general navigation, such as mooring cells, including the excavation of bottom material from within the form prior to the discharge of concrete, sand, rock, etc. This NWP does not authorize filled structural members that would support buildings, building pads, homes, house pads, parking areas, storage areas and other such structures. The structure itself may require a Section 10 permit if located in navigable waters of the US. (Section 404)

26. [Reserved]

27. *Stream and Wetland Restoration Activities.* Activities in waters of the US associated with the restoration of former waters, the enhancement of degraded tidal and non-tidal wetlands and riparian areas, the creation of tidal and non-tidal wetlands and riparian areas, and the restoration and enhancement of non-tidal streams and non-tidal open water areas as follows:

(a) *The activity is conducted on:*

(1) Non-Federal public lands and private lands, in accordance with the terms and conditions of a binding wetland enhancement, restoration, or creation agreement between the landowner and the U.S. Fish and Wildlife Service (FWS) or the Natural Resources Conservation Service (NRCS), the National Marine Fisheries Service, the National Ocean Service, or voluntary wetland restoration, enhancement, and creation actions documented by the NRCS pursuant to NRCS regulations; or

(2) Reclaimed surface coal mine lands, in accordance with a Surface Mining Control and Reclamation Act permit issued by the OSM or the applicable state agency (the future reversion does not apply to streams or wetlands created, restored, or enhanced as mitigation for the mining impacts, nor naturally due to hydrologic or topographic features, nor for a mitigation bank); or

(3) Any other public, private or tribal lands;

(b) *Notification:* For activities on any public or private land that are not described by paragraphs (a)(1) or (a)(2) above, the permittee must notify the District Engineer in accordance with General Condition 13; and

(c) Planting of only native species should occur on the site.

Activities authorized by this NWP include, to the extent that a Corps permit is required, but are not limited to: the removal of accumulated sediments; the installation, removal, and maintenance of small water control structures, dikes, and berms; the installation of current deflectors; the enhancement, restoration, or creation of riffle and pool stream structure; the placement of in-stream habitat structures; modifications of the stream bed and/or banks to restore or create stream meanders; the backfilling of artificial channels and drainage ditches; the removal of existing drainage structures; the construction of small nesting islands; the construction of open water areas; the construction of oyster habitat over unvegetated bottom in tidal waters; activities needed to reestablish vegetation, including plowing or discing for seed bed preparation and the planting of appropriate wetland species; mechanized land clearing to remove non-native invasive, exotic or nusiance vegetation; and other related activities.

This NWP does not authorize the conversion of a stream to another aquatic use, such as the creation of an impoundment for waterfowl habitat. This NWP does not authorize stream channelization. This NWP does not authorize the conversion of natural wetlands to another aquatic use, such as creation of waterfowl impoundments where a forested wetland previously existed. However, this NWP authorizes the relocation of non-tidal waters, including non-tidal wetlands, on the project site provided there are net gains in aquatic resource functions and values. For example, this NWP may authorize the creation of an open water impoundment in a non-tidal emergent wetland, provided the non-tidal emergent wetland is replaced by creating that wetland type on the project site. This NWP does not authorize the relocation of tidal waters or the conversion of tidal waters, including tidal wetlands, to other aquatic uses, such as the conversion of tidal wetlands into open water impoundments.

Reversion. For enhancement, restoration, and creation projects conducted under paragraphs (a)(3), this NWP does not authorize any future discharge of dredged or fill material associated with the reversion of the area to its prior condition. In such cases a separate permit would be required for any reversion. For restoration, enhancement, and creation projects conducted under paragraphs (a)(1) and (a)(2), this NWP also authorizes any future discharge of dredged or fill material associated with the reversion of the area to its documented prior condition and use (i.e., prior to the restoration, enhancement, or creation activities). The reversion must occur within five years after expiration of a limited term wetland restoration or creation agreement or permit, even if the discharge occurs after this NWP expires. This NWP also authorizes the reversion of wetlands that were restored, enhanced, or created on prior-converted cropland that has not been abandoned, in accordance with a binding agreement

between the landowner and NRCS or FWS (even though the restoration, enhancement, or creation activity did not require a Section 404 permit). The five-year reversion limit does not apply to agreements without time limits reached under paragraph (a)(1). The prior condition will be documented in the original agreement or permit, and the determination of return to prior conditions will be made by the Federal agency or appropriate state agency executing the agreement or permit. Before any reversion activity the permittee or the appropriate Federal or state agency must notify the District Engineer and include the documentation of the prior condition. Once an area has reverted to its prior physical condition, it will be subject to whatever the Corps Regulatory requirements will be at that future date. (Sections 10 and 404)

Note: Compensatory mitigation is not required for activities authorized by this NWP, provided the authorized work results in a net increase in aquatic resource functions and values in the project area. This NWP can be used to authorize compensatory mitigation projects, including mitigation banks, provided the permittee notifies the District Engineer in accordance with General Condition 13, and the project includes compensatory mitigation for impacts to waters of the US caused by the authorized work. However, this NWP does not authorize the reversion of an area used for a compensatory mitigation project to its prior condition. NWP 27 can be used to authorize impacts at a mitigation bank, but only in circumstances where it has been approved under the Interagency Federal Mitigation Bank Guidelines.

28. *Modifications of Existing Marinas.* Reconfiguration of existing docking facilities within an authorized marina area. No dredging, additional slips, dock spaces, or expansion of any kind within waters of the US is authorized by this NWP. (Section 10)

29. *Single-family Housing.* Discharges of dredged or fill material into non-tidal waters of the US, including non-tidal wetlands for the construction or expansion of a single-family home and attendant features (such as a garage, driveway, storage shed, and/or septic field) for an Individual Permittee provided that the activity meets all of the following criteria:

a. The discharge does not cause the loss of more than ¼-acre of non-tidal waters of the US, including non-tidal wetlands;

b. The permittee notifies the District Engineer in accordance with the ''Notification'' General Condition;

c. The permittee has taken all practicable actions to minimize the on-site and off-site impacts of the discharge. For example, the location of the home may need to be adjusted on-site to avoid flooding of adjacent property owners;

d. The discharge is part of a single and complete project; furthermore, that for any subdivision created on or after November 22, 1991, the discharges authorized under this NWP may not exceed an aggregate total loss of waters of the US of ¼-acre for the entire subdivision;

e. An individual may use this NWP only for a single-family home for a personal residence;

f. This NWP may be used only once per parcel;

g. This NWP may not be used in conjunction with NWP 14 or NWP 18, for any parcel; and,

h. Sufficient vegetated buffers must be maintained adjacent to all open water bodies, streams, etc., to preclude water quality degradation due to erosion and sedimentation.

For the purposes of this NWP, the acreage of loss of waters of the US includes the filled area previously permitted, the proposed filled area, and any other waters of the US that are adversely affected by flooding, excavation, or drainage as a result of the project. This NWP authorizes activities only by individuals; for this purpose, the term ''individual'' refers to a natural person and/or a married couple, but does not include a corporation, partnership, or similar entity. For the purposes of this NWP, a parcel of land is defined as ''the entire contiguous quantity of land in possession of, recorded as property of, or owned (in any form of ownership, including land owned as a partner, corporation, joint tenant, etc.) by the same individual (and/or that individual's spouse), and comprises not only the area of wetlands sought to be filled, but also all land contiguous to those wetlands, owned by the individual (and/or that individual's spouse) in any form of ownership.'' (Sections 10 and 404)

30. *Moist Soil Management for Wildlife.* Discharges of dredged or fill material and maintenance activities that are associated with moist soil management for wildlife performed on non-tidal Federally-owned or managed, state-owned or managed property, and local government agency-owned or managed property, for the purpose of continuing ongoing, site-specific, wildlife management activities where soil manipulation is used to manage habitat and feeding areas for wildlife. Such activities include, but are not limited to: The repair, maintenance or replacement of existing water control structures; the repair or maintenance of dikes; and plowing or discing to impede succession, prepare seed beds, or establish fire breaks. Sufficient vegetated buffers must be maintained adjacent to all open water bodies, streams, etc., to preclude water quality degradation due to erosion and sedimentation. This NWP does not authorize the construction of new dikes, roads, water control structures, etc. associated with the management areas. This NWP does not authorize converting wetlands to uplands, impoundments or other open water bodies. (Section 404)

31. *Maintenance of Existing Flood Control Facilities.* Discharge of dredge or fill material resulting from activities associated with the maintenance of existing flood control facilities, including debris basins, retention/detention basins, and channels that

(i) were previously authorized by the Corps by Individual Permit, General Permit, by 33 CFR 330.3, or did not require a permit at the time it was constructed, or

(ii) were constructed by the Corps and transferred to a non-Federal sponsor for operation and maintenance. Activities authorized by this NWP are limited to those resulting from maintenance activities that are conducted within the ''maintenance baseline,'' as described in the definition below. Activities including the discharges of dredged or fill materials, associated with maintenance activities in flood control facilities in any watercourse that has previously been determined to be within the maintenance baseline, are authorized under this NWP. The NWP does not authorize the removal of sediment and associated vegetation from the natural water courses except to the extent that these have been included in the maintenance baseline. All dredged material must be placed in an upland site or an authorized disposal site in waters of the US, and proper siltation controls must be used. (Activities of any kind that result in only incidental fallback, or only the cutting and removing of vegetation above the ground, e.g., mowing, rotary cutting, and chainsawing, where the activity neither substantially disturbs the root system nor involves mechanized pushing, dragging, or other similar activities that redeposit excavated soil material, do not require a Section 404 permit in accordance with 33 CFR 323.2(d)(2)).

Notification: After the maintenance baseline is established, and before any maintenance work is conducted, the permittee must notify the District Engineer in accordance with the ''Notification'' General Condition. The notification may be for activity-specific

maintenance or for maintenance of the entire flood control facility by submitting a five year (or less) maintenance plan.

Maintenance Baseline: The maintenance baseline is a description of the physical characteristics (e.g., depth, width, length, location, configuration, or design flood capacity, etc.) of a flood control project within which maintenance activities are normally authorized by NWP 31, subject to any case-specific conditions required by the District Engineer. The District Engineer will approve the maintenance baseline based on the approved or constructed capacity of the flood control facility, whichever is smaller, including any areas where there are no constructed channels, but which are part of the facility. If no evidence of the constructed capacity exist, the approved constructed capacity will be used. The prospective permittee will provide documentation of the physical characteristics of the flood control facility (which will normally consist of as-built or approved drawings) and documentation of the design capacities of the flood control facility. The documentation will also include BMPs to ensure that the impacts to the aquatic environment are minimal, especially in maintenance areas where there are no constructed channels. (The Corps may request maintenance records in areas where there has not been recent maintenance.) Revocation or modification of the final determination of the maintenance baseline can only be done in accordance with 33 CFR 330.5. Except in emergencies as described below, this NWP can not be used until the District Engineer approves the maintenance baseline and determines the need for mitigation and any regional or activity-specific conditions. Once determined, the maintenance baseline will remain valid for any subsequent reissuance of this NWP. This permit does not authorize maintenance of a flood control facility that has been abandoned. A flood control facility will be considered abandoned if it has operated at a significantly reduced capacity without needed maintenance being accomplished in a timely manner.

Mitigation: The District Engineer will determine any required mitigation one-time only for impacts associated with maintenance work at the same time that the maintenance baseline is approved. Such one-time mitigation will be required when necessary to ensure that adverse environmental impacts are no more than minimal, both individually and cumulatively. Such mitigation will only be required once for any specific reach of a flood control project. However, if one-time mitigation is required for impacts associated with maintenance activities, the District Engineer will not delay needed maintenance, provided the District Engineer and the permittee establish a schedule for identification, approval, development, construction and completion of any such required mitigation. Once the one-time mitigation described above has been completed, or a determination made that mitigation is not required, no further mitigation will be required for maintenance activities within the maintenance baseline. In determining appropriate mitigation, the District Engineer will give special consideration to natural water courses that have been included in the maintenance baseline and require compensatory mitigation and/or BMPs as appropriate.

Emergency Situations: In emergency situations, this NWP may be used to authorize maintenance activities in flood control facilities for which no maintenance baseline has been approved. Emergency situations are those which would result in an unacceptable hazard to life, a significant loss of property, or an immediate, unforeseen, and significant economic hardship if action is not taken before a maintenance baseline can be approved. In such situations, the determination of mitigation requirements, if any, may be deferred until the emergency has been resolved. Once the emergency has ended, a maintenance baseline must be established expeditiously, and mitigation, including mitigation for maintenance conducted during the emergency, must be required as appropriate. (Sections 10 and 404)

32. *Completed Enforcement Actions.* Any structure, work or discharge of dredged or fill material, remaining in place, or undertaken for mitigation, restoration, or environmental benefit in compliance with either:

(i) The terms of a final written Corps non-judicial settlement agreement resolving a violation of section 404 of the CWA and/or section 10 of the Rivers and Harbors Act of 1899; or the terms of an EPA 309(a) order on consent resolving a violation of section 404 of the CWA, provided that:

a. The unauthorized activity affected no more than 5 acres of non-tidal wetlands or 1 acre of tidal wetlands;

b. The settlement agreement provides for environmental benefits, to an equal or greater degree, than the environmental detriments caused by the unauthorized activity that is authorized by this NWP; and

c. The District Engineer issues a verification letter authorizing the activity subject to the terms and conditions of this NWP and the settlement agreement, including a specified completion date; or

(ii) The terms of a final Federal court decision, consent decree, or settlement agreement resulting from an enforcement action brought by the U.S. under section 404 of the CWA and/or section 10 of the Rivers and Harbors Act of 1899; or

(iii) The terms of a final court decision, consent decree, settlement agreement, or non-judicial settlement agreement resulting from a natural resource damage claim brought by a trustee or trustees for natural resources (as defined by the National Contingency Plan at 40 CFR subpart G) under section 311 of the Clean Water Act (CWA), section 107 of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA or Superfund), section 312 of the National Marine Sanctuaries Act (NMSA), section 1002 of the Oil Pollution Act of 1990 (OPA), or the Park System Resource Protection Act at 16 U.S.C. '19jj, to the extent that a Corps permit is required.

For either (i), (ii) or (iii) above, compliance is a condition of the NWP itself. Any authorization under this NWP is automatically revoked if the permittee does not comply with the terms of this NWP or the terms of the court decision, consent decree, or judicial/non-judicial settlement agreement or fails to complete the work by the specified completion date. This NWP does not apply to any activities occurring after the date of the decision, decree, or agreement that are not for the purpose of mitigation, restoration, or environmental benefit. Before reaching any settlement agreement, the Corps will ensure compliance with the provisions of 33 CFR part 326 and 33 CFR 330.6 (d)(2) and (e). (Sections 10 and 404)

33. *Temporary Construction, Access and Dewatering.* Temporary structures, work and discharges, including cofferdams, necessary for construction activities or access fills or dewatering of construction sites; provided that the associated primary activity is authorized by the Corps of Engineers or the USCG, or for other construction activities not subject to the Corps or USCG regulations. Appropriate measures must be taken to maintain near normal downstream flows and to minimize flooding. Fill must be of materials, and placed in a manner, that will not be eroded by expected high flows. The use of dredged material may be allowed if it is determined by the District Engineer that it will not cause more than minimal adverse effects on aquatic resources.

Temporary fill must be entirely removed to upland areas, or dredged material returned to its original location, following completion of the construction activity, and the affected areas must be restored to the pre-project conditions. Cofferdams cannot be used to dewater wetlands or other aquatic areas to change their use. Structures left in place after cofferdams are removed require a Section 10 permit if located in navigable waters of the U.S. (See 33 CFR part 322). The permittee must notify the District Engineer in accordance with the ''Notification'' General Condition. The notification must also include a restoration plan of reasonable measures to avoid and minimize adverse effects to aquatic resources. The District Engineer will add Special Conditions, where necessary, to ensure environmental adverse effects is minimal. Such conditions may include: limiting the temporary work to the minimum necessary; requiring seasonal restrictions; modifying the restoration plan; and requiring alternative construction methods (e.g. construction mats in wetlands where practicable.). (Sections 10 and 404)

34. *Cranberry Production Activities.* Discharges of dredged or fill material for dikes, berms, pumps, water control structures or leveling of cranberry beds associated with expansion, enhancement, or modification activities at existing cranberry production operations provided that the activity meets all of the following criteria:

a. The cumulative total acreage of disturbance per cranberry production operation, including but not limited to, filling, flooding, ditching, or clearing, does not exceed 10 acres of waters of the U.S., including wetlands;

b. The permittee notifies the District Engineer in accordance with the ''Notification'' General Condition. The notification must include a delineation of affected special aquatic sites, including wetlands; and,

c. The activity does not result in a net loss of wetland acreage. This NWP does not authorize any discharge of dredged or fill material related to other cranberry production activities such as warehouses, processing facilities, or parking areas. For the purposes of this NWP, the cumulative total of 10 acres will be measured over the period that this NWP is valid. (Section 404)

35. *Maintenance Dredging of Existing Basins.* Excavation and removal of accumulated sediment for maintenance of existing marina basins, access channels to marinas or boat slips, and boat slips to previously authorized depths or controlling depths for ingress/egress, whichever is less, provided the dredged material is disposed of at an upland site and proper siltation controls are used. (Section 10)

36. *Boat Ramps.* Activities required for the construction of boat ramps provided:

a. The discharge into waters of the U.S. does not exceed 50 cubic yards of concrete, rock, crushed stone or gravel into forms, or placement of pre-cast concrete planks or slabs. (Unsuitable material that causes unacceptable chemical pollution or is structurally unstable is not authorized);

b. The boat ramp does not exceed 20 feet in width;

c. The base material is crushed stone, gravel or other suitable material;

d. The excavation is limited to the area necessary for site preparation and all excavated material is removed to the upland; and,

e. No material is placed in special aquatic sites, including wetlands.

Another NWP, Regional General Permit, or Individual Permit may authorize dredging to provide access to the boat ramp after obtaining a Section 10 if located in navigable waters of the U.S. (Sections 10 and 404)

37. *Emergency Watershed Protection and Rehabilitation.* Work done by or funded by:

a. The NRCS which is a situation requiring immediate action under its emergency Watershed Protection Program (7 CFR part 624); or

b. The USFS under its Burned-Area Emergency Rehabilitation Handbook (FSH 509.13); or

c. The DOI for wildland fire management burned area emergency stabilization and rehabilitation (DOI Manual part 620, Ch. 3).

For all of the above provisions, the District Engineer must be notified in accordance with the General Condition 13. (Also, see 33 CFR 330.1(e)). (Sections 10 and 404)

38. *Cleanup of Hazardous and Toxic Waste.* Specific activities required to effect the containment, stabilization, or removal of hazardous or toxic waste materials that are performed, ordered, or sponsored by a government agency with established legal or regulatory authority provided the permittee notifies the District Engineer in accordance with the ''Notification'' General Condition. For discharges in special aquatic sites, including wetlands, the notification must also include a delineation of affected special aquatic sites, including wetlands. Court ordered remedial action plans or related settlements are also authorized by this NWP. This NWP does not authorize the establishment of new disposal sites or the expansion of existing sites used for the disposal of hazardous or toxic waste. Activities undertaken entirely on a Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) site by authority of CERCLA as approved or required by EPA, are not required to obtain permits under section 404 of the CWA or section 10 of the Rivers and Harbors Act. (Sections 10 and 404)

39. *Residential, Commercial, and Institutional Developments.* Discharges of dredged or fill material into non-tidal waters of the U.S., excluding non-tidal wetlands adjacent to tidal waters, for the construction or expansion of residential, commercial, and institutional building foundations and building pads and attendant features that are necessary for the use and maintenance of the structures. Attendant features may include, but are not limited to, roads, parking lots, garages, yards, utility lines, stormwater management facilities, and recreation facilities such as playgrounds, playing fields, and golf courses (provided the golf course is an integral part of the residential development). The construction of new ski areas or oil and gas wells is not authorized by this NWP.

Residential developments include multiple and single unit developments. Examples of commercial developments include retail stores, industrial facilities, restaurants, business parks, and shopping centers. Examples of institutional developments include schools, fire stations, government office buildings, judicial buildings, public works buildings, libraries, hospitals, and places of worship. The activities listed above are authorized, provided the activities meet all of the following criteria:

a. The discharge does not cause the loss of greater than ½-acre of non-tidal waters of the U.S., excluding non-tidal wetlands adjacent to tidal waters;

b. The discharge does not cause the loss of greater than 300 linear-feet of a stream bed, unless for intermittent stream beds this criterion is waived in writing pursuant to a determination by the District Engineer, as specified below, that the project complies with all terms and conditions of this NWP and that any adverse impacts of the project on the aquatic environment are minimal, both individually and cumulatively;

c. The permittee must notify the District Engineer in accordance with General Condition 13, if any of the following criteria are met:

(1) The discharge causes the loss of greater than 1/10-acre of non-tidal waters of the US, excluding non-tidal wetlands adjacent to tidal waters; or

(2) The discharge causes the loss of any open waters, including perennial or intermittent streams, below the ordinary high water mark (see Note, below); or

(3) The discharge causes the loss of greater than 300 linear feet of intermittent stream bed. In such case, to be authorized the District Engineer must determine that the activity complies with the other terms and conditions of the NWP, determine adverse environmental effects are minimal both individually and cumulatively, and waive the limitation on stream impacts in writing before the permittee may proceed;

d. For discharges in special aquatic sites, including wetlands, the notification must include a delineation of affected special aquatic sites;

e. The discharge is part of a single and complete project;

f. The permittee must avoid and minimize discharges into waters of the US at the project site to the maximum extent practicable. The notification, when required, must include a written statement explaining how avoidance and minimization of losses of waters of the US were achieved on the project site. Compensatory mitigation will normally be required to offset the losses of waters of the US. (See General Condition 19.) The notification must also include a compensatory mitigation proposal for offsetting unavoidable losses of waters of the US. If an applicant asserts that the adverse effects of the project are minimal without mitigation, then the applicant may submit justification explaining why compensatory mitigation should not be required for the District Engineer's consideration;

g. When this NWP is used in conjunction with any other NWP, any combined total permanent loss of waters of the US exceeding 1/10-acre requires that the permittee notify the District Engineer in accordance with General Condition 13;

h. Any work authorized by this NWP must not cause more than minimal degradation of water quality or more than minimal changes to the flow characteristics of any stream (see General Conditions 9 and 21);

i. For discharges causing the loss of 1/10-acre or less of waters of the US, the permittee must submit a report, within 30 days of completion of the work, to the District Engineer that contains the following information: (1) The name, address, and telephone number of the permittee; (2) The location of the work; (3) A description of the work; (4) The type and acreage of the loss of waters of the US (e.g., 1/12-acre of emergent wetlands); and (5) The type and acreage of any compensatory mitigation used to offset the loss of waters of the US (e.g., 1/12-acre of emergent wetlands created on-site);

j. If there are any open waters or streams within the project area, the permittee will establish and maintain, to the maximum extent practicable, wetland or upland vegetated buffers next to those open waters or streams consistent with General Condition 19. Deed restrictions, conservation easements, protective covenants, or other means of land conservation and preservation are required to protect and maintain the vegetated buffers established on the project site.

Only residential, commercial, and institutional activities with structures on the foundation(s) or building pad(s), as well as the attendant features, are authorized by this NWP. The compensatory mitigation proposal that is required in paragraph (e) of this NWP may be either conceptual or detailed. The wetland or upland vegetated buffer required in paragraph (i) of this NWP will be determined on a case-by-case basis by the District Engineer for addressing water quality concerns. The required wetland or upland vegetated buffer is part of the overall compensatory mitigation requirement for this NWP. If the project site was previously used for agricultural purposes and the farm owner/operator used NWP 40 to authorize activities in waters of the US to increase production or construct farm buildings, NWP 39 cannot be used by the developer to authorize additional activities. This is more than the acreage limit for NWP 39 impacts to waters of the US (i.e., the combined acreage loss authorized under NWPs 39 and 40 cannot exceed 1/2-acre, see General Condition 15).

Subdivisions: For residential subdivisions, the aggregate total loss of waters of US authorized by NWP 39 can not exceed 1/2-acre. This includes any loss of waters associated with development of individual subdivision lots. (Sections 10 and 404)

Note: Areas where wetland vegetation is not present should be determined by the presence or absence of an ordinary high water mark or bed and bank. Areas that are waters of the US based on this criterion would require a PCN although water is infrequently present in the stream channel (except for ephemeral waters, which do not require PCNs).

40. *Agricultural Activities.* Discharges of dredged or fill material into non-tidal waters of the US, excluding non-tidal wetlands adjacent to tidal waters, for improving agricultural production and the construction of building pads for farm buildings. Authorized activities include the installation, placement, or construction of drainage tiles, ditches, or levees; mechanized land clearing; land leveling; the relocation of existing serviceable drainage ditches constructed in waters of the US; and similar activities, provided the permittee complies with the following terms and conditions:

a. For discharges into non-tidal wetlands to improve agricultural production, the following criteria must be met if the permittee is an United States Department of Agriculture (USDA) Program participant:

(1) The permittee must obtain a categorical minimal effects exemption, minimal effect exemption, or mitigation exemption from NRCS in accordance with the provisions of the Food Security Act of 1985, as amended (16 U.S.C. 3801 et seq.);

(2) The discharge into non-tidal wetlands does not result in the loss of greater than 1/2-acre of non-tidal wetlands on a farm tract;

(3) The permittee must have NRCS-certified wetland delineation;

(4) The permittee must implement an NRCS-approved compensatory mitigation plan that fully offsets wetland losses, if required; and

(5) The permittee must submit a report, within 30 days of completion of the authorized work, to the District Engineer that contains the following information: (a) The name, address, and telephone number of the permittee; (b) The location of the work; (c) A description of the work; (d) The type and acreage (or square feet) of the loss of wetlands (e.g., 1/3-acre of emergent wetlands); and (e) The type, acreage (or square feet), and location of compensatory mitigation (e.g. 1/3-acre of emergent wetland on a farm tract; credits purchased from a mitigation bank); or

b. For discharges into non-tidal wetlands to improve agricultural production, the following criteria must be met if the permittee is not a USDA Program participant (or a USDA Program participant for which the proposed work does not qualify for authorization under paragraph (a) of this NWP):

(1) The discharge into non-tidal wetlands does not result in the loss of greater than 1/2-acre of non-tidal wetlands on a farm tract;

(2) The permittee must notify the District Engineer in accordance with General Condition 13, if the discharge results in the loss of greater than 1/10-acre of non-tidal wetlands;

(3) The notification must include a delineation of affected wetlands; and

(4) The notification must include a compensatory mitigation proposal to offset losses of waters of the US; or

c. For the construction of building pads for farm buildings, the discharge does not cause the loss of greater than ½-acre of non-tidal wetlands that were in agricultural production prior to December 23, 1985, (i.e., farmed wetlands) and the permittee must notify the District Engineer in accordance with General Condition 13; and

d. Any activity in other waters of the US is limited to the relocation of existing serviceable drainage ditches constructed in non-tidal streams. This NWP does not authorize the relocation of greater than 300 linear-feet of existing serviceable drainage ditches constructed in non-tidal streams unless, for drainage ditches constructed in intermittent non-tidal streams, the District Engineer waives this criterion in writing, and the District Engineer has determined that the project complies with all terms and conditions of this NWP, and that any adverse impacts of the project on the aquatic environment are minimal, both individually and cumulatively. For impacts exceeding 300-linear feet of impacts to existing serviceable ditches constructed in intermittent non-tidal streams, the permittee must notify the District Engineer in accordance with the ''Notification'' General Condition 13; and

e. The term ''farm tract'' refers to a parcel of land identified by the Farm Service Agency. The Corps will identify other waters of the US on the farm tract. NRCS will determine if a proposed agricultural activity meets the terms and conditions of paragraph a. of this NWP, except as provided below. For those activities that require notification, the District Engineer will determine if a proposed agricultural activity is authorized by paragraphs b., c., and/or d. of this NWP. USDA Program participants requesting authorization for discharges of dredged or fill material into waters of the US authorized by paragraphs (c) or (d) of this NWP, in addition to paragraph (a), must notify the District Engineer in accordance with General Condition 13 and the District Engineer will determine if the entire single and complete project is authorized by this NWP. Discharges of dredged or fill material into waters of the US associated with completing required compensatory mitigation are authorized by this NWP. However, total impacts, including other authorized impacts under this NWP, may not exceed the ½-acre limit of this NWP. This NWP does not affect, or otherwise regulate, discharges associated with agricultural activities when the discharge qualifies for an exemption under section 404(f) of the CWA, even though a categorical minimal effects exemption, minimal effect exemption, or mitigation exemption from NRCS pursuant to the Food Security Act of 1985, as amended, may be required. Activities authorized by paragraphs a. through d. may not exceed a total of ½-acre on a single farm tract. If the site was used for agricultural purposes and the farm owner/operator used either paragraphs a., b., or c. of this NWP to authorize activities in waters of the US to increase agricultural production or construct farm buildings, and the current landowner wants to use NWP 39 to authorize residential, commercial, or industrial development activities in waters of the US on the site, the combined acreage loss authorized by NWPs 39 and 40 cannot exceed ½-acre (see General Condition 15). (Section 404)

41. *Reshaping Existing Drainage Ditches.* Discharges of dredged or fill material into non-tidal waters of the US, excluding non-tidal wetlands adjacent to tidal waters, to modify the cross-sectional configuration of currently serviceable drainage ditches constructed in waters of the US. The reshaping of the ditch cannot increase drainage capacity beyond the original design capacity. Nor can it expand the area drained by the ditch as originally designed (i.e., the capacity of the ditch must be the same as originally designed and it cannot drain additional wetlands or other waters of the US). Compensatory mitigation is not required because the work is designed to improve water quality (e.g., by regrading the drainage ditch with gentler slopes, which can reduce erosion, increase growth of vegetation, increase uptake of nutrients and other substances by vegetation, etc.).

Notification: The permittee must notify the District Engineer in accordance with General Condition 13 if greater than 500 linear feet of drainage ditch will be reshaped. Material resulting from excavation may not be permanently sidecast into waters but may be temporarily sidecast (up to three months) into waters of the US, provided the material is not placed in such a manner that it is dispersed by currents or other forces. The District Engineer may extend the period of temporary sidecasting not to exceed a total of 180 days, where appropriate. In general, this NWP does not apply to reshaping drainage ditches constructed in uplands, since these areas are generally not waters of the US, and thus no permit from the Corps is required, or to the maintenance of existing drainage ditches to their original dimensions and configuration, which does not require a Section 404 permit (see 33 CFR 323.4(a)(3)). This NWP does not authorize the relocation of drainage ditches constructed in waters of the US; the location of the centerline of the reshaped drainage ditch must be approximately the same as the location of the centerline of the original drainage ditch. This NWP does not authorize stream channelization or stream relocation projects. (Section 404)

42. *Recreational Facilities.* Discharges of dredged or fill material into non-tidal waters of the US, excluding non-tidal wetlands adjacent to tidal waters, for the construction or expansion of recreational facilities, provided the activity meets all of the following criteria:

a. The discharge does not cause the loss of greater than ½-acre of non-tidal waters of the US, excluding non-tidal wetlands adjacent to tidal waters;

b. The discharge does not cause the loss of greater than 300 linear-feet of a stream bed, unless for intermittent stream beds this criterion is waived in writing pursuant to a determination by the District Engineer, as specified below, that the project complies with all terms and conditions of this NWP and that any adverse impacts of the project on the aquatic environment are minimal, both individually and cumulatively;

c. The permittee notifies the District Engineer in accordance with the ''Notification'' General Condition 13 for discharges exceeding 300 linear feet of impact of intermittent stream beds. In such cases, to be authorized the District Engineer must determine that the activity complies with the other terms and conditions of the NWP, determine the adverse environmental effects are minimal both individually and cumulatively, and waive this limitation in writing before the permittee may proceed;

d. For discharges causing the loss of greater than 1/10-acre of non-tidal waters of the US, the permittee notifies the District Engineer in accordance with General Condition 13;

e. For discharges in special aquatic sites, including wetlands, the notification must include a delineation of affected special aquatic sites;

f. The discharge is part of a single and complete project; and

g. Compensatory mitigation will normally be required to offset the losses of waters of the US. The notification must also include a compensatory mitigation proposal to offset authorized losses of waters of the US.

For the purposes of this NWP, the term ''recreational facility'' is defined as a recreational activity that is integrated into the natural landscape and does not substantially change preconstruction grades or deviate from natural landscape contours. For the purpose of this permit, the primary function of recreational facilities does not include the use of motor vehicles, buildings, or impervious surfaces. Examples of recreational facilities that may be authorized by this NWP include hiking trails, bike paths, horse paths, nature centers, and campgrounds (excluding trailer parks). This NWP may authorize the construction or expansion of golf courses and the expansion of ski areas, provided the golf course or ski area does not substantially deviate from natural landscape contours. Additionally, these activities are designed to minimize adverse effects to waters of the US and riparian areas through the use of such practices as integrated pest management, adequate stormwater management facilities, vegetated buffers, reduced fertilizer use, etc. The facility must have an adequate water quality management plan in accordance with General Condition 9, such as a stormwater management facility, to ensure that the recreational facility results in no substantial adverse effects to water quality. This NWP also authorizes the construction or expansion of small support facilities, such as maintenance and storage buildings and stables that are directly related to the recreational activity. This NWP does not authorize other buildings, such as hotels, restaurants, etc. The construction or expansion of playing fields (e.g., baseball, soccer, or football fields), basketball and tennis courts, racetracks, stadiums, arenas, and the construction of new ski areas are not authorized by this NWP. (Section 404)

43. *Stormwater Management Facilities.* Discharges of dredged or fill material into non-tidal waters of the US, excluding non-tidal wetlands adjacent to tidal waters, for the construction and maintenance of stormwater management facilities, including activities for the excavation of stormwater ponds/facilities, detention basins, and retention basins; the installation and maintenance of water control structures, outfall structures and emergency spillways; and the maintenance dredging of existing stormwater management ponds/facilities and detention and retention basins, provided the activity meets all of the following criteria:

a. The discharge for the construction of new stormwater management facilities does not cause the loss of greater than ½-acre of non-tidal waters of the US, excluding non-tidal wetlands adjacent to tidal waters;

b. The discharge does not cause the loss of greater than 300 linear-feet of a stream bed, unless for intermittent stream beds this criterion is waived in writing pursuant to a determination by the District Engineer, as specified below, that the project complies with all terms and conditions of this NWP and that any adverse impacts of the project on the aquatic environment are minimal, both individually and cumulatively;

c. For discharges causing the loss of greater than 300 linear feet of intermittent stream beds, the permittee notifies the District Engineer in accordance with the ''Notification'' General Condition 13. In such cases, to be authorized the District Engineer must determine that the activity complies with the other terms and conditions of the NWP, determine the adverse environmental effects are minimal both individually and cumulatively, and waive this limitation in writing before the permittee may proceed;

d. The discharges of dredged or fill material for the construction of new stormwater management facilities in perennial streams is not authorized;

e. For discharges or excavation for the construction of new stormwater management facilities or for the maintenance of existing stormwater management facilities causing the loss of greater than ⅒-acre of non-tidal waters, excluding non-tidal wetlands adjacent to tidal waters, provided the permittee notifies the District Engineer in accordance with the ''Notification'' General Condition 13. In addition, the notification must include:

(1) A maintenance plan. The maintenance plan should be in accordance with state and local requirements, if any such requirements exist;

(2) For discharges in special aquatic sites, including wetlands and submerged aquatic vegetation, the notification must include a delineation of affected areas; and

(3) A compensatory mitigation proposal that offsets the loss of waters of the US. Maintenance in constructed areas will not require mitigation provided such maintenance is accomplished in designated maintenance areas and not within compensatory mitigation areas (i.e., District Engineers may designate non-maintenance areas, normally at the downstream end of the stormwater management facility, in existing stormwater management facilities). (No mitigation will be required for activities that are exempt from Section 404 permit requirements);

f. The permittee must avoid and minimize discharges into waters of the US at the project site to the maximum extent practicable, and the notification must include a written statement to the District Engineer detailing compliance with this condition (i.e. why the discharge must occur in waters of the US and why additional minimization cannot be achieved);

g. The stormwater management facility must comply with General Condition 21 and be designed using BMPs and watershed protection techniques. Examples may include forebays (deeper areas at the upstream end of the stormwater management facility that would be maintained through excavation), vegetated buffers, and siting considerations to minimize adverse effects to aquatic resources. Another example of a BMP would be bioengineering methods incorporated into the facility design to benefit water quality and minimize adverse effects to aquatic resources from storm flows, especially downstream of the facility, that provide, to the maximum extent practicable, for long term aquatic resource protection and enhancement;

h. Maintenance excavation will be in accordance with an approved maintenance plan and will not exceed the original contours of the facility as approved and constructed; and

i. The discharge is part of a single and complete project. (Section 404)

44. *Mining Activities.* Discharges of dredged or fill material into:

(i) Isolated waters; streams where the annual average flow is 1 cubic foot per second or less, and non-tidal wetlands adjacent to headwater streams, for aggregate mining (i.e., sand, gravel, and crushed and broken stone) and associated support activities;

(ii) Lower perennial streams, excluding wetlands adjacent to lower perennial streams, for aggregate mining activities (support activities in lower perennial streams or adjacent wetlands are not authorized by this NWP); and/or

(iii) Isolated waters and non-tidal wetlands adjacent to headwater streams, for hard rock/mineral mining activities (i.e., extraction of metalliferous ores from subsurface locations) and associated support activities, provided the discharge meets the following criteria:

a. The mined area within waters of the US, plus the acreage loss of waters of the US resulting from support activities, cannot exceed ½-acre;

b. The permittee must avoid and minimize discharges into waters of the

US at the project site to the maximum extent practicable, and the notification must include a written statement detailing compliance with this condition (i.e., why the discharge must occur in waters of the US and why additional minimization cannot be achieved);

c. In addition to General Conditions 17 and 20, activities authorized by this permit must not substantially alter the sediment characteristics of areas of concentrated shellfish beds or fish spawning areas. Normally, the mandated water quality management plan should address these impacts;

d. The permittee must implement necessary measures to prevent increases in stream gradient and water velocities and to prevent adverse effects (e.g., head cutting, bank erosion) to upstream and downstream channel conditions;

e. Activities authorized by this permit must not result in adverse effects on the course, capacity, or condition of navigable waters of the US;

f. The permittee must use measures to minimize downstream turbidity;

g. Wetland impacts must be compensated through mitigation approved by the Corps;

h. Beneficiation and mineral processing for hard rock/mineral mining activities may not occur within 200 feet of the ordinary high water mark of any open waterbody. Although the Corps does not regulate discharges from these activities, a CWA section 402 permit may be required;

i. All activities authorized must comply with General Conditions 9 and 21. Further, the District Engineer may require modifications to the required water quality management plan to ensure that the authorized work results in minimal adverse effects to water quality;

j. Except for aggregate mining activities in lower perennial streams, no aggregate mining can occur within stream beds where the average annual flow is greater than 1 cubic foot per second or in waters of the US within 100 feet of the ordinary high water mark of headwater stream segments where the average annual flow of the stream is greater than 1 cubic foot per second (aggregate mining can occur in areas immediately adjacent to the ordinary high water mark of a stream where the average annual flow is 1 cubic foot per second or less);

k. Single and complete project: The discharge must be for a single and complete project, including support activities. Discharges of dredged or fill material into waters of the US for multiple mining activities on several designated parcels of a single and complete mining operation can be authorized by this NWP provided the ½-acre limit is not exceeded; and

l. *Notification:* The permittee must notify the District Engineer in accordance with General Condition 13. The notification must include: (1) A description of waters of the US adversely affected by the project; (2) A written statement to the District Engineer detailing compliance with paragraph (b), above (i.e., why the discharge must occur in waters of the US and why additional minimization cannot be achieved); (3) A description of measures taken to ensure that the proposed work complies with paragraphs (c) through (f), above; and (4) A reclamation plan (for aggregate mining in isolated waters and non-tidal wetlands adjacent to headwaters and hard rock/mineral mining only).

This NWP does not authorize hard rock/mineral mining, including placer mining, in streams. No hard rock/mineral mining can occur in waters of the US within 100 feet of the ordinary high water mark of headwater streams. The term's ''headwaters'' and ''isolated waters'' are defined at 33 CFR 330.2(d) and (e), respectively. For the purposes of this NWP, the term ''lower perennial stream'' is defined as follows: ''A stream in which the gradient is low and water velocity is slow, there is no tidal influence, some water flows throughout the year, and the substrate consists mainly of sand and mud.'' (Sections 10 and 404)

C. Nationwide Permit General Conditions

The following General Conditions must be followed in order for any authorization by an NWP to be valid:

1. *Navigation.* No activity may cause more than a minimal adverse effect on navigation.

2. *Proper Maintenance.* Any structure or fill authorized shall be properly maintained, including maintenance to ensure public safety.

3. *Soil Erosion and Sediment Controls.* Appropriate soil erosion and sediment controls must be used and maintained in effective operating condition during construction, and all exposed soil and other fills, as well as any work below the ordinary high water mark or high tide line, must be permanently stabilized at the earliest practicable date. Permittees are encouraged to perform work within waters of the United States during periods of low-flow or no-flow.

4. *Aquatic Life Movements.* No activity may substantially disrupt the necessary life-cycle movements of those species of aquatic life indigenous to the waterbody, including those species that normally migrate through the area, unless the activity's primary purpose is to impound water. Culverts placed in streams must be installed to maintain low flow conditions.

5. *Equipment.* Heavy equipment working in wetlands must be placed on mats, or other measures must be taken to minimize soil disturbance.

6. *Regional and Case-By-Case Conditions.* The activity must comply with any regional conditions that may have been added by the Division Engineer (see 33 CFR 330.4(e)). Additionally, any case specific conditions added by the Corps or by the state or tribe in its Section 401 Water Quality Certification and Coastal Zone Management Act consistency determination.

7. *Wild and Scenic Rivers.* No activity may occur in a component of the National Wild and Scenic River System; or in a river officially designated by Congress as a ''study river'' for possible inclusion in the system, while the river is in an official study status; unless the appropriate Federal agency, with direct management responsibility for such river, has determined in writing that the proposed activity will not adversely affect the Wild and Scenic River designation, or study status. Information on Wild and Scenic Rivers may be obtained from the appropriate Federal land management agency in the area (e.g., National Park Service, U.S. Forest Service, Bureau of Land Management, U.S. Fish and Wildlife Service).

8. *Tribal Rights.* No activity or its operation may impair reserved tribal rights, including, but not limited to, reserved water rights and treaty fishing and hunting rights.

9. *Water Quality.* (a) In certain states and tribal lands an individual 401 Water Quality Certification must be obtained or waived (See 33 CFR 330.4(c)).

(b) For NWPs 12, 14, 17, 18, 32, 39, 40, 42, 43, and 44, where the state or tribal 401 certification (either generically or individually) does not require or approve water quality management measures, the permittee must provide water quality management measures that will ensure that the authorized work does not result in more than minimal degradation of water quality (or the Corps determines that compliance with state or local standards, where applicable, will ensure no more than minimal adverse effect on water quality). An important component of water quality management includes stormwater management that minimizes degradation of the downstream aquatic system, including water quality (refer to General Condition 21 for stormwater

management requirements). Another important component of water quality management is the establishment and maintenance of vegetated buffers next to open waters, including streams (refer to General Condition 19 for vegetated buffer requirements for the NWPs).

This condition is only applicable to projects that have the potential to affect water quality. While appropriate measures must be taken, in most cases it is not necessary to conduct detailed studies to identify such measures or to require monitoring.

10. *Coastal Zone Management.* In certain states, an individual state coastal zone management consistency concurrence must be obtained or waived (see Section 330.4(d)).

11. *Endangered Species.* (a) No activity is authorized under any NWP which is likely to jeopardize the continued existence of a threatened or endangered species or a species proposed for such designation, as identified under the Federal Endangered Species Act (ESA), or which will destroy or adversely modify the critical habitat of such species. Non-federal permittees shall notify the District Engineer if any listed species or designated critical habitat might be affected or is in the vicinity of the project, or is located in the designated critical habitat and shall not begin work on the activity until notified by the District Engineer that the requirements of the ESA have been satisfied and that the activity is authorized. For activities that may affect Federally-listed endangered or threatened species or designated critical habitat, the notification must include the name(s) of the endangered or threatened species that may be affected by the proposed work or that utilize the designated critical habitat that may be affected by the proposed work. As a result of formal or informal consultation with the FWS or NMFS the District Engineer may add species-specific regional endangered species conditions to the NWPs.

(b) Authorization of an activity by a NWP does not authorize the ''take'' of a threatened or endangered species as defined under the ESA. In the absence of separate authorization (e.g., an ESA Section 10 Permit, a Biological Opinion with ''incidental take'' provisions, etc.) from the USFWS or the NMFS, both lethal and non-lethal ''takes'' of protected species are in violation of the ESA. Information on the location of threatened and endangered species and their critical habitat can be obtained directly from the offices of the USFWS and NMFS or their world wide web pages at *http://www.fws.gov/r9endspp/endspp.html* and *http://www.nfms.gov/prot_res/esahome.html* respectively.

12. *Historic Properties.* No activity which may affect historic properties listed, or eligible for listing, in the National Register of Historic Places is authorized, until the District Engineer has complied with the provisions of 33 CFR part 325, Appendix C. The prospective permittee must notify the District Engineer if the authorized activity may affect any historic properties listed, determined to be eligible, or which the prospective permittee has reason to believe may be eligible for listing on the National Register of Historic Places, and shall not begin the activity until notified by the District Engineer that the requirements of the National Historic Preservation Act have been satisfied and that the activity is authorized. Information on the location and existence of historic resources can be obtained from the State Historic Preservation Office and the National Register of Historic Places (see 33 CFR 330.4(g)). For activities that may affect historic properties listed in, or eligible for listing in, the National Register of Historic Places, the notification must state which historic property may be affected by the proposed work or include a vicinity map indicating the location of the historic property.

13. *Notification.*

(a) *Timing;* where required by the terms of the NWP, the prospective permittee must notify the District Engineer with a preconstruction notification (PCN) as early as possible. The District Engineer must determine if the notification is complete within 30 days of the date of receipt and can request additional information necessary to make the PCN complete only once. However, if the prospective permittee does not provide all of the requested information, then the District Engineer will notify the prospective permittee that the notification is still incomplete and the PCN review process will not commence until all of the requested information has been received by the District Engineer. The prospective permittee shall not begin the activity:

(1) Until notified in writing by the District Engineer that the activity may proceed under the NWP with any special conditions imposed by the District or Division Engineer; or

(2) If notified in writing by the District or Division Engineer that an Individual Permit is required; or

(3) Unless 45 days have passed from the District Engineer's receipt of the complete notification and the prospective permittee has not received written notice from the District or Division Engineer. Subsequently, the permittee's right to proceed under the NWP may be modified, suspended, or revoked only in accordance with the procedure set forth in 33 CFR 330.5(d)(2).

(b) *Contents of Notification:* The notification must be in writing and include the following information:

(1) Name, address and telephone numbers of the prospective permittee;

(2) Location of the proposed project;

(3) Brief description of the proposed project; the project's purpose; direct and indirect adverse environmental effects the project would cause; any other NWP(s), Regional General Permit(s), or Individual Permit(s) used or intended to be used to authorize any part of the proposed project or any related activity. Sketches should be provided when necessary to show that the activity complies with the terms of the NWP (Sketches usually clarify the project and when provided result in a quicker decision.);

(4) For NWPs 7, 12, 14, 18, 21, 34, 38, 39, 41, 42, and 43, the PCN must also include a delineation of affected special aquatic sites, including wetlands, vegetated shallows (e.g., submerged aquatic vegetation, seagrass beds), and riffle and pool complexes (see paragraph 13(f));

(5) For NWP 7 (Outfall Structures and Maintenance), the PCN must include information regarding the original design capacities and configurations of those areas of the facility where maintenance dredging or excavation is proposed;

(6) For NWP 14 (Linear Transportation Crossings), the PCN must include a compensatory mitigation proposal to offset permanent losses of waters of the US and a statement describing how temporary losses of waters of the US will be minimized to the maximum extent practicable;

(7) For NWP 21 (Surface Coal Mining Activities), the PCN must include an Office of Surface Mining (OSM) or state-approved mitigation plan, if applicable. To be authorized by this NWP, the District Engineer must determine that the activity complies with the terms and conditions of the NWP and that the adverse environmental effects are minimal both individually and cumulatively and must notify the project sponsor of this determination in writing;

(8) For NWP 27 (Stream and Wetland Restoration), the PCN must include documentation of the prior condition of the site that will be reverted by the permittee;

(9) For NWP 29 (Single-Family Housing), the PCN must also include:

(i) Any past use of this NWP by the Individual Permittee and/or the permittee's spouse;

(ii) A statement that the single-family housing activity is for a personal residence of the permittee;

(iii) A description of the entire parcel, including its size, and a delineation of wetlands. For the purpose of this NWP, parcels of land measuring ¼-acre or less will not require a formal on-site delineation. However, the applicant shall provide an indication of where the wetlands are and the amount of wetlands that exists on the property. For parcels greater than ¼-acre in size, formal wetland delineation must be prepared in accordance with the current method required by the Corps. (See paragraph 13(f));

(iv) A written description of all land (including, if available, legal descriptions) owned by the prospective permittee and/or the prospective permittee's spouse, within a one mile radius of the parcel, in any form of ownership (including any land owned as a partner, corporation, joint tenant, co-tenant, or as a tenant-by-the-entirety) and any land on which a purchase and sale agreement or other contract for sale or purchase has been executed;

(10) For NWP 31 (Maintenance of Existing Flood Control Projects), the prospective permittee must either notify the District Engineer with a PCN prior to each maintenance activity or submit a five year (or less) maintenance plan. In addition, the PCN must include all of the following:

(i) Sufficient baseline information identifying the approved channel depths and configurations and existing facilities. Minor deviations are authorized, provided the approved flood control protection or drainage is not increased;

(ii) A delineation of any affected special aquatic sites, including wetlands; and,

(iii) Location of the dredged material disposal site;

(11) For NWP 33 (Temporary Construction, Access, and Dewatering), the PCN must also include a restoration plan of reasonable measures to avoid and minimize adverse effects to aquatic resources;

(12) For NWPs 39, 43 and 44, the PCN must also include a written statement to the District Engineer explaining how avoidance and minimization for losses of waters of the US were achieved on the project site;

(13) For NWP 39 and NWP 42, the PCN must include a compensatory mitigation proposal to offset losses of waters of the US or justification explaining why compensatory mitigation should not be required. For discharges that cause the loss of greater than 300 linear feet of an intermittent stream bed, to be authorized, the District Engineer must determine that the activity complies with the other terms and conditions of the NWP, determine adverse environmental effects are minimal both individually and cumulatively, and waive the limitation on stream impacts in writing before the permittee may proceed;

(14) For NWP 40 (Agricultural Activities), the PCN must include a compensatory mitigation proposal to offset losses of waters of the US. This NWP does not authorize the relocation of greater than 300 linear-feet of existing serviceable drainage ditches constructed in non-tidal streams unless, for drainage ditches constructed in intermittent non-tidal streams, the District Engineer waives this criterion in writing, and the District Engineer has determined that the project complies with all terms and conditions of this NWP, and that any adverse impacts of the project on the aquatic environment are minimal, both individually and cumulatively;

(15) For NWP 43 (Stormwater Management Facilities), the PCN must include, for the construction of new stormwater management facilities, a maintenance plan (in accordance with state and local requirements, if applicable) and a compensatory mitigation proposal to offset losses of waters of the US. For discharges that cause the loss of greater than 300 linear feet of an intermittent stream bed, to be authorized, the District Engineer must determine that the activity complies with the other terms and conditions of the NWP, determine adverse environmental effects are minimal both individually and cumulatively, and waive the limitation on stream impacts in writing before the permittee may proceed;

(16) For NWP 44 (Mining Activities), the PCN must include a description of all waters of the US adversely affected by the project, a description of measures taken to minimize adverse effects to waters of the US, a description of measures taken to comply with the criteria of the NWP, and a reclamation plan (for all aggregate mining activities in isolated waters and non-tidal wetlands adjacent to headwaters and any hard rock/mineral mining activities);

(17) For activities that may adversely affect Federally-listed endangered or threatened species, the PCN must include the name(s) of those endangered or threatened species that may be affected by the proposed work or utilize the designated critical habitat that may be affected by the proposed work; and

(18) For activities that may affect historic properties listed in, or eligible for listing in, the National Register of Historic Places, the PCN must state which historic property may be affected by the proposed work or include a vicinity map indicating the location of the historic property.

(c) *Form of Notification:* The standard Individual Permit application form (Form ENG 4345) may be used as the notification but must clearly indicate that it is a PCN and must include all of the information required in (b) (1)–(18) of General Condition 13. A letter containing the requisite information may also be used.

(d) *District Engineer's Decision:* In reviewing the PCN for the proposed activity, the District Engineer will determine whether the activity authorized by the NWP will result in more than minimal individual or cumulative adverse environmental effects or may be contrary to the public interest. The prospective permittee may submit a proposed mitigation plan with the PCN to expedite the process. The District Engineer will consider any proposed compensatory mitigation the applicant has included in the proposal in determining whether the net adverse environmental effects to the aquatic environment of the proposed work are minimal. If the District Engineer determines that the activity complies with the terms and conditions of the NWP and that the adverse effects on the aquatic environment are minimal, after considering mitigation, the District Engineer will notify the permittee and include any conditions the District Engineer deems necessary. The District Engineer must approve any compensatory mitigation proposal before the permittee commences work. If the prospective permittee is required to submit a compensatory mitigation proposal with the PCN, the proposal may be either conceptual or detailed. If the prospective permittee elects to submit a compensatory mitigation plan with the PCN, the District Engineer will expeditiously review the proposed compensatory mitigation plan. The District Engineer must review the plan within 45 days of receiving a complete PCN and determine whether the conceptual or specific proposed mitigation would ensure no more than minimal adverse effects on the aquatic environment. If the net adverse effects of the project on the aquatic environment (after consideration of the compensatory mitigation proposal) are determined by the District Engineer to

be minimal, the District Engineer will provide a timely written response to the applicant. The response will state that the project can proceed under the terms and conditions of the NWP.

If the District Engineer determines that the adverse effects of the proposed work are more than minimal, then the District Engineer will notify the applicant either: (1) That the project does not qualify for authorization under the NWP and instruct the applicant on the procedures to seek authorization under an Individual Permit; (2) that the project is authorized under the NWP subject to the applicant's submission of a mitigation proposal that would reduce the adverse effects on the aquatic environment to the minimal level; or (3) that the project is authorized under the NWP with specific modifications or conditions. Where the District Engineer determines that mitigation is required to ensure no more than minimal adverse effects occur to the aquatic environment, the activity will be authorized within the 45-day PCN period. The authorization will include the necessary conceptual or specific mitigation or a requirement that the applicant submit a mitigation proposal that would reduce the adverse effects on the aquatic environment to the minimal level. When conceptual mitigation is included, or a mitigation plan is required under item (2) above, no work in waters of the US will occur until the District Engineer has approved a specific mitigation plan.

(e) *Agency Coordination:* The District Engineer will consider any comments from Federal and state agencies concerning the proposed activity's compliance with the terms and conditions of the NWPs and the need for mitigation to reduce the project's adverse environmental effects to a minimal level.

For activities requiring notification to the District Engineer that result in the loss of greater than ½-acre of waters of the US, the District Engineer will provide immediately (e.g., via facsimile transmission, overnight mail, or other expeditious manner) a copy to the appropriate Federal or state offices (USFWS, state natural resource or water quality agency, EPA, State Historic Preservation Officer (SHPO), and, if appropriate, the NMFS). With the exception of NWP 37, these agencies will then have 10 calendar days from the date the material is transmitted to telephone or fax the District Engineer notice that they intend to provide substantive, site-specific comments. If so contacted by an agency, the District Engineer will wait an additional 15 calendar days before making a decision on the notification. The District Engineer will fully consider agency comments received within the specified time frame, but will provide no response to the resource agency, except as provided below. The District Engineer will indicate in the administrative record associated with each notification that the resource agencies' concerns were considered. As required by section 305(b)(4)(B) of the Magnuson-Stevens Fishery Conservation and Management Act, the District Engineer will provide a response to NMFS within 30 days of receipt of any Essential Fish Habitat conservation recommendations. Applicants are encouraged to provide the Corps multiple copies of notifications to expedite agency notification.

(f) *Wetland Delineations:* Wetland delineations must be prepared in accordance with the current method required by the Corps (For NWP 29 see paragraph (b)(9)(iii) for parcels less than (¼-acre in size). The permittee may ask the Corps to delineate the special aquatic site. There may be some delay if the Corps does the delineation. Furthermore, the 45-day period will not start until the wetland delineation has been completed and submitted to the Corps, where appropriate.

14. *Compliance Certification.* Every permittee who has received NWP verification from the Corps will submit a signed certification regarding the completed work and any required mitigation. The certification will be forwarded by the Corps with the authorization letter and will include:

(a) A statement that the authorized work was done in accordance with the Corps authorization, including any general or specific conditions;

(b) A statement that any required mitigation was completed in accordance with the permit conditions; and

(c) The signature of the permittee certifying the completion of the work and mitigation.

15. *Use of Multiple Nationwide Permits.* The use of more than one NWP for a single and complete project is prohibited, except when the acreage loss of waters of the US authorized by the NWPs does not exceed the acreage limit of the NWP with the highest specified acreage limit (e.g. if a road crossing over tidal waters is constructed under NWP 14, with associated bank stabilization authorized by NWP 13, the maximum acreage loss of waters of the US for the total project cannot exceed ⅓-acre).

16. *Water Supply Intakes.* No activity, including structures and work in navigable waters of the US or discharges of dredged or fill material, may occur in the proximity of a public water supply intake except where the activity is for repair of the public water supply intake structures or adjacent bank stabilization.

17. *Shellfish Beds.* No activity, including structures and work in navigable waters of the US or discharges of dredged or fill material, may occur in areas of concentrated shellfish populations, unless the activity is directly related to a shellfish harvesting activity authorized by NWP 4.

18. *Suitable Material.* No activity, including structures and work in navigable waters of the US or discharges of dredged or fill material, may consist of unsuitable material (e.g., trash, debris, car bodies, asphalt, etc.) and material used for construction or discharged must be free from toxic pollutants in toxic amounts (see section 307 of the CWA).

19. *Mitigation.* The District Engineer will consider the factors discussed below when determining the acceptability of appropriate and practicable mitigation necessary to offset adverse effects on the aquatic environment that are more than minimal.

(a) The project must be designed and constructed to avoid and minimize adverse effects to waters of the US to the maximum extent practicable at the project site (i.e., on site).

(b) Mitigation in all its forms (avoiding, minimizing, rectifying, reducing or compensating) will be required to the extent necessary to ensure that the adverse effects to the aquatic environment are minimal.

(c) Compensatory mitigation at a minimum one-for-one ratio will be required for all wetland impacts requiring a PCN, unless the District Engineer determines in writing that some other form of mitigation would be more environmentally appropriate and provides a project-specific waiver of this requirement. Consistent with National policy, the District Engineer will establish a preference for restoration of wetlands as compensatory mitigation, with preservation used only in exceptional circumstances.

(d) Compensatory mitigation (i.e., replacement or substitution of aquatic resources for those impacted) will not be used to increase the acreage losses allowed by the acreage limits of some of the NWPs. For example, ¼-acre of wetlands cannot be created to change a ¾-acre loss of wetlands to a ½-acre loss associated with NWP 39 verification. However, ½-acre of created wetlands can be used to reduce the impacts of a ½-acre loss of wetlands to the minimum impact level in order to meet the

minimal impact requirement associated with NWPs.

(e) To be practicable, the mitigation must be available and capable of being done considering costs, existing technology, and logistics in light of the overall project purposes. Examples of mitigation that may be appropriate and practicable include, but are not limited to: reducing the size of the project; establishing and maintaining wetland or upland vegetated buffers to protect open waters such as streams; and replacing losses of aquatic resource functions and values by creating, restoring, enhancing, or preserving similar functions and values, preferably in the same watershed.

(f) Compensatory mitigation plans for projects in or near streams or other open waters will normally include a requirement for the establishment, maintenance, and legal protection (e.g., easements, deed restrictions) of vegetated buffers to open waters. In many cases, vegetated buffers will be the only compensatory mitigation required. Vegetated buffers should consist of native species. The width of the vegetated buffers required will address documented water quality or aquatic habitat loss concerns. Normally, the vegetated buffer will be 25 to 50 feet wide on each side of the stream, but the District Engineers may require slightly wider vegetated buffers to address documented water quality or habitat loss concerns. Where both wetlands and open waters exist on the project site, the Corps will determine the appropriate compensatory mitigation (e.g., stream buffers or wetlands compensation) based on what is best for the aquatic environment on a watershed basis. In cases where vegetated buffers are determined to be the most appropriate form of compensatory mitigation, the District Engineer may waive or reduce the requirement to provide wetland compensatory mitigation for wetland impacts.

(g) Compensatory mitigation proposals submitted with the ''notification'' may be either conceptual or detailed. If conceptual plans are approved under the verification, then the Corps will condition the verification to require detailed plans be submitted and approved by the Corps prior to construction of the authorized activity in waters of the US.

(h) Permittees may propose the use of mitigation banks, in-lieu fee arrangements or separate activity-specific compensatory mitigation. In all cases that require compensatory mitigation, the mitigation provisions will specify the party responsible for accomplishing and/or complying with the mitigation plan.

20. *Spawning Areas.* Activities, including structures and work in navigable waters of the US or discharges of dredged or fill material, in spawning areas during spawning seasons must be avoided to the maximum extent practicable. Activities that result in the physical destruction (e.g., excavate, fill, or smother downstream by substantial turbidity) of an important spawning area are not authorized.

21. *Management of Water Flows.* To the maximum extent practicable, the activity must be designed to maintain preconstruction downstream flow conditions (e.g., location, capacity, and flow rates). Furthermore, the activity must not permanently restrict or impede the passage of normal or expected high flows (unless the primary purpose of the fill is to impound waters) and the structure or discharge of dredged or fill material must withstand expected high flows. The activity must, to the maximum extent practicable, provide for retaining excess flows from the site, provide for maintaining surface flow rates from the site similar to preconstruction conditions, and provide for not increasing water flows from the project site, relocating water, or redirecting water flow beyond preconstruction conditions. Stream channelizing will be reduced to the minimal amount necessary, and the activity must, to the maximum extent practicable, reduce adverse effects such as flooding or erosion downstream and upstream of the project site, unless the activity is part of a larger system designed to manage water flows. In most cases, it will not be a requirement to conduct detailed studies and monitoring of water flow.

This condition is only applicable to projects that have the potential to affect waterflows. While appropriate measures must be taken, it is not necessary to conduct detailed studies to identify such measures or require monitoring to ensure their effectiveness. Normally, the Corps will defer to state and local authorities regarding management of water flow.

22. *Adverse Effects From Impoundments.* If the activity creates an impoundment of water, adverse effects to the aquatic system due to the acceleration of the passage of water, and/or the restricting its flow shall be minimized to the maximum extent practicable. This includes structures and work in navigable waters of the US, or discharges of dredged or fill material.

23. *Waterfowl Breeding Areas.* Activities, including structures and work in navigable waters of the US or discharges of dredged or fill material, into breeding areas for migratory waterfowl must be avoided to the maximum extent practicable.

24. *Removal of Temporary Fills.* Any temporary fills must be removed in their entirety and the affected areas returned to their preexisting elevation.

25. *Designated Critical Resource Waters.* Critical resource waters include, NOAA-designated marine sanctuaries, National Estuarine Research Reserves, National Wild and Scenic Rivers, critical habitat for Federally listed threatened and endangered species, coral reefs, state natural heritage sites, and outstanding national resource waters or other waters officially designated by a state as having particular environmental or ecological significance and identified by the District Engineer after notice and opportunity for public comment. The District Engineer may also designate additional critical resource waters after notice and opportunity for comment.

(a) Except as noted below, discharges of dredged or fill material into waters of the US are not authorized by NWPs 7, 12, 14, 16, 17, 21, 29, 31, 35, 39, 40, 42, 43, and 44 for any activity within, or directly affecting, critical resource waters, including wetlands adjacent to such waters. Discharges of dredged or fill materials into waters of the US may be authorized by the above NWPs in National Wild and Scenic Rivers if the activity complies with General Condition 7. Further, such discharges may be authorized in designated critical habitat for Federally listed threatened or endangered species if the activity complies with General Condition 11 and the USFWS or the NMFS has concurred in a determination of compliance with this condition.

(b) For NWPs 3, 8, 10, 13, 15, 18, 19, 22, 23, 25, 27, 28, 30, 33, 34, 36, 37, and 38, notification is required in accordance with General Condition 13, for any activity proposed in the designated critical resource waters including wetlands adjacent to those waters. The District Engineer may authorize activities under these NWPs only after it is determined that the impacts to the critical resource waters will be no more than minimal.

26. *Fills Within 100-Year Floodplains.* For purposes of this General Condition, 100-year floodplains will be identified through the existing Federal Emergency Management Agency's (FEMA) Flood Insurance Rate Maps or FEMA-approved local floodplain maps.

(a) *Discharges in Floodplain; Below Headwaters.* Discharges of dredged or fill material into waters of the US within the mapped 100-year floodplain, below

headwaters (i.e. five cfs), resulting in permanent above-grade fills, are not authorized by NWPs 39, 40, 42, 43, and 44.

(b) *Discharges in Floodway; Above Headwaters.* Discharges of dredged or fill material into waters of the US within the FEMA or locally mapped floodway, resulting in permanent above-grade fills, are not authorized by NWPs 39, 40, 42, and 44.

(c) The permittee must comply with any applicable FEMA-approved state or local floodplain management requirements.

27. *Construction Period.* For activities that have not been verified by the Corps and the project was commenced or under contract to commence by the expiration date of the NWP (or modification or revocation date), the work must be completed within 12-months after such date (including any modification that affects the project).

For activities that have been verified and the project was commenced or under contract to commence within the verification period, the work must be completed by the date determined by the Corps.

For projects that have been verified by the Corps, an extension of a Corps approved completion date maybe requested. This request must be submitted at least one month before the previously approved completion date.

D. Further Information

1. District Engineers have authority to determine if an activity complies with the terms and conditions of an NWP.

2. NWPs do not obviate the need to obtain other Federal, state, or local permits, approvals, or authorizations required by law.

3. NWPs do not grant any property rights or exclusive privileges.

4. NWPs do not authorize any injury to the property or rights of others.

5. NWPs do not authorize interference with any existing or proposed Federal project.

E. Definitions

B*est Management Practices (BMPs):* BMPs are policies, practices, procedures, or structures implemented to mitigate the adverse environmental effects on surface water quality resulting from development. BMPs are categorized as structural or non-structural. A BMP policy may affect the limits on a development.

Compensatory Mitigation: For purposes of Section 10/404, compensatory mitigation is the restoration, creation, enhancement, or in exceptional circumstances, preservation of wetlands and/or other aquatic resources for the purpose of compensating for unavoidable adverse impacts which remain after all appropriate and practicable avoidance and minimization has been achieved.

Creation: The establishment of a wetland or other aquatic resource where one did not formerly exist.

Enhancement: Activities conducted in existing wetlands or other aquatic resources that increase one or more aquatic functions.

Ephemeral Stream: An ephemeral stream has flowing water only during and for a short duration after, precipitation events in a typical year. Ephemeral stream beds are located above the water table year-round. Groundwater is not a source of water for the stream. Runoff from rainfall is the primary source of water for stream flow.

Farm Tract: A unit of contiguous land under one ownership that is operated as a farm or part of a farm.

Flood Fringe: That portion of the 100-year floodplain outside of the floodway (often referred to as ''floodway fringe'').

Floodway: The area regulated by Federal, state, or local requirements to provide for the discharge of the base flood so the cumulative increase in water surface elevation is no more than a designated amount (not to exceed one foot as set by the National Flood Insurance Program) within the 100-year floodplain.

Independent Utility: A test to determine what constitutes a single and complete project in the Corps regulatory program. A project is considered to have independent utility if it would be constructed absent the construction of other projects in the project area. Portions of a multi-phase project that depend upon other phases of the project do not have independent utility. Phases of a project that would be constructed even if the other phases were not built can be considered as separate single and complete projects with independent utility.

Intermittent Stream: An intermittent stream has flowing water during certain times of the year, when groundwater provides water for stream flow. During dry periods, intermittent streams may not have flowing water. Runoff from rainfall is a supplemental source of water for stream flow.

Loss of Waters of the US: Waters of the US that include the filled area and other waters that are permanently adversely affected by flooding, excavation, or drainage because of the regulated activity. Permanent adverse effects include permanent above-grade, at-grade, or below-grade fills that change an aquatic area to dry land, increase the bottom elevation of a waterbody, or change the use of a waterbody. The acreage of loss of waters of the US is the threshold measurement of the impact to existing waters for determining whether a project may qualify for an NWP; it is not a net threshold that is calculated after considering compensatory mitigation that may be used to offset losses of aquatic functions and values. The loss of stream bed includes the linear feet of stream bed that is filled or excavated. Waters of the US temporarily filled, flooded, excavated, or drained, but restored to preconstruction contours and elevations after construction, are not included in the measurement of loss of waters of the US. Impacts to ephemeral waters are only not included in the acreage or linear foot measurements of loss of waters of the US or loss of stream bed, for the purpose of determining compliance with the threshold limits of the NWPs.

Non-tidal Wetland: A non-tidal wetland is a wetland (i.e., a water of the US) that is not subject to the ebb and flow of tidal waters. The definition of a wetland can be found at 33 CFR 328.3(b). Non-tidal wetlands contiguous to tidal waters are located landward of the high tide line (i.e., spring high tide line).

Open Water: An area that, during a year with normal patterns of precipitation, has standing or flowing water for sufficient duration to establish an ordinary high water mark. Aquatic vegetation within the area of standing or flowing water is either non-emergent, sparse, or absent. Vegetated shallows are considered to be open waters. The term ''open water'' includes rivers, streams, lakes, and ponds. For the purposes of the NWPs, this term does not include ephemeral waters.

Perennial Stream: A perennial stream has flowing water year-round during a typical year. The water table is located above the stream bed for most of the year. Groundwater is the primary source of water for stream flow. Runoff from rainfall is a supplemental source of water for stream flow.

Permanent Above-grade Fill: A discharge of dredged or fill material into waters of the US, including wetlands, that results in a substantial increase in ground elevation and permanently converts part or all of the waterbody to dry land. Structural fills authorized by NWPs 3, 25, 36, etc. are not included.

Preservation: The protection of ecologically important wetlands or other aquatic resources in perpetuity through the implementation of appropriate legal and physical mechanisms. Preservation may include protection of upland areas adjacent to wetlands as necessary to

ensure protection and/or enhancement of the overall aquatic ecosystem.

Restoration: Re-establishment of wetland and/or other aquatic resource characteristics and function(s) at a site where they have ceased to exist, or exist in a substantially degraded state.

Riffle and Pool Complex: Riffle and pool complexes are special aquatic sites under the 404(b)(1) Guidelines. Riffle and pool complexes sometimes characterize steep gradient sections of streams. Such stream sections are recognizable by their hydraulic characteristics. The rapid movement of water over a course substrate in riffles results in a rough flow, a turbulent surface, and high dissolved oxygen levels in the water. Pools are deeper areas associated with riffles. A slower stream velocity, a streaming flow, a smooth surface, and a finer substrate characterize pools.

Single and Complete Project: The term ''single and complete project'' is defined at 33 CFR 330.2(i) as the total project proposed or accomplished by one owner/developer or partnership or other association of owners/developers (see definition of independent utility). For linear projects, the ''single and complete project'' (i.e., a single and complete crossing) will apply to each crossing of a separate water of the US (i.e., a single waterbody) at that location. An exception is for linear projects crossing a single waterbody several times at separate and distant locations: each crossing is considered a single and complete project. However, individual channels in a braided stream or river, or individual arms of a large, irregularly shaped wetland or lake, etc., are not separate waterbodies.

Stormwater Management: Stormwater management is the mechanism for controlling stormwater runoff for the purposes of reducing downstream erosion, water quality degradation, and flooding and mitigating the adverse effects of changes in land use on the aquatic environment.

Stormwater Management Facilities: Stormwater management facilities are those facilities, including but not limited to, stormwater retention and detention ponds and BMPs, which retain water for a period of time to control runoff and/or improve the quality (i.e., by reducing the concentration of nutrients, sediments, hazardous substances and other pollutants) of stormwater runoff.

Stream Bed: The substrate of the stream channel between the ordinary high water marks. The substrate may be bedrock or inorganic particles that range in size from clay to boulders. Wetlands contiguous to the stream bed, but outside of the ordinary high water marks, are not considered part of the stream bed.

Stream Channelization: The manipulation of a stream channel to increase the rate of water flow through the stream channel. Manipulation may include deepening, widening, straightening, armoring, or other activities that change the stream cross-section or other aspects of stream channel geometry to increase the rate of water flow through the stream channel. A channelized stream remains a water of the US, despite the modifications to increase the rate of water flow.

Tidal Wetland: A tidal wetland is a wetland (i.e., water of the US) that is inundated by tidal waters. The definitions of a wetland and tidal waters can be found at 33 CFR 328.3(b) and 33 CFR 328.3(f), respectively. Tidal waters rise and fall in a predictable and measurable rhythm or cycle due to the gravitational pulls of the moon and sun. Tidal waters end where the rise and fall of the water surface can no longer be practically measured in a predictable rhythm due to masking by other waters, wind, or other effects. Tidal wetlands are located channelward of the high tide line (i.e., spring high tide line) and are inundated by tidal waters two times per lunar month, during spring high tides.

Vegetated Buffer: A vegetated upland or wetland area next to rivers, streams, lakes, or other open waters which separates the open water from developed areas, including agricultural land. Vegetated buffers provide a variety of aquatic habitat functions and values (e.g., aquatic habitat for fish and other aquatic organisms, moderation of water temperature changes, and detritus for aquatic food webs) and help improve or maintain local water quality. A vegetated buffer can be established by maintaining an existing vegetated area or planting native trees, shrubs, and herbaceous plants on land next to open-waters. Mowed lawns are not considered vegetated buffers because they provide little or no aquatic habitat functions and values. The establishment and maintenance of vegetated buffers is a method of compensatory mitigation that can be used in conjunction with the restoration, creation, enhancement, or preservation of aquatic habitats to ensure that activities authorized by NWPs result in minimal adverse effects to the aquatic environment. (See General Condition 19.)

Vegetated Shallows: Vegetated shallows are special aquatic sites under the 404(b)(1) Guidelines. They are areas that are permanently inundated and under normal circumstances have rooted aquatic vegetation, such as seagrasses in marine and estuarine systems and a variety of vascular rooted plants in freshwater systems.

Waterbody: A waterbody is any area that in a normal year has water flowing or standing above ground to the extent that evidence of an ordinary high water mark is established. Wetlands contiguous to the waterbody are considered part of the waterbody.

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Federal Register

Tuesday,
January 15, 2002

Part II

Department of Defense

Department of the Army, Corps of Engineers

Issuance of Nationwide Permits; Notice

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

Issuance of Nationwide Permits; Notice

AGENCY: Army Corps of Engineers, DoD.

ACTION: Final notice.

SUMMARY: The Corps of Engineers is reissuing all the existing Nationwide Permits (NWPs), General Conditions, and definitions with some modifications, and one new General Condition. These final NWPs will be effective on March 18, 2002. All NWPs except NWPs 7, 12, 14, 27, 31, 40, 41, 42, 43, and 44 expire on February 11, 2002. Existing NWPs 7, 12, 14, 27, 31, 40, 41, 42, 43, and 44 expire on March 18, 2002. In order to reduce the confusion regarding the expiration of the NWPs and the administrative burden of reissuing NWPs at different times, we are issuing all NWPs on the same date so that they expire on the same date. Thus, all issued, reissued and modified NWPs, and General Conditions contained within this notice will become effective on March 18, 2002 and expire on March 19, 2007.

DATES: All NWPs and general conditions will become effective on March 18, 2002. All NWPs have an expiration date of March 19, 2007.

ADDRESSES: HQUSACE, ATTN: CECW–OR, 441 ''G'' Street, NW., Washington, DC 20314–1000.

FOR FURTHER INFORMATION CONTACT: Mr. David Olson, at (703) 428–7570, Mr. Rich White, at (202) 761–4599, or Mr. Kirk Stark, at (202) 761–4664 or access the U.S. Army Corps of Engineers Regulatory Home Page at: *http//:www.usace.army.mil/inet/functions/cw/cecwo/reg/*.

SUPPLEMENTARY INFORMATION:

Background

In the August 9, 2001 (66 FR 42070), **Federal Register** the Corps proposed to reissue all the existing Nationwide Permits (NWPs), General Conditions, and definitions with some modifications, and one new General Condition. We proposed to modify NWPs 14, 21, 27, 31, 37, 39, 40, 42, and 43, General Conditions 4, 9, 13, 19, 21, 26, and add a new General Condition 27.

The proposal intended to simplify and clarify permits that have no more than minimal effect on the environment, add additional requirements that will enhance protection of the aquatic environment, increase flexibility for the Corps field staff to target resources where most needed to protect the aquatic environment, reduce unnecessary burdens on the regulated public, and retain the key protections for the aquatic environment that were added last year (e.g. acreage limit of ½ acre of impact per project, the requirement for the Corps to be notified of any impacts over 1/10 acre, and important limits on impacts within mapped floodplains).

As a result of the comments received in response to the August 9, 2001, **Federal Register** notices and the public hearing on September 26, 2001, the Corps has made a number of changes to the proposed NWPs and General Conditions that are designed to further clarify the permits and strengthen environmental protection. These changes are discussed in the preamble.

In the December 13, 1996, issue of the **Federal Register**, the Corps announced its intention to replace NWP 26 with activity-specific NWPs before the expiration date of NWP 26. In the March 9, 2000, **Federal Register** notice (65 FR 12818—12899), the Corps published five new NWPs, modified six existing NWPs, modified six General Conditions, and added two new General Conditions to replace NWP 26. The five new NWPs (i.e., 39, 41, 42, 43, 44) and six modified NWPs (i.e., NWPs 3, 7, 12, 14, 27, and 40) would have expired five years from their effective date of June 7, 2000.

Today the Corps of Engineers is reissuing all the existing Nationwide Permits (NWPs), General Conditions, and definitions with some modifications, and one new General Condition. These final NWPs will be effective on March 18, 2002. All NWPs except NWPs 7, 12, 14, 27, 31, 40, 41, 42, 43, and 44 expire on February 11, 2002. Existing NWPs 7, 12, 14, 27, 31, 40, 41, 42, 43, and 44 expire on March 18, 2002. In order to reduce the confusion regarding the expiration of the NWPs and the administrative burden of reissuing NWPs at different times, we are issuing all NWPs on the same date so that they expire on the same date. Thus, all issued, reissued and modified NWPs, and General Conditions contained within this notice will become effective on March 18, 2002 and expire on March 19, 2007.

Grandfather Provision for Expiring NWPs at 33 CFR 330.6

Activities authorized by the current NWPs issued on December 13, 1996, (except NWPs 7, 12, 14, 27, 31, 40, 41, 42, 43, and 44), that have commenced or are under contract to commence by February 11, 2002, will have until February 11, 2003 to complete the activity. Activities authorized by NWPs 7, 12, 14, 27, 31, 40, 41, 42, 43, and 44, that were issued on March 9, 2000, that are commenced or under contract to commence by March 18, 2002, will have until March 18, 2003 to complete the activity.

Clean Water Act Section 401 Water Quality Certification (WQC) and Coastal Zone Management Act (CZMA) Consistency Agreement

In the August 9, 2001, **Federal Register** notice and concurrent with letters from Corps Districts to the appropriate state agencies, the Corps requested 401 certification and CZM consistency agreement. This began the Clean Water Act section 401 water quality certification (WQC) and Coastal Zone Management Act (CZMA) consistency agreement processes. Today's **Federal Register** notice provides a 60-day period for the states to complete the Clean Water Act section 401 water quality certification (WQC) and Coastal Zone Management Act (CZMA) consistency agreement processes. On August 9, 2001, we proposed to increase the normal 60-day period to complete the WQC and CZMA processes to 90 days. However, due to a majority of the NWPs expiring February 11, 2001, and schedule delays, we have had to keep the WQC and CZMA processes to 60 days. Also during this 60-day period, Corps divisions and districts will finalize their regional conditions for the new and modified NWPs.

Discussion of Public Comments

I. Overview

In response to the August 9, 2001, **Federal Register** notice, we received more than 2,100 comments. We reviewed and fully considered all comments received in response to that notice.

Many commenters expressed opposition to the proposed NWPs, but a few commenters indicated support for these NWPs. Most of the comments in opposition of the NWPs were two versions of identical post cards and a form letter that objected to proposed changes to general conditions 19 and 26, opposed the removal of linear limits for NWPs 21, 39, 40, 42, 43, and 44, and requested the withdrawal of NWP 21. Other commenters said that the NWPs were too difficult for the public to use, the NWPs exceeded the Corps jurisdiction, and the acreage and linear limits were too low for the NWPs to be useful. One commenter indicated that few changes proposed in the August 9, 2001, **Federal Register** notice will result in decreased workload for the Corps.

After considering the comments received in response to the August 9, 2001, **Federal Register** notice, we made several changes to the NWPs, general conditions, and definitions. These changes are discussed in detail in the preamble discussion for each NWP, general condition, and definition. We do not agree that the NWPs are too difficult for the regulated public to use. We have retained the ½ acre limit for many of the NWPs, to ensure that those NWPs authorize only activities with minimal adverse effects on the aquatic environment, individually and cumulatively. We have not adopted the proposed waiver process for the 300 linear foot limit for perennial streams in NWPs 39, 40, 42, and 43. We did adopt the waiver for intermittent streams in NWPs 39, 40, 42, and 43. NWPs 21 and 44 do not currently have a linear foot limitation, so the waiver does not apply. We believe that the changes to the NWPs will allow the Corps to more effectively authorize activities with minimal adverse effects on the aquatic environment.

II. General Comments

Many commenters objected to the NWP proposal, stating that it will place citizens at risk from flooding, promote wetland and stream destruction, degrade water quality, and result in the loss of critical habitat. Another commenter indicated that the NWPs need to be strengthened to ensure that marine, riparian, and riverine habitats, and the fish species that depend on those habitats, are adequately protected under the NWP process. One commenter said that the NWPs should authorize only those activities that have minimal impacts on water quality. This commenter said that the NWPs will lead to piecemealing and result in cumulative impacts detrimental to particular waterbodies. A commenter objected to the NWPs, stating that the NWPs authorize activities that expand existing developments. Another commenter said that the proposed NWPs will only benefit the development community and the Corps, while exposing the public and environment to unnecessary harm. One commenter stated that the Corps proposal to modify the NWPs would significantly weaken wetlands protection and severely hamper the ability of State fish and wildlife agencies to conserve wetlands and watersheds.

The terms and conditions of the NWPs, including the general conditions, ensure that the activities authorized by NWPs result in no more than minimal adverse effects on the aquatic environment, including wetlands and streams. General Condition 26, Fills Within 100-year Floodplains, addresses the use of certain NWPs to authorize activities in 100-year floodplains and ensures that such activities comply with FEMA-approved State and local floodplain management requirements. General Condition 11, Endangered Species, ensures that activities authorized by NWPs comply with the Endangered Species Act. Water quality certification is required for NWP activities authorized under section 404 of the Clean Water Act. In addition, district engineers can require water quality management measures to ensure that NWP activities result in no more than minimal adverse effects on water quality. NWPs authorize single and complete projects, and do not result in piecemealing of projects. District engineers consider cumulative adverse effects when reviewing requests for NWP verifications, including activities that result in the expansion of existing developments. The NWPs do not impede the efforts of State fish and wildlife agencies to conserve wetlands and watersheds.

Several commenters asserted that the NWP program contradicts the clear intent of Congress to establish a streamlined general permit process for activities with minimal adverse effects on the aquatic environment. A couple of commenters said that the NWPs regulate activities that are exempt from the Clean Water Act and its implementing regulations. These commenters requested more consistency between the NWPs and these statutory exemptions. One commenter stated that drainage districts are generally exempt from permit requirements, including pre-construction notification (PCN) requirements. This commenter said that the NWP conditions and notification requirements are too costly and could impair the ability of drainage districts to meet their obligations to protect citizens from flooding, and that the drainage ditches should be exempt from these regulations. One commenter stated that the Corps should recognize the important differences between wetland landscapes and the protection of non-aquatic areas that are dominated by ephemeral drainage systems in the desert regions of the southwest United States.

The NWPs provide an expedited review process for activities in waters of the United States that result in no more than minimal individual and cumulative adverse effects on the aquatic environment. Although the NWP program has undergone substantial changes in recent years, we believe those changes were necessary to ensure compliance with section 404(e) of the Clean Water Act. Section 404(e) authorizes the Corps to issue general permits, including NWPs. General permits authorize activities that are similar in nature and result in no more than minimal adverse effects on the aquatic environment, individually and cumulatively. The lower acreage limits and more restrictive terms and conditions of the NWPs are necessary to comply with section 404(e).

The NWPs do not regulate activities that are exempt from the permit requirements of the Clean Water Act. Certain activities that are conducted by drainage districts, such as the maintenance of drainage ditches, may be eligible for section 404(f) exemptions and therefore may not require authorization from the Corps. The construction of new drainage ditches may require a Department of the Army (DA) permit, if the proposed work involves discharges of dredged or fill material into waters of the United States and/or work in Section 10 waters. The NWPs do not change the section 404(f) exemptions. The NWPs authorize certain activities that require a DA permit pursuant to section 10 of the Rivers and Harbors Act and/or section 404 of the Clean Water Act. Some NWPs, such as NWPs 3 and 14, contain references to the section 404(f) exemptions. Project proponents can contact district engineers to determine whether specific activities qualify for the section 404(f) exemptions.

The NWPs allow district engineers flexibility when reviewing activities that involve discharges of dredged or fill material into ephemeral streams. Division engineers can regionally condition the NWPs to restrict or prohibit specific activities that result in the loss of ephemeral stream beds, or require project proponents to notify district engineers prior to construction for case-by-case review. The waiver process for the 300 linear foot limit for NWPs 39, 40, 42, and 43 allows district engineers to issue NWP verifications for activities that result in the loss of greater than 300 linear feet of intermittent (but not perennial) stream bed and have no more than minimal adverse effects on the aquatic environment.

Several commenters indicated that the proposed changes to the NWP program fails to address the significant problems with the new and modified NWPs that were published in the March 9, 2000, **Federal Register** (65 FR 12818). Two commenters stated that the restrictions in those NWPs have resulted in large burdens on the transportation construction industry and planning

officials. One commenter said that the elimination of the NWP 26 has resulted in large increases in delays associated with obtaining individual permits for transportation activities that were authorized by NWP 26. One commenter stated that these NWPs will result in longer delays and greater expenses for simple projects. This commenter said that NWP 26 should be reinstated to replace these cumbersome NWPs. One commenter asserted that the NWPs result in substantial burdens on the regulated public. Two commenters recommended that the Corps improve the NWP program by increasing acreage limits, increasing PCN thresholds, and reducing PCN information requirements.

The replacement of NWP 26 with activity-specific NWPs was necessary to ensure compliance with section 404(e) of the Clean Water Act. The terms and conditions of the NWPs published in the March 9, 2000, **Federal Register** notice were intended to ensure that the NWPs authorize only those activities that result in no more than minimal adverse effects on the aquatic environment. We recognize that certain activities that were previously authorized by NWPs now require individual permits, and that it takes more time to authorize those activities, including some transportation projects. We do not agree that the acreage limits and PCN thresholds of the NWPs should be increased, because the lower limits and thresholds ensure that the NWPs authorize only activities with no more than minimal adverse environmental effects.

One commenter stated that the Corps data shows that the number of acres of wetlands created under the mitigation requirements of the NWP program exceeds the number of acres permitted under the program. This commenter asked why the Corps has failed to do more to carry out the policies established in section 101(f) of the Clean Water Act to minimize paperwork, seek the best uses of manpower and funds, and to prevent needless delays at all levels of government.

The NWP program complies with the requirements of section 101(f) of the Clean Water Act, by providing an effective means of authorizing activities with no more than minimal individual and cumulative adverse effects on the aquatic environment.

Implementation

One commenter objected to the NWPs, stating that these permits remove the public, resource agencies, and the Corps from the permit review process. Another commenter said that NWP activities should be coordinated with natural resource agencies and the public. One commenter said that it is not appropriate for the Corps to rely on discretionary authority, regional conditions, and the PCN process to reduce the adverse impacts to the aquatic environment to a minimal level. This commenter stated that regional conditions are not consistently implemented across the country or to the degree necessary to ensure minimal effects.

The NWPs authorize minor activities that are usually not controversial and would result in little or no public or resource agency comment if they were reviewed through the standard permit process. Conducting full public interest reviews for NWP activities would substantially increase the Corps workload without substantial added value for the aquatic environment. NWP activities that require notification to the district engineer and result in the loss of greater than ½ acre of waters of the United States are coordinated with the appropriate Federal and state agencies (see paragraph (e) of General Condition 13). Discretionary authority, regional conditions, and the PCN process are essential elements of the NWP program, to ensure that NWP activities result in no more than minimal adverse effects on the aquatic environment. In response to a PCN, a district engineer can add special conditions to the NWP authorization to ensure that the activity will result in no more than minimal adverse effects on the aquatic environment. If the proposed work will result in more than minimal adverse effects on the aquatic environment, district engineers can exercise discretionary authority to require an individual permit. Regional conditions are not consistent throughout the country, because they address differences in aquatic resource functions and values in watersheds or other types of geographic regions.

One commenter stated that in order to ensure that the NWPs authorize only activities with minimal adverse effects on the aquatic environment, the NWPs should include a new general condition. This general condition would require public notices in all cases where notification is required and the submission of surveys of terrestrial and aquatic species and cultural and historic resources that may be affected by the NWP activity.

We do not agree that the general condition proposed in the previous paragraph is practical or necessary. General Condition 11, Endangered Species, addresses compliance with the Endangered Species Act. General Condition 12, Historic Properties, addresses compliance with the requirements of the National Historic Preservation Act. Project proponents may be required to provide surveys of endangered species or cultural resources to ensure compliance with these general conditions.

One commenter asserted that there is an unsubstantiated presumption that compensatory mitigation in any form effectively offsets the individual or cumulative adverse effects of NWP activities. One commenter indicated that, due to the small NWP acreage limits, the Corps has lost the ability to direct mitigation toward areas that would provide the most benefits on a watershed basis. One commenter said that mitigation should not be used to ensure that NWP activities result in minimal adverse effects on the aquatic environment. This commenter suggested that avoidance and practicable alternatives should be emphasized.

Compensatory mitigation is an important mechanism to ensure that the activities authorized by NWPs result in no more than minimal adverse effects on the aquatic environment, individually and cumulatively. Compensatory mitigation can be provided through individual aquatic resource restoration, creation, enhancement, or in exceptional circumstances, preservation projects, as well as mitigation banks, in lieu fee programs, and other types of consolidated mitigation efforts. General Condition 19 discusses mitigation for NWP activities, including the requirement for project proponents to avoid and minimize adverse effects on waters of the United States to the maximum extent practicable on the project site.

One commenter objected to the NWPs, stating that conditions imposed on the NWPs are rarely monitored for compliance. This commenter suggested that the Corps commit to an aggressive monitoring and enforcement program for activities authorized by NWPs. Another commenter said that the lack of compliance inspections has resulted in numerous instances where activities authorized by NWPs have resulted, through implementation failures and intentional violations, in substantial adverse effects. This commenter suggested that each NWP should be subject to a statistically sufficient number of compliance inspections to determine whether compliance is being achieved, and whether the NWP activities are resulting in more than minimal individual or cumulative adverse effects. One commenter said that enforcement efforts should not be

weakened. One commenter stated that the Corps needs to monitor and enforce the national and regional conditions of the NWPs.

We are committed to strong enforcement and compliance efforts for activities authorized by DA permits, including NWPs, but the amount of time dedicated to enforcement and compliance is dependent upon the value of the impacted resource and the available amount of district resources. The Corps is increasing its compliance efforts to further improve compliance. In consultation with other Federal agencies, the Corps is currently finalizing guidance that will address the need for improved compliance.

One commenter asserted that Corps personnel rarely verify the information provided in NWP verification requests, and speculated that project proponents may under-report the amount of impacts to waters of the United States to qualify for NWP authorization. This commenter suggested that the Corps commit to independent verification of the information submitted in NWP verification requests or verify the information for randomly selected subsets of verification requests. One commenter suggested that Corps produce educational brochures and web pages that describe the basic information that must be submitted in order to ensure that a NWP request is considered complete.

District personnel review requests for NWP verifications to determine if the information provided by the project proponents is accurate. The level of review is dependent on the amount of impacts proposed by the applicant and the resources available to Corps personnel. Site visits cannot be conducted for all NWP verification requests. District personnel utilize their knowledge of local conditions when reviewing NWP verification requests to assess whether the information provided in the NWP verification request is accurate. The Corps Headquarters homepage, see address above, and Corps district homepages contain information on the NWPs, including the NWPs, general conditions, regional conditions, state 401 and CZM conditions, and decision documents. The text of General Condition 13, Notification, lists the information necessary for a complete PCN. Several districts also provide brochures to assist project proponents who are preparing permit applications or NWP verification requests. District home pages on the Internet also have other information that is useful for permit applicants.

Acreage Limits

Three commenters suggested that higher acreage limits should be adopted for impacts to non-wetland waters and that district engineers should have the authority to issue project-specific waivers to NWP acreage limits. One commenter said that there should be higher acreage limits for master planned communities or similar planned development projects. One commenter said that a 500 linear foot limit for stream impacts should be added to the NWPs.

We do not agree that higher acreage limits should be implemented for NWP activities that result in the loss of non-wetland waters, or for master planned development projects. Open waters, such as streams, ponds, lakes, estuaries, and the oceans, are important components of the overall aquatic environment and provide valuable functions and environmental benefits. We also do not agree that a waiver process should be implemented for the acreage limits of NWPs. We do not believe it is necessary to impose a 500 linear foot limit on all losses of stream bed authorized by NWPs. The 300 linear foot limit for NWPs 39, 40, 42, and 43, and the waiver process for intermittent streams will ensure that those NWPs authorize no more than minimal impacts to stream beds. And such a limit is not necessary for the other NWPs. In addition, these acreage limit suggestions would require notice and comment, before they could be adopted.

One commenter stated that the standard permit process does not necessarily result in additional avoidance, minimization, or compensatory mitigation, but causes substantial project delays, higher costs, and increased risks to public safety. Two commenters suggested that the Corps implement an NWP program that imposes the acreage limits of the 1996 NWPs (*i.e.,* 3 acres) on the activity-specific NWPs published in the March 9, 2000, **Federal Register**. A number of commenters recommended reissuing NWP 26. One commenter said that the NWPs are too restrictive and they add unnecessary administrative burdens while providing questionable environmental benefits. Two commenters said that there is nothing in the administrative record that indicates the need for the ½ acre limit. Three commenters stated that the acreage limits and PCN thresholds are arbitrary and capricious and unsupported by sound science.

The standard permit process can result in additional avoidance and minimization because of the Section 404(b)(1) guidelines analysis required for those standard permit activities that involve discharges of dredged or fill material into waters of the United States. The terms and conditions of the NWPs, including the ½ acre limit for many of the NWPs, are necessary to ensure that the NWPs authorize only those activities with no more than minimal adverse effects on the aquatic environment, individually and cumulatively. We do not agree that NWP 26 should be reinstated, because the replacement of NWP 26 was necessary to ensure compliance with section 404(e) of the Clean Water Act.

One commenter stated that the ½ acre limit for certain NWPs has dramatically expanded the scope of the regulatory program, leading to increased costs and delays with few demonstrated environmental benefits. One commenter asserted that the acreage limits of the NWPs do not decrease losses of wetlands because projects are designed to impact the maximum amount to avoid the individual permit process. Several commenters said that the NWP program is no longer useful to industry and other regulated entities because the strict terms and conditions of the NWPs provide no incentives for project proponents to design projects to qualify for NWP authorization. This commenter said that there should be more reliance on regional conditions to ensure that there is no more than minimal adverse environmental effects, instead of unnecessarily restrictive national conditions. A number of commenters indicated that impacts on the environment will increase since few projects qualify for NWP authorization.

The ½ acre limit for certain NWPs has not increased the scope of the regulatory program, although it may result in more activities requiring individual permits. The terms and conditions of the NWPs are necessary to ensure that the NWPs authorize only those activities that result in no more than minimal adverse effects on the aquatic environment, individually and cumulatively. Division engineers can add regional conditions to the NWPs to address important aquatic resource functions and values in particular geographic areas, but the terms and national general conditions of the NWPs are necessary to address national concerns for the aquatic environment. The NWP program encourages avoidance and minimization of impacts to wetlands, and most project proponents do not request NWP authorization to fill the maximum amount of wetlands under the NWP acreage limits. General Condition 29 requires project proponents to avoid and minimize impacts to waters of the

United States to the maximum extent practicable on the project site. We believe that many project proponents will continue to design their projects to qualify for authorization under the NWPs, including avoiding and minimizing impacts to aquatic resources on the project site.

Pre-construction Notification Process

One commenter requested that the Corps reinstate the ⅓ acre PCN threshold, or demonstrate that a lower notification threshold is necessary to ensure that adverse effects on the aquatic environment are minimal.

The 1/10 acre PCN threshold for several of the NWPs is necessary so that district engineers can review those activities to ensure that they result in no more than minimal adverse effects on the aquatic environment, individually and cumulatively. Therefore, we have retained the 1/10 acre PCN threshold for certain NWPs. Additionally, the Corps does not believe the PCN requirements impose a significant burden on most project proponents.

A few commenters stated that NWPs are complex and the PCN process requires too much time. One commenter said that the time limit for determining if a PCN is complete is longer than the 15 day period for determining if a standard permit application is complete. This commenter recommended that the Corps delete the 30 day completeness review for PCNs. This commenter said that increasing the PCN review period to 45 days does not comply with the goal for an expedited permit process, and makes the NWP process resemble the standard permit process. One commenter said that the PCN review process provides disincentives for project proponents to design their projects to qualify for NWP authorization.

The 45 day PCN review period is necessary to allow district engineers to adequately review those activities that require PCNs. However, most NWP verifications do not take the full 45 days. The average time to verify a NWP activity is 19 days. Although the 30 day completeness review period for PCNs is less than the 15 day completeness review period for standard permit applications, the PCN process allows more effective authorization of activities with no more than minimal adverse effects on the aquatic environment. An individual activity authorized by an NWP does not require a public notice or the same level of review required for a standard permit activity. Project proponents requesting NWP verifications generally receive their authorizations more quickly than they would receive standard permits. The 45 day PCN review period includes the 30 day completeness review, and we do not agree that the 30 day completeness review period should be deleted. The completeness review period makes the PCN process more efficient by requiring district engineers to request additional information early in the PCN process. If a district engineer receives a complete PCN, then the decision to verify that the activity is authorized by NWP or exercise discretionary authority must be made within 45 days. We do not agree that the PCN process discourages project proponents from designing their projects to qualify for NWP authorization, because the NWP process is faster than the standard permit process.

Compliance With Section 404(e) of the Clean Water Act and the National Environmental Policy Act

Several commenters said that the NWPs do not comply with section 404(e) of the Clean Water Act because they authorize activities with more than minimal adverse effects on the aquatic environment. One commenter asserted that the NWPs should be limited to specific uses. Numerous commenters stated that the NWPs do not comply with the ''similar in nature'' requirement of section 404(e) of the Clean Water Act.

The terms and conditions of the NWPs, including the acreage limits and PCN review process, ensure that the NWPs authorize only those activities with no more than minimal individual and cumulative adverse effects on the aquatic environment. The NWPs undergo a thorough review process every five years to ensure compliance with the requirements of section 404(e) of the Clean Water Act. Each of the NWPs complies with the requirement for general permits to authorize activities that are ''similar in nature.''

One commenter indicated that the database may not be adequate enough to warrant the proposed changes to the NWPs and said that the Corps cannot assure the public that the proposed changes will not result in greater impacts to waters of the United States. Another commenter said that the database to justify the proposed changes is small compared to the overall age of the permit program. A few commenters suggested that the regulations should be modified to require each Corps district office to furnish quarterly reports to each state agency in the district that would summarize the number, type, and impacts of activities in waters of the United States for all NWP verifications issued. Several commenters said that the Corps needs to improve its database for the regulatory program.

The proposed changes to the NWPs published in the August 9, 2001, **Federal Register** will not result in more than minimal adverse effects on the aquatic environment. The proposed modifications are intended to improve the efficiency of the NWP program, and enhance protection of important aquatic resources. We do not agree that it is necessary to change the Corps regulations to require districts to provide states with quarterly reports concerning the impacts authorized by all NWP verifications. Corps headquarters is developing a new data collection and reporting system to replace the current system. The new system will improve data collection for the regulatory program, and will help the Corps compile summary data and evaluate trends. The new data collection system will improve the reliability of regulatory program data.

One commenter said that the Corps has not adequately assessed cumulative impacts and that virtually no mitigation has been required because of the smaller individual impacts of these NWPs. Another commenter objected to the NWPs, stating that district engineers cannot determine the magnitude of individual and cumulative environmental impacts. One commenter said that the NWPs should not be reissued because cumulative impacts have not been addressed at a regional or national level.

We maintain our position that assessing cumulative impacts across the nation is not possible or appropriate. We believe that no assessment of individual and cumulative impacts can be made a national level, because the functions and values of aquatic resources vary considerably across the country. Assessment of cumulative impacts is more appropriately conducted by Corps districts on a watershed basis, because they have better understanding of local conditions and processes. However, the NWP program is designed programmatically to ensure no more than minimal adverse effects, individually and cumulatively. This is accomplished through acreage limits, the PCN process, regional conditioning, and the exercise of discretionary authority to require individual permits. Each district generally tracks losses of waters of the United States authorized by Department of the Army permits, including verified NWPs, as well as required compensatory mitigation achieved through aquatic resource restoration, creation, and enhancement. The regional conditioning process, including

the preparation of supplemental Environmental Assessments by division engineers, also helps ensure that the NWPs authorize activities with no more than minimal adverse effects on the aquatic environment, individually and cumulatively.

One commenter stated that National Environmental Policy Act (NEPA) requires the Corps to evaluate the environmental impacts of every major Federal action, such as the issuance of section 404 permits, that significantly affects the quality of the human environment. Several commenters said that Environmental Impact Statements (EISs) are required for the NWPs, at both the national and district levels. One of these commenters asserted that these EISs should examine all reasonable alternatives to the NWPs, general conditions, and regional conditions. One commenter said that EISs should be completed for NWPs 13, 29, 39, 40, 42, and 44. Two commenters said that regional conditions for the NWPs should not be finalized until an EIS on the NWPs is completed. One commenter expressed disagreement with the Finding of No Significant Impact (FONSI) for the NWP program that was issued on June 23, 1998, which stated that the Corps is not required to do an EIS for the NWPs. One commenter said that an EIS is required to demonstrate compliance with section 404(e) of the Clean Water Act.

We maintain our position that the NWPs do not require an EIS, even though we are in the process of preparing a voluntary programmatic EIS for the NWP program. Since the NWPs authorize only those activities that have no more than minimal adverse effects on the aquatic environment, the NWP program does not reach the significance threshold required for the preparation of an EIS. The NWPs are subjected to a reissuance process every five years. This reissuance process involves a public notice and comment period, which provides the Corps with information to ensure that the NWPs continue to authorize only those activities with no more than minimal adverse effects on the aquatic environment, individually and cumulatively. Again, the NWP program does not reach the level of significant impacts that requires the preparation of an EIS. To comply with NEPA, Corps headquarters issues an Environmental Assessment (EA) for each NWP when it is issued, reissued, or modified. These EAs consider the environmental effects of each NWP from a national perspective. Each Corps division and district engineer will supplement these EAs to evaluate regional environmental effects of the NWPs. For the reasons above, the NWP program and the NWPs do not reach the level of significant impacts that requires the preparation of an EIS, and in fact are far below that level.

We do not agree that regional conditions for the NWPs should not be finalized until an EIS on the NWPs is completed. We also believe that the FONSI for the NWP program that was issued on June 23, 1998, is still valid despite the changes to the NWPs that have occurred since the FONSI was issued. There have been no substantial changes to the NWP regulations at 33 CFR part 330 or to the implementation of the NWP program since the FONSI was issued. The FONSI discussed, in general terms, the implementation of the NWP program, including the procedures used by the Corps to ensure that the NWPs authorize only those activities with no more than minimal individual and cumulative adverse effects on the aquatic environment. The Corps is not required to do an EIS to demonstrate compliance with section 404(e) of the Clean Water Act. The decision documents issued for each NWP address compliance with the section 404(b)(1) guidelines, which require an analysis for the issuance of general permits (see 40 CFR 230.7). Finally, although not required to prepare an EIS, the Corps is preparing a voluntary Programmatic EIS to assess the NWP Program to see if there are changes to the NWP program that would further ensure that there are no more than minimal adverse effects to the aquatic environment, individually and cumulatively. The Programmatic EIS is discussed below.

One commenter said that the Corps can not limit its analyses to only those effects of the NWPs that occur in jurisdictional waters at the location of the permitted activity. Another commenter said that an EIS is required each time an NWP is used to authorize a private development project.

For the purposes of NEPA and the Corps regulatory program, the scope of analysis is limited to address the impacts of the specific activity requiring a DA permit and those portions of the entire project over which the district engineer has sufficient control and responsibility to warrant Federal review (see 33 CFR part 325, Appendix B, paragraph 7(b)). We do not agree that an EIS is warranted whenever an NWP is used to authorize a private development project, because the NWPs authorize only those activities that occur within the Clean Water Act section 404 limited scope of review and that have no more than minimal adverse effects on the aquatic environment.

One commenter stated that the EAs for the NWPs must contain current data. Two commenters asserted that the decision documents, including the EAs and Statements of Finding, for the NWPs should be subjected to an agency coordination and public comment period before they are finalized. Another commenter said that the EAs fail to consider alternatives to the proposed NWPs. One commenter stated that the EAs prepared for the NWPs do not adequately describe or assess the significant cumulative effects the NWP program has on the environment. One commenter recommended that the Corps issue new EAs for each nationwide permit to demonstrate compliance with NEPA. One commenter objected to the preliminary EAs, stating that those documents do not demonstrate an ecological rationale for the proposed acreage limits of the NWPs. One commenter stated that the EAs do not adequately assess potentially significant environmental impacts of the NWPs.

We believe it was unnecessary to make the revised EAs for the NWPs proposed in the August 9, 2001, **Federal Register** available for agency review and public comment. The EAs for the new and modified NWPs issued today discuss, in general terms, the acreage limits for these NWPs, the types of waters subject to the new and modified NWPs, and the functions of those waters. The EAs also address projected impacts to waters of the United States that will occur through the use of these NWPs. These projected impacts are based on recent data. The EAs also contain discussions of alternatives analyses. Since aquatic resource functions and values vary considerably across the country, we cannot include detailed ecological analyses to support the acreage limits for these NWPs. In addition, due to NEPA requirements concerning the length of environmental documentation, the EAs for the new and modified NWPs must be limited to general discussions of potential impacts. Division engineers will be issuing supplemental EAs that will address regional issues at the district level. The ''Forty Most Frequently Asked Questions'' concerning NEPA developed by the Council on Environmental Quality (i.e., Question 36) and the Corps regulations at 33 CFR part 325, Appendix B, discuss the recommended length of EAs. Finally, the changes in the new NWPs, relative to the existing NWPs, are minimal and generally designed to simplify the permits and increase protection of the aquatic environment. EAs for the existing

permits have been publicly available since these permits were issued.

A few commenters said that the Corps must finalize the Programmatic Environmental Impact Statement (PEIS) for the NWPs before finalizing the NWP proposal published in the August 9, 2001, **Federal Register**. One commenter stated that the current NWPs should be extended until the PEIS is completed. One commenter stated that the draft PEIS for the NWP program does not address the specific effects of the NWPs on listed species, critical habitat or any other natural resources. Another commenter said that the draft PEIS lacks available data to assess the impacts of the NWP program because the Corps database is faulty. This commenter asserted that there should be no permitting until the Corps can adequately assess the success or failure of the regulatory program. One commenter said that the NWP PEIS does not provide sound scientific data that demonstrates that the NWPs have only minimal impacts on the environment.

In March 1999 the Corps began preparation of a voluntary PEIS to evaluate procedures and processes for the NWP program. The PEIS will not address the impacts of any specific NWPs. The PEIS is not a legally required EIS. The Council of Environmental Quality's regulations at 50 CFR 1506.1(c) do not prohibit the Corps from issuing the NWPs prior to completing the voluntary PEIS. The issuance of the NWPs will not preclude the ability of the Corps to modify the NWP program or modify individual NWPs in accordance with any need for changes identified in the PEIS. The Corps is in compliance with NEPA because a FONSI for the NWP program was issued on June 23, 1998, and the Corps issues decision documents, including EAs, for each NWP when the NWP is issued, reissued, or modified. Specific comments concerning the PEIS will be addressed through the PEIS process.

Jurisdictional Issues

In response to the August 9, 2001, **Federal Register** notice, we received numerous comments concerning the scope of the Corps regulatory authority. These comments addressed issues such as excavation activities in waters of the United States, isolated waters, and ephemeral streams as waters of the United States.

One commenter stated that the Corps should develop regulations that accurately reflect the regulatory exemptions for excavation because all maintenance activities associated with any existing structures or fill are exempt from Section 404 permit requirements. One commenter stated that the definition of ''loss of waters of the United States'' in the NWPs should be clarified to exclude excavation. As an example, this commenter said that if an activity involves non-jurisdictional excavation and temporary stockpiling of excavated material, those activities should not be included in the measurement of ''loss of waters of the United States''.

In the January 17, 2001, issue of the **Federal Register** (66 FR 4550), we promulgated a final rule that revised the Clean Water Act regulatory definition of the term ''discharge of dredged material'' to address recent Court decisions. It is important to note that not all excavation activities in waters of the United States result only in incidental fallback into waters of the United States. Excavation activities that result in the redeposit of dredged material into waters of the United States, other than incidental fallback, require a Section 404 permit. Excavated material that is temporarily stockpiled in waters of the United States before it is removed to a permanent deposit area requires a Section 404 permit. We have retained the excavation language in the new and modified NWPs and the definition of ''loss of waters of the United States'' because some of these activities may be authorized by NWPs. All excavation activities in navigable waters of the United States require Section 10 permits, even if those excavation activities result only in incidental fallback into Section 10 waters. NWPs issued under Section 10 of the Rivers and Harbors Act may authorize excavation activities in navigable waters of the United States.

Two commenters indicated that the NWPs should be modified to ensure compliance with the recent *Solid Waste Agency of Northern Cook County* v. *United States Army Corps of Engineers et al.* decision (U.S. Supreme Court No. 99–1178).

The *Solid Waste Agency of Northern Cook County v. United States Army Corps of Engineers et al.* decision related to the scope of CWA jurisdiction over non-navigable isolated intrastate waters. The NWPs do not establish jurisdiction that does not otherwise exist. They only authorize activities that require a permit. If an activity does not require a permit, the NWPs do not create a requirement for a permit. If an activity does require a permit and complies with the terms and conditions of an NWP, that activity may be authorized by the NWP.

A couple of commenters suggested that the Corps needs to improve its definition of ordinary high water mark (OHWM) because the current definition, which is based on physical evidence, does not provide any criteria regarding the frequency of flow necessary to establish an OHWM. These commenters stated that Corps personnel use the outermost banks to identify OHWMs, regardless of how frequently flows actually inundate the area between banks. Another commenter stated that Congress did not intend to extend Federal jurisdiction to discharges of dredge or fill material into areas that are ordinarily dry. This commenter indicated that a Corps district is asserting jurisdiction up to the limits of the 25-year floodplain. This commenter also suggested that the Corps limit its jurisdiction to areas with an OHWM within a less frequently flooded floodplain and that areas outside of the 1 to 5 year floodplain should not be considered to be within the OHWMs.

The Corps agrees that we should look at improving the definition of the OHWM. This will be the subject of a separate review. However, no schedule has been developed for this review. The frequency and duration at which water must be present to develop an OHWM has not been established for the Corps regulatory program. District engineers will use their judgment on a case-by-case basis to determine whether an OHWM is present. The criteria used to identify an OHWM are listed in 33 CFR 328.3(e).

Procedural Comments

One commenter said that it was unreasonable to: (1) Expect the public to travel to a public hearing to provide comments on the August 9, 2001, proposal in a government building in Washington DC; (2) schedule only one public hearing; (3) expect public comments to reach the Corps in a timely manner when the **Federal Register** notice had only a physical address for receiving public comments; and (4) expect the public to receive updated information regarding the rescheduling of the public hearing because of computer viruses and the absence of phone numbers or e-mail addresses in the **Federal Register** notice. This commenter also stated that it was not reasonable to expect public comments on proposed NWP regional conditions to be submitted in a timely manner because the physical addresses published in the August 9, 2001, **Federal Register** notice contained errors, the deadline for public comment on the regional conditions was not published in the **Federal Register**, and the comment period for proposed regional conditions preceded the

deadline for public comment published in the **Federal Register** notice. This commenter said that future public notices by the Corps should include an electronic mail address, a physical address, and a telephone number for submitting of non-electronic comments. This commenter also asserted that additional public hearings should be conducted throughout the country to provide adequate opportunities for the general public to provide public comment prior to the reissuance and modification of the NWPs.

In response to the August 9, 2001, **Federal Register** notice announcing the proposed changes to the NWPs, we received over 2,100 comments and had 19 people attend the public hearing in Washington, DC. We believe that the level of participation is consistent with other proposals. We understand that the events on September 11, 2001, has affected the general public and we have made reasonable efforts to accommodate the public. In response to these events, we postponed and rescheduled the September 12, 2001, public hearing and extended the 45-day comment period by 15 days. The new date of the public hearing and the extension of the comment period were announced on our web page at *http://www.usace.army.mil/inet/functions/cw/cecwo/reg* and published in the September 18, 2001 (66 FR 48121), and September 21, 2001 (66 FR 48665), issues of the **Federal Register**, respectively. We believe that sufficient time and notice was given to the public to either participate in the public hearing or submit written comments. A physical address, web address that allowed electronic submittal of comments, and a telephone number with a point of contact were included in the August 9, 2001, September 18, 2001, and September 21, 2001, issues of the **Federal Register**. While some addresses within the notice may have contained zip code errors, we continue to provide the best information possible. We disagree that additional public hearings need to be conducted and maintain our position that we have fully complied with the public hearing requirements of the Clean Water Act.

One commenter said that the August 9, 2001, **Federal Register** notice contained several significant changes to the NWPs that were not discussed in the preamble. This commenter cited the addition and removal of a particular word or clauses that may narrow the protection provided by the terms and conditions of an NWP, the general conditions, and the definitions. One commenter said that NWPs should be coordinated with state agencies and the public and that any permit conditions requested by state agencies should be incorporated into the NWPs.

The preamble to the August 9, 2001, **Federal Register** notice discussed the substantive changes that we proposed for the NWPs and general conditions. We do not believe it was necessary to explain all minor editing changes to the NWPs, general conditions, and definitions in the preamble. However, there were a few errors in the proposal that contained some substantive changes that we did not intend to propose as changes. These were not discussed in the proposal and have been changed back to the original March 9, 2000 language. These errors are discussed in the discussion of the NWP, general condition or definition where they occurred. Each Corps district issued public notices announcing the publication of the August 9, 2001, **Federal Register** notice for the proposal to reissue and modify the NWPs. The district public notice process included coordination with state agencies and the public, to solicit their comments on regional issues related to the reissuance and modification of the NWPs, including any proposed regional conditions. We do not agree that all conditions requested by state agencies should be incorporated into regional conditions. Division engineers approve only those regional conditions that are necessary to ensure that the NWPs authorize activities with minimal adverse effects on the aquatic environment, individually and cumulatively. However, state and Tribal Section 401 water Quality Certification and state Coastal Zone Consistency conditions are included as conditions to the NWPs

One commenter said that the August 9, 2001, proposal to reissue and modify NWPs should have had information concerning the cost of administering the NWP program. This commenter stated that costs of administering the NWP program can be reduced by requiring individual permits for all NWP activities that result in more than minimal adverse effects on the aquatic environment and require mitigation. Another commenter asserted that the August 9, 2001, **Federal Register** notice should have included statistics on the current NWP program, such as the number of activities authorized by NWP, the amount of staff time expended to process NWP verification requests, and the amount of staff time used for compliance and enforcement.

We did not believe it was necessary to discuss the costs of administering the NWP program in the August 9, 2001, **Federal Register** notice. Requiring individual permits for all NWP activities that may result in more than minimal adverse environmental effects before consideration of mitigation would not reduce costs. The individual permit process is more costly to implement than the NWP process. Increasing the number of individual permits processed by the Corps would increase the costs to implement the Corps regulatory program. We do not agree that it was necessary to include statistics on the NWP program or the amount of staff time expended to implement the NWP program in the August 9, 2001, notice.

Discretionary Authority

A few commenters objected to the NWPs because they place a large part of the responsibility on discretionary authority at the district and division levels to reduce the adverse individual and cumulative effects to the aquatic environment to a minimal level. One commenter suggested that more restrictive national standards on the NWPs should be imposed instead of relying upon the discretionary authority process. One commenter stated that the use of discretionary authority needs further guidance. Another commenter requested clear criteria district engineers should use to incorporate safeguards as a result of discretionary authority.

We disagree with these commenters because the PCN and discretionary authority processes provide substantial protection for the aquatic environment. The PCN requirements of the NWPs allows case-by-case review of activities that have the potential to result in more than minimal adverse effects to the aquatic environment. If the adverse effects on the aquatic environment are more than minimal, then a district engineer can either add special conditions to the NWP authorization to ensure that the activity results in no more than minimal adverse environmental effects or exercise discretionary authority to require an individual permit. We believe that district engineers are the best qualified to identify projects or activities at the local level that may result in more than minimal adverse effects to the aquatic environment. In addition, division engineers can add regional conditions to the NWPs to lower the PCN threshold or otherwise further restrict the use of the NWPs to ensure that the NWPs authorize only activities with no more than minimal adverse effects on the aquatic environment in a particular watershed or other geographic region. The functions and values of aquatic resources differ greatly across the

country. Therefore, minimal effects determinations for proposed NWP activities should be made at the local level by district engineers. We do not agree that guidance concerning the use of discretionary authority needs to be developed and implemented at the national level.

Compliance With the Endangered Species Act

A couple of commenters said that the Corps should initiate formal Endangered Species Act (ESA) consultation for the NWP program. One commenter suggested that NWPs be subject to national and district-level ESA assessments and formal consultation. One commenter indicated that the Corps is violation of section 7 of the ESA for failing to complete the mandatory formal consultation process with the U.S. Fish and Wildlife Service (FWS) and National Marine Fisheries Service (NMFS) prior to reissuing and implementing the NWPs.

The Corps has initiated formal programmatic ESA consultation with the U.S. FWS and NMFS for the NWP program in 1999. A draft Biological Opinion has been prepared, but a final Biological Opinion has not been issued to date. A section 7(d) determination that the NWP reissuance will not foreclose any options has been prepared. Further, we believe that the NWPs, through the requirements of General Condition 11, comply with ESA. Further where necessary for specific cases we use the interagency ESA section 7 consultation regulations at 50 CFR part 402 when determining compliance with ESA. General Condition 11 requires a non-federal permittee to notify the district engineer if any listed species or designated critical habitat might be affected or is in the vicinity of the proposed activity, or if the proposed work is located in designated critical habitat. General Condition 11 also states that the permittee shall not begin work on the activity until notified by the district engineer that the requirements of the ESA have been satisfied and that the activity is authorized by NWP. General Condition 11 further indicates that the NWP does not authorize the taking of any endangered species.

A few commenters indicated that NWPs create cumulative impacts that affect endangered species. One commenter suggested that the Corps prohibit the use of NWPs in proximity to areas containing habitat that may be used by threatened or endangered species. A couple of commenters objected to General Condition 11, stating that it places the responsibility of determining whether a proposed activity may affect a threatened or endangered species in the hands of the prospective permittee.

To address cumulative impacts that affect endangered species, division engineers can impose regional conditions on the NWPs and district engineers can add case-specific special conditions to NWP authorizations to address impacts to endangered or threatened species or designated critical habitat. For example, regional conditions can prohibit the use of NWPs in certain geographic areas or require PCNs for all activities in areas inhabited by endangered or threatened species. Some Corps districts have conducted programmatic ESA consultation to address activities regulated by the Corps that may affect Federally-listed endangered or threatened species. General Condition 11 requires non-federal permittees to notify the Corps if any Federally-listed endangered or threatened species or designated critical habitat might be affected by the proposed work. Those activities that will not affect any Federally-listed endangered or threatened species or designated critical habitat do not require notification to the district engineer. The regulations at 50 CFR part 402 do not require ESA consultation for those activities that will not affect endangered or threatened species or destroy or adversely modify designated critical habitat. The implementation of General Condition 11, regional conditions, and case-specific special conditions will ensure that the NWP program complies with the ESA.

Regional Conditioning of the Nationwide Permits

One commenter stated that the preamble of the August 9, 2001, **Federal Register** notice makes it clear that in taking into account these regional differences, district engineers can change notification thresholds or require notification for all activities within a particular watershed or waterbody. This commenter indicated that district engineers should also have the discretion to eliminate notification requirements, increase acreage limits, add permits, and authorize activities where the impacts to the environment will be minimal based upon the regional conditions.

Division engineers cannot modify the NWPs by adding regional conditioning to make the NWPs less restrictive. Only the Chief of Engineers can modify an NWP to make it less restrictive, if it is in the national public interest to do so. Such a modification must go through a public notice and comment process. However, if a Corps district determines that regional general permits are necessary for activities not authorized by NWPs, then that district can develop and implement regional general permits to authorize those activities, as long as those regional general permits comply with section 404(e) of the Clean Water Act.

One commenter stated that regional conditions are not uniformly applied by district engineers throughout the country and in some cases can potentially result in less protection for the aquatic resources. This commenter suggested that Corps districts adopt stronger regional conditions or institute stronger national conditions. One commenter agreed that regional conditions are an essential tool for protecting valuable aquatic resources and accounting for differences in aquatic resource functions and values across the country. One commenter stated that regional conditions have broadened the applicability of NWPs to make them less protective.

We believe that imposing more restrictive national terms and limitations on the NWPs is unnecessary. The terms and conditions of the NWPs published in this **Federal Register** notice, the PCN process, and the regional conditioning process will ensure that the NWPs authorize activities with no more than minimal adverse effects on the aquatic environment, individually and cumulatively. It is far more efficient to develop NWPs that authorize most activities that have no more than minimal adverse effects on the aquatic environment and provide division and district engineers with the authority to limit the use of these NWPs through discretionary authority or by adding conditions to the NWPs.

For particular regions of the country or specific waterbodies where additional safeguards are necessary to ensure that the NWPs authorize only those activities with no more than minimal adverse effects, regional conditions are the appropriate mechanism to address those concerns. For example, regional conditions can restrict the use of NWPs in high value waters for those activities that do not require submission of a PCN. Division and district engineers are much more knowledgeable about local aquatic resource functions and values and can prohibit or limit the use of the NWPs in these waters. We believe that regional conditioning of the NWPs provides effective protection for high value wetlands and other aquatic habitats.

One commenter stated that NWPs could affect treaty and other Indian

rights and would like to consult with the Corps on a government to government basis to develop regional or national conditions that will address the concerns. One commenter recommended regional conditions that would require notification of Tribes and provide appropriate Tribes with the opportunity to comment on particular NWP activities.

We believe that General Condition 8, Tribal Rights, addresses the issue of tribal rights and the use of NWPs. Division and district engineers can consult with Tribes to develop regional conditions that will ensure that tribal rights are adequately addressed by the NWP process. Division engineers can regionally condition the NWPs to require coordination with Tribes when proposed NWP activities may affect Tribal lands or trust resources.

One commenter said that regional conditions should be developed for all NWPs to conserve Essential Fish Habitat. A couple of commenters indicated that NWPs should not be used in any areas that have been ranked as high value wetlands or critical resource waters. One commenter indicated that NWPs should not be used to authorize Section 10 and Section 404 activities in the Lower Hudson River. One commenter indicated that regional conditions are troubling because there are no central, definitive sources for information concerning those conditions.

We agree that regional conditions are an effective mechanism to help ensure that the NWPs comply with the Essential Fish Habitat provisions of the Magnuson-Stevens Fishery Conservation and Management Act. We require division and district engineers to coordinate with regional offices of the National Marine Fisheries Service to develop and implement regional conditions to conserve Essential Fish Habitat. Areas with high value wetlands or critical resource waters can be subjected to regional conditions, to ensure that activities authorized by NWPs do not result in more than minimal adverse effects to those waters. General Condition 25 addresses the use of certain NWPs in designated critical resource waters. This general condition states that district engineers can designate additional critical resource waters after notice and opportunity for public comment. The Corps has a general map of Corps division and district boundaries that is available on the Internet at *http://www.usace.army.mil/where.html#Divisions.* This interactive map also provides links to the home pages of Corps districts. Due to the scale of this map and since some Corps district boundaries are based on watershed boundaries, prospective permittees should contact the nearest Corps district office to determine which Corps district will review their PCN, permit application. Most Corps districts post their regional conditions on their Internet home pages.

One commenter stated that the last paragraph on page 42070 of the August 9, 2001, **Federal Register** notice contains an incorrect statement. This paragraph states that: ''In addition to the ''notification'' provision, regional conditions may be developed by District Engineers to take into account regional differences in aquatic resource functions and values across the country and to put mechanisms into place to protect them. After identifying the geographic extent of ''higher'' quality aquatic systems, District Engineers can either change ''notification'' thresholds, or require ''notification'' for all activities within a particular watershed or waterbody to ensure that NWP use and authorization only occurs for activities with minimal adverse effects, individually and cumulatively.'' This commenter said that district engineers can only recommend regional conditions and that regional conditions must be approved by division engineers.

This commenter is correct, because regional conditions must be approved by division engineers after a public notice and comment period. District engineers can propose regional conditions at any time, but the division engineer must approve those regional conditions before they become effective.

Water Quality Certification/Coastal Zone Management Act Consistency Determination Issues

One commenter suggested that agencies should work together to make early agreements on certification conditions or denials of certification by states and tribes under section 401 of the Clean Water Act and section 307 of the Coastal Zone Management Act (CZMA). This would improve protection of the aquatic resources, benefit the regulated community, and reduce duplication of workload. Some commenters indicated that NWPs should be conditioned to prohibit construction by an applicant until all state and local permits are issued. A few commenters stated that the Corps should not issue a provisional NWP verification letter if the state denies Water Quality Certification because local regulators are easily persuaded to issue their permit.

We encourage States and Tribes to coordinate with Corps districts to complete and expedite water quality certification (WQC) and coastal zone certification for the NWPs. The proposed changes to the NWPs that were announced in the August 9, 2001, **Federal Register** notice are minor, and we believe that the proposed changes will not substantially affect the water quality certification and coastal zone consistency determination processes. Concurrent with the publication of the August 9, 2001, **Federal Register** notice, Corps districts and divisions were required to issue public notices to solicit comments on proposed regional conditions and initiate coordination with states and Tribes for the purposes of WQC and CZMA consistency determinations. The NWPs published in today's **Federal Register** notice have not been extensively modified from the proposal published in the August 9, 2001, **Federal Register**. These NWPs will become effective in 60 days. Since there have been few changes to the proposed NWPs, we believe that 60 days is sufficient time for states and Tribes to complete their WQC and CZMA consistency determinations. We believe that it is incumbent upon the Corps to let the applicant know when we have completed the Corps review and what the Corps decision is. It is up to the applicant to get the required individual State 401 water quality certification from the state, where the state has denied a water quality certification for the NWP as a whole.

Discussion of Comments and Final Permit Decisions

Nationwide Permits

The following is a discussion of the public comments received on the proposed nationwide permits and our final decisions regarding the NWPs, the general conditions, and the definitions. The Corps prepared decision documents on each of the NWPs, which are available on the Corps web site, indicated above. Following the discussion of the public comments are the final NWPs, the final general conditions, and the final definitions.

1. *Aids to Navigation.* There were no changes proposed to this nationwide permit. Since there were no comments on this nationwide permit. The nationwide permit is reissued without change.

2. *Structures in Artificial Canals.* There were no changes proposed to this nationwide permit. There were no comments on this nationwide permit. The nationwide permit is reissued without change.

3. *Maintenance.* We did not propose any change to this nationwide permit.

However, there were several comments on this NWP. One commenter suggested that 'terms' should be applied to maintenance of all flood protection works that the Corps built in partnership with the State, and that are now maintained by local entities or by ourselves.

We presume that this comment refers to ''term limits'' on the time that may elapse between maintenance events in flood protection projects. Although this idea may have merit in the context of the original project authorization, or with respect to maintenance agreements with local sponsors, we do not believe that such limits can or should be imposed through NWP 3. We do not intend this NWP to encourage or compel maintenance activities to be conducted more frequently than is necessary. However, the eligibility requirements of NWP 3(i) do encourage maintenance to be conducted before the structure or fill falls into such a state of disrepair that it can no longer be considered ''serviceable.''

Another commenter expressed the opinion that NWP 3 addressed activities that are exempt from regulations under section 404(f)(1) of the Clean Water Act

This is not correct. NWP 3 does not, in any way, extend Clean Water Act or River and Harbor Act jurisdiction to any area or activity that is not subject to these laws. Any activity that is exempt does not require a permit for the Corps including NWP 3.

One commenter suggested that while bioengineered projects are less environmentally damaging than riprap and offer benefits to salmon, the presence of wood in some bank protection structures has the potential to interfere with treaty fishing access by preventing the use of nets in areas. Another commenter stated that Tribes should be informed of all requests for this NWP that involve in-water work and granted 30 days to provide comments.

General Condition 8, Tribal Rights, does not allow an activity or its operation to impair reserved tribal rights, including but not limited to, reserved water rights and treaty fishing and hunting rights. Compliance with the general condition for NWP 3 regarding interference with treaty fishing rights, or other tribal rights, and the determination of any relevant and necessary modification of this NWP is the responsibility of our Division and District offices.

One commenter suggested that riprap should not be allowed in any waterbody where habitat-forming processes are limited, as identified by a state or federal watershed analysis for salmon and/or their habitat, and where the riprap would interfere with these processes. This commenter also suggested that the placement of riprap should be the minimum necessary to protect the structure.

We believe that NWP 3, as proposed, will limit the placement of riprap to the minimum necessary to provide adequate erosion protection. However, applicable law does not impose any restriction related to the habitat-forming processes mentioned by this commenter. In light of this, we believe that it would be inappropriate to impose such a policy under any Corps permit process. Although the consideration of such concerns may be proper in the context of authorizations for new work, we do not agree that it should be a compelling consideration in the context of the kinds of maintenance activities that are eligible for authorization under this NWP.

One commenter suggested that the Corps prohibit the addition of new riprap or, at a minimum, require ''Notification'' if new riprap is proposed, and that the Corps prohibit the placement of riprap or any other bank stabilization material in any special aquatic site, including wetlands. Another commenter stated the permit should prohibit ''removal of accumulated sediments'' in special aquatic sites.

Since this NWP only authorizes activities that restore an area to its previous condition, we do not believe it is appropriate to prohibit the maintenance of structures or fills simply because a special aquatic site may have formed in areas that require such repair. Similarly, with respect to the discharge of riprap or other bank stabilization materials, we do not believe that restoration of banks or of stabilization projects, within the limits of NWP 3, should be precluded by the presence of a special aquatic site.

One commenter suggested that this NWP should not be issued for maintenance work on culverts that fail to meet appropriate standards for the upstream and downstream passage of fish, or issued for culverts that do not allow for the downstream passage of substrate and wood. This commenter also suggested that if the proposed action is to remove the build-up of substrate at the upstream end of the culvert, or from the culvert itself, a condition of the permit should be that all substrate of spawning size and all wood of any size should be placed at the downstream end of the culvert.

We do not believe there are any national standards that we can apply to NWP 3 to assure that an adequate passage for fish and substrate materials is provided in the maintenance situations that can be authorized under this NWP. However, we agree that, to the extent that actions to enhance such fish and substrate passage can be incorporated into individual NWP 3 authorizations, they should be included as best management practices. We will encourage Corps districts to consider this issue when approving maintenance of culverts. Any redeposit of excavated spawning-size substrate may be authorized under NWP 18, but is subject to the limitations of that NWP

Several commenters indicated the Corps should withdraw section (iii) as the dredging and discharge allowed is double that authorized by NWPs 18 and 19 and, as such, will result in greater than minimal adverse effects. Several commenters also offered the opinion that restoring upland areas damaged by a storm, etc., has nothing to do with maintaining currently serviceable structures. Furthermore, some commenters suggested that it may be difficult to determine if the ''damage'' is due to a discreet event after a two-year period. Additionally, there is no acreage limit for this section and placement of ''upland protection structures'' will result in changes in the upstream and downstream hydromorphology of a stream.

We do not agree that the mere fact that the amount of the dredging or discharge authorized under this NWP, as compared to the authorization of similar activities under other NWPs, in any way indicates that the effects are more than minimal. The question of whether or not restoring upland areas has anything to do with maintaining currently serviceable structures is not relevant to the consideration of this NWP since no such relationship is required by the permit itself, or by the regulations governing the issuance of such permits. We do agree that, in some cases, it may be difficult to determine whether any damage is due to a discrete event. For this reason, the NWP prescribes only limited criteria in this regard, and it affords considerable discretion to the District Engineer to determine when there is a reasonable indication that the damage being repaired qualifies for authorization under NWP 3.

Two commenters indicated the permit can be used to expand the scope of other NWPs, including 13, 18, 19 and 31 which could result in more than minimal impact to the environment.

General condition 15 addresses the use of multiple NWPs for a project. This condition provides that more than one NWP can only be used if the acreage lost

does not exceed the acreage limit of the NWP with the highest specified acreage limit. Normally, when NWPs are combined for a project, the combined impacts are no more than minimal. We rely on our District offices to provide reasonable final assurance that the use of one or more NWPs, as they are applied in actual situations, do not result in more than minimal impacts. Districts have discretionary authority to require individual permits in situations where there is reason to believe that any NWP, individually or in combination with other NWPs, will result in more than minimal impacts.

One commenter suggested that the permit (inappropriately) encourages reconstruction in floodplains without questioning the need or desirability of doing so.

We believe that, inherent in the authorization of a structure or fill, is the reasonable right to maintain those structures or fills. With respect to the kinds of activities that are eligible for authorization under NWP 3, we do not agree that an assessment of need or desirability, is appropriate or necessary to ensure that the relevant effects are no more than minimal, including the effects on the floodplain.

Several commenters stated the lack of a definition of ''discreet event'' ignores the natural, hydrological processes at work in stream systems and allows landowners to prevent natural meandering processes within a waterway caused by normal storm events.

On the contrary, NWP 3 clearly recognizes that maintenance may be required either as a result of a discrete event such as a storm, or as a result of non-discrete forces. However, we do not agree that landowners should be prevented or unduly constrained from maintaining legitimately constructed structures or fills that are subject to the effects of natural hydrologic processes of adjoining waters.

A couple of commenters stated allowing riprap and gabions will result in the permanent channelization of natural streams by inhibiting their natural movement within the floodplain with major direct and secondary effects to the aquatic environment, as well as adverse hydrologic affects to downstream properties.

Since NWP 3 only authorizes activities that repair or return a project to previously existing conditions, we do not believe that it will result in any effects that did not previously accrue from the existence of the original structure or fill, and we believe that the maintenance activities authorized under this NWP will have no more than minimal adverse effects on the aquatic environment, individually and cumulatively.

One commenter stated that NWP 3(i) should be modified to also allow for the maintenance of existing structures or fill that did not require a permit at the time they were constructed.

NWP 31 does authorize regulated activities related to the repair, rehabilitation, or replacement of structures or fills that did not require authorization at the time they were constructed. As referenced in NWP 3(i), the regulations at 33 CFR 330.3 provide an elaboration on this point.

One commenter suggested that NWP 3(ii) should be modified to allow the Corps District Engineer to waive the 200' limitation in any direction from the structure when the aquatic resource impacts would remain minimal. It should also specify that areas that are only excavated with only incidental fallback, temporary stockpile areas, and temporary redeposits should not be included in the 200' limitation since such impacts would not cause a loss of waters of the US.

It is entirely reasonable to conclude that regulated discharges associated with the removal of accumulated sediments that occur more than 200 feet from a certain structure may have no more than minimal effects. However, our intent in qualifying such removal for eligibility under NWP was to authorize them as part of the maintenance of a specific structure, and not simply because the effects were no more than minimal. Although we cannot certify that 200 feet is, in any way, an absolute distance within which removals are clearly associated with the maintenance of the structure, we believe that it is a reasonable distance for asserting such association for the purposes of this NWP. Incidental fallback associated with otherwise unregulated activities is not regulated under section 404 of the Clean Water Act or under section 10 of the Rivers and Harbors Act. Temporary stockpiles and other temporary discharges of dredged or fill materials in waters of the US are regulated, but we believe that they can and should be avoided in most maintenance situations. Although they may not result in a permanent or net loss of waters of the US, and they may have no more than minimal adverse effects on the aquatic environment, we do not believe that they are necessary in most cases. They can also lead to discharges of pollutants into waters of the US that may or may not have minimal adverse effects, depending on the circumstances. For these reasons, we are not including such activities among those eligible for authorization under NWP 3.

One commenter suggested that NWP 3(iii) should be modified to allow the Corps District Engineer to waive the limitation which states that dredging may not be done primarily to obtain fill for restorative purposes when the aquatic resource impacts would remain minimal or when it is environmentally advantageous to allow some modification of pre-existing contours or discharges of additional fill material to prevent recurring damage and the associated repeated disturbance to continually repair the damage. This commenter further suggested that the District Engineer could then exercise more discretion in terms of requiring watershed based mitigation banks and in-lieu fee programs for additional impacts while requiring mitigation at a site of superior watershed importance.

This NWP focuses on the repair and restoration of currently serviceable structures and not on the source of such material. We are not convinced that allowing dredging to obtain the fill material would normally have no more than minimal impacts unless there were also detailed listing of dredging limitations and conditions. Further, to establish such limitations we would need to provide opportunity for public review and comment. In light of this, we do not agree that the suggested expansion of this NWP is appropriate. This NWP does allow some minor deviation, but modifications that are more than minor deviations cannot be considered to be ''maintenance'' as it is envisioned in this NWP and, depending on the nature and location of such prospective changes, separate authorization may be required.

One commenter stated that individuals should not be able to use this Nationwide Permit to increase the area impacted by bank stabilization structures.

NWP 3 does not authorize any significant increase in the original structure or fill. Only minor deviations that are necessary to effect repairs are eligible for authorization under this NWP.

One commenter insisted the notification requirement should be removed from NWP 3(ii) and NWP 3(iii) as these requirements create additional administrative burden with no increase in environmental protection or added value to the process. For NWP 3(iii), the commenter suggested that the requirement should be changed to a post-construction notification in order to expedite repairs necessary to public infrastructure.

We believe that these PCN requirements, as proposed, are a prudent means of assuring that the proposed maintenance activities are limited to those eligible for authorization under this NWP. We recognize that the PCN requirement imposes an additional burden on the project proponent, but we do not believe that it is inequitable or, in most circumstances, substantial. Emergency permit procedures are available to authorize such maintenance activities more quickly in emergency situations.

One commenter suggested that NWP 3 should be withdrawn as it is too broad for projects to be considered ''similar in nature'', or to be able to determine that the various projects, when considered individually or cumulatively, will result in minimal adverse environmental effects. The commenter also felt that its limitations are arbitrary and capricious and potentially could result in the exposure of highly toxic compounds.

We believe that NWP 3, as proposed, describes activities that are sufficiently similar in nature for the purposes of the NWP Program. Since this NWP only authorizes activities needed to return a project to a previously existing condition that either was authorized or that was implemented prior to the need for authorization, we do not agree that the effects will be more than minimal.

One commenter stated the Corps is unlikely to obtain adequate information on whether or not a change in use is contemplated, what the practicable alternatives are, or what materials are used unless an Individual Permit is required. In light of this, the commenter suggested that NWP 3 should be rewritten to prevent serious and widespread abuses.

We acknowledge that under this NWP we rely on the applicant's information on the intended use and on other aspects of the regulated activity. Since this NWP only authorizes activities that would return a project to previously existing conditions, we believe that the likelihood of serious or widespread abuses is exceedingly low. Further, we have the authority and use our authority to enforce compliance with permits, where necessary. The nationwide permit is reissued without change.

4. *Fish and Wildlife Harvesting, Enhancement, and Attraction Devices and Activities.* There were no changes proposed to this nationwide permit. There were no comments on this nationwide permit. The nationwide permit is reissued without change.

5. *Scientific Measurement Devices.* There were no changes proposed to this nationwide permit. One commenter stated the word ''primarily'' should be replaced with the word ''solely''. We believe that this change would unnecessarily restrict the NWP and require an individual permit in a few cases, simply because there was a secondary use or benefit of the scientific devise. Further, we do not believe that the requirement for an individual permit, for that reason, would result in any added value for the environmental. The nationwide permit is reissued without change.

6. *Survey Activities.* There were no changes proposed to this nationwide permit. There were no comments on this nationwide permit. The nationwide permit is reissued without change.

7. *Outfall Structures and Maintenance.* There were no changes proposed to this nationwide permit. One commenter suggested that notification should be limited to impacts greater than one acre, and that the District Engineer should have the authority to quickly issue this permit, without agency notification, by placing conditions limiting construction activities to periods of low-flow or no-flow in unvegetated ephemeral watercourses. Another commenter indicated the Corps should withdraw NWP 7(ii) since NWP 19 already provides for minor dredging, or limit the amount of material to be excavated to 25 cubic yards in order to be consistent with NWP 19.

The Corps believes that the limitations on the amount of fill that can be placed per linear foot is normally sufficient to ensure that the adverse effects on the aquatic environment will be minimal, individually and cumulatively. We agree that some impacts can be reduced by conducting certain activities in waters of the United Sates during low-flow or no-flow conditions. However, we also believe that a prohibition is not necessary or not practicable in many cases. We believe that this practice should be encouraged to further minimize any adverse effects on the aquatic environment. Therefore, we have modified general condition 3 to encourage this practice. We agree that there is some redundancy between NWP 7(ii) and NWP 19. However, we believe that NWP 7(ii) should not be eliminated since it is related to other activities authorized by NWP 7. Furthermore, the terms of NWP 7 are specific to that type of activity.

One commenter said this permit should prohibit the removal of accumulated sediments from small impoundments and special aquatic sites as these locally support rare, threatened or endangered water-dependent organisms.

The Corps does not believe that these areas normally support rare, threatened or endangered water dependent organisms, but this NWP does not authorize any regulated activity unless it complies with the Endangered Species Act. This NWP only allows the removal of accumulated sediments to maintain a preexisting depth, to facilitate water withdrawal at the location of the water intake.

One commenter insisted that NW7 should be withdrawn as it is too broad for projects to be considered ''similar in nature'', or to be able to determine that the various projects, when considered individually or cumulatively, will result in minimal adverse environmental effects. The commenter also suggested that its limitations are arbitrary and capricious. The Corps believes that the description of the type of activities will ensure that those activities authorized by this NWP will be similar in nature. Further, we believe that these activities normally will have no more than minimal adverse effects on the aquatic environment, individually or cumulatively. Further, Division and District Engineers will condition such activities where necessary to ensure that these activities will have no more than minimal adverse effects on the aquatic environment, individually and cumulatively.

The nationwide permit is reissued without change, however condition 3 was modified based on a comment on this NWP as indicated above.

8. *Oil and Gas Structures.* There were no changes proposed to this nationwide permit. However, one commenter recommended that NWP 8 should be withdrawn as it is too broad for projects to be considered ''similar in nature'', or to be able to determine that the various projects, when considered individually or cumulatively, will result in minimal adverse environmental effects. The commenter indicated that this permit category has the potential for catastrophic secondary, indirect, and cumulative adverse impacts, including adverse impacts to federally listed threatened or endangered species.

The Corps believes that this NWP is sufficiently restrictive to protect the environment. The only structures that can be authorized under this NWP are those within areas leased by the Department of the Interior, Minerals Management Service. The general environmental concerns are addressed in the required NEPA documentation that the Service must prepare prior to issuing a lease. Further, Corps involvement is only to review impacts on navigation and national security as stated in 33 CFR 322.5(f). The

nationwide permit is reissued without change.

9. *Structures in Fleeting and Anchorage Areas.* There were no changes proposed to this nationwide permit. However, one commenter suggested changing the permit to read: ''Buoys, floats and similar non-structural devices placed within anchorage or fleeting areas to facilitate moorage of vessels where the USCG has established such areas for that purpose.''

The Corps believes that this change is not needed. The current language is sufficient to ensure that the category of activities will be similar in nature. We believe that the suggested language would not allow certain structures that are necessary for moorage of vessels to be authorized within anchorage and fleeting areas. The types of structures permitted by this NWP within USCG established anchorage or fleeting areas are only those for the purpose moorage of vessels. We believe that this limits the type of structure sufficiently to be considered similar in nature. The nationwide permit is reissued without change.

10. *Mooring Buoys.* There were no changes proposed to this nationwide permit, and there were no comments on this nationwide permit. The nationwide permit is reissued without change.

11. *Temporary Recreational Structures.* There were no changes proposed to this nationwide permit. However, one commenter recommended withdrawing NWP 11 as it is too broad for projects to be considered ''similar in nature'', or to be able to determine that the various projects, when considered individually or cumulatively, will result in minimal adverse environmental effects. The commenter also stated that the permit category has the potential for catastrophic secondary, indirect, and cumulative adverse impacts, including adverse impacts to Federally listed threatened or endangered species. Another commenter suggested that temporary buoys, markers, small floating docks, and similar structures can interfere with the exercise of treaty fishing access and, therefore, in an area subject to treaty fishing, notification to affected tribes is required. The commenter further stated the regional conditions should be added, to require that such structures shall be removed from salmon spawning areas prior to commencement of the spawning season.

We believe that the listing of the type of activities will ensure that those activities authorized by this NWP will be similar in nature. Further, we believe that normally these activities will have no more than minimal adverse effects on the aquatic environment, individually and cumulatively. Further, Division and District Engineers will condition such activities where necessary to ensure that these activities will have no more than minimal adverse effects on the aquatic environment, individually and cumulatively. We agree that this NWP, as with all NWPs, should not authorize any activity that may impair reserved tribal rights, including, but not limited to, those reserved water rights, and treaty fishing and hunting rights, as stated in general condition 8. District and division engineers will consider the need to add regional conditions or case-specific conditions where necessary to protect such tribal rights. The nationwide permit is reissued without change.

12. *Utility Line Activities.* No changes to this nationwide permit were proposed. Several commenters raised issues and suggested changes related to size and threshold limits and construction practices. One commenter said that the permit should contain height and depth requirements for utility line installation. Another commenter suggested that a strict cap limit on the size of the utility line should be established. One commenter suggested that the Corps should require revegetation, as well as restoration, of the landscape's original contours for all NWP12 projects. One commenter suggested that sidecasting of material into wetlands should be prohibited, as should the construction of permanent access roads. One commenter suggested that the Corps should limit temporary sidecasting to 30 days, rather than 90 to 180 days as currently written. The commenter also suggested that, because temporary impacts can have more than minimal adverse effects, they should be limited to ½-acre, and total impacts should be limited to 0.3 acres. One commenter recommended raising the acreage limit from ½ acre to one acre. Another commenter said that the ½ acre limit is arbitrary and capricious.

Based on our experience, the Corps believes that the current thresholds and construction limitations are adequate to protect the aquatic environment while allowing needed projects to proceed, with restrictions. Furthermore, district engineers can further restrict specific activities, such as limiting sidecasting to 30 days where necessary. At this time, we do not believe that it is necessary or appropriate to increase or reduce the thresholds.

Several commenters suggest changes to the preconstruction notification (PCN) requirement. One commenter recommended requiring a PCN for all lines greater than 6″ in diameter. Two commenters indicated that the absence of a clear definition of ''mechanized land clearing'' and a reasonable threshold for requiring PCNs creates regulatory uncertainty and an unnecessary burden on gas utility and pipeline construction projects. They further indicated that the notification requirement would be more reasonable and consistent with other NWP criteria if it only applied when mechanized land clearing affects more than a reasonable acreage of forested wetland. Another commenter recommended removing the PCN requirements for any mechanized land clearing that occurs in forested wetlands for utility rights-of-way. One commenter stated the Corps should exempt all utility projects other than sewer lines from the notification criteria because it is an unnecessary burden on non-sewer, energy-related utility projects, which typically will cross a water at right angles as opposed to running parallel to a stream bed that is within a jurisdictional area. Also, one commenter suggested we substitute a Corps-only PCN for activities resulting in the loss of between ½ and one acre of waters of the U.S. and a broader PCN for activities resulting in the loss of more than one acre. One commenter recommended reducing the PCN time period for a Corps response from 45 to 30 days.

The Corps believes that the current PCN requirements continue to be the appropriate criteria for determining when a PCN is required. We do not believe that an additional PCN requirement related to the size of the utility line is appropriate since the impacts of the utility line are temporary, and since restoration to preconstruction contours is required. We believe that projects involving mechanized land clearing require a PCN so that the Corps can ensure that the effect are no more than minimal. We also believe that the requirement for agency coordination of PCNs for activities that affect more than ½ acre for all NWPs, including this one, should remain in place to avoid confusion and to be consistent for all other NWPs. We believe that the 45 day response time for PCN is appropriate. It provides adequate time for those NWP activities that need some extra time to review. Corps Districts do not routinely use the 45 day period. Currently the average review time for NWP verifications is 18 days.

One commenter stated that natural gas distribution and pipeline projects typically only result in incidental fallback and, as such, should not require a 404 permit.

The Corps disagrees that such projects exclusively result in only incidental fallback. The Corps recognizes that

some excavation activities are likely to result in only incidental fallback that does not require a Corps permit under section 404 of the Clean Water Act. However, the Corps regards the use of mechanized earth moving equipment in waters of the US as resulting in a discharge of dredged material unless project specific evidence shows that the activity results in only incidental fallback. (See 33 CFR 323.2(d)(2)(i)). The determination whether a permit is required will be made on a case-by-case basis. In addition, the backfill for the pipeline is a regulated discharge which requires authorization under section 404 of the Clean Water Act.

A few commenters suggested that the NWP, as proposed, would eliminate the ½ acre threshold for several activities. They indicated that the proposed NWP states that ''activities authorized by paragraph (i) *and* (iv) may not exceed a total of ½-acre loss of waters of the U.S.'' whereas the existing NWP states that ''activities authorized by paragraphs (i) *through* (iv) may not exceed a total of ½-acre loss of waters of the United States.'' Since the current NWP language more clearly indicates that the total loss may not exceed ½-acre, they recommended that the current language should be retained.

The Corps agrees with this comment. The change was an error and the Corps did not intend to change this NWP. The current language will be retained.

Several commenters indicated that the discharge of dredged or fill material under this NWP could adversely affect a number of species listed under the Endangered Species Act.

The Corps believes that General Condition 11 is adequate to protect endangered species. No NWP authorizes any activity that does not comply with the Endangered Species Act.

One commenter recommended that the Corps prohibit ''stacking'' NWP 12 authorizations to allow multiple crossings, or to allow the use of NWP 12 in combination with any other NWP.

This NWP can only be used once for a pipeline crossing of a water of the United States. A pipeline project may cross more than one stream. However, each of these separate and distinct crossings is considered a single and complete crossing in accordance with Corps regulations at 33 CFR 330.2(i).

A few commenters recommended that the use of NWP12 for water intakes should not be approved because the low head dams typically associated with such structures can violate general condition 4. Some commenters also indicated that water withdrawal projects have different requirements than standard utility line crossings resulting in alterations to natural flow regimes that cannot be considered under this NWP.

NWP 12 specifies that all activities authorized by this NWP must comply with General Condition 4. Furthermore, NWP 12 cannot be used to authorize low head dams. Such structures would require an individual permit or some other general permit.

Two commenters requested the Corps revoke NWP12(ii) since they believed that it is unnecessary to construct such facilities in wetlands. They believe that providing an easily attainable authorization for such construction will actually encourage the placement of utility lines in wetland areas, resulting in an increase in the loss of wetlands.

We agree that any unnecessary construction of utility line substations in wetlands should be avoided. However, where such construction cannot be avoided as a practical matter, we believe that the limitations we have imposed in the NWP will ensure that any adverse effects on the aquatic environment will be no more than minimal, individually and cumulatively.

One commenter suggested that NWP 12 should be conditioned to require BMP's on private lands only, since federal and state land managers are more likely to impose conditions on properties under their control.

We believe that the term and conditions are adequate to ensure that any adverse effects on the aquatic environment will be no more than minimal, individually or cumulatively. The Corps districts will add regional or case specific conditions where they determine a need for such conditions.

One commenter said that NWP 12 should be withdrawn as it is too broad for projects to be considered ''similar in nature'', or to be able to determine that the various projects, when considered individually or cumulatively, will result in minimal adverse environmental effects. The permit category has the potential for catastrophic secondary, indirect, and cumulative adverse impacts, including adverse impacts to federally listed threatened or endangered species.

We believe that the minor nature of these types and categories of activities are similar in nature. We further believe that the conditions and specified thresholds will ensure that the activities will have no more than minimal adverse effects on the aquatic environment, individually and cumulatively. The thresholds have been developed based on years of experience and were developed to consider most effects that could occur in many areas of the country. However, Division and District Engineers will condition such activities where necessary to ensure that those activities will have no more than minimal adverse effects on the aquatic environment, individually and cumulatively. Activities authorized by this NWP must comply with general condition 11 to ensure that the activity is in compliance with the Endangered Species Act.

One commenter suggested we remove the sentence ''waters of the United States temporarily affected by filling, flooding, excavation, or drainage, where the project area is restored to preconstruction contours and elevations, are not included in the calculation of permanent loss of water of the United States.''

The Corps has established the threshold limits for all NWPs to be for permanent loss of waters of the US. Further we have establish the thresholds to provide for the Corps to be able to look at those projects to ensure that there will be no more minimal adverse effects on the aquatic environment, individually or cumulatively. Because the temporary discharges do not result in long lasting impacts and any short term impacts are less per acre than permanent, adding those temporary impacted acreage to permanent acreage would not provide an accurate measure of the potential impacts that may result in more than minimal effects.

One commenter recommended that a threshold of ½-acre should be used below which no compensatory mitigation should be required, unless a District Engineer determines otherwise. Another commenter suggested the changes in values and functions associated with the permanent conversion of maintaining gas line rights-of-way are more likely to be beneficial than detrimental. Because of the benefits, as well as the very limited extent of vegetation change, a mitigation ratio of 1:1 should be adopted for wetland disturbances above ½-acre. One commenter suggested we remove the paragraph that characterizes the conversion of a forested wetland to an herbaceous wetland as a ''permanent adverse effect'' that requires mitigation. Compensatory mitigation should not be required as well-maintained herbaceous wetlands are of significant value and often provide greater ecological functions. Additionally, many utility construction and maintenance activities result in only temporary effects on wetlands.

The Corps believes that mitigation should be required to ensure that any adverse effects on the aquatic environment will be no more than

minimal, individually or cumulatively. We have proposed to modify General Condition 19 concerning mitigation requirements for the NWPs. See the preamble discussion on General Condition 19 for our response to mitigation comments. The nationwide permit is reissued without change.

13. *Bank Stabilization.* The Corps proposed no changes to this NWP. One commenter said that this NWP should be withdrawn because it is too broad to meet the ''similar in nature'' requirement of general permits and it authorizes activities that may result in more than minimal adverse environmental effects. This commenter also stated that this NWP has the potential for substantial secondary, indirect, and cumulative adverse impacts, including adverse impacts to federally listed threatened or endangered species and environmental damage at riprap extraction sites. Another commenter stated that the Corps needs to develop a method to document, analyze, and minimize environmental impacts from all bank stabilization activities. One commenter stated that this NWP authorizes activities that adversely affect natural stream processes, is contrary to current practices and philosophies of natural stream rehabilitation, and impedes future restoration work. A couple of commenters suggested that the Corps adopt a ''no net loss in natural stream banks'' policy, requiring the removal of one linear foot of bank stabilization for every linear foot of new bank stabilization. Two commenters stated that the Corps should direct its bank stabilization and bank restoration programs toward the goal of maintaining and restoring natural stream processes to the Nation's rivers and streams.

This NWP complies with the ''similar in nature'' requirement of general permits, including nationwide permits, even though there are numerous methods of bank stabilization that can be authorized by this NWP. The terms and conditions, including the notification requirements and the ability of division and district engineers to impose regional and case-specific conditions on this NWP, will ensure that the activities authorized by this NWP will result in no more than minimal individual and cumulative adverse effects on the aquatic environment. For those NWP 13 activities that require notification, district engineers will review the proposed work to ensure that those activities result in no more than minimal adverse effects to the aquatic environment. We do not agree that it would be appropriate to adopt a ''no net loss'' goal for stream banks. Stream bank stabilization activities are necessary to protect property and ensure public safety. Stream restoration is not always feasible in developed areas and other types of bank stabilization may be more appropriate in those areas.

One commenter said the NWP should encourage consideration of more environmentally acceptable methods of bank stabilization first, and if those methods are not appropriate, then hard erosion control measures such as riprap or bulkheads could be authorized. A commenter recommended that this NWP authorize techniques that employ more natural methods of bank protection channelward of the ordinary high water mark, which may or may not include the use of hard armoring materials.

We do not agree that it is necessary to establish preferences for bank stabilization methods in the terms and conditions of this NWP. In certain situations, riprap or bulkheads may be the only practicable methods of bank stabilization. This NWP can be used to authorize bank stabilization activities channelward of the ordinary high water mark, as long as the terms and conditions of the NWP are met.

One commenter stated that the 500 linear foot limit of this NWP should be reduced to 100 linear feet, to prevent significant degradation of salmon habitat. Two commenters said that NWP 13 should not authorize bank stabilization activities in excess of 300 linear feet. One commenter indicated that NWP 13 should be modified to allow district engineers to waive the 500 linear foot limit when impacts to aquatic resource are minimal or when it is environmentally advantageous to allow additional bank stabilization to prevent recurring damage. Such a waiver would reduce repeated disturbances associated with continuously repairing damaged bank stabilization measures that were shortened to meet the limit. This commenter also said that this waiver would allow district engineers to exercise more discretion in terms of requiring watershed based mitigation banks and in-lieu fee programs for additional impacts and requiring mitigation at a site of greater watershed importance.

Based on our experience of using this limit for over 25 years, we believe that 500 linear feet is the appropriate limit. However, this limit can be waived as indicated in the first sentence of the last paragraph of NWP 13 which states that bank stabilization activities in excess of 500 feet in length may be authorized if the project proponent notifies the district engineer in accordance with General Condition 13 and the district engineer determines that the proposed work results in minimal individual and cumulative adverse environmental effects. Division engineers can regionally condition this NWP to prohibit or restrict its use in streams inhabited by salmon. For those activities that require notification, district engineers will review the proposed work to ensure that the adverse environmental effects are no more than minimal.

One commenter said that projects proposing bank stabilization structures of more than 300 feet should be elevated to the Individual Permit level.

Past experience with the limits of this NWP leads us to believe that the currently proposed 500-foot limit generally will not result in more than minimal impacts.

Two commenters recommended the Corps prohibit stacking of NWP 13 with itself or any other NWP. Two commenters stated the Corps should prohibit the use of waste concrete for bank stabilization material due to the environmental problems, such as toxic paints from sidewalks, rebar from construction, and petroleum products from automobiles. One commenter indicated that the placement of wood in bank stabilization projects has the potential to interfere with treaty fishing access and affected tribes should be notified of activities authorized by this NWP.

This NWP authorizes single and complete bank stabilization activities. We do not agree that it would be appropriate to prohibit the use of NWP 13 with other NWPs, but we do prohibit using a NWP more than once for a single and complete project. General Condition 15 addresses the use of more than one NWP for a single and complete project. General Condition 18 addresses the use of suitable material for discharges of dredged or fill material into waters of the United States. This general condition prohibits the use of materials that contain toxic pollutants in toxic amounts. General Condition 8, Tribal Rights, indicates that no activity or its operation may impair reserved tribal rights, including, but not limited to, reserved water rights and treaty fishing and hunting rights. This NWP can further be regionally conditioned by division engineers to ensure that bank stabilization activities do not interfere with specific treaty fishing access. This nationwide permit is reissued without change.

14. *Linear Transportation Projects.* In the August 9, 2001, **Federal Register** notice, we proposed to modify NWP 14

to authorize private transportation projects in non-tidal waters to have a maximum acreage of ½-acre instead of the current ⅓-acre, and to eliminate the 200 linear-feet prohibition.

Numerous commenters agreed with the proposal to treat both public and private transportation projects the same for tidal and non-tidal waters and increase the impact limit to ½-acre in non-tidal areas. Most agreed that the Corps was unjust in differentiating between private and public projects in the past. Two commenters recommended that the ½ acre threshold be increased to assist the applicant with projects that may still have minimal impacts however will go over the allowed threshold and stated this will decrease the amount of individual permits. Several commenters disagreed with the proposal to treat both public and private transportation projects the same and indicated that private individuals are less likely to have access to critical resource and ecological information to assist them in designing their project with minimal impacts to the aquatic environment. Some commenters recommended that the ½-acre threshold be changed to ½-acre overall. One commenter stated that the change in the acreage threshold conflicts with the general requirement of the Nationwide Permits to have minimal adverse impacts on the aquatic environment. One commenter stated that this NWP supports a non-water dependant activity and therefore activities proposed under this NWP should be reviewed as an Individual Permit. One commenter recommended that the Corps withdraw all proposed changes.

We have determined that the impacts to the aquatic environment for transportation projects will be essentially the same whether the project is public or private and on the average we would expect the private transportation projects to be smaller. We believe that private projects go through local, state, and other permitting processes and have the same access to resource and ecological information as public projects. Furthermore, the terms and conditions will ensure that NWP 14 will have no more than a minimal adverse effect on the aquatic environment. We believe that a distinction needs to be made for transportation crossings based on whether they cross tidal or non-tidal waters. We are not changing the maximum acreage of NWP 14, but are applying the maximum acreage to non-tidal waters rather than public projects. We have determined that the maximum loss of waters of the US for this NWP should be ½ acre in non-tidal waters of the US and ⅓ acre in tidal waters of the US. Both limits along with the terms and conditions of the NWP will ensure that this NWP does not authorize activities with more than minimal adverse effects on the aquatic environment.

Many commenters objected to the removal of the 200 linear-foot restriction because this type of impact could not be considered minimal. The commenters stated that streams have no adjacent wetlands therefore allowing several hundred feet of stream to be impacted before the ½ acre threshold is reached, that requiring a linear measure ensures that impacts will be minimal, and no justification was provided in the **Federal Register** for proposing this change. Numerous commenters agree with the removal of the 200 linear-foot restriction and have stated that the PCN threshold, as well as the acreage limit, will continue to provide protection to the environment. One commenter recommended that a 100 linear-foot restriction be adopted.

We proposed to remove the 200 linear-feet prohibition from NWP 14 to eliminate varied interpretations and to simplify the basis for use of the permit. We have determined that the removal of this prohibition will have little practical effect as the limiting factor contained in the terms and conditions of NWP 14 is most often the acreage limitation. We believe that very few projects exceeding the 200 linear-feet would remain below the ⅒-acre ''notification'' threshold. For example, a 200′ by 22′ wide transportation crossing would impact 4,400 sq. ft. (i.e., ⅒-acre). We have determined that the ''notification'' threshold (i.e. ⅒-acre for areas without special aquatic sites, and all proposed projects that would involve fill in special aquatic sites) allows the Corps to do a case-by-case review. Therefore, we have concluded that these measures, along with the other terms and conditions of the NWPs and other mechanisms such as regional conditions and the discretionary authority, will ensure that any NWP 14 activity that complies with the acreage threshold will have no more than a minimal adverse effect on the aquatic environment.

Two commenters recommend that all proposed changes be implemented and individual Corps Districts not be allowed the use of discretionary authority to restrict these changes nor require an individual permit for multiple stream crossings. One commenter recommended that mitigation always be required for impacts under NWP 14.

We believe that the use of discretionary authority by District Engineers is necessary to ensure that impacts to the aquatic environmental that are more than minimal receive the proper review. The requirement for a compensatory mitigation proposal applies to those activities that require notification. Further, for projects not requiring a PCN, District Engineers may determine, on a case-by-case basis, that compensatory mitigation is necessary to offset losses of waters of the United States because the work, without compensatory mitigation, will result in more than minimal adverse effects on the aquatic environment. This could occur if the project proponent submits a voluntary verification request to the Corps or if a concern is raised to the Corps by a third party.

Numerous commenters agreed with the preamble clarification that features integral to linear transportation projects are covered under NWP 14 and stated this clarification will reduce confusion without adversely affecting environmental values. One commenter objected to the clarification of features integral to linear transportation projects and stated that the addition of these activities expands the possibility of impacts, which often could be avoided. One commenter recommended that the term ''stormwater detention basin'' (as used in the preamble to the proposed NWPs) be changed to read ''stormwater management basin'' and ''water quality enhancement measure'' be changed to read ''water quality/wetland enhancement measures''. The commenter stated that this change would allow additional stormwater best management practices to be authorized by this permit.

We do not believe that the features described in preamble of the August 9, 2001, issue of the **Federal Register**, expanded the activities that can be authorized by NWP 14. We have maintained that NWP 14 may not be used to authorize non-linear features commonly associated with transportation projects, such as vehicle maintenance or storage buildings, parking lots, train stations, or hangars. We believe the examples listed in the preamble are dependent integral components of typical linear projects and were added for clarification. We maintain the authority to assert discretionary authority when evaluating the magnitude of adverse effects on the aquatic environment (33 CFR 330.1(d), 330.4(e) & 330.5). These examples and other integral features not listed could be authorized. We agree that stormwater management features and wetlands features integrally related to the linear

transportation project could be authorized by this NWP. In addition, other NWPs may be combined with this NWP to authorize related activities subject to general condition 15.

Several commenters addressed the Corps definition of single and complete project under NWP 14. One commenter recommends that any proposed roadway fill in special aquatic sites, including wetlands require a PCN with agency coordination. One commenter recommended that the definition of ''single and complete project'' be amended to include all portions of the linear project that do not have independent utility. One commenter recommended that multiple stream crossings should be deemed to be part of a single road project. One commenter recommended that additions to previously permitted projects be reviewed under the individual permit to avoid piece-mealing.

Notification is required for all discharges of dredged or fill material into special aquatic sites and discharges resulting in the loss of greater than 1/10 acre of waters of the United States. We believe most activities authorized by this NWP will require notification to the district engineer and the determination as to whether to require an individual permit should be made on a case-by-case basis. For example, if NWP 14 is used more than once by different project proponents to cross a single waterbody, the district engineer will assess the adverse effects on the aquatic environment and determine if those adverse effects are minimal. As with any NWP, the district engineer can exercise discretionary authority and require an individual permit if the adverse effects on the aquatic environment will be more than minimal. The definition of the term ''single and complete project'' for linear projects can be found in Corps regulation at 33 CFR 330.2(i).

Many commenters recommend that NWP 14 not be authorized within tidal wetlands or waters and wetlands adjacent to tidal waters as these areas have great ecological importance and already suffer from development pressures. One commenter recommended an individual permit be required for activities within tidal wetlands and wetlands adjacent to tidal waters. One commenter recommended the language in section a. (2) be changed to read ''linear transportation projects in tidal waters and non-tidal wetlands adjacent to tidal waters''.

We agree that tidal waters or water and wetlands adjacent to tidal water can have great ecological importance and have suffered from development pressures. However, the current language is sufficient to protect such areas. We have developed terms and conditions to keep adverse impacts at a minimal level. Further, in many cases a PCN is required and Districts will add case specific conditions and mitigation when needed to ensure that adverse impacts will be minimal. Some projects will need to be processed as an individual permit. The district offices will make that determination when necessary to ensure that the adverse effects to the aquatic environment will be no more than minimal.

One commenter recommends that the Corps prohibit the construction of new transportation or spur projects under this NWP. Due to the development potential associated with road projects, a thorough alternative analysis, along with agency and public review should be required.

The main purpose of this NWP is to authorize new linear transportation crossing of waters of the US. It may also authorize new crossings involved in relocating of existing linear transportation projects. This NWP does not authorize a transportation project as a whole, which does not require authorization by the Corps of Engineers. However, we will address alternatives to crossings to avoid and minimize adverse effects in accordance with General Condition 19, to ensure that adverse effects on the aquatic environment are no more than minimal.

One commenter recommends, condition ''f'' be clarified to ensure less than minimal effects on the environment. The clarification should state ''all stream crossings be engineered to transport flows and sediment during both bank full and flood flows''. Furthermore the clarification should state the permit does not authorize crossings that block flows in or restrict the stream's access to the floodplain. The commenter further recommended that the condition require equalization culverts be installed as part of crossings that affect flood plains.

We agree that activities authorized by this NWP can have adverse effects related to flow and movement of water through and under the crossings. For that reason, the term f. of the NWP was added to emphasize the need for projects authorized by this permit to adequately address water movement impacts. This provision refers to General Conditions 9 & 21. We believe that along with these two conditions, the effects of crossings on the movement of water will be no more than minimal.

15. *U.S. Coast Guard Approved Bridges.* There were no changes proposed to this nationwide permit. However, one commenter recommended that NWP 15 be withdrawn as it is too broad for projects to be considered ''similar in nature'', or to be able to determine that the various projects, when considered individually or cumulatively, will result in minimal adverse environmental effects. The commenter also stated that the permit category has the potential for catastrophic secondary indirect, and cumulative adverse impacts, including adverse impacts to federally listed threatened or endangered species.

We believe that the listing of the type of activities and that they are related to bridge construction only will ensure that those activities authorized by this NWP will be similar in nature. Further, we believe that normally these activities will have no more than minimal adverse effects on the aquatic environment, individually and cumulatively. However, Division and District Engineers will condition such activities where necessary to ensure that these activities will have no more than minimal adverse effects on the aquatic environment, individually and cumulatively. The nationwide permit is reissued without change.

16. *Return Water From Upland Contained Disposal Areas.* There were no changes proposed to this nationwide permit. A few commenters suggested that, in order to assure that the lands and waters draining the disposal areas are not contaminated from pollutants entrained in the dredged material, the NWP should be tightened to require individual permit review unless the discharge/leachate from the dredged material is controlled through a NPDES permit. Another commenter stated that NWP 16 should be withdrawn as it is too broad for projects to be considered ''similar in nature'', or to be able to determine that the various projects, when considered individually or cumulatively, will result in minimal adverse environmental effects. The commenter also stated that the permit category has the potential for catastrophic secondary indirect, and cumulative adverse impacts, including adverse impacts to federally listed threatened or endangered species.

Consistent with 33 CFR 323.2(d)(1)(ii), this NWP authorizes the return water as the discharge of dredged material. As such, an NPDES permit is not required. However, a 401 certification is required and we believe will adequately control the quality of the return flow. We believe that the listing of the type of activities will ensure that those activities authorized by this NWP will be similar in nature. Further, we believe that normally these activities will have no more than

minimal adverse effects on the aquatic environment, individually and cumulatively. Further, Division and District Engineers will condition such activities where necessary to ensure that these activities will have no more than minimal adverse effects on the aquatic environment, individually and cumulatively. General Condition 11 ensures that the activity will comply with the Endangered Species Act. The nationwide permit is reissued without change.

17. *Hydropower Projects.* There were no changes proposed to this nationwide permit. There were no comments on this nationwide permit. The nationwide permit is reissued without change.

18. *Minor Discharges.* There were no changes proposed to this nationwide permit. One commenter said that NWP 18 should be withdrawn as it is too broad for projects to be considered ''similar in nature'', or to be able to determine that the various projects, when considered individually or cumulatively, will result in minimal adverse environmental effects. The permit category has the potential for catastrophic secondary indirect, and cumulative adverse impacts, including adverse impacts to federally listed threatened or endangered species. Also, the thresholds of 25 cubic yards and 1/10th acre are arbitrary and capricious. Another commenter stated that NWP 18 should be modified to allow the Corps District Engineer to waive the 25 cubic yard limitation when the aquatic resource impacts would remain minimal or when it is environmentally advantageous and efficient to allow the discharge of additional material as a single project and direct mitigation to a watershed based mitigation bank.

We believe that the minor nature of these types of small discharge activities authorized by this NWP will be similar in nature. Further, we believe that normally these activities will have no more than minimal adverse effects on the aquatic environment, individually and cumulatively. However, Division and District Engineers will condition such activities where necessary to ensure that these activities will have no more than minimal adverse effects on the aquatic environment, individually and cumulatively. While we believe that the small quantity limits are necessary to ensure that on a national basis that the adverse effect on the aquatic environment will be no more than minimal individually and cumulatively, we also recognize that in some areas and in some situations that larger quantities would also have no more than minimal individually and cumulatively. In these situations the Corps Divisions and districts may issue, after notice and comment, regional general permits for larger quantity limits. General Condition 11 ensures that the activity will comply with the Endangered Species Act. The nationwide permit is reissued without change.

19. *Minor Dredging.* There were no changes proposed to this nationwide permit. One commenter said that NWP 19 should be withdrawn as it is too broad for projects to be considered ''similar in nature'', or to be able to determine that the various projects, when considered individually or cumulatively, will result in minimal adverse environmental effects. The permit category has the potential for catastrophic secondary indirect, and cumulative adverse impacts, including adverse impacts to federally listed threatened or endangered species. Also, the thresholds of 25 cubic yards is arbitrary and capricious.

We believe that the minor nature of these types of small dredging activities authorized by this NWP will be similar in nature. Further, we believe that normally these activities will have no more than minimal adverse effects on the aquatic environment, individually and cumulatively. However, Division and District Engineers will condition such activities where necessary to ensure that these activities will have no more than minimal adverse effects on the aquatic environment, individually and cumulatively. Also these activities do not require a permit under section 404 of the Clean Water Act if they result in only incidental fallback (see 33 CFR 323.2 (d)). While we believe that the small quantity limits are necessary to ensure on a national basis that the adverse effects on the aquatic environment will be no more than minimal individually and cumulatively, we also recognize that in some areas and in some situations that larger quantities would also have no more than minimal adverse effects, individually and cumulatively. In these situations the Corps Divisions and districts may issue, after notice and comment, regional general permits for larger quantity limits. General Condition 11 ensures that the activity will comply with the Endangered Species Act. The nationwide permit is reissued without change.

20. *Oil Spill Cleanup.* There were no changes proposed to this nationwide permit. One commenter suggested that NWP 20 should be withdrawn as it is too broad for projects to be considered ''similar in nature'', or to be able to determine that the various projects, when considered individually or cumulatively, will result in minimal adverse environmental effects. The permit category is a prime example of the secondary, indirect, and cumulative adverse impacts, including adverse impacts to federally listed threatened or endangered species in locations beyond the location of the spill which could result from activities authorized under NWP 8.

We believe that the minor nature of these types of small discharge activities authorized by this NWP will ensure that they are similar in nature. Further, we believe that normally these activities will have no more than minimal adverse effects on the aquatic environment, individually and cumulatively. However, Division and District Engineers will condition such activities where necessary to ensure that these activities will have no more than minimal adverse effects on the aquatic environment, individually and cumulatively. This NWP only addresses the need to clean up oil spills regardless of the source of the spill and only when the clean up involves a discharge of dredged or fill material. The effects of the oil spill itself will be considered by the lead Federal or state agency involved in the clean up exercise. General Condition 11 ensures that the activity will comply with the Endangered Species Act. The nationwide permit is reissued without change.

21. *Surface Coal Mining Activities.* The Corps proposed two changes to this NWP to ensure the proper focus of the NWP and to make certain adequate mitigation will be required resulting in no more than minimal adverse effects on the aquatic environment. Both of these changes will increase protection of the aquatic environment. First, the Corps proposed to require a specific determination by the District Engineer on a case-by-case basis that the proposed activity complies with the terms and conditions of this NWP and that adverse effects to the aquatic environment are minimal both individually and cumulatively after consideration of any required mitigation before any project can be authorized. Second, the Corps proposed to add clarification to NWP 21 that the Corps will require mitigation when evaluating surface coal mining activities in accordance with General Condition 19. In addition, the Corps Section 404 review will address the direct and indirect effects to the aquatic environment from the regulated discharge of fill material.

Definition of Fill and Waste

Two commenters stated that the Corps issuance of NWP 21 to authorize valley

fills is illegal in that the Corps current definition of fill specifically precludes pollutants discharged into the water primarily to dispose of waste, as that activity is regulated by EPA under section 402 of the Clean Water Act. (33 CFR section 323.2(e)). One of these commenters quoted from the Bragg v. Robertson decision where the 4th District Court, in ruling upon certain claims against the State under SMCRA, stated in dicta that the overburden or excess spoil was a pollutant and waste material and not fill material subject to Corps authority under section 404 of the CWA when it is discharged into waters of the U.S. for the primary purpose of waste disposal. The other commenter added that even if the Corps had jurisdiction to issue permits for valley fills composed of mining spoils under the April 2000 proposed rule, to amend the definition of ''fill material'', it would not have jurisdiction to authorize the discharge of coal processing waste into refuse impoundments under Section 404. In addition, the commenter asserted that even if the Corps finalizes the proposed rule regarding the definition of fill, it must, under NEPA, perform an EIS before implementing the rule. Because this has not been done and the current rule prohibits fills composed of waste material, the commenter claimed NWP 21 is inapplicable to authorize the placement of mining spoil or coal refuse in waters of the U.S.

Another commenter added that the final notice reissuing NWPs must clearly and unambiguously prohibit placement of coal processing wastes and underground development wastes in ''coal waste dams'' or ''tailings piles'' into waters of the U.S., and must further prohibit the placement of coal mine ''spoil'' material in such waters as ''waste disposal'' unless the final design of the valley fill structure is demonstrated to be necessary to support the approved post-mining land use and is thus placed for a beneficial purpose.

Definition of Fill Rule: On April 20, 2000, the Corps and EPA issued a joint proposal to revise the definition of fill found at 33 CFR 323.2(e) and 40 CFR 232.2 (65 FR 21292, April 20, 2001). The proposed revision would clarify that fill material means material (including, but not limited to rock, sand and earth) that has the effect of: (i) Replacing any portion of water of the US with dry land; or (ii) Changing the bottom elevation of any portion of a water of the US.

Among other things the proposed rule would clarify that placement of excess coal mining overburden, resulting from mountaintop mining/reclamation activities, in waters of the U.S. (valley fills) is considered a discharge of fill material. The agencies are reviewing approximately seventeen thousand comments received in response to the proposed rule and are in the process of drafting the final rule. NWP 21 is available to authorize discharges of fill material meeting the terms of the permit. Issues related to the applicability of Clean Water Act section 404 to ''coal waste dams,'' ''tailings piles''' coal mine ''spoil'' and coal slurry impoundments turn on the jurisdictional question of what constitutes fill material, an issue that will be clarified in that rulemaking. Because the proposed nationwide permits do not seek to resolve those questions, these comments are outside the scope of this proceeding. With regard to valley fills, in a memorandum dated September 26, 2001, the Corps directed all involved field elements to inform the public and initiate regulating valley fills in all states, pursuant to section 404 of the CWA. The memorandum attaches a legal analysis that concludes that Corps regulation of valley fills may be pursued under the current regulations. The Corps decided to regulate valley fills because of the need for consistent administration of the Regulatory Program, assuring equity for the public. In addition, the Corps will require appropriate compensatory mitigation, as necessary, for the loss of aquatic resources.

Bragg Settlement Agreement: On December 23, 1998, a settlement agreement was signed to end litigation against the federal government that challenged whether applicable federal programs were being appropriately applied to regulate valley fills in West Virginia (*Bragg* v. *Robertson*, Civil Action No. 2:98–0636 (S.D. W.Va)). The Court approved the agreement on June 17, 1999 (54F.Supp. 2d 653). The settlement agreement was facilitated, in part, by the Army establishing that the Corps would regulate valley fills in West Virginia pursuant to section 404 of the CWA. While on appeal, the Fourth Circuit Court of Appeals vacated a subsequent decision issued by the District Court addressing Surface Mining Control and Reclamation Act (SMCRA) claims in the case (see 248 F.3d 275); that Fourth Circuit decision left intact the 1998 settlement agreement. See 248 F.3d at 288, n.1 (noting District Court's approval of the settlement agreement). A portion of the settlement agreement stated that excess rock resulting from a surface coal mining and reclamation operation which would bury a stream segment draining a watershed of 250 acres or more would generally be considered to have more than minimal adverse effects on waters of the U.S. Consistent with the terms of this agreement, to which the Corps is a party, the Corps will generally use its discretionary authority to require standard permits for coal mining activities in West Virginia where the material would bury a stream segment draining a watershed of 250 acres or more. The Corps notes that this agreement was negotiated among various Federal agencies and the state of West Virginia and relates to certain types of coal mining operations in that state. The Corps believes there are many different types of coal mining operations in other parts of the country and that the conditions of the settlement agreement may not be applicable to many of these other operations. For this reason, the terms of the agreement have not been incorporated into the permit, which by definition is nationwide in applicability.

Further, we are gathering data and, in conjunction with other federal agencies, are preparing a programmatic mountaintop mining/valley fill (MTM/VF) EIS to better understand the environmental effects of mountaintop mining and valley fills, as well as programmatic changes that may be necessary to address those impacts. The Corps will reevaluate NWP21 when the mountain top mining EIS is completed. The Corps intends to use the results of this EIS and all other information that may be available at that time, including information resulting from individual verification of all NWP 21 projects as required under the revised terms and conditions, to make sure that NWP 21 results in no more than minimal impacts (site-specifically and cumulatively) on the aquatic environment. Therefore, at this time we are not adding additional conditions from the Bragg agreement to the NWP itself. Thus, we do not believe that we should add specific conditions from the settlement agreement to this NWP, which has a term of five years. However, the Corps wishes to reiterate that it will abide by all terms of the settlement agreement in West Virginia as long as it remains in effect.

It is important to the Corps that surface coal mining activities authorized by this NWP do not cause more than minimal adverse effects to the aquatic environment after considering mitigation. As such, the District Engineer will ensure that the discharge of fill material in waters of the US associated with coal mining activities will have no more than minimal adverse effects on the aquatic environment.

EIS/EA for NWP

A few commenters stated that the Corps 1996 EA did not adequately account for the increasing size and scale of valley fills and their impacts. One of these commenters suggested that this NWP should not be reauthorized until the new EA or EIS is completed which may find that impacts due to this nationwide are more than minimal.

Three commenters stated that reissuance of NWP 21 was inconsistent with the Corps obligation under NEPA, since the Draft Nationwide Permit Program Programmatic EIS (PEIS) dated July, 2001, does not adequately address the effects of eliminating NWP 21 and other NWPs which have been controversial due to their substantial environmental effects.

The PEIS addressed the effects of different permit processing scenarios (standard, regional general and nationwide general permits) on the Corps permit program in terms of workload, cost and protection for the environment. It did not include alternatives changing only some nationwide permits to standard permits or regional general permits or any other combination of specific NWPs permits. This combining of different scenarios would have resulted in a very large number of alternatives to analyze.

One commenter stated that the PEIS fails to fully incorporate and analyze the substantial body of scientific knowledge and information that has been amassed as part of the aforementioned MTM/VF EIS relative to the effects of mountain removal mining and valley fill construction on Appalachian streams and rivers. This commenter requests that all available technical and scientific studies, and the draft MTM/VF EIS be incorporated into the DPEIS and that a supplemental PEIS be prepared concerning the proposal to reissue NWP 21, which includes the alternative of reissuance of other nationwide permits with the exception of NWP 21 and other controversial NWPs.

The MTM/VF EIS will not be completed for some time. However, the Corps fully intends to use all relevant information, including the results of this EIS, to make sure that NWP 21 results in no more than minimal impacts (site-specifically and cumulatively) on the aquatic environment.

One commenter noted that the Corps is currently involved in an EIS limited to two states, Kentucky and West Virginia, for a subset of the activities authorized under NWP 21 and which will not determine the effects of all activities associated with this permit. This commenter states that the Corps must perform an EIS on all impacts associated with NWP 21 including, but not limited to, mountaintop removal valley fills, contour mining valley fills, and coal refuse discharges. They also state that particularly, given the concentrated use of NWP 21 in only a few districts, it is clear that the Corps permitting decisions have had impacts exceeding both the ''significant'' standard under NEPA and the ''minimal adverse effects'' standard under Section 404(e).

As previously stated, the Corps is committed to ensuring that NWP 21 does not result in more than minimal adverse effects to the aquatic environment. We believe that the changes proposed and adopted will ensure minimal adverse effects on the aquatic environment. We will review the additional information provided within the MTM/VF EIS, upon its completion, to be sure that this continues to be the case.

Scope of Analysis

One commenter opposed reissuance of NWP 21 based on this activity's non-water dependency and associated secondary/cumulative impacts such as acid rain from burning of coal and its affect on the human environment. This commenter is concerned over the adverse impacts of acid deposition on the human environment. Another commenter claims that coalfield communities near these operations are dwindling as large out of state coal corporations employ fewer and fewer workers and severe flooding in the area caused by the mining activities makes it extremely difficult to live near these mining operations.

These impacts are outside of the Corps scope of analysis pursuant to the National Environmental Policy Act. The Corps evaluation of valley fills is focused on impacts to aquatic resources. Overall mining is permitted under separate Federal laws, SMCRA.

Another commenter, also concerned with secondary and indirect impacts of coal mining activities, objected to the statement in the preamble that the ''Corps review is limited to the direct and indirect, and cumulative effects of fills in waters of the U.S''. This commenter states that the scope of analysis should extend beyond the effects of fills in waters of the U.S. However, another commenter not only agreed that the scope of analysis should be limited to the direct and indirect and cumulative effects of only the fills in waters of the U.S. but also that wording should be included in the permit language to inform all interested parties that the Corps would not be considering the impacts of the actual coal mining operation itself, especially one occurring on a mountain top.

Impacts associated with surface coal mining and reclamation operations are appropriately addressed by the U.S. Department of the Interior Office of Surface Mining or the applicable state agency, if program delegation has occurred, pursuant to the Surface Mining Control and Reclamation Act. Under these circumstances, the Corps NEPA implementing regulations clearly restrict the Corps scope of analysis to impacts to aquatic resources. We concur with the commenter that the scope of analysis should be limited to only impacts to the aquatic environment.

Duplication/ Executive Order 13212

One commenter was opposed to any change to NWP 21 because of possible duplication of the intensive review performed by the Office of Surface Mining in coordination with the Corps and other state and Federal agencies related to approval of reclamation plans for surface coal mining activities. This commenter is concerned that such duplication now proposed will complicate the approval process for mine operations and make approval more cumbersome and bureaucratic resulting in unnecessary duplication and delays for approval of energy related projects which would be in direct conflict with Executive Order 13212 Actions to Expedite Energy Related Projects. One commenter discussed at great lengths the implication of EO 13212 which was signed on May 18, 2001. The commenter asserted coal reserves serve an indispensable role in the nation's energy equation and are used primarily for generating the nation's electricity, and that a reliable general permit program is vital to a coal producer's ability to meet the nation's growing coal needs. This commenter is concerned that the proposed changes to this NWP will cause delays and unnecessary duplication. One commenter suggested that all proposed projects falling under this NWP be coordinated with the SMCRA and should consider any required SMCRA mitigation when making its determinations regarding appropriate mitigation under Section 404. One commenter suggested that the Corps utilize the SMCRA environmental protection, mitigation and findings standards as a general basis for determining that surface coal mining operations regulated by SMCRA will have minimal impact and meet NWP 21 applicability standards. By using SMCRA standards when making determinations of applicability to NWP

21, the commenter indicated the Corps review can be expedited consistent with EO 13212. Further, the commenter indicated that under SMCRA, the DMME is prohibited from issuing a coal surface mining permit unless the agency first finds, in writing, that the proposed mining operation will minimize impacts to the hydrologic balance within the permit area and will not result in material damage to the hydrologic balance outside the permit area.

As stated above, the Corps has determined that the SMCRA process does not currently adequately address impacts to the aquatic environment as required under Section 404, therefore this NWP does not duplicate the mining permit process but does rely on it for help in the analysis. We encourage Corps Districts to work with state and Federal mining agencies to coordinate early in the process so that the SMCRA permit includes adequate mitigation to offset impacts to the aquatic environment.

Two commenters agreed with the proposed changes in this NWP because of the differing goals of the SMCRA/DMME and the CWA, specifically concerning compensatory mitigation. The commenters indicated that while most NPDES permits include conditions to protect against stream impacts, they do not often address wetland impacts. In addition, according to one commenter, there are no clear standards for stream replacement, leading to poor reconstruction techniques with little or no restoration of habitat function.

The Corps is working on stream functional assessment protocols to help in identifying the functions lost through impacts and the functions gained or enhanced through mitigation.

Two commenters suggested that NWP 21 should be significantly restricted or eliminated, since it wrongfully assumes the state or federal regulatory agency under SMCRA is engaging in a process comparable to section 404 of the CWA and the 404(b)(1) Guidelines of assuring avoidance and minimization of impacts on special aquatic sites and other waters of the US, when in fact no other agency engages in such review.

The Corps has not assumed that other state or Federal agencies are engaging in a comparable Section 404 type process. In accordance with the Section 404(b)(1) Guidelines, analysis of offsite alternatives is not required in conjunction with general permits.

A few commenters were opposed to the requirement for a written determination of compliance without a time clock, i.e. 45 days, for the Corps to respond or the applicant can begin work. One of these commenters is concerned that under the proposed NWP, the applicant could wait weeks or months until he receives express authorization from the district to begin which would result in delays and additional paper exercise for a project deemed to be of minimal impact. Another scenario a commenter provided would be to wait months just to be told the project does not qualify for NWP 21 and that a standard permit would be required. This commenter suggests that the Corps could abuse the lack of time constraints when it cannot meet its own deadlines. A few commenters suggested that the Corps rely solely on the notification requirement for determining whether or not any specific activity complies with the terms and conditions of the NWP within the 45 day time limit.

Under the current regulatory program, all coal mine operators must notify the Corps which may involve agency coordination subject to a 45 day time clock to submit comments to the Corps. Under the proposed NWP, the applicant must wait before initiating construction until he receives express authorization from the District Engineer. Corps districts will make decisions in a timely matter. We believe that a careful case specific minimal impacts determination is necessary for this NWP, but it may sometimes take more than 45 days. Because of the potential for more than minimal adverse effects with these projects this approach is necessary.

Impacts from NWP 21

A majority of the commenters opposed the reissuance of NWP 21 because of potential impacts. Specifically, the major concern stated by most commenters was that the mountaintop removal mining and disposing of the overburden in valleys (valley fills) would result in the burying of streams thereby disturbing the natural processes and water quality in the entire watershed and result in the permanent loss of habitat. One commenter stated concern that this NWP activity will displace Federally protected threatened and endangered species. Another commenter raised concerns about impacts to water supplies used for drinking and recreation from the valley fills.

This NWP requires compliance with all of the general conditions for the nationwide permits. One commenter pointed out that in one state alone 15–25% of the mountains have been leveled, that the overburden from these mines placed in ''valley fills'' have destroyed more than 1,000 miles of streams, and that one mine can destroy 10 square miles of mountain and fill as many as 12 stream valleys. This commenter concludes that these kinds of impacts cannot be considered ''minimal in effect'' to qualify for a NWP. One commenter stated that the ''field assessment'' of the nationwide permit program provided an inadequate analytical basis for documenting the extent and severity of aquatic and terrestrial impacts of the implementation of NWP 21.

One commenter contends that the Corps has admitted to its inability to assess direct, indirect, and cumulative impacts associated with specific coal mining projects. Therefore, the Corps cannot be in a position to state whether any application for an authorization under NWP 21 would or would not have more than minimal adverse impacts, either individually or cumulatively.

Another commenter stated that a draft EPA finding indicates that the ''impacts of mountaintop mining and valley fill activities in eastern Kentucky were evident based on stream biological and habitat indicators. Mining related sites generally had higher conductivity, greater sediment deposition, smaller particle sizes, and a decrease in pollution sensitive macoinvertebrates * * * in turn, these streams and rivers may support fewer fish and other taxa which are recreationally or commercially important.''

These studies are draft documents and have not been finalized or the conclusions agreed upon by the cooperating agencies.

One commenter stated that the Corps has ignored OSM studies and are not considering effect of valley fills on flooding. However, another comment challenged the Corps statement under notification that the Corps is ''discouraging extensive channelizing or relocation of stream beds because of potential adverse effects on the stream and the potential to intensify downstream flooding''. This commenter contended that the Corps does not have an adequate basis for this statement concerning downstream flooding and requests that it be taken out.

The basis for this conclusion is that whether increased downstream flooding will occur is a site specific circumstance based on downstream channel capacity and geometry coupled with the influence of man induced alternations to channels and flood plains. These issues will be evaluated during the case specific minimal effects determination.

This commenter added that available studies document lower flood rates in areas of surface mining activities than in similar unmined watersheds and that some mining activities result in alteration to landscape that can provide

significant runoff retention. And, for example, the commenter added, open pits and drainage control structures can provide runoff retention and longer travel times for overland flow and increased infiltration provided by backfills can also retard or lessen peak flows.

The preliminary draft MMEIS, which includes an assessment of scientific studies related to providing a better understanding of flooding potential related to mountaintop mining, concluded that no corroborating evidence exists to support the allegations that surface mining operations increased flooding potential downstream.

Two commenters questioned the Corps proposal of this NWP and the determination that it meets the requirement that the adverse environmental impacts are individually and cumulatively minimal while admitting (in the proposed regulation) that it is still gathering data to better understand the effects of valley fills on the aquatic environment.

The Corps is continually gathering data on all its nationwide general permits to ensure that the effects of the program on the aquatic environment are minimal, both individually and cumulatively. The changes in procedures proposed and adopted here will ensure minimal effects through case specific review and mitigation.

Thresholds for NWP 21

A few of these commenters suggested reissuing this NWP but precluding its use for mining operations involving mountain-top removal.

We disagree, this permit is designed for use by mountaintop mining operations as well as other surface coal mining activities.

Several commenters added that since this nationwide has no size/acreage limits, extensive linear feet of streams could be impacted. Two commenters recommended using the same stream threshold limitations as stated in NWP 39, 40, 42, and 43 (300-foot limitation) for consistency purposes and since stream impacts from filling should be evaluated the same regardless of the activity involved.

The 300 linear foot limit is retained for NWPs 39, 40, 42, and 43, however justification, on a case-by-case basis, can be made to allow additional linear impacts for intermittent streams. The Corps believes that coal mining is different from activities authorized under NWPs 39, 40, 42 and 43 in that coal mining projects are reviewed for environmental impacts under several other authorities (SMCRA, CWA section 402). For this reason, the determination of whether a project will result in more than minimal adverse effects is best made on a case-by case basis.

Two commenters cite from the Draft PEIS that in 2000 alone, 13,907 acres of impacts to streams and wetlands were authorized under NWP 21 making up 72% of all NWP impacts for that year and one of these commenters recommends protective measures and/or environmental thresholds due to the potential losses. One of these applications resulted in the direct filling of over six miles of streams and indirect impacts to an additional three miles with no data to suggest that these impacts were minimal. For this reason, this commenter and others have suggested including the provisions adopted in the Bragg v. Robertson settlement of a 250-acre watershed threshold while waiting the findings of the EIS process to determine the appropriateness of that threshold limit. They believe the 250 acre standard would provide better protection than no threshold at all, as is currently the case. Two commenters suggested that if NWP 21 must be reissued, it should be conditioned such that valley fill projects affecting intermittent and/or perennial streams will be ineligible for authorization and would be evaluated as standard permits. They state that this would be consistent with the Corps July 2000 guidance to the field, which provides that the 250 acre standard should be used in evaluating all PCN for NWP 21. However, two commenters support the Corps decision not to include the 250 acre threshold because it is temporary in nature and limited only to West Virginia. Further, they asserted that limit was not based upon any scientific analysis but rather a product of an agreement arrived at in an arbitrary way, having no correlation with environmental protection. These commenters also cited projects with a 500 acre watershed, which improved the pre-mining conditions. One commenter suggested that if NWP 21 must be reissued, it should be conditioned such that valley fill projects affecting intermittent and/or perennial streams will be ineligible for authorization and be evaluated as standard permits.

The Corps believes that a scientific basis for the 250 acre limit designated in the Bragg v. Robertson settlement has not been adequately established and the limit may not be appropriate for all situations. High quality streams exist above this point on the landscape and lower quality streams exist below this point. We believe it is better for the environment to look at specific sites and watersheds and make quality determinations than to try and fit all watersheds into a rigid pre-determined categorization that may or may not reflect the site specific aquatic conditions. The Corps is further concerned that universal use of the 250 acre limit could encourage a proliferation of smaller valley fills in lieu of fewer larger fills, and that this may not be the best outcome for the aquatic environment. The Corps has identified a data error in the PEIS. The 13,907 acres of impact actually were less that 50 acres.

One commenter suggested that environmental thresholds be established if not with this authorization, definitely with the next and that these thresholds be determined through a public review process.

Thresholds may be added by individual Districts as regional conditions for this permit through the public review process. In addition, we will review this NWP when the MTM/VF EIS is complete along with all other relevant information and will develop criteria or propose any changes that may be needed.

Mitigation

Many of those commenters objecting to the reissuance of NWP 21 stated that the mitigation, even with Corps review and approval, could not sufficiently compensate for these impacts and therefore this NWP would be a violation of the Clean Water Act requirements that general permits result in only minimal adverse impacts to the aquatic environment. One of these commenters stated that stream restoration experts have concluded that it is not possible to recreate streams on most mined areas, therefore, the loss of these stream miles and the functions they provide to the aquatic ecosystems downstream is a permanent loss and, for the purposes of a Section 404 impact assessment, the stream losses cannot be adequately compensated. One commenter, although supporting the requirement of mitigation beyond what the State requires under the project's coal mining permit, still opposes NWP 21 because it illegally jumps from avoidance and past minimization directly to mitigation. This commenter also voiced concern over a lack of alternative analysis for placement of fill into waters of U.S. by any state or Federal agency for these proposed valley fills. Another commenter recommended that any mitigation plan be coordinated and approved by all involved regulatory and commenting resource agencies prior to the NWP approval.

We feel we are avoiding and minimizing impacts to the extent practicable and that adequate mitigation, especially in the form of enhancement or rehabilitation of existing streams through activities such as stabilizing old mined sites to reduce stream sedimentation and reduction in acidic water releases, can be used to determine that a project has minimal impacts, both individually and cumulatively, on the aquatic environment. These activities can result in a substantial improvement in downstream water quality and aquatic habitat within a watershed.

A few commenters agreed with the proposed changes to NWP 21 because of the varying goals of the SMCRA and the CWA program and the wetland mitigation plan requirement. One commenter stated that the review proposed would be valuable in ensuring the requirement of equity between coal mining activities and other wetland impacting activities, and indicated that while most NPDES permits include conditions to protect against stream impacts, they do not usually address wetland impacts. In addition, there are no clear standards for stream replacement, leading to poor reconstruction techniques with little or no restoration of habitat functions.

As stated above, the Corps is in the process of designing stream function protocols to aid in evaluating mitigation projects.

This commenter recommends that the following language be included into the permit language: ''Compensatory mitigation will be required to offset losses of waters of the U.S., consistent with General Condition 19''.

We do not agree this is necessary, as General Condition 19 applies to all nationwide permits and does not need to be specifically repeated in this NWP, however, we agree with the intent of this statement.

Two commenters suggested that at the very least, bonding of mitigation measures should be required in all cases. One of these commenters argued that performance bonds under 30 U.S.C. 1269 should not be used by the Section 404 program because of the limitations imposed on these bonds. For instance, neither state regulatory authorities nor OSM have authority to impose bond liabilities on regulated mines beyond those specified in the mining law which are established by law as that amount needed to assure completion of the reclamation plan required under 30 U.S.C. 1268 and not section 404 of the CWA. Also, if there was a violation of the Corps mitigation conditions, the Corps would not have authority to direct the expenditure of those funds.

Requiring a bond by the Corps in certain cases is consistent with existing policy and the Corps will continue to do so as it deems appropriate.

General Condition 4

One commenter stated that the purpose of valley fills is not to impound water but rather to dispose of overburden or waste material. Furthermore, the commenter asserted that a valley fill is an activity that completely eliminates the possibility of movement and survival of aquatic life. The commenter asserted the Bragg Settlement contains nothing that even remotely purports to modify any Corps regulation * * *. The Corps must still comply with these and all other statutory and regulatory requirements''. The commenter indicated that completely filling streams by valley filling affects the necessary life movements of all aquatic life that must move within or between those streams. Furthermore, the commenter asserted, valley filling violates the General Condition because not only does it preclude movement of species, but destroys the species themselves.

Generally, proposed projects are located at the upper limits of the watersheds and are not interfering with aquatic species migration.

It is our position that this NWP is useful in expediting the processing of permits for some surface coal mining operations provided that adequate compensatory mitigation accompanies the activity so that there is an overall net improvement in functions of the aquatic environment. Our scope of analysis will continue to be limited to the impacts to the aquatic environment. The locations of the mines are dependent on location of the coal seams.

The existing permit relies primarily on any state-required mitigation under SMCRA to address impacts to the aquatic environment. The Corps has determined that this is not appropriate, as the requirements of SMCRA differ from those of the CWA and reliance on SMCRA authorization may not result in adequate mitigation for adverse impacts to the aquatic environment. Therefore, the reissued permit provides for Corps determination of appropriate mitigation in accordance with General Condition 19. Corps review is limited to the direct, indirect, and cumulative effects of fills in waters of the U.S. In order to ensure that appropriate mitigation is performed, and that no activities are authorized that result in greater than minimal adverse impacts, either individually or cumulatively, the revised permit also requires not only notification, but also explicit authorization by the Corps before the activity can proceed. The Corps believes that both of these changes will strengthen environmental protection for projects authorized by this permit. This permit will be reissued as proposed.

22. *Removal of Vessels.* There were no changes proposed to this nationwide permit. There were no comments on this nationwide permit. The nationwide permit is reissued without change.

23. *Approved Categorical Exclusions.* There were no changes proposed to this nationwide permit. One commenter indicated that although the Office of the Chief of Engineers may have been furnished notice of a list of activities, and concurred, a list of activities did not appear to have been included in the referenced August 9, 2001, **Federal Register** notice on which the reissuance of the NWP Program will be based. The commenter further stated that the absence of this critical information mirrors the Corps piece-mealing approach to Regulatory implementation of the CWA that is found in the issuance of Corps permits in the southeastern U.S. The commenter also stated that because of the lack of this information, the public is unable to determine whether new information supporting reversal may have become available since the decisions that these activities do not have a significant effect on the human environment. Another commenter stated that this permit illegally delegates to other federal agencies the ability to decide whether their projects will result in more than minimal impacts. The permit effectively has no ceiling on individual or cumulative impacts and covers a broad range of activities. An additional commenter suggested that the NWP 23 activities listed are extremely dissimilar in nature and impact. It is not possible for the agencies to have made a reasonable evaluation of the cumulative impacts of all of the activities in this permit.

When the Corps considers whether an agency's categorical exclusions have no more than minimal adverse effects on the aquatic environment and whether they could be authorized by this NWP, the Corps first seeks public comment and publishes the proposal in the **Federal Register**. The Corps then determines whether the agencies categorical exclusions have no more than minimal adverse effects on the aquatic environment. The Corps has not approved all agency categorical exclusions, has added further conditions and has required pre-

construction notifications to ensure that there are no more than minimal adverse effects on the aquatic environment, individually and cumulatively. Furthermore, Corps districts and divisions have the discretionary authority to require regional conditions, case-specific conditions or individual permits where the adverse effects may be more than minimal.

One commenter indicated that all projects requiring stream channelization should be evaluated through the Individual Permit process. Another commenter suggested projects affecting more than 1/10th acre of wetland should require a pre-construction notification to the Corps and those affecting 1/3 acre should require an Individual Permit. A commenter recommended all bridge projects that are not longer than 1.5 times bankfull width should be elevated to an individual permit process.

General condition 21 contains provisions to minimize adverse impacts related to water movement, including channelization and passage of high water flows. When reviewing an agency's categorical exclusion for approval under this NWP the Corps considers the need for a pre-construction notification. We have required a pre-construction notification where we believe that it was necessary to ensure that the adverse effects would be no more than minimal, and we have required the individual permit process, where needed. The nationwide permit is reissued without change.

24. *State Administered Section 404 Programs.* There were no changes proposed to this nationwide permit. One commenter stated that applicants will find it difficult to keep up with a complex matrix of non-uniform approaches to regulating water bodies if states across the country run their section 404 programs differently.

The Corps recognizes that nationally there may be different approaches by the states toward regulating section 404 discharges into those waters. However, the Corps will not change the way the states regulate in those waters by requiring a Corps individual permit process. Currently, this NWP is only applicable in the States of Michigan and New Jersey, which have assumed the Clean Water Act section 404 authority in Navigable Waters of the United States based on historic use only. In those waters, which are subject to section 10 of the Rivers and Harbors Act based solely on the historic use for interstate waterborne commerce, the state administers the Section 404 program while the Corps has a permit role under Section 10. Those waters do not have current nor are they susceptible to use for water borne commerce. The Corps believes that the states are considering and adequately addressing the environmental impacts of these projects. The Corps further believes that there are no impacts affecting waterborne commerce needing Section 10 review. Therefore, there is no need to process an individual permit for these activities. The nationwide permit is reissued without change.

25. *Structural Discharges.* There were no changes proposed to this nationwide permit. There were no comments on this nationwide permit. The nationwide permit is reissued without change.

26. [*Reserved*] One commenter indicated that, if reissued, NWP 26 must be modified to significantly lower the threshold of activities not requiring an individual permit.

There are no plans to reissue NWP 26. This NWP expired on June 7, 2000. The number 26 is being reserved to avoid the need to renumber all of the subsequent NWPs. We believe that renumbering NWPs 27 through 44 would be confusing and unnecessary.

27. *Wetland and Riparian Restoration and Creation Activities:* In the August 9, 2001, **Federal Register** notice, we proposed to modify this NWP by combining two categories of land (''any Federal land'' and ''any private or public land'') into a single category: ''any other public, private, or tribal lands''. Therefore, there would be three categories of land that would be eligible for NWP 27 activities, instead of four categories. This change will not affect how or if any activities will be authorized by this NWP.

Many commenters supported the Corps proposal to combine the four categories of lands into three categories. A commenter recommended limiting the use of this NWP to activities conducted or sponsored by Federal or state agencies. One commenter suggested adding the National Marine Fisheries Service and the National Ocean Service to paragraph (a)(1). This commenter also recommended adding ''the construction of oyster habitat over unvegetated bottom in tidal waters'' to the list of examples of activities authorized by this permit. This commenter said that these changes would result in a reduction in Corps workload, and authorize activities conducted under National Marine Fisheries Service and National Ocean Service restoration grant programs.

To simplify the descriptions of the types of lands eligible for this NWP, we are combining paragraphs (a)(2) and (a)(4) of NWP 27 to read as ''any other public, private, or tribal land'' in paragraph (a)(3). The previous text of paragraph (a)(3) has been moved to paragraph (a)(2).

We do not agree that this NWP should be limited to activities conducted or sponsored by Federal or state agencies, because such a restriction would affect the ability of the Corps to effectively authorize aquatic habitat restoration or creation (establishment) activities conducted by individuals, non-government organizations, or local governments. We have added ''the construction of oyster habitat over unvegetated bottom in tidal waters'' to the list of examples of activities authorized by this NWP. Since the construction of oyster habitat in tidal waters could potentially affect navigation, it is important to consider General Condition 1. The construction of oyster habitat in tidal waters cannot have a more than minimal adverse effect on navigation.

We have modified paragraph (a)(1) to include restoration activities undertaken through the programs of the National Marine Fisheries Service and the National Ocean Service. In addition, we have modified the text of this NWP by adding the phrase '' * * *, to the extent that a Corps permit is required, * * *'' after the phrase ''Activities authorized by this NWP include * * *''.

One commenter stated that, even though activities authorized by permit would result in an increase of wetland habitat, NWP 27 should have an upper limit to require more detailed review of restoration and creation projects that involve larger impacts to wetlands. Another commenter said that an acreage limit is needed for this NWP because there are inadequate assurances that it authorizes only activities with minimal adverse environmental effects. This commenter suggested imposing a 250 linear foot limit and a 1/4 acre limit on wetland impacts for restoration activities and a five acre limit for wetland enhancement projects. This commenter also recommended requiring notification and agency coordination for all activities undertaken by private individuals that impact wetlands or more than 100 linear feet of stream, with the notification including documentation of the hydrologic analyses used to design the project. Another commenter said that the ''wetland enhancement, restoration or creation agreement'' described in paragraph (a)(1) should be reviewed and approved by the Corps and other resource agencies and each agreement should have enforceable conditions.

We do not agree that acreage or linear limits are necessary for this NWP, since it authorizes activities that restore, enhance, or create aquatic habitats. The

terms of this NWP, as well as the notification requirements described in paragraph (b), will ensure that the activities authorized by this NWP result only in minimal adverse effects on the aquatic environment. District engineers will review pre-construction notifications for activities on public and private land not conducted under the terms of paragraphs (a)(1) or (a)(2) and determine whether those activities will result in minimal adverse effects on the aquatic environment. Agency coordination is not necessary for NWP 27 activities undertaken by private individuals because Corps personnel have the expertise necessary to evaluate proposed NWP 27 activities. We do not believe that it is necessary for the Corps and other resource agencies to review agreements between landowners and the U.S. Fish and Wildlife Service or Natural Resources Conservation Service. We concur that these agreements should have enforceable conditions.

One commenter suggested adding the phrase ''* * * and the planting of appropriate wetland species'' after the phrase ''* * * activities needed to reestablish vegetation * * *'' and changing ''* * * mechanized land clearing to remove undesirable vegetation * * *'' to ''* * * mechanized land clearing to remove non-native invasive, exotic or nuisance vegetation * * *''.

We concur with these recommendations and have made these changes to the text of the NWP.

One commenter objected to the reissuance of this NWP, stating that it lacks effective oversight, especially for activities on public and private lands, its use has not been effectively monitored in the Corps regulatory database, and the terms ''restoration'' and ''enhancement'' are inadequately defined. To address these concerns, this commenter suggested that all projects must be subjected to strict, enforceable success criteria; all failed projects must be corrected to offset any adverse impacts to waters of the United States; all permitted projects must be overseen by a qualified restoration specialist; only those activities with high likelihood of success should be approved; include a more extensive list of activities not authorized by NWP 27; prohibit the use of NWP 27 to construct compensatory mitigation projects; and limit NWP 27 to one use per applicant per stream. One commenter said that this NWP should not authorize the construction of mitigation banks.

As with all NWPs, the use of this NWP is monitored by each of the Corps districts, to ensure that it authorizes only those activities with individual and cumulative adverse effects on the aquatic environment.

Since the publication of five new and six modified NWPs in the March 9, 2000, issue of the **Federal Register** (65 FR 12818), the terms ''restoration'' and ''enhancement'' have been defined in the ''Definitions'' section of the NWPs. Since that time, the Federal government has adopted new definitions for purposes of tracking losses and gains of wetlands under the previous Administration's Clean Water ActionPlan. The new definitions also apply to mitigation activities for other types of aquatic habitats. Under the new definition for restoration, there are two types activities: re-establishment and rehabilitation. Re-establishment involves the rebuilding of a former wetland, resulting in a net gain in wetland acres. Rehabilitation involves the manipulation of a degraded wetland to repair natural or historic functions, but does not result in a net gain in wetland acres. Enhancement is the manipulation of a wetland for a specific purpose, resulting in increases in some wetland functions and declines in other wetland functions, with no gain in wetland acres.

Where strict criteria are necessary to ensure the success of stream or wetland restoration projects, district engineers can add special conditions to NWP 27 authorizations to specify success criteria. If those success criteria are not met, district engineers can use their enforcement authority to require the permittee to identify the reasons for failure and implement necessary remedial measures. We do not agree that it is necessary for activities authorized by this NWP to be overseen by qualified restoration specialists. The text of NWP 27 clearly states what is not authorized by the NWP; we do not believe any additional clarification is necessary. Since NWP 27 authorizes activities that provide benefits for the aquatic environment, it would not be appropriate to limit the use of this NWP to one time per project proponent per stream channel.

We maintain our position that NWP 27 should authorize the construction of compensatory mitigation sites, including mitigation banks, provided those sites result in net increases in aquatic resource functions and values. NWP 27 requires compensatory mitigation for impacts to waters of the United States caused by the authorized work, as well as notification to the district engineer in accordance with General Condition 13. A mitigation bank can also be authorized by NWP 27, as long as the mitigation bank has been approved under the 1995 Interagency Mitigation Banking Guidelines.

One commenter recommended that the use of this permit should be limited to restoring streams to their historic, undegraded states to prevent their use as a flood control projects. Another commenter said that district engineers should have the authority to waive the prohibition against conversions of certain types of streams or natural wetlands to other aquatic habitat types that could provide more environmental benefits for local watersheds.

NWP 27 does not authorize flood control projects. This NWP authorizes stream restoration activities, which may include grading stream banks and riparian areas so that those riparian areas are flooded more frequently by the streams. In other words, flood storage capacity may be increased by a stream restoration project, but the increase in flood storage capacity is not the main goal of the project. We do not agree that this NWP should allow flexibility to waive prohibitions against certain conversion activities, since conversions of streams, wetlands, and other waters may result in more than minimal adverse effects to the aquatic environment. If such conversions would provide net benefits for watersheds, then those activities could be authorized by other types of permits, including standard permits.

A commenter suggested that NWP 27 should be modified to prohibit the creation of open water areas in existing wetlands and the relocation of existing wetlands. One commenter supported the provision that states this NWP does not authorize the conversion of natural wetlands into another aquatic use, but recommended prohibiting the ''relocation of aquatic habitat types on the project site'' and prohibiting the use of riprap or other armoring material. One commenter said that activities authorized by this NWP should not be allowed to alter the basic functions and habitat of ''high quality wetlands'' and that all projects should have a long-term management plan with a binding contract between the landowner and the Federal and state fish and wildlife agencies, not the Natural Resources Conservation Service.

We maintain our position that the relocation of non-tidal waters, including non-tidal wetlands, on the project site should be authorized by this NWP, provided there are net gains in aquatic resource functions and values. We do not agree that this NWP should prohibit the use of riprap because riprap contains crevices and other habitat features for small organisms. Other armoring materials can provide habitat

for aquatic organisms. The use of armoring materials for stream and wetland restoration activities is at the discretion of the district engineer. We do not agree that it is necessary to have a long-term management plan with a binding agreement between landowners and the Federal and state fish and wildlife agencies for all activities authorized by this NWP.

One commenter said that some activities authorized by this NWP do not comply with the Clean Water Act. One example offered by this commenter is the conversion of waters of the United States to storm water treatment facilities and sewage treatment facilities, under the guise of restoration and mitigation. This commenter states that NWP 27 should be revoked because the activities authorized by this NWP are not similar in nature and it is unreasonable to conclude that all of the cumulative adverse impacts on the human environment could be considered for such a category of dissimilar activities.

This NWP does not authorize the construction of storm water management facilities or sewage treatment facilities. Storm water management facilities and sewage treatment facilities may be authorized by NWP 43 or individual permits. The activities authorized by NWP 27 comply with the similar in nature requirement for general permits. This NWP authorizes aquatic habitat restoration, creation, and enhancement activities that provide benefits for the aquatic and human environments. NWP 27 is reissued with the modification discussed above.

28. *Modifications of Existing Marinas.* There were no changes proposed to this nationwide permit. There were no comments on this nationwide permit. The nationwide permit is reissued without change.

29. *Single-family Housing.* There were no changes proposed to this nationwide permit. One commenter stated that the Corps has failed to demonstrate with substantial evidence that the acreage limits applicable to this and many other NWPs is sufficiently protective of the environment. The commenter also stated that the Corps must validate, with evidence and an environmental impact analysis, the acreage limits it sets for all NWPs. Another commenter said that single-family housing is not a water dependent activity, and therefore it is presumed that alternative locations are available for these activities. That commenter also stated that activities authorized by this permit are not similar and result in more than minimal adverse environmental effects, even individually, much less cumulatively and, that the acreage limits are arbitrary and capricious. Another commenter recommended a full environmental impact statement and, at a minimum, only use the permit to authorize homes, without attendant features, with a 1/10 acre limit and that the Corps establish a process to monitor cumulative impacts over time. The commenter also recommended the Corps prohibit use of this permit in high growth counties and that it not be used to authorize placement of septic tanks or leach fields in wetlands.

The Corps believe that the listing of the type of activities authorized by this NWP will ensure that those activities authorized by this NWP will be similar in nature. Further, we believe that normally these activities will have no more than minimal adverse effects on the aquatic environment, individually and cumulatively. Further, Division and District Engineers will condition such activities where necessary to ensure that these activities will have no more than minimal adverse effects on the aquatic environment, individually and cumulatively. Therefore we find that the NWPs do not require an EIS. However, we do prepare environmental assessments to assess potential impacts. NWP 29 was originally issued with a 1/2 acre maximum limit. We reviewed this threshold in 1999 and decided to reduce the maximum acreage limit for NWP 29 to 1/4 acres. We continue to believe that this is the appropriate maximum acreage limit. The environmental assessment for this NWP is published on our webpage for review. It is true that the activities authorized by the NWP are not water dependent as defined in the Section 404(b)(1) guidelines. However, the alternatives test does not apply to NWPs as stated in the 404(b)(1) guidelines. Therefore, it is not presumed that alternative locations are available for these activities. Furthermore, the EPA and the Corps issued additional guidance on March 6, 1995 regarding compliance with the Section 404(b)(1) guidelines for small landowners. These activities comply with this guidance. This guidance is also available on the Corps webpage. The nationwide permit is reissued without change.

30. *Moist Soil Management for Wildlife.* There were no changes proposed to this nationwide permit. One commenter suggested that this permit be revised to allow local public agencies to conduct these activities, especially when they would result in environmentally useful activities. Another commenter stated that, because the activities authorized by this permit are not similar, the permit should be withdrawn. They go on to say that since the general public cannot determine what activities are authorized by this permit, direct, indirect, or secondary impacts cannot be determined to result in minimal adverse environmental impacts.

We agree that this NWP should also allow local agencies to conduct these activities on public property. Therefore we have modified the NWP to allow activities on local government agency owned or managed property to also be authorized by this NWP. We believe that the terms and conditions will ensure that the adverse effect on the aquatic environment will be minimal. Further we believe this change will provide for additional opportunities for activities to provide needed environmental benefits. Also should some of these activities have the possibility to have adverse environmental effects, the Corps districts or divisions have the discretionary authority to require activity specific conditions or regional conditions. We believe that the listing of the type of activities will ensure that those activities authorized by this NWP will be similar in nature. Further, we believe that normally these activities will have no more than minimal adverse effects on the aquatic environment, individually and cumulatively. Further, Division and District Engineers will condition such activities where necessary to ensure that these activities will have no more than minimal adverse effects on the aquatic environment, individually and cumulatively. The nationwide permit is reissued with the change described above.

31. *Maintenance of Existing Flood Control Facilities.* The Corps proposed to modify NWP 31 to clarify Corps policy and requirements regarding mitigation for maintenance activities. We also proposed to clarify documentation requirements for the baseline determination, and allow maintenance of areas that are a part of the flood control facility without constructed channels provided that the Corps approves Best Management Practices to ensure that adverse environmental effects are no more than minimal.

Two commenters insisted that the language of this NWP must be clear that exempt facilities are not now regulated and they suggested that facilities built prior to, or that were not subject to mitigation as part of the CWA, should not now be subject to mitigation requirements for routine maintenance. They suggested that the language of the currently proposed NWP conflicts with the Corps policy indicating that routine maintenance impacts are temporary and generally not worthy of mitigation. They

questioned how one mitigates for ''unspecified discharges''. They also agree with the Corps Civil Works policy that one-time mitigation should be required as part of the project and should address all permanent and temporary impacts, and that this should be required at the time the project is initially constructed. Most commenters agreed that a one time mitigation requirement for these maintenance projects may be appropriate.

We do not agree that discharges of dredged or fill material in waters of the United States that are part of a pre-Clean Water Act flood control facility are exempt from permit or mitigation requirements. Although discharges associated with the construction of facilities that pre-date the Clean Water Act are not subject to any retroactive authorization requirement, waters of the U.S. flowing through such facilities are not excluded from jurisdiction under the Act. As such, discharges of dredged or fill materials into these waters remain subject to section 404 requirements. NWP 31 conveys the section 404 authorization for discharges associated with flood control facility maintenance activities, provided (1) That a maintenance baseline is established, (2) that the adverse effects of discharges associated with establishing that baseline are adequately mitigated, and (3) that discharges associated with subsequent maintenance activities do not alter the maintenance baseline. We believe that mitigation need only be imposed once, as part of the establishment of the maintenance baseline, to ensure that the loss of waters of the U.S. that are attributable to discharges associated with the establishment of that baseline are no more than minimal. Once this is accomplished, regulated discharges that are associated with maintaining the established baseline, and that do not incur losses beyond those addressed in conjunction with the establishment of that baseline, are authorized under NWP 31 without the need for further mitigation.

We believe that the utilization of the ''maintenance baseline'' procedure is consistent with Corps policy to the effect that ''routine maintenance impacts are temporary and generally not worthy of mitigation.'' The maintenance baseline establishes the limits within which regulated maintenance-related discharges are authorized by NWP 31, and excluded from additional mitigation requirements. We agree that, ideally, all mitigation for permanent and temporary impacts resulting from the construction of flood control facilities, and from the inevitable maintenance, should be imposed only once, at the time of initial construction. The Clean Water Act does not provide an exemption for discharges into the waters of the U.S. specifically for maintenance of flood control facilities. Unless section 404 authorization for discharges associated with regulated construction and maintenance activities has been conveyed through some other means, such as through the Federal Project authorization process, authorization through the Corps permit process is required. As previously indicated, although section 404 authorization is not required for discharges associated with flood control facility construction that pre-dates the Clean Water Act, the Act does not exempt discharges in waters of the U.S. that may accompany the maintenance of these facilities. We believe that NWP 31, with the inclusion of the maintenance baseline provision, is a reasonable and appropriate procedure for conveying the section 404 authorization required for maintenance-related discharges that have not been previously authorized through other means. Finally, the question as to how one mitigates for ''unspecified discharges'' is, we believe, based on a misprint in the original **Federal Register** notice. The preamble, at page 42077 of this notice indicates that we intended to ''* * * proactively *prescribe* mitigation for * * * unspecified discharges * * *'' (emphasis added). This sentence should have read ''* * * proactively *proscribe* mitigation for * * * unspecified discharges * * *''

One commenter suggested that the mitigation requirement should consider future, cumulative impacts as these impacts would likely result in more than minimal adverse impacts to aquatic resources.

We believe that mitigation requirements associated with NWP 31, as proposed, are sufficient to account for future, cumulative impacts. As envisioned, mitigation will be required for adverse effects on the aquatic environment that are attributable to regulated discharges associated with the establishment of the baseline physical parameters (i.e., the maintenance baseline) of the flood control facility. Maintenance-related discharges that do not exceed the established maintenance baseline will not result in losses of aquatic resources beyond those addressed at the time the maintenance baseline is established. Discharges that exceed the established maintenance baseline are not eligible for authorization under NWP 31.

One commenter stated that baseline criteria are often difficult to produce, especially for much smaller drainage/utility districts which may not have nor maintain such records. Two other commenters indicated their support for revisions to this permit which recognize that cyclic maintenance is inherent in the continued operation of flood control facilities, and that regulated discharges will inevitably occur as a result of this activity. They also support the revisions allowing discharges in emergency situations. They suggested that the Corps should clarify that, in situations where baseline information is unavailable due to the age of the facility, lack of construction drawings will not preclude use of this NWP.

We acknowledge that producing records of baseline parameters may not be possible in all cases, but we can not waive this requirement. In these cases, a new maintenance baseline must be established before the maintenance-related discharges in the subject facility are eligible for authorization under NWP 31.

One commenter suggested that the proposal to authorize maintenance activities on natural features is a departure from previous practice and creates the greatest risk for more than minimal adverse environmental impacts. Also, they state that they believe it is critical that the Corps articulate its basis for extending authorization into areas that previously have been prohibited under this NWP, as well as an explanation as to why it believes that adequate protection will be provided through the use of BMPs. They want the Corps to clarify under what circumstances it considers a natural segment to be ''incorporated'' into a flood control facility, as the term may be interpreted broadly to the detriment of aquatic resources. Lastly, they also believe that the open ended nature of the provision may lead to greater than minimal impacts and confusion after the activities are completed, when mitigation is required, and urge the Corps to make clear that this provision only applies to situations satisfying the minimal effects test in light of existing regulatory provisions that already provide for emergency permitting.

The incorporation of natural areas into an overall flood control facility is accomplished through the establishment of a maintenance baseline that includes these areas. Although the current NWP 31 differs from its predecessor with respect to the treatment of these natural areas, this NWP does not authorize discharges that exceed this baseline. As such, NWP 31 does not authorize any regulated discharge that results in the further loss of jurisdictional aquatic areas in the flood control facility, including those in the subject natural

areas. Upon incorporation in the maintenance baseline, the physical parameters of the natural area can be maintained, but not exceeded, through maintenance activities that may involve regulated discharges that are authorized by NWP 31. For example, scoured banks in a natural area may be restored to the baseline condition (but *only* restored, not exceeded) through a discharge of fill material that is authorized under NWP 31. Beyond this, the application of Best Management Practices (such as a time-of-year restriction on the discharge) may further minimize adverse effects on the aquatic environment. As with all NWPs, Corps Districts may ''override'' the use of this NWP by requiring individual permits in situations where the District believes that adverse effects are likely to exceed the minimal level. In light of these factors, we do not agree that the concerns presented in this comment warrant further modification of NWP 31.

One commenter objects to the ''one-time mitigation requirement'' as the Corps has not satisfactorily demonstrated that compensatory mitigation is successful in replacing the lost functions and values destroyed through the original construction of the flood control facility. They also state that it is impossible to pre-determine the magnitude of potential adverse impacts when there are no limits on the acreage of impacts or cubic yardage of excavation authorized under this permit.

Excavation in waters of the U.S. that results in only incidental fallback is not regulated under section 404 of the Clean Water Act, and such activities are not subject to mitigation requirements imposed under that law. Regardless, in the context of the NWPs, the mitigation of the adverse effects of regulated activities need only offset those effects such that ''no more than minimal'' adverse effects remain, and not necessarily to guarantee that losses are exhaustively compensated. NWP 31 authorizes maintenance-related discharges that are subject to regulation under section 404. The establishment of the maintenance baseline, in effect, identifies the location and physical dimensions of waters of the U.S. that have been incorporated in the flood control facility. Discharges that result in losses of these waters (i.e., that exceed the maintenance baseline) are not eligible for authorization under NWP 31. In light of this, we believe that the ''one time mitigation requirement'' imposed in conjunction with the establishment of the maintenance baseline is sufficient for the purpose of this NWP.

One commenter indicated that there are far too many unclear considerations in this permit for it to protect water quality and critical aquatic habitat. They recommend the Corps (1) Process emergency activities through individual permits, (2) maintain and strengthen existing mitigation requirements for unavoidable impacts and amend as needed to comport with aquatic habitat changes, (3) develop a clear definition of acceptable maintenance baselines and a clear explanation of what constitutes suitable documentation, and (4) include adequate conditions that further protect water quality and aquatic habitat and must allow comment from the public prior to adoption and implementation.

Although we respect the concerns that are implicit in this comment, we do not agree that further modification or elaboration of NWP 31 (or of our emergency permit procedures) is a necessary or appropriate way to address them. In adopting generic permits such as NWP 31, and in designing emergency procedures for nationwide application, we try to avoid being unnecessarily prescriptive or restrictive. Our intent is to afford Corps Division and District offices with significant discretion and latitude as to the final application of the NWP program and the emergency procedures, in order to allow them to tailor the actual application of the NWPs to the nuances of local situations that we can not anticipate. Toward this end, we strive to make the generic NWPs as broad as possible within the constraints imposed by the law and related regulations, in order to maximize the potential applicability of these permits. At the same time, we provide our Division and District offices with the authority to further condition, modify, suspend, or revoke these permits in response to regional or local conditions that demand such actions to ensure that effects remain at or below the ''minimal'' level. The corollary to that authority is the Division and District responsibility to ensure that the ''no more than minimal'' threshold is not exceeded by individual activities authorized under a NWP.

One commenter recommended that the Corps consider a review of potential cost to the applicant in establishing a maintenance baseline on a given project. They also opined that any review of whether a project has been abandoned should consider more than just time in that decision-making process due to the fact that the financial resources to perform that maintenance in what might be considered a timely manner are not always available.

Although we are aware of the importance of cost considerations to all applicants for Corps permits, we have no authority to waive requirements under the law because of these considerations. The establishment of a maintenance baseline is the key component of NWP 31 because it delineates parameters of waters of the U.S. that are incorporated into the flood control facility, within which regulated discharges are eligible for authorization under the NWP. As such, we can not factor cost considerations into the requirements for establishing a maintenance baseline. We believe that NWP 31, as proposed, does not compel an abandonment determination to be based exclusively on the time that elapses between maintenance events. This provision of NWP 31 takes into account whether the capacity has been significantly reduced, and whether maintenance was needed but not performed, in addition to consideration of the length of time during which the capacity has been significantly reduced, and during which needed maintenance was not performed. The non-specific nature of the facets of this provision is deliberate, as is the absence of a consideration of environmentally beneficial features, such as wetlands, that may have developed between maintenance events. Our awareness of some of the practical realities of operating and maintaining flood control facilities encourages us to believe that the bar should be set fairly high for determining that such a facility has been abandoned for the purposed of NWP 31.

One commenter suggested that the development of the ''maintenance baseline'' to be employed at these facilities should account for channel and habitat characteristics associated with a hydrogeomorphic approach.

The establishment of the maintenance baseline is related to ensuring that losses of waters of the United States, beyond those addressed in conjunction with such establishment, do not occur as a result of regulated discharges that are authorized by the NWP. We do not believe that formalized assessment methodologies are necessary to accomplish this. The implication of this suggestion is that NWP 31 procedures should be used to determine baseline channel and habitat characteristics, which could then be maintained through subsequent authorizations under the NWP. We do not believe that this is practical or appropriate. Many maintenance activities that are not subject to regulation under section 404 of the Clean Water Act, such as excavation that results in only incidental fallback, are likely to affect channel and habitat characteristics as much as, or more than, the kinds of

discharges that are regulated under NWP 31. We do not believe that it is appropriate to use this NWP to regulate effects that are not attributable to regulated activities.

Two commenters stated that the periodic maintenance of flood control facilities is required for the operation of those facilities and will not have a significant adverse impact on the environment when conducted within the maintenance baselines for such facilities. They support the clarification proposed for NWP 31 that maintenance of these facilities do not require compensatory mitigation when approved BMPs are utilized.

We believe that the maintenance baseline procedure, in combination with the imposition of BMPs, will preclude the need for mitigation for regulated discharges associated with routine and recurrent maintenance activities in most cases. However, in designing nationwide generic permits such as NWP 31, we ultimately rely on our Division and District offices to provide the final surety that the specific regulated activities that are authorized under the NWPs do not result in more than minimal effects. To ensure that the ''minimal effect'' threshold is not exceeded in individual cases, we believe that the Divisions and Districts must continue to have the authority to impose mitigation requirements in addition to BMPs as a means of achieving this.

Three commenters stated that the Corps should not regulate temporary discharges associated with maintenance activities within the flood control facilities since there is not a permanent impact. They state that NWP 31 should make it clear that temporary stockpiles and redeposits associated with otherwise unregulated excavation is not a loss of a water of the U.S. that requires compensatory mitigation. They also state this holds true for other maintenance activities associated with the flood control facility that are not within Corps jurisdiction, i.e., mowing or brush hogging. In addition, they assert, if the flood control facility was constructed by the Corps and turned over to a local or state agency for maintenance, and did not mitigate for the maintenance of its project, the receiving agency should not be burdened with the Corps omission. They also suggest that ensuring that mitigation and/or ESA surveys would not be required if the maintainer reduced the frequency of routine maintenance might be a valuable mitigation tool in and of itself. Lastly, the Corps should provide a means that minimal impact NWP 31 activities could be authorized without a PCN.

We agree that, in situations where there is no permanent loss of waters of the U.S., no mitigation for such temporary effects is required. However, this does not exempt temporary discharges from the need for section 404 authorization, even when those discharges are only incidental to otherwise unregulated activities. Generally, we believe that it is not appropriate to impose mitigation for effects attributable to unregulated activities, such as excavation that results in only incidental fallback, but to the extent that significant regulated discharges may accompany some unregulated maintenance activity, mitigation may be required to ensure that there are no more than minimal adverse effects. We believe that such determinations must be made on a case-by-case basis, as individual NWP authorizations are confirmed.

We do not intend to impose any restriction on the frequency of routine maintenance. We believe that such decisions should be left to those responsible for the operation and maintenance of flood control facilities, since they must often must balance budget limitations against the projected need for maintenance.

We do not intend to impose, on local sponsors, any requirement to mitigate for impacts attributable to the construction of a Corps-constructed flood control facility. However, many such facilities were constructed prior to the implementation of the Clean Water Act, so no section 404-related mitigation was required. Although Clean Water Act requirements are not retroactively imposed on the construction of these facilities, the Corps has no authority to exempt current discharges of dredged or fill material that occur in conjunction with the maintenance of the facility, or to waive any requirement for necessary mitigation.

Reiterating the concern of the previous comment, another commenter stated that, absent sufficient reasoning for requiring a PCN, the Corps should delete the PCN requirement from this permit as it is costly to the applicant both from a time and money standpoint.

We are not currently confident that we could prescribe conditions and limitations on potential NWP 31-authorized discharges sufficient to ensure that their adverse effects can reasonably be determined to be no more than minimal in most cases, in the absence of site-specific verification through the PCN process. Conversely, we are not certain that the PCN requirement for this NWP could not be relaxed at some point in the future, as we gain greater experience with use of the NWP. In light of this uncertainty, we believe that the inclusion of the PCN requirement is prudent, for the current issuance of this NWP, but the Corps will continue to evaluate its appropriateness for future reissuances.

One commenter supported the concept of maintenance baseline, however, to assure the impacts are minimal, suggests that the state regulatory agencies and state and federal resource agencies be involved in the review and approval of the maintenance baseline, as well as mitigation for the projects.

The Corps believes that establishment of the maintenance baseline is essentially a technical exercise. Since the maintenance baseline for NWP 31 purposes, as proposed, is a description of the physical characteristics of the flood control project that has been or is being constructed through some independent authorization, we do not agree that coordination with state or Federal agencies is necessary or warranted for the establishment of the baseline. Coordination may be necessary or appropriate for authorization of the project itself, depending on the terms and conditions of the legal authority under which project authorization occurs.

Two commenters indicated the need to define ''best management practices'' and ''maintenance baselines'' so that a true assessment of impacts resulting from the proposed changes to the NWP can be made. They also suggested that the Corps should work with local communities to restore floodplain functions, where possible, and maintain existing wetlands to help moderate peak flows.

We believe that the concepts of ''best management practices'' and of the ''maintenance baseline'' do not need further definition in order to adequately understand the impacts of this NWP. Through the Regulatory Program, and through other Civil Works and Military Programs, the Corps does work with local communities to restore floodplain functions and to maintain and restore wetlands, but these comments are outside the scope of NWP considerations.

One commenter indicated the changes to this permit could allow any stream that has been deemed incorporated into a ''flood control facility'' to be routinely maintained with little or no mitigation required. He suggested that mitigation should be required for all maintenance activities.

In issuing this NWP, it is our intent to provide for identification of the

extent of waters of the U.S. that exist within the flood control facility, and to authorize maintenance-related, regulated discharges in a manner that does not result in a net loss of these waters. We believe that it is appropriate to include streams that have been incorporated into flood control facilities through the establishment of a maintenance baseline. As long as the maintenance baseline is not exceeded, we believe that the authorization of maintenance-related discharges, with little or no mitigation, is adequate and appropriate, both in areas that include structural features and in those that do not. In light of the fact that only the discharge associated with maintenance activities requires a CWA section 404 permit and other maintenance activities may not be regulated even if conducted in section 404-only waters, we do not believe that mitigation for all maintenance activities is necessary or appropriate. It is not our intent to use this or any NWP to require mitigation for unregulated activities. Despite this, Corps Division and District offices are authorized to impose mitigation requirements that they determine are necessary to keep effects at a minimal level.

One commenter suggested that maintenance baselines be re-evaluated periodically to determine if it still reflects existing conditions. Two other commenters opposed the specifications for one-time mitigation stating that habitat and species composition changes over time, warranting additional mitigation. Also, a separate and new permit should be created through coordination with the US Fish and Wildlife Service for emergency flood control work.

The maintenance baseline is intended to be a fixed description of physical parameters that cannot be exceeded by regulated discharges authorized under NWP 31. Changes in conditions in the flood control facility are expected to occur, and NWP 31 is intended to authorized regulated discharges associated with maintenance activities that can return the facility to the maintenance baseline condition, but not exceed them. As such, we believe that the maintenance baseline must remain fixed, and that it would be inappropriate to raise or lower the bar in connection with periodic reviews. If the operator of the facility wished to change the baseline, however, they could apply to the Corps to do so and appropriate mitigation would be required at the time a new baseline is established. We believe that the current emergency procedures, along with the revisions to NWP 31 related to emergency maintenance, are sufficient to provide necessary and appropriate environmental consideration in emergency situations. In light of this, we do not agree that a new permit should be created.

One commenter who opposed NWP 31 stated that they were concerned with the requirement for mitigation stating that if adverse impacts truly were minimal, then mitigation should not be needed.

After the establishment of the maintenance baseline, we believe that the adverse impacts attributable to regulated discharges associated with maintenance activities will, indeed, be minimal, and mitigation will not be required. However, if the loss of waters of the U.S. in a particular reach of a flood control facility has not previously been mitigated, and a regulated discharge associated with a needed maintenance activity will result in such loss, we believe that ''once only'' mitigation may be required as a prerequisite to NWP 31 eligibility, and that it should be imposed in conjunction with the establishment of the maintenance baseline.

One commenter questioned whether BMPs would adequately protect areas covered under this NWP from environmental degradation and loss of fish and wildlife habitat values.

BMPs are intended to minimize the adverse effects of regulated activities. With respect to NWP 31, the application of BMPs in conjunction with the maintenance baseline provisions is expected to ensure that the effects of activities authorized under this NWP are no more than minimal. They are not necessarily intended to prevent environmental degradation and the loss of habitat values that may be attributable to factors that are not caused by maintenance activities.

One commenter suggested redrafting NWP 31 to clarify what is already exempt under statute and regulation and to narrow its application to debris basins and retention/detention basins, to the portion of constructed soft bottom channels beyond the limits reasonably related to maintenance of the sides of the channel, to natural watercourses that are part of a flood control facility, and to any other part of an existing flood control facility that is not a structure or a constructed fill.

Since our intent in issuing this NWP is to assure that its applicability is as broad as possible within the constraints of the NWP program, we do not agree that is necessary to impose further limitations that are not supported by any clear indication that such limitations are necessary to ensure that the effects will be no more than minimal.

One commenter contends that it should not be mandated that the baseline, with supporting mitigation, be required after-the-fact whenever emergency maintenance has occurred, but instead, the actual facts associated with the emergency related activities should be considered. If no impacts, or only minor impacts, occurred there should be no need to undertake the burdensome task of establishing a baseline. He also suggests that the imposition of administrative burdens to address minor maintenance activities essential to keeping flood control structures in safe operating conditions, cannot be justified and is not required under Section 404.

Regardless of the circumstances, the requirement to establish a maintenance baseline is only imposed in conjunction with the prospective use of NWP 31. If the applicant is not willing or able to establish a maintenance baseline, other Corps permit processes can be applied to consider authorizations for discharges associated with maintenance activities, but necessary mitigation would be required in any case. Since neither emergency circumstances nor the minor nature of a particular activity is exempted from regulation under the law, we can not exempt them through the NWP process. We believe that NWP 31, as proposed, is a reasonable and prudent way to minimize the burdens imposed on applicants, within the constraints of applicable law and regulation.

One commenter requested clarification of terms such as ''reasonably foreseeable discharges'' and ''routine maintenance'' and ''cyclic maintenance'', as well as a clarification of the intent of this rule. He suggested that the rules should provide for permitting authorization for structures constructed by agencies other than the Corps, with maintenance activities focused on restoration to a specific baseline.

We believe that the intent of this NWP, which is to authorize discharges associated with maintenance activities in flood control facilities, is adequately indicated in the NWP, as written. We do not believe that the terms ''reasonably foreseeable discharges,'' ''routine maintenance'' or ''cyclic maintenance'' need to be further defined, since the applicability of NWP 31 does not depend on any precise definition of these terms. As designed, NWP 31 does focus on the maintenance of a predetermined baseline. However, we believe that the inclusion, in this NWP, of provisions to authorize the

construction of structures in jurisdictional areas is not warranted. The authorization of structures is limited to that provided by other applicable NWPs and standard permits. NWP 31 authorizes regulated discharges associated with maintenance activities for the purposes of section 404 of the Clean Water Act and section 10 of the Rivers and Harbors Act.

One commenter stated that riverine systems that do not have constructed channels cannot be considered flood control structures and the activities proposed by this NWP would result in more than minimal impacts to the environment. He suggests, if the NWP is issued that, at least regionally, use of this NWP should be prohibited in areas that are not constructed channels.

As proposed, NWP 31 addresses the maintenance of flood control facilities, and not just structures. This NWP authorizes discharges associated with maintenance activities, but it does not subject otherwise unregulated activities or non-jurisdictional areas to the requirements of applicable law. The effects being addressed in connection with this NWP are those that result from regulated discharges in jurisdictional areas. Upon the establishment of the maintenance baseline, the effects of subsequent maintenance-related discharges that do not exceed that baseline will, generally, be no more than minimal.

One commenter indicated that the NWP would result in a significant workload increase for the Corps as most projects did not have a baseline prepared and as a result, a significant quantity of one-time-only mitigation might be identified when these first baselines are determined. This mitigation would have to be reviewed and approved by the Corps. This mitigation preparation and execution would also put a financial and manpower hardship on local sponsors. He suggests a grandfather clause so that the projects would qualify for NWP 31 with no requirement for baseline determinations and/or supplemental mitigation.

Since the Corps has no authority to exempt discharges associated with maintenance activities from regulation under the law, or from corresponding mitigation requirements, we can not adopt a grandfather clause to waive these requirements. Although we recognize that the establishment of a maintenance baseline, and the imposition of related mitigation requirements, will impose a significant burden in some cases, we believe that this one-time procedure is a viable way of generally assuring that the effects of subsequent maintenance-related discharges are no more than minimal.

One commenter suggested that the proposed NWP does not address provisions of, and possible conflict with, a recent proposed policy guidance document for authorization of maintenance activities through the USACE Civil Works Department. He suggests specific language providing that revised as-builts and updated environmental surveys be submitted rather than an EIS to authorize maintenance activities under the Civil Works Program. The commenter would like to see the processes for modification of existing manuals to NEPA and CWA standards be more standardized and expedited.

This comment is apparently more concerned with the specifics of prospective policy guidance on the maintenance of Corps flood control facilities, than with NWP 31 as proposed. We believe that any consideration of issues related to the effects of such policy guidance must be deferred until such time as the policy guidance is actually issued.

One commenter objected that the requirements of the proposed NWP 31 extend jurisdiction to areas outside of those regulated by the CWA, *i.e.,* areas which are the upland portions of detention facilities and areas above the normal high water level in stream channels. If this approach is adopted, the commenter suggests the extent of information required is so detailed and extensive as to make it unruly.

NWP 31 does not extend Clean Water Act jurisdiction to areas or activities that are not subject to that law. Unregulated activities, and work in non-jurisdictional areas, do not require section 404 authorization under NWP 31 or any other Corps permit process. The maintenance baseline provision of NWP 31 does, by necessity, include considerations of non-jurisdictional areas, but this prerequisite only applies in the context of NWP 31. Other permit avenues, such as individual permit procedures, remain available to consider maintenance activities that require section 404 authorization in circumstances in which the maintenance baseline information requirements can not be accommodated by the applicant.

One commenter requested that the Corps revise the NWPs to eliminate the use of the term ''incidental fallback,'' to avoid any requirement for the case-by-case demonstration of proposed equipment use, and to avoid reliance on the ''rebuttable presumption'' approach to defining ''discharge of dredged material.''

We do not believe that this change is necessary. Like all NWPs, NWP 31 authorizes only regulated discharges and does not alter or enlarge program jurisdiction. For example, incidental discharges are addressed in the regulations themselves at 33 CFR 323.2(d), and not the NWPs.

The nationwide permit is reissued as proposed.

32. *Completed Enforcement Actions* There were no changes proposed to this nationwide permit. One commenter suggested that NWP 32 should be withdrawn as it is too broad for projects to be considered ''similar in nature'', or to be able to determine that the various projects, when considered individually or cumulatively, will result in minimal adverse environmental effects, and that it's limitations are arbitrary and capricious (*e.g.,* 5 acres, 1 acre).

The Corps believes that the description of the type of activities will ensure that those activities authorized by this NWP will be similar in nature. Further, we believe that normally these activities will have no more than minimal adverse effects on the aquatic environment, individually and cumulatively. Further, Division and District Engineers will condition such activities where necessary to ensure that these activities will have no more than minimal adverse effects on the aquatic environment, individually and cumulatively.

Another commenter recommended changes to NWP 32 which would allow restoration-based settlements for natural resource injuries by adding the following text: (iii) The terms of a final court decision, consent decree, settlement agreement, or non-judicial settlement agreement resulting from a natural resource damage claim brought by a trustee or trustees for natural resources (as defined by the National Contingency Plan at 40 CFR subpart G) under section 311 of the Clean Water Act (CWA), section 107 of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA or Superfund), section 312 of the National Marine Sanctuaries Act (NMSA), section 1002 of the Oil Pollution Act of 1990 (OPA), or the Park System Resource Protection Act at 16 U.S.C. 19jj. For (i), (ii), and (iii) above, the compliance is a condition of the NWP itself.

The Corps agrees with the commenter. These are Federal environmental legal resolutions that we believe should proceed without the delays caused by processing individual permits that would have no added value to resolutions under these laws. However, we have added a clarification that this

NWP only applies to the extent that a Corps permit is required.

The nationwide permit is reissued with the change discussed above.

33. *Temporary Construction, Access and Dewatering* There were no changes proposed to this nationwide permit. One commenter suggested that NWP 33 should be withdrawn as activities authorized under this permit cannot be considered ''similar in nature'' and do not result in temporary or minimal adverse environmental effects to waters of the U.S.

The Corps believes that the description of the type of activities will ensure that those activities authorized by this NWP will be similar in nature. Further, we believe that normally these activities will have no more than minimal adverse effects on the aquatic environment, individually and cumulatively. Further, Division and District Engineers will condition such activities where necessary to ensure that these activities will have no more than minimal adverse effects on the aquatic environment, individually and cumulatively.

The nationwide permit is reissued without change.

34. *Cranberry Production Activities* There were no changes proposed to this nationwide permit. One commenter recommended that the Corps not reissue this permit as it violates section 404(e) of the CWA and the section 404(b)(1) Guidelines. The commenter stated that cranberry growers are allowed to ''buy down'' impacts of conversion with compensatory mitigation and that compensatory mitigation is allowed to take the form of preservation. The commenter further stated that some have indicated that cranberry production can degrade water quality, harm fisheries, and reduce water quantity, each of which can significantly, adversely affect the aquatic environment.

The Corps believes that this NWP is fully in compliance with section 404(e) of the Clean Water Act. Further the Corps believes that it is appropriate to require mitigation for adverse effects of a project and that the mitigation can be considered when determining that the adverse effects of a project are minimal.

The nationwide permit is reissued without change.

35. *Maintenance Dredging of Existing Basins* There were no changes proposed to this nationwide permit. Two commenters pointed out that there was a change in the proposed NWP 35 which was not mentioned in the Preamble. Another commenter recommended withdrawing this permit as it is not reasonable to conclude that the cumulative impacts of all of the activities authorized under this category would not result in greater than minimal adverse environmental effects. The commenter stated it is reasonable to conclude that this category of activities would be incapable of being in compliance with CZM programs.

The Corps agrees that there were differences in the NWP from the 1996 NWP. However, the Corps did not intend to propose a change to this NWP. This was an error. This NWP will be adopted as it has existed since 1996. We continue to believe that the cumulative effects of activities authorized by this NWP will be no more than minimal individually and cumulatively. Furthermore, Corps districts or divisions may add case-specific or regional conditions where necessary to further ensure that the adverse effects to the aquatic environment are no more than minimal, individually and cumulatively. The states will review the activities authorized by this NWP and will agree or disagree that these activities comply with their State CZM programs. If the States disagree, then activities that otherwise qualify for the NWP will need to get an individual State CZM concurrence before they can proceed. If the state conditions its CZM agreement, then those state CZM condition will become conditions of the NWP.

The nationwide permit is reissued without change from the 1996 NWP.

36. *Boat Ramps* There were no changes proposed to this nationwide permit. One commenter suggested that NWP 36 should be withdrawn as it is unreasonable to conclude that the cumulative impacts of all of the activities authorized under this category would not result in greater than minimal adverse environmental effects. The commenter expressed is doubt that the adverse indirect/secondary impacts of extracting the source materials and subsequent degradation of water quality associated with the use of the construction of boat ramps has been considered by the COE.

We continue to believe that the cumulative effects of activities authorized by this NWP will be no more than minimal, individually and cumulatively. Furthermore, Corps districts or divisions may add case-specific or regional conditions where they believe necessary to further ensure that the adverse effects to the aquatic environment are no more than minimal, individually and cumulatively. The Corps will also consider adverse effects at borrow areas where appropriate. It should be noted that normally the materials for the small boat ramps are obtained from existing borrow areas or sources that exist independently of the small projects. Any individual water quality issues will be addressed by the states through water quality certifications, NPDES permits or other programs. In some cases the Corps may directly address water quality issues when appropriate.

The nationwide permit is reissued without change.

37. *Emergency Watershed Protection and Rehabilitation* The Corps proposed to modify this NWP to include the Department of the Interior (DOI), Wildland Fire Management Burned Area Emergency Stabilization and Rehabilitation Program (DOI Manual, part 620, Ch. 3) to this NWP. The existing NWP only included the Natural Resource Conservation Service (NRCS) and U.S. Forest Service (USFS) Programs for emergency watershed protection and rehabilitation. The Department of the Interior has similar responsibilities as the Forest Service, such as suppression of wildland fires and the rehabilitation of the burned land.

Several commenters suggested additional changes to this NWP, including limiting the time that the NWP can be used after an emergency situation, such as 2 years, and broadening the NWP to cover State and local emergency activities. One commenter suggested that there were abuses, such as converting waters of the U.S. in the guise of restoration. Another commenter recommended retaining the word ''exigency'' in the permit language until such time that NRCS completes their final PEIS and modifies their regulations accordingly to ensure that the impacts from this category of NWP will not exceed the minimal impact threshold.

The Corps believes that the time constraint and the expansion to include State and local emergency activities would need to be proposed before a change could be adopted. Furthermore, we believe that the suggested time constraint is not needed and we are not aware of any such abuses. The Corps will monitor the use of this NWP and will propose any changes that may be necessary to ensure that any adverse effects on the aquatic environment are no more than minimal, individually or cumulatively. The Corps believes that the terminology used to describe the NRCS emergency situations will not result in materially different activities that are now covered by the NWP. Should there be a change the Corps can modify the NWP accordingly.

One commenter suggested a grammatical change, removing the

''Work done or funded by'' from the beginning of subsections ''b'' and ''c'' in order to be consistent with subsection ''a''. We concur with this comment and have accordingly changed the NWP.

The nationwide permit is reissued as proposed and with the change described above.

38. *Cleanup of Hazardous and Toxic Waste* There were no changes proposed to this nationwide permit. One commenter indicated that this NWP covers many different activities that are not similar activities. The commenter added that the NWP also lacks any indication of a time constraint that would constitute an ''emergency'' response, which may have occurred up to five years later in some cases. The commenter also stated that there have been adverse effects that occur under the guise of so-called ''Restoration''.

The Corps believes that the description of the type of activities will ensure that those categories of activities authorized by this NWP will be similar in nature. Further, we believe that normally these activities will have no more than minimal adverse effects on the aquatic environment, individually and cumulatively. In addition, Division and District Engineers will condition such activities where necessary to ensure that these activities will have no more than minimal adverse effects on the aquatic environment, individually and cumulatively. The addition of a time constraint would need to be proposed before a change could be adopted. Furthermore, we believe that a time constraint is not needed and we are not aware of any such abuses. The Corps will monitor the use of this NWP and will propose any changes that may be necessary to ensure that any adverse effects on the aquatic environment are no more than minimal, individually or cumulatively. The nationwide permit is reissued without change.

39. *Residential, Commercial, and Institutional Developments* The Corps proposed these changes to this NWP: (1) Simplify the subdivision provision, without substantively changing its effects, (2) delete the one-cfs restriction on stream impacts, and (3) allow a project specific waiver of the 300 linear-feet prohibition following a written determination by the Corps that any adverse environmental effects would be no more than minimal.

Simplify the Subdivision Provision

Several commenters supported simplifying the subdivision provision while several others indicated that the existing subdivision provision should remain. Several commenters expressed concerns about repeated use of the NWP within a subdivision and supported applying the aggregate of all fills in waters of the U.S. to the ½ acre threshold. Some commenters did not want the restriction to apply to future individual lot owners while others wanted to ensure that it did. One commenter asked whether the new subdivision language would apply to all subdivisions or would some be grandfathered. Another expressed concern about Corps workload and record keeping impacts due to grandfathered subdivision dates. One commenter requested that individual lot owners within a subdivision be exempted from the subdivision provision. Another commenter indicated that the 1/10 acre notification requirement should be retained in the subdivision provision.

The Corps continues to believe that to make the subdivision provision effective, it needs to be simplified. The subdivision provision will apply to all, but only to, residential subdivisions, regardless of when they were built. This will create some additional workload in older residential subdivisions not yet completed. However, in appropriate cases Corps divisions and districts may consider regional general permits or abbreviated permit processes. Also Corps divisions and districts may add regional conditions to require notification or other restrictions when appropriate. The subdivision provision will apply to all lots within a residential subdivision. Furthermore, when authorizing future residential subdivisions the Corps will consider the status of lots that maybe filled in the future and add them to the total for determining compliance with the aggregate ½ acre threshold. The simplified subdivision provision will simplify Corps record keeping and workload. But more importantly it will further compliance with this condition and thus provide additional environmental protection while allowing those subdivisions with minimal impact to proceed without unnecessary costs and delays.

Delete the One-cfs Restriction on Stream Impacts: Many commenters objected to the removal of the one cfs restriction on stream impacts and requested that it be restored to ensure that developments are not located on flood prone property without full individual permit review, including public notice and comment. One commenter recommended a preferred modification involving retaining the provision and proposed specific conditions under which this provision might be waived e.g. severe degradation. Another commenter was concerned that removal of this provision could jeopardize streams considered degraded by the Corps when that degradation might be eliminated or reduced through simple changes in management practices. Two commenters supported the elimination of the one cfs restriction agreeing that it was inconsistent with the intent of the NWP, but one of them further went on to say that the prohibition is unnecessary, confusing and results in many minimal impact projects having to undergo the individual permit process, and that the condition is arbitrary as there is no data to support the application of this condition. One commenter stated that removing the one cfs prohibition would allow a developer to completely remove most functions provided by a stream, however, this much impact should not be authorized by the Corps.

The Corps agrees with those commenters that the one cfs restriction is unnecessarily prohibitive. There is a need on occasion to have some unavoidable elements of relocation and channelization below the one cfs point on a stream for a project covered by NWP 39. In these cases there would be no value added to the environment by processing an individual permit. Further, the added complication and costs of making a determination of another point on a stream in addition to the five cfs point, unnecessarily adds a burden to the Corps and the applicant. We further believe that there are several other general conditions that protect important stream values; such as General Condition 21 Management of Waters Flows, General Condition 20 Spawning Areas, General Condition 17 Shellfish beds and General Condition 9 Water Quality to name a few.

300 Linear Foot Prohibition with a Waiver: This issue is discussed elsewhere in this preamble.

Compliance with 404(e): Several commenters indicated that the NWP was not in compliance with Section 404(e). One commenter said that since a residential development is not a water dependent activity, it is presumed that alternative locations are available for these activities.

We believe that the minor nature of these types and categories of activities will ensure that they are similar in nature. We further believe that the conditions and specified thresholds will ensure that the activities will have no more than minimal adverse effects on the aquatic environment, individually and cumulatively. The thresholds have been developed and greatly reduce from 10 acres in 1984 down to ½ acre in 2000, based on years of experience and were developed to consider most effects

that could occurs in many areas of the country. However, Division and District Engineers will condition such activities where necessary to ensure that those activities will have no more than minimal adverse effects on the aquatic environment, individually and cumulatively. A case specific off-site alternatives analysis is not required for activities with minimal adverse effects that are authorized by NWPs, as provided for the Clean Water Act section 404(b)(1) Guidelines. However, on-site avoidance and minimization is required by General Condition 19.

Other Comments

Many commenters opposed the preamble discussion regarding the phasing of subdivisions. The Corps has defined the concept of single and complete projects for the purpose of authorizing activities by nationwide permits. This term is defined in Corps regulations at 33 CFR 330.2(i). The preamble discussion states how the Corps is implementing the regulations. The Corps is not proposing to change the nationwide permit regulations at this time.

Two commenters requested conditions requiring a pre-construction notification for all wetland impacts to allow the Corps to determine the appropriateness of using the NWP for wetlands impacts. One of those commenters recommended that permittees be required to verify compliance with the NWP general conditions. A pre-construction notification is a requirement for impacts to greater than 1/10 acre of non-tidal waters of the U.S., excluding non-tidal wetlands adjacent to tidal waters. This NWP can not authorize activities in tidal waters of the U.S. and not in non-tidal wetlands adjacent to tidal waters and not for permanent above grade fills below the headwaters in the 100 year flood plain as provided for in general condition 26. We believe that this will ensure that the impacts will be no more than minimal. Furthermore, Corps divisions and districts will add regional conditions as appropriate to further ensure that cumulative effects will be no more than minimal. The Corps believes that it would be an unnecessary and unreasonable burden on an applicant to demonstrate compliance with all conditions. The Corps districts will request verification of compliance for those conditions that the Corps believes are applicable to a project but for which the applicant did not supply sufficient information.

This NWP is reissued as proposed except with the modified 300 linear foot waiver discussed below.

40. *Agricultural Activities.* The Corps proposed to modify this NWP by providing a waiver for the 300 linear foot limit on relocating existing serviceable drainage ditches constructed in non-tidal streams. Several commenters opposed this NWP, with some suggesting that it be withdrawn. Some commenters suggested additional restrictions to the NWP. These restrictions included changing the maximum acreage threshold (e.g. 1% of the farm tract, .3 acres, 1/2 acre for the entire farm holding or all the tracts under one ownership, 1/4 acres, and 1/10 acre); prohibiting conversion of waters of the US. to agricultural production; requiring that all impacts must be fully mitigated; and requiring that the Corps must review and approve all mitigation. Additional suggestions included requiring a pre-construction notification to include a hydrologist report documenting the extent of both primary and secondary impacts; limiting the linear footage of fill in all streams to 250 feet; prohibiting the discharge of fill into playas, prairie potholes, and vernal pools, withdrawing the provision that states that ''discharges of dredged or fill materials into waters of the US. associated with the construction of compensatory mitigation are authorized by the NWP, but are not calculated in the acreage loss of waters of the US'; and requiring that the Corps make its own minimal effects determination consistent with section 404 of the Clean Water Act.

Many of these suggestions would require that the Corps publish proposed changes to this NWP for public comments. The Corps can consider and propose any such appropriate changes after this NWP is reissued. However, at this time we believe that the threshold that we established in 1996 continues to be appropriate for this NWP. The Corps will review appropriate activities for compliance with this NWP including requiring appropriate mitigation and ensuring that the authorized activities will have no more than minimal adverse effects on the aquatic environment, individually and cumulatively. Further, we also believe that the PCN requirements are adequate to allow the Corps to make such determinations. We also believe that the PCN requirements will ensure that any jurisdictional activities in playas, prairie potholes, and vernal pools will have no more than minimal adverse effects on the aquatic environment, individually and cumulatively. However, for activities authorized by paragraph a. of this NWP, we will rely on NRCS to make those decisions. We believe that this is adequate and appropriate considering NRCS's responsibilities under the Swampbuster provisions of the Farm Bill. The threshold limits for all NWPs are based on the amount of impacts to waters of the US of the proposed activity. We do not allow that limitation to be modified by considering mitigation to decrease that number. However, we do consider the net effects including the project effects, mitigation and impacts caused by the mitigation in deciding whether the activity will have no more than minimal adverse effects on the aquatic environment, individually and cumulatively.

Most commenters stated that the activities authorized under this permit would pose a serious threat of contamination to wetlands and nearby streams from animal waste and should be withdrawn.

We understand these concerns. However, these issues are normally considered and will be addressed as part of the states' Section 401 water quality certification or by a Section 402 permit.

Most commenters stated that the scope of this permit violates the minimal impact standards as it unnecessarily exceeds the 1/4 acre limit for filling wetlands under the ''minimal effects'' provisions of the Farm Bill, and, as such, should be withdrawn.

The Corps disagrees. Nothing in this NWP will override the provisions of the Farm Bill. Where an activity is covered by the Farm Bill, it must meet the requirements of the Farm Bill as well as the requirements of the Corps NWPs. The NRCS is responsible for determining compliance with the Farm Bill, while the Corps is responsible for determining compliance with the NWP.

One commenter recommended withdrawing this NWP as the activities authorized by it are not water dependent activities, are very dissimilar in nature and result in major adverse impacts to the human environment. Additionally, the impact thresholds are arbitrary and capricious.

We believe that the minor nature of these types and categories of activities will ensure that they are similar in nature. We further believe that the conditions and specified thresholds will ensure that the activities will have no more than minimal adverse effects on the aquatic environment, individually and cumulatively. The thresholds have been developed based on years of experience and were developed to consider most effects that could occurs in many areas of the country. However, Division and District engineers will condition such activities where necessary to ensure that those activities

will have no more than minimal adverse effects on the aquatic environment, individually and cumulatively. This nationwide permit is reissued with a modified 300 linear foot waiver as discussed below.

41. *Reshaping Existing Drainage Ditches.* There were no changes proposed to this nationwide permit. Three commenters said that this NWP should not be reissued. One commenter stated that there is no demonstrated need for this NWP. Three commenters objected to the reissuance of the NWP because there are no acreage or linear foot limits. One of these commenters suggested adding a 500 linear foot limit and a 250 linear foot pre-construction notification threshold. One commenter said that the sidecasting of drainage ditch soils may have significant adverse impacts on the hydrologic regimes of adjacent wetlands. Another commenter indicated that impacts due to temporary sidecasting of excavated material result in more than minimal adverse effects on the human environment.

This NWP authorizes the reshaping of existing, serviceable drainage ditches in a manner that benefits the aquatic environment. Without this NWP, project proponents would likely have to obtain an individual permit to reshape drainage ditches in a manner that helps improve water quality in a watershed. Requiring an individual permit for this activity would discourage landowners from conducting this activity. We do not agree that acreage or linear limits are necessary because of the nature of the authorized activity. The pre-construction notification threshold of 500 linear feet will allow district engineers to review ditch reshaping activities that may result in more than minimal adverse effects to the aquatic environment. In response to a pre-construction notification, a district engineer can require special conditions to ensure that adverse effects on the aquatic environment are minimal or exercise discretionary authority to require an individual permit for the work.

One commenter asserted that this NWP will encourage the drainage, degradation, and further loss of waters and wetlands. One commenter recommended revocation of this NWP within ''Tulloch'' ditches because the permit provides additional opportunities for developers to fill wetlands with little oversight by the Federal government. This commenter also suggested modifying NWP 41 to require planting of native trees and shrubs on ditch banks after construction to reduce the potential for water quality degradation.

This NWP authorizes only temporary sidecasting of excavated material into waters of the United States. Therefore, activities authorized by this NWP will not have significant, permanent impacts on the hydrology of adjacent wetlands or the human environment. This NWP does not encourage the loss of waters and wetlands because it is limited to activities in existing, serviceable drainage ditches and reshaping activities cannot increase the area drained by the ditches. We do not agree that it is necessary to require planting of native trees and shrubs after construction. Drainage ditches require periodic maintenance to remove accumulated sediments and any trees and shrubs planted next to drainage ditches would have to be removed during maintenance activities.

One commenter said that if this NWP is used to authorize activities in waters that support salmonids, then a regional condition should be added to the NWP. The recommended regional condition would require delineations of pools and riffles and require that the reshaping activity be conducted in a manner that does not reduce the volume and surface area of pools or other suitable habitat.

Division engineers can add regional conditions to this NWP to address concerns for salmonid species.

One commenter objected to the reissuance of this NWP, stating that it does not define the term ''drainage ditch'' narrowly, it does not require an applicant to prove that the proposed ditch reshaping activity will not increase the area drained by the ditch, it does not require mitigation when work is designed to improve water quality. This commenter said that the NWP should clarify that pre-existing waterways are not drainage ditches, even if they have been channelized. This commenter recommended adding the following text to NWP 41: ''This general permit is limited to reshaping that would restore more natural stream characteristics by activities similar to increasing the area of riparian vegetation through re-grading or by recreating stream meanders.'' Other suggestions by this commenter include requiring applicants to obtain NRCS minimal effects determinations and best management practices certifications and requiring mitigation for adverse impacts to aquatic resources authorized by this NWP.

This NWP does not define the term ''drainage ditch''. District engineers can determine, on a case-by-case basis, what constitutes a ''drainage ditch''. The Corps has modified the language of this permit slightly to clarify that drainage ditches constructed in uplands are generally not waters of the US, consistent with earlier guidance on this issue (FR 51:219, p 41217). We do not believe that it is necessary to require compensatory mitigation for activities authorized by this NWP, since the activities authorized by NWP 41 are designed to improve water quality. We do not agree that the recommended text in the previous paragraph should be added to NWP 41 because this NWP authorizes the reshaping of existing drainage ditches, not stream restoration activities. Requiring applicants to obtain minimal effects determinations and best management practices certifications from NRCS is unnecessary, since this NWP is limited to the reshaping of existing, currently serviceable drainage ditches that have minimal individual and cumulative adverse effects on the aquatic environment. This nationwide permit is reissued without change.

42. *Recreational Facilities* In the August 9, 2001, **Federal Register** notice, we proposed to modify this NWP by allowing on a case-by-case basis, a waiver of the prohibition on impacts exceeding 300 linear feet of stream bed. In addition, we requested suggestions regarding criteria, standards, and best management practices that should be applied to this NWP for recreational facilities to ensure that adverse effects on the aquatic environment are minimal.

One commenter requested that the Corps broaden the applicability of this NWP to include improvements to ski facilities, because ski area expansion is too narrow. This commenter also expressed support for expanding the scope of this NWP to include the construction of hotels and restaurants, because these facilities are important components of skiing facilities. One commenter supported the use of this NWP to authorize the construction of hiking, biking, and horse trails.

This NWP can be used to authorize the construction of certain improvements to ski facilities, provided those improvements comply with the terms and conditions of the NWP. We do not agree that NWP 42 should be expanded to include the construction of hotels and restaurants. These facilities may be authorized by other NWPs, such as NWP 39, which authorizes discharges of dredged or fill material into non-tidal waters of the United States to construct commercial buildings and attendant features, or other types of Corps permits.

Two commenters said that this NWP should be withdrawn. One of these commenters said that the NWP authorizes activities that are not similar in nature that result in more than minimal adverse impacts to the aquatic

environment. Six commenters asserted that this NWP should not authorize the construction of golf courses or ski areas. One commenter objected to the authorization of these facilities under NWP 42 because they are unlikely to substantially deviate from natural landscape contours. Another commenter said that the authorization of golf courses and ski areas discourages developers from looking for alternatives that have less impact on the aquatic environment. One commenter objected to the inclusion of campgrounds in the list of activities that may be authorized by this NWP. Four commenters stated that support facilities, such as buildings, stables, parking lots, and roads should not be authorized by this NWP. One commenter asked if this NWP can be used to authorize the construction of recreational ponds.

This NWP authorizes activities that are similar in nature because it is limited to discharges of dredged or fill material into waters of the United States to construct recreation facilities. The terms and conditions of the NWP, with the case-by-case review of those activities that require pre-construction notification to district engineers, will ensure that the activities authorized by this NWP result in minimal adverse effects on the aquatic environment. Pre-construction notification is required for discharges of dredged or fill material resulting in the loss of greater than 1/10 acre on non-tidal waters of the United States or the loss of greater than 300 linear feet of perennial and intermittent streams. The pre-construction notification process allows district engineers to review those activities that may result in more than minimal adverse effects to the aquatic environment. In response to a pre-construction notification, a district engineer can require special conditions to ensure that adverse effects on the aquatic environment are minimal or exercise discretionary authority to require an individual permit for the work.

Golf courses and expanded ski facilities can be constructed so that they are integrated into the natural landscape, without substantial amounts of grading and filling. This NWP authorizes only the expansion of existing ski areas. Paragraph (a) of General Condition 19 requires permittees to avoid and minimize adverse effects to waters of the United States on-site to the maximum extent practicable. We do not agree that campgrounds should be excluded from this NWP. We believe that the construction of small support facilities, such as storage buildings and stables, are necessary attendant features for the operation of the recreational facilities authorized by this NWP. This NWP may authorize the construction of small recreational ponds, provided the construction of those impoundments does not substantially change natural landscape contours.

One commenter said that this NWP should have a 1/3 acre limit, including a 250 linear foot limit for stream impacts. Another commenter said that the 1/2 acre limit was too high. One commenter stated that the pre-construction notification threshold should be 1/3 acre or 1/4 acre, instead of 1/10 acre. A commenter said that all activities authorized by this NWP should require pre-construction notification, and that this NWP should not authorize activities in special aquatic sites. One commenter recommended replacing the word ''loss'' in the text of the NWP with the phrase ''fill or impact (including temporary and permanent impacts)''.

We do not agree that the acreage limit should be reduced to 1/3 acre, or that there should be a 250 linear foot limit for stream impacts. In addition, we believe that the 1/10 acre pre-construction notification threshold adequately ensures that all activities that could result in more than minimal adverse effects on the aquatic environment are reviewed by district engineers on a case-by-case basis. We do not agree that it is necessary to require pre-construction notification for all activities authorized by this NWP or to prohibit use of this NWP in special aquatic sites. Where there are concerns that this NWP may authorize activities with more than minimal adverse effects on the aquatic environment, division engineers can regionally condition this NWP to reduce the acreage limit or require notification for all activities. It is not necessary to replace the word ''loss'' with the phrase ''fill or impact (including temporary and permanent impacts)'' because the word ''loss'' addresses waters of the United States adversely affected by filling, flooding, excavation, or drainage.

Several commenters objected to allowing case-by-case waivers to the 300 linear foot limit for losses of stream beds. One of these commenters said that small and ephemeral streams are important for protecting water quality, preventing flooding, and providing habitat for many species. Another commenter said that the waiver should not be granted until the district engineer solicits comments from the other Federal and state resource and regulatory agencies.

This waiver is discussed in more detail below in this **Federal Register** notice.

One commenter stated that the definition of ''recreational facilities'' is too broad and the NWP does not adequately address impacts at the project site and downstream. One commenter said that the Corps should not attempt to establish criteria, standards, or best management practices because the Corps has already determined that the NWP authorizes only activities with minimal adverse environmental effects. A commenter suggested that the Corps require best management practices for storm water management, limits on the clearing of vegetation for project construction, the establishment and maintenance of 100 foot wide forested buffers adjacent to aquatic resources, and limits on the use of impervious surfaces for trails and walkways. One commenter requested that the NWP contain more flexibility to allow limited use of impervious surfaces to accomplish complete accessibility for the physically challenged on multi-use trails.

We believe that the definition of ''recreational facilities'' used in this NWP, in addition to the terms and conditions of NWP 42 and the NWP general conditions, are sufficient to ensure that the NWP authorizes only activities with minimal adverse effects on the aquatic environment. The August 9, 2001, **Federal Register** notice sought public input on ways to continue to ensure that this NWP authorizes minimal impact recreational facilities. Compliance with General Condition 9, Water Quality, may require storm water management for a particular recreational facility. The maintenance and establishment of vegetated buffers may be required by district engineers as compensatory mitigation. Specific limits on the use of impervious surfaces are determined by district engineers on a case-by-case basis in response to a pre-construction notification. The construction of multi-use trails that provide accessibility for physically challenged individuals can be authorized by this NWP.

One commenter said that regional conditions should be adopted to prevent the cumulative adverse impacts to wood recruitment in waters inhabited by salmon. This commenter also suggested that regional conditions should be adopted to prohibit the construction of trails or paths along the tops of banks unless the facility is constructed so that there is no loss of riparian vegetation and any removed vegetation is allowed to grow back. This commenter also said that this NWP should not be stacked

with NWP 13 because these two NWPs exert synergistic significant adverse impacts on wood recruitment.

Division engineers can impose regional conditions on this NWP to address cumulative impacts, including impacts to salmon habitat. We do not agree that there should be a restriction prohibiting the use of NWP 13 with this NWP for a single and complete project. Bank stabilization may be required to maintain the integrity and safety of a recreational facility.

The nationwide permit is reissued with a modified 300 linear foot waiver as discussed below.

43. *Stormwater Management Facilities* In the August 9, 2001, **Federal Register** notice, we proposed to modify this NWP by allowing on a case-by-case basis, a waiver of the prohibition on impacts exceeding 300 linear feet of stream bed. There were no other changes proposed to this nationwide permit.

Three commenters stated that this NWP should be withdrawn. One of these commenters said that NWP 43 was unnecessary because the construction of stormwater management (SWM) facilities is authorized by other NWPs. Two commenters stated that new SWM facilities should not be constructed in streams, including ephemeral and intermittent streams. Another commenter said that SWM facilities are not water dependent, SWM facilities should not be constructed in waters of the United States, and the activities authorized by this NWP result in more than minimal adverse effects on the human environment. One commenter said that this NWP should not authorize activities in special aquatic sites.

Although other NWPs, such as NWP 39, can authorize the construction of SWM facilities, certain types of SWM facilities, such as regional SWM ponds that are not associated with a particular development, may not be authorized by other NWPs. In some cases, the construction of SWM facilities in waters of the United States may be necessary and may provide more protection to the aquatic environment. Division engineers can regionally condition this NWP to prohibit its use in high value waters. For those activities that require notification, district engineers can add case-specific conditions to ensure that the adverse effects on the aquatic environment are minimal or exercise discretionary authority and require individual permits for activities with more than minimal adverse effects.

One commenter said that the acreage limit for this NWP should be 3 acres and another commenter suggested a ¼ acre limit for the construction of new facilities. One commenter requested a higher acreage limit for activities in non-perennial streams, stating that the pre-construction notification process would provide the Corps the opportunity to ensure that project impacts are not more than minimal.

We believe that the ½ acre limit for the construction of new SWM facilities will ensure that this NWP authorizes activities with minimal adverse effects on the aquatic environment. We do not agree that there should be a higher acreage limit for discharges of dredged or fill material into intermittent and ephemeral streams.

One commenter stated that coordination with Federal and state resource and regulatory agencies should be conducted before the district engineer issues a waiver of the 300 linear foot limit. Another commenter supported waiving the 300 foot limit, but recommended that the Corps clarify that the presence of an ordinary high water mark is required when determining that a waterbody is a water of the United States.

We have adopted a modified condition allowing district engineers to issue case-by-case waivers to the 300 linear foot limit for losses of intermittent stream beds, for activities that result in no more than minimal adverse effects on the aquatic environment. This modified waiver is discussed in more detail in another section of this **Federal Register** notice.

One commenter recommended that the NWP authorize normal operations and maintenance activities so that the multi-objective aspects, including flood mitigation, of the project can be met and the community can realize project benefits. A commenter recommended adding a condition that restricts this NWP to the maintenance of existing SWM facilities. Another commenter said that the NWP should include a condition requiring maintenance of base flows during periods of low flow, to protect the downstream environment. This commenter also said that the NWP should be conditioned to prohibit the construction of concrete or stone-lined channels. One commenter asserted that the text of NWP 43 should clearly state that non-jurisdictional activities are not included in the acreage loss of waters of the United States.

NWP 43 authorizes the maintenance of existing, currently serviceable SWM facilities. Regular maintenance of SWM facilities is an important mechanism for ensuring effective stormwater management, including flood control. We do not agree that this NWP should be limited to maintenance activities. Paragraph (g) of NWP 43 refers to General Condition 21, Management of Water Flows, which requires the maintenance of pre-construction downstream flows. We do not agree that it is necessary to condition the NWP to prohibit the construction of concrete or stone-lined channels. Division engineers can regionally condition this NWP to prohibit these types of activities. During the review of a pre-construction notification, district engineers can exercise discretionary authority if the proposed work involves the construction of a concrete or stone-lined channel and the proposed work will result in more than minimal adverse effects on the aquatic environment. We do not believe it is necessary to explicitly state in the text of the NWP that non-jurisdictional activities are not included in the acreage loss of waters of the United States, although this is true for all NWPs generally.

One commenter said that areas within SWM facilities should not be considered as compensatory mitigation if regular maintenance is required. Another commenter said that this NWP should not authorize the use of SWM facilities as compensatory mitigation sites.

Areas of a SWM facility that are not subject to regular maintenance can be used as compensatory mitigation sites (see paragraph (e)(3)).

The nationwide permit is reissued with a modified 300 linear foot waiver as discussed below.

44. *Mining Activities.* There were no changes proposed to this nationwide permit. Many commenters said that this NWP should be withdrawn. Several of these commenters believe that the activities authorized by this NWP result in more than minimal adverse effects on the aquatic environment, including water quality, navigation, and aquatic habitat. Some commenters said that these activities should be reviewed under the standard permit process.

This NWP authorizes mining activities that have no more than minimal individual and cumulative adverse effects on the aquatic environment. The terms and conditions of this NWP, including the NWP general conditions, will ensure that these mining activities will have no more than minimal adverse environmental effects. For example, mining activities in navigable waters must comply with General Condition 1, Navigation. All activities authorized by this NWP require notification to the district engineer prior to commencement of mining activities. The pre-construction notification process allows district engineers to review mining activities on a case-by-case basis, to ensure that the proposed work has no more than

minimal adverse effects on the aquatic environment. In response to a pre-construction notification, the district engineer can add special conditions to the NWP authorization to ensure that the adverse effects on the aquatic environment are no more than minimal or exercise discretionary authority to require an individual permit for the work.

One commenter stated that this NWP does not satisfy the ''similar in nature'' requirement for general permits, including NWPs. Another commenter asserted that the activities authorized by this NWP are not water dependent and that alternatives are available.

This NWP complies with the ''similar in nature'' requirement of general permits because it is limited to aggregate and hard rock/mineral mining activities. The water dependency test in the Section 404(b)(1) guidelines does not require each activity in waters of the United States to be water dependent to fulfill its basic project purpose. General Condition 19, Mitigation, requires permittees to avoid and minimize adverse effects to waters of the United States to the maximum extent practicable on the project site. The NWPs do not require an analysis of off-site alternatives. As long as the mining activity results in no more than minimal adverse effects to the aquatic environment and complies with all terms and conditions, the activity can be authorized by NWP.

One commenter said that this NWP should be withdrawn because it is of limited use to the aggregate mining industry. A commenter objected to this NWP, stating that the Corps has not demonstrated why the NWP should be limited to activities in isolated waters and wetlands adjacent to headwaters. One commenter asserted that the ½ acre limit for this NWP is too restrictive because of the extensive pre-construction notification and mitigation requirements. This commenter also said that the Corps cannot condition this NWP to prohibit beneficiation and mineral processing within 200 feet of an open waterbody. Another commenter recommended increasing the acreage limit to three acres for impacts to non-wetland waters and allowing district engineers to waive the 1 cubic foot per second limit on a case-by-case basis.

The terms and conditions of this NWP, including the ½ acre limit and the scope of applicable waters, are intended to ensure that activities authorized by this NWP result in no more than minimal adverse effects to the aquatic environment, individually and cumulatively. We have the authority to condition this NWP to prohibit beneficiation and mineral processing within 200 feet of an open waterbody, if such a restriction is necessary to ensure that the NWP authorizes only activities with no more than minimal adverse effects on the aquatic environment. We do not agree that a waiver for the 1 cubic foot per second limit for aggregate mining in headwater streams would be appropriate. That restriction is necessary to ensure that the NWP does not authorize aggregate mining activities with more than minimal adverse effects to headwater streams. Aggregate and hard rock/mineral mining activities that do not qualify for authorization under this NWP can be authorized by individual permits.

Two commenters stated that this NWP must be reevaluated in light of the *Solid Waste Agency of Northern Cook County* v. *United States Army Corps of Engineers et al.* (U.S. Supreme Court No. 99–1178) (SWANCC). One commenter said that many mining operations do not involve discharges of dredged or fill material into waters of the United States and the Corps should reassess areas where it has exceeded its statutory authority. One commenter recommended modifying this NWP to clarify that non-jurisdictional excavation activities channelward of the ordinary high water mark and activities outside of the ordinary high water mark and adjacent wetlands do not require a Section 404 permit.

The *Solid Waste Agency of Northern Cook County* v. *United States Army Corps of Engineers et al.* decision related to the scope of CWA jurisdiction over nonnavigable isolated intrastate waters. Aggregate and hard rock/mineral mining activities may occur in jurisdictional waters and thus could be authorized by this NWP. Activities that occur in non-jurisdictional waters, as determined by applicable regulations and case law (including SWANCC) do not require a section 404 permit. The nationwide permit is reissued without change.

Project Specific Wavier of 300-Linear Feet Prohibition in NWPs 39, 40, 42, and 43

In the August 9, 2001, **Federal Register** notice, the Corps proposed to allow a waiver, on a case-by-case basis, of the prohibitions in NWPs 39, 40, 42, and 43 against discharges resulting in the loss of greater than 300 linear feet of stream bed. The waiver could be issued only after the district engineer reviewed a pre-construction notification for the proposed work and determined that the activity would result in no more than minimal adverse effects on the aquatic environment.

Several commenters stated that the absolute 300 linear foot limit on the amount of stream that can be filled under these NWPs should be retained. They were concerned that the proposed waiver would lead to severe stream destruction from the construction of developments, agricultural activities, and other activities and said that the existing, strong linear limits on stream bed impacts should be retained. Some of these commenters added that the 300 linear foot limit provides predictability and certainty to the regulated community and state permitting agencies as well as reducing workload for Corps staff. A few commenters stated that the proposed waiver would lead to many variations in the way permit decisions are made between Corps districts and even between Corps project managers within the same district who use their own definitions of minimal impacts. One of these commenters indicated that NWP verification requests should be simple to review and approve, with clear thresholds and consistency in the review process. Another commenter stated that the waiver would require the Corps to rely on the expertise of applicants to provide information and allow developers to excavate or fill as much as one mile of a stream under a general permit when the intent of NWP program is to authorize only those activities with minimal adverse impacts. Numerous commenters supported the proposed waiver. Some of these commenters said that the waiver would allow greater flexibility and efficiency in permit processing and would eliminate the need for individual permits to fill more than 300 linear feet of stream bed where the impacts are minimal.

The waiver adds flexibility to the Corps permit process, by allowing district engineers to efficiently authorize activities that have minimal adverse effects on the aquatic environment. Requiring individual permits for minimal impact activities that would otherwise qualify for authorization under NWPs 39, 40, 42, and 43 because they involve the loss of greater than 300 linear feet of stream bed would increase the Corps workload, with no added environmental benefits. Since aquatic resource functions and values vary across the United States, we recognize that there will be differences in the implementation of the waiver. However, we do not agree that the waiver makes the protection provided by the NWP process less consistent. District engineers will use their knowledge of the local aquatic environment, as well

as the information submitted in pre-construction notifications, to make their case-by-case determinations whether the waiver is applicable for a particular activity.

Some commenters emphasized the functions and values of the small headwater streams in the overall health of the aquatic environment and stated that filling these streams will result in significant impacts. These commenters stated that the cumulative loss of intermittent streams and the downstream impacts of piping these streams can cause significant irreversible environmental and ecological losses. Another commenter added that small streams usually exist within extensive riparian corridors and are incorrectly called drainage ditches to devalue their worth. This commenter is concerned that the waiver would result in the degradation of headwater streams, allow channelization of more streams, and result in more losses of wetlands. One commenter stated that allowing filling of streams could impact the States' efforts to restore wetlands, streams, and watershed functions.

We recognize that headwater streams often provide important functions and values, but there are situations where the loss of these streams will result only in minimal adverse effects on the aquatic environment. We believe that such situations would not likely occur in intermittent streams, but rather in perennial streams. We have thus decided not to adopt the waiver of the 300 linear foot limit for perennial streams. The absolute prohibition on the use of these permits where more than 300 linear feet are impacted remains in place for perennial streams. We have decided to adopt the waiver process for intermittent streams, thereby allowing district engineers to waive, on a case-by-case basis, the 300 linear foot limit for the loss of intermittent stream beds under NWPs 39, 40, 42, and 43. It is important to note that, in order for the waiver to occur, the district engineer must make a written determination that the proposed work will result in no more than minimal adverse effects on the aquatic environment. If the district engineer does not provide written confirmation of the waiver, then the 300 linear foot limit for the loss of intermittent stream beds remains in place and the project proponent must obtain another type of Corps permit for the proposed activity.

Further, if the proposed work will result in more than minimal adverse effects on the aquatic environment, the district engineer will determine that the waiver is not applicable and require the project proponent to obtain an individual permit. As an added level of protection to valuable headwater streams, division engineers can regionally condition the NWPs to further restrict or prohibit their use in high value waters. The waiver will not impact States' efforts to restore waters and watersheds, since the waiver can only be issued after case-by-case review.

Some commenters asked how the Corps would determine whether an activity resulted in minimal environmental impacts to justify waiving the 300 linear foot limit. One commenter asked if the cumulative effects of the waiver would be evaluated each time the waiver was used. A few commenters said that the Corps cannot justify eliminating and waiving the 300 linear foot limit until the Corps can demonstrate that there are no cumulative adverse impacts resulting from activities authorized by NWPs.

District engineers will use their knowledge of local aquatic environments and case-specific circumstances to determine when proposed activities will result in minimal adverse effects on the aquatic environment. District engineers monitor the use of NWPs on a watershed or regional basis to determine whether the cumulative adverse effects of these activities are more than minimal.

One commenter said that the 300 linear foot limit for the NWPs should be reduced to 200 linear feet. This commenter also recommended that mitigation should be required for all projects that result in a net loss of aquatic habitat, acreage, or function.

We do not agree that the 300 linear foot limit should be reduced to 200 linear feet. The mitigation requirements for the NWPs are addressed in General Condition 19, Mitigation. For activities authorized by NWPs, project proponents are required to avoid and minimize adverse effects to waters of the United States on-site to the maximum extent practicable. District engineers will determine, on a case-by-case basis whether compensatory mitigation is required to offset losses of waters of the United States and ensure that the adverse effects on the aquatic environment are minimal.

Several commenters discussed the example provided in the August 9, 2001, **Federal Register** notice (page 42079) which described a 6-inch wide by 1-inch deep ephemeral stream running for several thousand feet. One commenter inferred that the Corps was devaluing all such streams and that the loss of these streams would result in more than minimal impacts. This commenter said that relatively intact ephemeral streams perform a diversity range of hydrologic, biogeochemical, and habitat support functions that directly affect down-gradient streams. Another commenter stated that these small headwater tributaries provide important habitat for aquatic life, including fish spawning areas. This commenter also said that these streams are important habitat for amphibians and reptiles during those short periods when water is flowing or ponded, and that the continued loss of this habitat is cumulatively damaging. Another commenter stated that headwater streams should be protected, and added that continued permitting of these activities under the NWP program must include careful individual site review by qualified aquatic biologists. Two commenters said that minimal impact determinations for the waiver of the 300 linear foot limit should require on-site inspections.

The example provided in the August 9, 2001, **Federal Register** notice was intended as an illustrative example to show that some impacts exceeding 300 linear feet may still be minimal. It was not intended to suggest that all ephemeral streams are of low value, or that all impacts to ephemeral streams are by definition minimal. As a practical matter, ephemeral streams are not covered by the 300 linear feet limitation, so a formal waiver is not needed for ephemeral streams. However, even a project that impacts only an ephemeral stream could be required to obtain an individual permit if the District Engineer determined that individual or cumulative adverse effects were more than minimal. Under the waiver process, the district engineer would have to make a written determination that the loss of an intermittent stream segment exceeding 300 linear feet would result in minimal adverse effects on the aquatic environment. We do not agree that it is necessary to require on-site determinations in all cases by district engineers prior to issuing a waiver. District engineers can utilize their experience, information provided in pre-construction notifications, and other sources of information before determining the applicability of the waiver.

Three commenters suggested allowing the resource agencies to review all waiver applications. One of these commenters said that the public should be allowed to comment on these minimal effect determinations. Several commenters were opposed to the requirement for a written determination of a waiver without a time clock.

We do not agree that it is necessary to conduct agency coordination or a public comment process for requests to

waive the 300 linear foot limit for intermittent streams for NWPs 39, 40, 42, and 43. District engineers have the expertise to determine on a case-by-case basis whether these activities will result in more than minimal adverse effects on the aquatic environment. We do not believe it is necessary to adopt a separate time clock for waiver requests. If a project proponent submits a complete pre-construction notification for a NWP 39, 40, 42, and 43 activity, and the proposed work involves filling or excavating more than 300 linear feet of intermittent stream bed, the project proponent cannot assume that the proposed work is authorized by these NWPs unless a written waiver is obtained from the district engineer. District engineers should respond to requests for the 300 linear foot waivers for intermittent streams within the 45 day pre-construction notification period.

NWPs 39, 40, 42 and 43 are issued with a waiver for the 300 linear foot limit for intermittent stream beds. These NWPs cannot be used to authorize the loss of more than 300 linear feet of a perennial stream bed. As a clarification, there are no absolute quantitative limitations on linear impacts to ephemeral streams, as long as the adverse effects on the aquatic environment are no more than minimal.

Nationwide Permits General Conditions

1. *Navigation.* There were no changes proposed to this General Condition. There were no comments on this General condition. The General Condition is adopted without change.

2. *Proper Maintenance.* There were no changes proposed to this General Condition. There were no comments on this General Condition. The General Condition is adopted without change.

3. *Soil Erosion and Sediment Controls.* There were no changes proposed to this General Condition. There were no comments on this General Condition. However, there was a comment on NWP 7 that the Corps determined was related to this condition. The change is discussed in the Preamble discussion of NWP 7. We agreed with the comment.

The General Condition is adopted with a change to encourage permittees to perform work in waters during low-flow or no-flow conditions.

4. *Aquatic Life Movements.* In the August 9, 2001, **Federal Register** notice, the Corps proposed to modify this General Condition to clarify the intent of the condition was to protect aquatic life cycle movements.

One commenter stated that the current General Condition 4 was difficult to understand. Numerous commenters supported the clarification of this General Condition. Several commenters suggested that the statement ''substantially disrupt life cycle movements'' be replaced with ''prevent life cycle movements'', because substantial gives the impression that the impacts may be more than minimal. One commenter suggested that General Condition 4 should be revised to read, ''No activity conducted under a NWP may substantially disrupt the necessary life-cycle movements of those species of aquatic life indigenous to the water body, including those species that normally migrate through the area, culverts placed in streams must be installed to maintain low flow conditions''. One commenter recommended that General Condition 4 should restrict any activity that could impact or impair aquatic life stages or movement of organisms dependent upon waters or wetlands. One commenter stated that there is no need to change the wording of General Condition 4, if the Corps would consider that all movements by an organism are related to its life cycle. One commenter requested clarification of this condition concerning the application of the condition to other organisms, which do not have all of their life cycles within the aquatic environment (amphibians).

We have retained the word ''substantially'' in the text of this General Condition, which is related to the movement of the species not to the impact on the species. Removal of this word would change the standard to any movement no matter how minimal or inconsequential the movement would be. We believe that most work in waters of the United States will result in some disruption in the movement of some aquatic organisms through those waters. District Engineers will determine, for those activities that require notification, if the disruption of aquatic life-cycle movements is more than minimal and either add conditions to the NWP to ensure that the adverse effects are no more than minimal or exercise discretionary authority and require an individual permit.

A few commenters stated that culverts must be installed in streams to maintain low and high flow conditions to allow fish passage. One commenter added that the hydraulic analysis to determine that range of high flows through the culvert shall be based upon anticipated flows in the basin at build-out.

The Corps believes that it is important to maintain low flow conditions, but that it is not reasonable or necessary to require hydraulic analysis for every culvert that would be authorized by NWPs. Corps district can enforce this condition where necessary.

One commenter stated that activities for which the primary purpose is to impound water should be evaluated as individual permits and not authorized under NWPs since ponds significantly disrupt the necessary life cycle of aquatic life.

We believe there are impoundment projects which would substantially disrupt the movement of specific individuals of aquatic life, but which would not adversely affect the populations of the species nor have more than minimal impacts on the aquatic environment. Such activities would need to be processed as individual permits.

This General Condition is adopted as proposed.

5. *Equipment.* There were no changes proposed to this General Condition. There were no comments on this General Condition. The General Condition is adopted without change.

6. *Regional and Case-by-Case Conditions.* There were no changes proposed to this General Condition. One commenter stated that the public was not given adequate time to evaluate the regional conditions as they were not published in the **Federal Register**. Furthermore, the comment period for the regional conditions did not coincide with the comment period of the proposal to modify and reauthorize the NWP program. Therefore, the public was not provided an opportunity to evaluate and provide comment on the comprehensive and cumulative impacts of the NWPs.

Regional conditions are proposed and evaluated by the individual Corps division offices by a public notice and comment process. Case-by-case conditions are developed by Corps District or Division offices, to ensure that specific activities meet the NWP conditions and have no more than minimal adverse effect on the aquatic environment, individually and cumulatively. Division offices need to know what the final NWPs are before they can develop final regional conditions. Therefore, the review of any proposed regional conditions can not occur simultaneously with the review of the NWPs. Finally, this condition is to reinforce that those regional and case-by-case conditions are legally binding conditions of the NWPs.

The General Condition is adopted without change.

7. *Wild and Scenic Rivers.* There were no changes proposed to this General condition. There were no comments on

this General condition. The General Condition is adopted without change.

8. *Tribal Rights.* There were no changes proposed to this General condition. One commenter stated that tribal rights have been impaired due to cumulative impacts by the NWP program and suggested that a regional condition should be implemented to prohibit use of NWPs in south Florida until a regional EIS has been completed. The comments have been forwarded to the appropriate Corps District. The General Condition is adopted without change.

9. *Water Quality.* The Corps proposed to clarify this condition as it relates to detailed studies and documentation requirements. We also proposed to add language that clarifies that permittees may meet the requirement of this condition by complying with state or local water quality practices.

Numerous commenters agreed with the proposed change to General Condition 9. Many commenters stated the current more burdensome requirements, detailed studies, and design plans, only serve to expend the time and resources of the applicant. Several commenters indicated concern that the Corps may infringe upon the water quality authority of the State. One commenter recommended that General Condition 9 be revised to mandate compliance with the most stringent applicable standards whether they are federal, state, or local. One commenter stated that the Corps should not defer authority by making state or local permits a contingency of an NWP. Several commenters disagree with the proposed changes to this condition stating that many local jurisdictions lack the skilled personnel to develop and/or enforce adequate water quality standards and without evaluation of the state or local practices, the Corps cannot insure that impacts to the aquatic environment are minimal. One commenter stated that the proposed clarification should be withdrawn because the General Condition is less stringent than the existing condition and will result in poorer water quality. One commenter suggested that this condition should be expanded to specifically exclude the use of any NWP for a project adjacent to or in any water of the U.S. designated on a State 303(d) list.

We believe the changes will not reduce protection of the aquatic environment. Although the language of this condition could be interpreted to require detailed studies and design to develop water quality plans for every permit action, that was never our intent. While we do believe that inclusion of water quality management measures in project design is very important, we do not believe that comprehensive water quality planning should be a requirement of Corps NWPs, except in a few cases. In most cases, the Corps relies on state or local water quality programs. Where such programs do exist, the Corps will normally review the project to ensure that appropriate water quality features, such as stormwater retention ponds, are designed into the project. In some cases, the Corps may require more extensive design features to ensure that open water and downstream water quality are not substantially degraded. Normally, we believe that the permittee will comply with the requirements of this condition by obtaining state or local water quality approval or complying with state or local water quality practices, where such practices exist. The Corps proposed a condition in 1998 to restrict NWPs in State 303(d) (impaired) waters. We decided not to adopt that condition as explained in the March 9, 2000 preamble. We could not now adopt such a condition without proposing it for public review and comment.

The General Condition is adopted as proposed.

10. *Coastal Zone Management.* There were no changes proposed to this General Condition. There were no comments on this General Condition. The General Condition is adopted without change.

11. *Endangered Species.* There were no changes proposed to this General Condition. One commenter stated that a sentence has been omitted from this condition in the proposed preamble with no notification of the change. The omitted sentence, the last line of 11(a), states that, ''As a result of formal or informal consultation with the FWS or NMFS, the District Engineer may add species-specific regional endangered species conditions to the NWPs''. The commenter stated that omitting this statement shifts the burden of identifying and protecting potentially impacted endangered and threatened species and their critical habitat onto the permit applicant. The commenter requested that this change be dropped because the Corps has not met the legal requirements to adopt it.

The commenter is correct. This sentence is included in the currently in force June 6, 2000, version of this General Condition, but not in the August 9, 2001, proposed version. The Corps did not intend to propose any changes to this General Condition. The omission was in error. The omitted sentence has been reinserted in this condition.

One commenter stated that this condition may lead to compliance with the ESA however, is not likely to fully minimize or substantially reduce the significance of harm to listed species and their critical habitat. One commenter suggested this condition be re-titled to read ''Threatened and Endangered Species'', the condition be simplified and clarified, and the U.S. Fish & Wildlife Service and the National Marine Fisheries Service web sites be placed in this condition.

We believe this condition as stated provides not only the legal protection but also the actual protection required under the ESA. The ''Endangered Species Act'' covers both threatened and endangered species as does the General Condition title ''Endangered Species''. We do not believe that it is necessary to include other agency websites here. These are readily accessible on the internet.

The General Condition is adopted without change (but with the inadvertently omitted sentence restored).

12. *Historic Properties.* There were no changes proposed to this General Condition. Two commenters recommended that the Corps coordinate with the SHPOs in accordance with the National Historic Preservation Act (NHPA) and requested that a FONSI should not be issued until consultation under NHPA has been completed.

Division and districts will coordinate with SHPOs and Tribal Historic Preservation Officers where appropriate and add any regional conditions or case specific conditions that may be necessary to satisfy the NHPA in specified areas. There is no requirement to coordinate with SHPO in developing a FONSI and we do not believe that such coordination is necessary.

The General Condition is adopted without change.

13. *Notification.* In the August 9, 2001 issue of the **Federal Register**, we proposed under Contents of Notification, to provide applicants the option to provide drawings, sketches or plans sufficient for Corps review of the project to determine if the project meets the terms of an NWP, to allow a waiver of the 300 linear-foot prohibition [following written verification from the Corps], and to delete for NWPs 12, 14, 29, 39, 40, 42, 43, and 44 the requirement to provide ''notification'' to the Corps for permanent above grade fills in waters of the U.S. These latter two changes were to make notification requirements consistent with changes discussed elsewhere in this notice.

Several commenters supported the proposed clarification for the submittal of drawings. Few commenters disagreed with the clarification but some said that drawings or sketches should be a mandatory requirement for notification and requiring this information would reduce Corps workload while insuring that impacts to the aquatic environment are minimal. One commenter recommended that photographs be required with notification.

It was not the intent of this proposed clarification to modify the required contents of notification or to make submittal of non required information mandatory but rather to encourage applicants to provide us as complete a submittal as possible to expedite our review of their application. We did state that the Corps has the discretion on a case-by-case basis to require additional information as necessary to determine if the activity complies with the terms and conditions of the NWP.

Several commenters agreed with the proposal to delete the notification requirements for above grade fill in waters of the United States. One commenter recommended expanding notification requirements to include above grade fills in NWPs 3, 12, 14, 21, 31, 39, 40, 42, and 44 and stated that the applicant should submit documentation as to why there is no practicable alternative to the proposed discharge and provide a copy to EPA, F&WS, and NMFS. One commenter stated that a statement of avoidance and minimization should be submitted with NWPs 12, 14, 40, 41, and 42.

The Corps believes it is not necessary for permittees to routinely notify the Corps for above grade fills in waters of the US as long as they are complying with general condition 26. Comments on this issue are further discussed under general condition 26.

One commenter recommended that the review period for NWPs 3, 12, and 33 be amended to 30 days instead of 45 to expedite energy-related projects. One commenter supported the 45-day time frame for review of notification but believed 60 days is more realistic. A couple of commenters requested this condition be amended to require the Corps to issue or deny the NWP within 45 days of receipt of a complete notification and the 45-day timeframe should also apply to the 300-foot stream waiver provision.

The Corps normally does not take the full 45 day time period to verify NWPs. For energy related activities Corps districts will expedite the decision as to whether to verify the activity under an NWP. It is not necessary to make that a permit condition. Corps districts are required to make a decision to verify or deny the NWP within 45 days, or the applicant may proceed. However, this does not apply to waiving the 300 linear foot prohibition for intermittent streams or the verification of NWP 21 or the 500 linear foot limit for NWP 13. In these cases, the applicant may not proceed before receiving written verification. This is to ensure that the district has adequate time to make a satisfactory evaluation before deciding whether to authorize use of an NWP.

One commenter stated that the Corps has amended the language in condition 13(a) without providing notification in the preamble. The March 9, 2000 **Federal Register** stated ''where required by the terms of the NWP, the prospective permittee must notify the District Engineer with a pre-construction notification (PCN) as early as possible''. The August 9, 2001 notice stated ''The District Engineer must determine if the notification is complete within 30 days of the date of receipt and can request additional information necessary for the evaluation of the PCN only once''. The commenter indicated this change will increase the incentive of permit applicants to withhold relevant information necessary for full evaluation of a PCN and the change must be withdrawn.

The Corps did not intend to propose this change. It was an error. The general condition will be issued with the existing language adopted on March 9, 2000.

One commenter disagreed with the agency coordination threshold of ½ acre and stated that all PCNs should require a 30-day agency coordination to ensure minimal impacts. One commenter stated that simply noting in the record that an agency concern has been considered, without a response to the agency, is not agency coordination and is not full consideration of their comments. Furthermore, the commenter stated that any recommendations that are not adopted, after coordinating a decision with the agency, should be fully documented and become part of the administrative record.

We disagree. The requirement for agency coordination is to fully consider agency comment with no specification to document or respond to the commenting agency, though normally the Corps does respond to commenting agencies when significant concerns are raised. Further, it has been determined in coordination with the other Federal agencies that ½ acre is a satisfactory threshold for required coordination. Coordination does occur with other Federal agencies on a case specific as needed basis.

One commenter recommended that the Corps consider removing the mandatory delineation of special aquatic sites, including wetlands, or at the least adding a reasonable threshold for such documentation to all PCNs. One commenter recommended the addition of NWPs 3, 11, 13, 19, 27, 31, and 36 to the requirement for submittal of delineation of special aquatic sites with the PCN.

We do not believe that we should either increase or decrease the specific activities for which a mandatory delineation is required. We do not believe it is necessary for many NWPs, for example; requiring a delineation for NWPs 3 and 31 would be unnecessary for maintenance activities authorized by these NWPs. Also districts may require a delineation of wetlands (or any other appropriate documentation) in cases where they determine it is necessary to evaluate the impacts of the project or to determine the mitigation requirements.

One commenter disagreed with the requirement to submit information regarding the original design capacities and configurations where maintenance excavation is proposed under NWP 7, (b)(5) because if the maintenance excavation is non-jurisdictional, the applicant should not be required to submit such information, and the Corps should not review non-regulated activities. One commenter recommended that the Corps clarify (b)(16) to state that activities that consist of non-jurisdictional excavation or temporary stockpiling during the excavation process are not included in the compensatory mitigation requirements or in the calculation of acreage of waters lost.

Maintenance excavation activities in section 404-only waters do not require a CWA section 404 permit unless they result in more than incidental fallback. If there are regulated excavation activities that can be authorized under NWP 7, then the applicant will need to provide information necessary for the Corps to evaluate the PCN for compliance with the terms and conditions of the NWP. Non jurisdictional activities should not be considered in mitigation requirements. However, related impacts of the project will be considered when determining if the adverse effects are more than minimal. Also the acreage impacts for directly related excavation activities will be included in calculating the acreage limits for the NWP. The concern addressed by the acreage limit is with the direct effects of the activity. Temporary stockpiling is a regulated activity and is considered for possible mitigation requirements where the

impacts are measurable. However, the acreage is not included in calculating the acreage limit because the impacts are temporary.

One commenter recommended that the Corps revise the notification requirement in (b)(10) for NWP 31 to require the applicant to obtain the Corps approval prior to construction for any disposal site within waters of the United States. The commenter stated that the proposed condition requires location of disposal site at time of notification, which is not always an option for long-term maintenance activities.

NWP 31 does not authorize the disposal of the excavated material into waters of the US unless the disposal site is submitted with the PCN. The District Engineer can review a disposal site to assure that it is not in waters of the US or, if it is in a water of the US, to determine if the adverse effects are more than minimal and, if so, disapprove the disposal site.

One commenter recommended that the Corps accept the use of established state agency coordination documents concerning annual work plans as sufficient notification for maintenance activities.

Once a maintenance baseline has been approved, the applicant must then notify the Corps of maintenance activities, either case-specific or generically. The state agency documents you describe may be sufficient, but such a decision would need to be made on a case-by-case basis by the appropriate Corps District Engineer.

One commenter recommended that NWPs 3, and 31 also be added to (b)(5) and a delineation of affected special aquatic sites including wetlands, along with the location of dredge material disposal site, should be provided.

NWP 3 allows for the maintenance of currently serviceable structures and fills, consequently wetlands and other special aquatic site should not be affected by the maintenance activity. However, while this is also true for most NWP 31 activities, NWP 31 also allows the maintenance of unconfined channels that have wetlands in them from time to time. Therefore, (b)(10) does require delineation of special aquatic sites, including wetlands to be included in PCNs for NWP 31. The location of disposal sites for NWP 31 PCNs is required by (b)(10). NWP 3 does not provide for authorization of disposal sites in waters of the US, except for part (ii), which requires that the District Engineer specifically approve any such disposal site under a separate authorization.

One commenter disagreed with the restoration plan requirement in (b)(11) for NWP 33 because excavation is not regulated. The commenter added that the regulated discharge is temporary and the only required restoration should be the removal of the temporary deposit.

The restoration plan must address temporary activities including both filled and excavated areas. If a Corps permit is required for some of the temporary work and the permittee seeks authorization by NWP 33, then the affected waters of the U.S. must be restored by the permittee and a restoration plan submitted to the Corps.

One commenter recommended that the requirement for the submittal of a maintenance plan under (b)(15) be deleted. Excavation in Sec. 404 waters does not required authorization from the Corps. The maintenance plan is to ensure that cyclical maintenance does not cause more than a minimal effect and that cyclical activities only be mitigated for once.

The Corps believes that it is necessary to maintain stormwater management facilities. The Corps also believes that to ensure that the adverse effects are minimal it is necessary that an adequate mitigation plan be developed by the permittee. This requirement provides the necessary assurances that such a necessary maintenance plan is developed.

In the preamble to the August 9, 2001, **Federal Register** notice, the Corps proposed for NWPs 21, 39, 40, 42, and 43, to add language to the notification General Condition 13 from the permit. For all projects using NWP 21 and for projects using NWPs 39, 40, 42, and 43 that propose impacting intermittent stream beds in excess of 300 linear feet, the Corps must be notified and explicit authorization in writing obtained from the Corps before the project can proceed. There were no comments on this proposal. The Corps has added language to General Condition 13 as proposed. This added language does not change any requirement of the NWPs.

The General Condition is adopted as proposed.

14. *Compliance Certification.* There were no changes proposed to this General Condition. There were no comments on this General Condition. The General Condition is adopted without change

15. *Use of Multiple Nationwide Permits.* There were no changes proposed to this General Condition. One commenter stated that the use of more than one NWP for a single and complete project is prohibited. One commenter stated that the Corps should include a General NWP condition that precludes the use of multiple NWPs and NWPs in combination with individual permits for multiple Section 10 or 404 activities located in close proximity to one another. The commenter asserted the Corps is in noncompliance with Section 404(e) and NEPA when stacking of NWPs is allowed. One commenter suggested that the District Engineer be authorized to waive the highest specified acreage limit when stacking NWPs, not to exceed the overall minimal impact threshold in order to avoid an individual permit.

We will continue to allow use of multiple NWPs to authorize a single and complete project provided it will result in no more than minimal adverse effects on the aquatic environment, individually and cumulatively. We do not agree that allowing use of multiple NWPs is in violation of Section 404(e) or NEPA. We continue to believe that in order to allow the use of multiple NWPs for a single and complete project, it is necessary to not exceed the highest acreage limit of any of the NWPs.

The General Condition is adopted without change.

16. *Water Supply Intakes.* There were no changes proposed to this General Condition. There were no comments on this General Condition. The General Condition is adopted without change

17. *Shellfish Beds.* There were no changes proposed to this General Condition. There were no comments on this General Condition. The General Condition is adopted without change.

18. *Suitable Material.* There were no changes proposed to this General Condition. There were no comments on this General Condition. The General Condition is adopted without change.

19. *Mitigation.* The following discussion does not alter or supersede requirements under the section 404(b)(1) Guidelines or guidance applicable to individual permits, such as the 1990 EPA/Department of the Army MOA concerning the determination of mitigation under the Guidelines. The Corps proposed to revise this General Condition to allow a case-by-case waiver of the requirement for one-for-one mitigation of adverse impacts to wetlands. This change is intended to allow Corps Districts to require the mitigation for project impacts that best protects the aquatic environment. In the case of wetland destruction, one-for-one replacement or restoration is often the most environmentally appropriate form of mitigation, and the Corps will continue to require this form of mitigation in the majority of cases. However, the Corps believes the one-for-one acreage requirement as currently written is too restrictive in that it does not allow the Corps to mitigate aquatic impacts to

streams and other non-wetland aquatic resources.

Proposed Waiver of One-for-One Mitigation Requirement

Numerous commenters opposed the case-by-case waiver of the requirement for one-for-one mitigation of adverse impacts to wetlands. Instead they requested that the Corps maintain one-for-one and/or strengthen existing mitigation requirements. Several commenters stated that wetland loss continues to occur despite the regulatory programs efforts and ''no net loss'' policy, and that the proposed waiver would allow extreme flexibility in implementing mitigation policy which would be counter to current Federal mitigation guidance and ''no net loss''. Rather the proposal would further invite net losses of wetlands. As such, many commenters recommended that the Corps require compensation for impacts to wetlands at higher than a one-for-one ratio, or at a minimum, clearly outline the Corps discretion to require greater than one-for-one ratios.

The Corps is committed to the no overall net loss of wetlands goal, and will continue to require more than one for one mitigation for wetland loss in its nationwide permit program. The underlying policy of the Corps, since 1990, has been to offset impacts to wetlands at a one for one ratio on a functional basis. Based on the possibility of failure of mitigation, as pointed out in the recent NRC/NAS Report on the Corps Regulatory Program, the Corps has for many years required more than one for one mitigation on an acreage basis. The proposed change to condition 19 is intended to result in a more ecologically and watershed based approach to mitigation. Wetlands remain one of the most critical ecological assets in most watersheds in the Country, but other vital aquatic ecosystems, such as free-flowing streams, are subject to impacts that must also be offset. The changes to Condition 19 will allow the Corps biologists to make the right decision on mitigation for each project within the watershed context. However, to reinforce its commitment to the no net loss policy, the Corps will also direct its District Offices to ensure that their verified NWPs achieve at least one-for-one mitigation of all wetlands impacts, on an acreage basis for the District as a whole. In documenting compliance with this requirement, districts should not include preservation of existing wetlands in their district-level tally of compensating wetlands mitigation. Preservation, while it may be important for the aquatic environment and may be appropriate in some cases as mitigation, does not compensate for lost wetlands.

The Corps has also slightly modified the wording of paragraph (f) of this general condition from what was proposed to clarify that the requirement to mitigate wetland impacts is not waived only the requirement to provide wetland mitigation. The stream buffers themselves may provide mitigation for wetland impacts. The wording is also revised to clarify that the District Engineer may reduce as well as completely waive the requirement for wetland mitigation for wetland impacts.

One commenter stated that the waiver would conflict with the Corps policy that nationwide permits have only minimal adverse effects on the aquatic environment. Another commenter stated that wetlands offer too many important services to be sacrificed by implementing this waiver. One commenter suggested that guidelines should first be developed that identify the circumstances which warrant the use of a waiver mechanism and outline its proper implementation.

The waiver will not sacrifice wetlands; it will ensure the best mitigation for each permit decision that is made. The Corps cannot establish specific guidelines beyond what we have for waiver of the one for one acreage requirement. The Corps has exceptional biological and ecological expertise in the districts and we trust those professionals to make the proper judgments in each case.

One commenter suggested that the Corps coordinate with regulatory natural resource agencies for out-of-kind mitigation when the one-for-one mitigation requirement is waived.

The Corps 1,150 district employees in the Regulatory Program are predominantly biologists and ecologists. These exceptional professionals have the capability to make the ecological mitigation judgments, and with 40,000 nationwide permit decisions made every year the other agencies do not have the capability to substantively comment on every project.

Many commenters agreed with the proposed waiver of the one-for-one-mitigation requirement, stating it would provide the Corps with increased flexibility when determining appropriate mitigation. One commenter, while agreeing with the proposal, suggested the applicant should be required to justify why a less than one-for-one mitigation is appropriate by clearly articulating why a mitigation area's functions and values are greater than what was lost.

We agree that proper mitigation decisions will be made under the revisions to Condition 19. The Corps will make a decision in writing when the one for one acreage ratio for mitigation will not be met. In most cases, that decision will be based on the applicant's information, however, we do not believe we should require a process that may not in some cases be needed. Applicants should note however that providing sound justification with a waiver request will increase the chances of the waiver being granted.

Vegetated Buffers

Many commenters were opposed to the use of vegetated buffers to mitigate wetland losses. Several stated that allowing vegetated buffers to count as mitigation would be counter to current Federal mitigation guidance and the goal of ''no net loss''. One commenter suggested the proposal constitutes a major change in mitigation policy by establishing a sort of ''ecological trading'', allowing the offsetting of impacts to wetlands with compensation through non-wetland environmental improvements. Other commenters stated that this proposal was against Corps policy that nationwide permits have minimal adverse effects on the aquatic environment.

The Corps believes that vegetated buffers are a critical element of the overall aquatic ecosystem in virtually all watersheds. Of course, some arid areas do not have vegetated buffers even in a natural state and the Corps will not require vegetated buffers where they would not naturally occur. However, nationwide this is uncommon. The Corps believes we need to protect open waters better than we have in the past, and vegetated buffers are a critical element of that protection. Many vegetated buffers to open waters are in fact wetlands. Some vegetated buffers are uplands, but are critical to open water protection. The Corps believes in a watershed approach, with the ability of the Corps districts to make the best decision for the aquatic ecosystem and watershed where the permitted impacts will occur. Mitigation, including vegetated buffers is used to ensure that no more than minimal adverse effects on the aquatic environment will occur.

Several commenters indicated that it was inappropriate to suggest that vegetated buffers in uplands could act as compensatory mitigation for the placement of fill in waters of the U.S. A few commenters stated that, as a means of increasing value of mitigation, vegetated buffers are beneficial and are often incorporated into compensatory mitigation plans to offset the adverse effect of an individual permit authorization. However vegetated

buffers alone will not fully compensate for wetland loss, do not replace wetland/aquatic environment value and function, and should not be regarded as compensatory mitigation for the placement of fill in waters of the U.S., but instead should be added to the one-for-one mitigation requirement.

The Corps takes a holistic watershed approach to mitigation of impacts to waters of the U.S., which includes impacts to non-wetlands. Vegetated buffers, both upland and wetland are a critical part of that watershed approach. The Corps needs the flexibility to make the best mitigation decision for each watershed.

A few commenters were concerned that vegetated buffers may be used more often than one-for-one wetland mitigation (e.g. restoration, enhancement, and/or creation), supporting a continual loss of wetland habitats. Concerned for cases in which less than one-for-one mitigation of lost wetlands incorporates the establishment and/or preservation of vegetative buffers as part of that mitigation, commenters suggested a careful analysis of the functions and values of the vegetated buffers as compared to the impacted wetlands be performed.

The Corps will use the modified Condition 19 to make the best decision for the watershed where the permitted effects occur. The Corps will continue to require more than one for one mitigation for wetlands, it is just not required for every permit decision, because that does not always make sense for the aquatic environment.

One commenter suggests that functional assessments of mitigation with the purpose of justifying ratios less than one-for-one based on a projected functional boost provided by the buffer is inappropriate. Rather, the Corps should also address functional impacts to wetlands under the permit process and require mitigation for loss of functional value from permitted impacts to vegetated buffers.

The Corps does use a functional basis when requiring mitigation, but since models to assess aquatic ecosystem functions, including but not limited to wetlands, are not yet comprehensive, the decision requires professional judgment. The Corps 1,150 Regulatory Program employees are predominantly biologists and ecologists, so we have the capability to make sound ecological decisions.

One commenter stated the proposed regulations do not require proof that vegetated buffers or other methods of mitigation would replace lost functions and values of an impacted wetland. This commenter added that they were not convinced the Corps would be able to assess lost functions resulting from impacts to particular wetlands or those functions gained by incorporating vegetated buffers.

The Corps makes its mitigation decisions on an aquatic ecological function basis using professional judgment. With thousands of decisions each year many involving less than 0.1 acre of impact, it is not practical, nor a responsible expenditure of resources to require absolute proof that the mitigation will offset the impacts. Programmatically, the Corps will improve its enforcement, and mitigation banks and in lieu fees are an important part of that improved mitigation performance.

One commenter disagreed with the Corps statement regarding the greater effectiveness of vegetated buffers at protecting open waters due to their relative proximity to open waters over those wetland distant to open waters. Instead, the commenter suggests that the relative effectiveness of vegetated buffers and wetlands at protecting open waters depends more on the nature of water flow through an area than on the proximity of the buffer or wetland to the water body.

There is no doubt that vegetated buffers protect open waters in terms of removing non point source water pollution. Vegetated buffers also stabilize the shoreline of open waters and in most cases provide important aquatic habitat such as shading or providing hiding places during high water. The Corps believes that establishing or maintaining existing vegetated buffers to open waters is critical to overall protection of the nations aquatic ecosystems. The Corps agrees, however, that the relative importance of wetlands and vegetated buffers at any particular site is dependent on site-specific factors. This is why Corps field staff must have flexibility to determine appropriate mitigation on a site-specific basis.

One commenter stated that vegetative buffers must not be used in lieu of wetlands mitigation, but there must be a preference for restoring, enhancing, or creating buffers as a component of appropriate mitigation. The commenter further stated that the Corps must require a minimum 100-foot-wide riparian or wetland buffer (instead of the proposed 25 to 50 feet), to be increased as necessary in proportion to the size and shape of waters they surround to obtain the desired performance.

The Corps will take a watershed approach with mitigation, which will include vegetated buffers as a critical element of mitigation. The Corps must be reasonable in the width of the vegetated buffer required. While a wider buffer clearly provides more protection, even a narrow vegetated buffer provides important protection for the aquatic environment. In determining appropriate buffer widths, the Corps must balance environmental protection with what is reasonable given the scope of the project and the level of impacts that need to be mitigated.

One commenter stated that the Corps proposal is counter to Federal policy and Corps guidance that favors mitigation banks in the context of general permitting.

The Corps believes the proposed changes to Condition 19 are consistent with Corps policy. Mitigation banks are one important form of mitigation, but there are many others. The proposed changes will enhance, not limit, the opportunity to use mitigation banks by providing greater flexibility to Corps field staff to determine the most environmentally beneficial mitigation.

One commenter expressed concern that vegetated buffer areas, especially non-jurisdictional habitats, used as mitigation, would not be afforded the same protection by existing laws as mitigation sites in which jurisdictional areas are created, enhanced, restored, or preserved.

Vegetated buffers established or preserved in uplands are subject to the same protection as aquatic areas are through permit conditions. The Corps will generally require that all mitigation, including upland areas that are parts of vegetated buffers, are placed in conservation easements or protected in some other manner.

One commenter recommended that the Corps only consider other forms of mitigation as part of an overall compensatory mitigation requirement once no net loss of function and acreage is obtained, and that a conservation easement or deed restriction be required for all such mitigation.

The Corps will take a holistic watershed approach to mitigation without arbitrarily favoring any type of mitigation. The Corps biological and ecological capability in the districts will be used to make the best mitigation decisions.

A few commenters disputed the appropriateness of the ''normal'' requirement of upland buffers as compensatory mitigation to open waters since it exceeds the Corps statutory authority to regulate these areas. A few commenters expressed concern that requiring vegetated buffers as mitigation may be invalid where the condition

bears no relationship to the impacts of the discharge on a particular site.

Vegetated buffers required by the Corps as mitigation on open waters is within the Corps authority because they are providing water quality benefits to the open water areas and often the vegetated buffer provides aquatic habitat such as shading to maintain cool water stream. All mitigation, whether vegetated buffers or wetland mitigation, must be related to the impacts authorized. The Corps views that relationship in the context of the overall aquatic environment on a watershed basis.

One commenter suggested that the Corps' advocacy of the use of vegetated buffers for mitigation of impacts to waters of the U.S. is an abandonment of a long-standing policy of ''no net loss'' and requirement of in-kind wetlands mitigation, and called for an adequate basis for this change in policy.

The proposed modification to Condition 19 does not change the Corps commitment to no overall net loss of wetlands. The Corps has required no overall net loss of wetlands since the early 1990s and will continue to do so under the revised condition. The changes to Condition 19 simply allow the Corps to make the best mitigation decision on a case-by-case basis from a watershed perspective. Requiring one-for-one mitigation in every single permit does not support a watershed approach to mitigation because it focuses excessively on one type of mitigation. Although the Corps believes that flexibility is needed on a project specific basis to determine the appropriate mitigation, we will continue to ensure that the NWP Program results in no overall net loss of wetlands. On an individual permit basis, the Corps often requires greater than one-for-one mitigation on an acreage basis, due to the value of the replacement acreage, temporal effects and risk factors. As noted above, to further ensure that no net loss is achieved, we are establishing a requirement that all Corps districts must meet an annual goal of at least one-for-one wetlands mitigation on an acreage basis for verified nationwide permit activities within each district for each fiscal year. The Corps will collect information documenting compliance with this requirement and make it available on the internet.

Numerous commenters agreed with eliminating the mandatory one-for-one mitigation requirement to qualify for an NWP, stating that it would provide Corps with increased flexibility in determining mitigation requirements that may be more appropriate and environmentally beneficial. A couple of commenters also favored the proposed waiver because they believe the very low PCN thresholds for the NWPs creates situations where many small projects become subject to review for which one-to-one mitigation would be overly burdensome and impracticable.

The Corps agrees with these comments.

One commenter supported the proposed use of buffers as mitigation, but cautioned the Corps to avoid suggesting any minimum width prescriptions or specific replacement ratios. Another commenter cautioned that, in situations where less than one-for-one mitigation of permanent impacts to wetlands is allowed, and the establishment and/or preservation of vegetative buffers as mitigation is proposed, then a careful analysis must be conducted and include a determination of the function and value of the proposed vegetated buffers as compared to the impacted wetlands. The commenter indicated that determining the width of vegetated buffers is extremely subjective, and that mitigation containing these features should be scrutinized to ensure the vegetated buffers have sufficient width and length to provide habitat in and of themselves, not just for the waters of the U.S. they border. Another commenter stated that alternative mitigation measures, such as vegetated buffers, should be valued and compared to permitted losses only to the degree that they enhance or create wetland functions beyond what would exist without them (*e.g.* a 10-acre buffer placed around a 5-acre wetland would not necessarily offset 10, or even 5 acres, of wetland impacts; rather, if the 5-acre wetland were improved 20 percent in habitat value the buffer would receive credit for mitigating only 1 acre of wetlands impact.)

The Corps must make its mitigation decisions based on the information available and based on the significant knowledge and understanding of the aquatic environment that the district staff of biologists and ecologists possess. The Corps can not always quantify precise offset determinations, and it would not make sense to do so in the nationwide permit program because project specific impacts are generally limited to less than one half acre, and are often one tenth of an acre or less.

A few commenters agreed with using vegetated buffers as mitigation, but opposed using upland buffers as additional compensatory mitigation, suggesting that they are neither a wetland nor aquatic resource, and therefore it is not justifiable to include a requirement of upland vegetated buffers as additional compensatory mitigation. The commenters suggested that if the Corps normally includes a requirement for establishment, maintenance, and legal protection of vegetated buffers, then the total mitigation requirement shall not exceed that necessary for wetland impacts. (*i.e.* if total proposed wetland impacts are ½ acre and one-for-one mitigation is required, then the total amount of mitigation that should be required, inclusive of any upland buffers, should not exceed ½ acre). One commenter suggested that the Corps establish a maximum percentage of overall compensation that ''alternative forms'' of compensation (such as vegetated buffers) may comprise.

As stated above, the Corps is committed to a holistic watershed approach to mitigation and that cannot be accomplished with rigid quantitative requirements. The Corps regulates the entire aquatic environment, not just wetlands. Mitigation must consider the entire aquatic ecosystem as well. The Corps has and will continue to programmatically require greater than one-for-one acreage of wetland mitigation to account for differences in function and values, temporal losses and potential failure of mitigation. The Corps will continue to require greater than one-for-one acreage mitigation for wetlands programmatically, but some projects should not and will not require such mitigation, because it is not what is best for the aquatic environment.

One commenter stated that upland (riparian) buffers could be used as mitigation for stream or other non-wetland impacts, but should not be allowed to compensate for wetlands. Another commenter stated that the use of upland buffers as compensatory mitigation is acceptable, provided that it is at the option of the permittee and that the amount of land required for mitigation is proportionate to the impacts.

The Corps will require mitigation for permitted impacts based on a watershed approach and what is best for the aquatic ecosystem in that watershed. This approach will often involve a mix of vegetated buffers and other wetland mitigation. In some cases it will involve only one type of mitigation. In all cases, mitigation will be based on what is best for the overall aquatic environment in the particular watershed involved. The Corps always tries to ensure that mitigation requirements are proportionate to impacts, though the areas affected may be greater or less depending on site-specific circumstances.

One commenter cautioned that incorporating vegetated buffers as mitigation measures may prove problematic, especially if a particular organism relies on vegetated buffer habitat that is injurious to another organism using the same aquatic system.

The Corps recognizes this concern. It is one example of why the Corps must use its professional judgment based on a holistic watershed approach to determine appropriate mitigation.

One commenter warned that, vegetated buffers present a promising tool with real benefits to water quality and public resource, but are not always compatible with existing functioning federally authorized flood protection systems. In some instances, they may reduce channel capacities and conflict with maintenance activities; in others, they may improve flow.

The Corps will consider the aquatic environment and the practicability of requiring vegetative buffers. The Corps will not require vegetative buffers where it would have adverse effects on projects such as flood control projects.

Several commenters stated that guidelines and clarification on the appropriate use of non-wetland vegetated buffers as mitigation for impacts to wetlands should be developed—perhaps by the Corps and other appropriate natural resource agencies, or through some form or rulemaking—prior to extending them credit as compensatory mitigation. A few commenters stated that the Corps should develop guidelines to support the need to establish buffers and standards and criteria for determining appropriate buffer types and widths based on intended benefit, adjacent land use, density of vegetative cover, etc., and that this documentation should be put forth for public comment. One commenter stated that the current guidance regarding upland vegetated buffers is lax, suggesting little other than prohibition of using mowed lawns and encouraging use of native vegetation. As such, golf course roughs, where the height of vegetation is actively managed, and areas subject to human disturbance could be proposed as compensatory mitigation for the loss of wetlands. Similarly, landscaped areas of development projects could be proposed as compensatory mitigation as well.

The Corps can not establish detailed guidelines for vegetated buffers on a nationwide basis. No such guidance exists for wetland mitigation either. Such detailed guidance for wetland mitigation would not be sensible just as detailed guidance for vegetated buffers would not make sense. The Corps has adequate protections in the condition to ensure that vegetated buffer mitigation will be properly used by the districts. As stated many times above, the Corps is taking a holistic watershed approach to mitigation which relies on the exceptional expertise of our 1,150 district employees, who are predominantly biologists and ecologists.

Corps Preference for Restoration Over Preservation

Many commenters stated that the preference for restoration of wetland impacts over preservation must be maintained. Several commenters indicated that restoration should be the preferred option, since, for certain, a net loss of wetlands will always occur when preservation is chosen as mitigation. One commenter stated that preservation does not necessarily ensure replacement of functions and values of lost wetlands. A couple of commenters stated that many of the existing wetlands that are appropriate for preservation are already protected by law. Therefore, preservation should only be used in extreme situations, such as when the wetlands are under threat or not afforded protection (isolated wetlands), or when the wetlands to be preserved are large or are of high significance. One commenter suggested that if and when preservation of high quality wetlands is preferred, it should force the project to be reviewed under an individual permit instead of a nationwide permit, allowing the state, the public and other resource agencies to review the proposed project.

The Corps is increasingly taking a holistic watershed approach to mitigation of impacts in our Regulatory Program, including the nationwide permit program. The Corps district experts must have the flexibility in policy to make decisions that support a holistic watershed approach. Preservation is often a very important component of a watershed approach. Some of the most important and high functioning wetlands are potentially subject to many activities that are not regulated by the Corps or any other governmental body. Therefore, absent the protection by preservation of these high value areas through mitigation they will be degraded over time. Restoration is the main method of mitigating impacts to the aquatic environment permitted by the Corps and it will continue to be the primary mitigation approach. The Corps has slightly modified the wording in paragraph (c) of this general condition from what was proposed to clarify that this preference for restoration applies regardless of what wetlands mitigation ratio is required at a specific site.

However, preservation is also a very important tool in the Corps ability to mitigate impacts on a holistic watershed basis. Protection of the aquatic environment through preservation of high value aquatic areas is critical to protecting the nation's aquatic ecosystems. The view that preservation is not appropriate because the areas are not ''new'' is shortsighted and has proven to be mistaken because of the significant impacts to wetlands that are not protected through preservation, particularly when the preservation includes adjacent uplands and open waters as a preserved matrix of environmental assets that work together to produce high value habitat. However, the Corps recognizes that preservation does not provide new acres and thus cannot compensate for wetlands loss on an acreage basis. As noted above, the Corps will instruct district offices not to include preservation in their documentation of compliance with the minimum one-for-one district level mitigation requirement.

A few commenters stated that preservation of wetlands is preferable to restoration. The evolving emphasis on watershed assessment and protection underscores the need and importance of preserving aquatic ecosystems. One commenter pointed out that if sites are established, and functioning well, it would appear that preserving them should be critical in attempts to maintain the present and future value of wetlands. If vegetated buffers, or the enhancement of uplands, adjoining wetlands are important enough to be considered as mitigation credit, then preservation of existing wetlands adjacent to a mitigation site should be at least similarly credited.

We agree with these commenters to the extent that they identify the importance of a holistic approach to mitigation. However, as noted above, restoration will continue to be the primary mitigation approach, and preservation will not be counted in the district-level one-for-one mitigation requirement.

One commenter opposed the use of preservation of onsite avoided wetlands or wetland buffers as compensatory mitigation since it credits the avoidance of impacts, which is the first step in mitigation sequencing, a second time in the form of compensation for unavoidable impacts. The commenter did state that off-site preservation was acceptable, however, since it did not conflict with the on-site mitigation sequencing process.

Whether the Corps requires preservation and gives project-level mitigation credit for onsite or offsite

preservation depends on the size, functional value and relationship of the area to other aquatic areas. For example, preservation of an extremely high value wetland on the border of a permitted development site where that high value wetland is part of a larger high value wetland system is a very positive mitigation approach in terms of holistic watershed protection of the aquatic environment, particularly if it increases the chances that the entire system will be preserved. On the other hand, preservation of a small moderate value wetland that will be surrounded by paved parking areas and may lose its hydrology because of overall site development may not make environmental sense, on-site or off-site.

Several commenters stated that there should be no established Federal preference of either restoration or preservation, and both are equally appropriate. One commenter suggested that a preference for restoration over preservation could result in an opportunity to preserve a highly functioning wetland being overlooked. Other commenters urged greater acceptance of preservation when the area to be preserved is of high value, subject to significant impacts, and included in a wider planning framework, and restoration/creation are not feasible and wetlands are in abundance, locally, compared to other important resources. Several of the commenters stated that the decision to use either preservation or restoration (or a combination of the two) should be flexible and left up to the individual Corps Districts to decide on a case-by-case, local or watershed basis, depending on which type would be most appropriate.

We agree with these commenters.

One commenter stated that there should be guidance showing the need for preservation before it is used over any other type of mitigation for wetland losses.

This does not support the holistic watershed approach the Corps is working to establish, and would not be a good use of Corps resources. We want Corps districts to focus their limited resources on what makes sense for the aquatic environment in a particular watershed.

One commenter stated that the use of either preservation or restoration is contrary to the ''no net loss'' policy and the goal of the CWA to restore and maintain the physical, chemical and biological integrity of the Nations waters. The General Condition should require that project impacts be fully offset unless the applicant demonstrates that full offset is impracticable. At a minimum, mitigation must offset all impacts that are more than minimal, both individually and cumulatively.

The Corps has and will continue to require mitigation that is necessary to reduce project impacts to the minimal adverse effect level. The Corps will continue to meet the no overall net loss goal for wetlands because most wetland mitigation is at a greater than one for one acreage basis to ensure that the functional impacts authorized are offset by the mitigation. In addition, districts will be required to document at least one-for-one mitigation at the district level.

One commenter stated that the preference for restoration over preservation affects the entire Section 404 program and the preamble of the NWPs is not the appropriate forum to discuss and change that policy.

The Corps does not agree that it is inappropriate to discuss this policy, as it relates to the implementation of the NWP program. The Corps is not proposing to change this policy. The preference for restoration over preservation is preserved in the language of paragraph (c) of GC 19.

Mitigation Bonding

Several commenters stated that unless a comparable bonding program exists within the Districts, bonding of mitigation measures under NWPs should be established that obligate a permittee to complete the mitigation, bond the mitigation activity and success period, and allow the Corps to execute the bond in the event of forfeiture.

The Corps is currently reviewing guidance which addresses bonding and otherwise protecting mitigation sites and ensuring they will be successful. The principles in that guidance will apply to the nationwide permit program. Bonding is just one tool available to the Corps in its efforts to ensure that required mitigation is established and is successful.

Other Comments on General Condition 19

Several commenters suggested the Corps should require natural resource agency review of all mitigation plans, especially mitigation proposing the use of vegetated buffers. One commenter requested rewording of General Condition19c to read* * *'' unless the District Engineer determines [in consultation with the appropriate natural resource agencies through a PCN coordination process such as that described in General Condition 13,] that some other form of mitigation* * *''

The Corps does not agree. We believe that such a change would result in excessive review that would not result in benefits for the aquatic environment. The commenting agencies do not have the staff necessary to evaluate all such projects either. The Corps has the technical expertise and capability to make these determinations. Where appropriate, the Corps does and will continue to consult with other agencies.

Many commenters stated that numerous studies from around the country, including recent studies conducted by the National Academy of Science and General Accounting Office, showed that mitigation is not fully successful, and does not compensate for wetlands lost to permitted fills. Therefore, reducing mitigation requirements that already aren't working is unsupportable.

The Corps is not reducing the mitigation requirements necessary in the nationwide permit program. The requirement remains that mitigation adequate to ensure no more than minimal adverse effects on the aquatic environment will be required. The Corps agrees with the NRC/NAS report that we must improve the success of mitigation. One method the Corps has used, and will continue to use, to deal with the failure of some mitigation is higher ratios of mitigation for most impacts. Consolidating mitigation into larger sites through mitigation banks, in lieu fees, and other large mitigation areas as well as protecting a matrix of environmental assets in mitigation areas including wetlands, open waters and uplands will also serve to improve mitigation in the long term.

Several commenters indicated that the Corps must improve data collection from mitigated projects and reporting cumulative wetland losses to evaluate and ensure that impacts to waters of the US have been minimized and the goals of the program achieved.

We agree that we need to improve our data collection and tracking of mitigation and will soon bring a new data system on line to facilitate such tracking. By better documenting the mitigation requirements included in NWPs and tracking the fulfillment of these requirements, the Corps will better ensure that the impacts authorized are offset to the level that no more than minimal adverse effects will result.

One commenter stated that the proposal continues to elevate one form of mitigation—compensation—above all others by automatically requiring that type of mitigation in every instance. Thus, the program fails to consider whether avoidance and/or minimization has been sufficiently incorporated into a project to the maximum extent necessary to ensure that adverse effects

to the aquatic environment are minimal. Then, in a gesture toward easing the burden of compensatory mitigation, the Corps allows different types of compensation, such as vegetated buffers, to be used in lieu of providing one-for-one wetlands compensation. The Corps should treat ALL forms of mitigation uniformly, not just all forms of compensation, especially those such as the use of upland buffers which are not subject to regulation or jurisdiction. This omission removed any incentive to incorporate avoidance and minimization efforts. The Corps is urged to remove preferential treatment given to compensatory mitigation, over avoidance and minimization, by deleting all mandatory compensation requirements.

We disagree with these comments because deleting all compensatory mitigation requirements would substantially reduce protection of the aquatic environment by reducing mitigation, much of which is very successful. The Corps will instead take a watershed approach to mitigation, as discussed above.

One commenter stated the acreage of fill placed in waters of the U.S. to construct compensatory mitigation must be included in the calculation of acreage and impacts. These fills should not be discounted, because compensatory mitigation does not always succeed, and can result in the conversion of one type of water of the U.S. to another.

The Corps considers the overall impacts of a proposed project. Fill in waters of the US involved with mitigation projects is very small in volume in essentially all cases. If there were a case where potentially substantial impacts would be involved in the mitigation project the Corps will consider that impact. However, the acreage used to construct compensatory mitigation projects is not counted in the acreage limit of the NWPs.

A few commenters stated that in-kind mitigation must be mandatory for all unavoidable impacts to wetlands, non-wetland aquatic habitats, and terrestrial habitats.

We disagree. The Corps will take a watershed and holistic approach when requiring mitigation.

A few commenters stated that mitigation ratios recommended by EPA Region 4 must be adopted as the absolute minimum ratios for wetland mitigation.

The Corps disagrees with nationwide mandatory ratios on a permit-specific basis although, as noted above, ratios exceeding one-for-one are often required. The underlying requirement for mitigation in the nationwide permit program is that the mitigation reduces the permitted adverse effects on the aquatic environment to the minimal adverse effect level.

A few commenters stated that there should be a requirement for detailed mitigation plans as part of each PCN, which at a minimum identify specific mitigation sites, detailed mitigation development/management plans, assurances against mitigation failure; success criteria, detailed monitoring plans, details of protection afforded to guarantee functions replaced by the mitigation will be protected and maintained in accordance with objectives, and identification of the party responsible for the mitigation.

We believe we have required the proper level of documentation for PCNs submitted to the Corps. If the Corps determines on a case by case basis that additional information is necessary to ensure that any permitted impacts will be offset by mitigation the district can require such information.

Several commenters stated that mitigation buy downs to meet the 404(e)(1) minimal effects requirement should be prohibited in the context of NWPs. A couple of commenters questioned the capability of any type of mitigation to compensate for the complete loss of an aquatic environments. One commenter pointed out that there is significant scientific evidence, the validity of which is recognized by the Corps and other federal agencies,which shows that wetlands mitigation often fails, meets mixed success, or does not replace lost functions/values. Thus, mitigation cannot assure minimal effects. The commenter adds that if minimal effects are not achieved through the use of NWPs, then their use should be prohibited since they cannot satisfy the CWA's requirement of minimal cumulative adverse effects. One commenter suggested that any activities having adverse impacts sufficient to warrant compensatory mitigation be converted to an individual permit. However, another commenter stated that some compensatory mitigation plans which have been reviewed under individual permit public notice were inappropriate for the resources lost, and would not adequately replace lost functions and values, and therefore they see no reason to believe that compensatory mitigation proposed for NWPs—which lacks public review and agency comment—would be any better.

The Corps understands that some mitigation projects fail. We are working to improve the success of mitigation we require. The test for mitigation for adverse effects on the aquatic environment under the nationwide permit program is to ensure no more than minimal adverse effects after considering the required mitigation. For general permits, by regulation, impacts to the aquatic environment are to be avoided to the extent practicable on the project site. These regulations are not being changed. General Condition 19 deals with mitigation when it is required, after impacts to aquatic areas have been avoided to the extent practicable.

One commenter suggested that language regarding compensatory mitigation be narrowed to prevent its use in open water habitats in navigable public waterways. The commenter states that there is an unwarranted assumption that compensatory mitigation can be relied on to compensate for alteration or destruction of naturally occurring aquatic ecosystems, including open waters. The commenter adds that habitats should not be tradeable; each is unique and artificial habitats are not as good as the real thing. Eliminating open water by constructing wetlands or altering the habitat as mitigation can destroy species which are dependent upon open water.

These comments identify one of the many reasons that the Corps is changing its approach in Condition 19 to more effectively allow the Corps expert biologists and ecologists to make project specific decisions on impacts to be authorized and mitigation that will be required.

One commenter suggested that NWPs should require mandatory mitigation for all unavoidable impacts to non-wetland aquatic habitats and to terrestrial habitats since these areas have significant ecological value as do wetlands.

The Corps regulates the aquatic environment not uplands. We may require upland vegetated buffers as mitigation to the extent the vegetated upland buffers to open waters protect or enhance aquatic functions and habitat. The Corps agrees we need to more effectively mitigate impacts permitted to waters other than wetlands. That is precisely why the Corps is modifying Condition 19 to allow flexibility in mitigation decisions that are holistic and take a watershed approach.

One commenter stated that the Corps should emphasize the importance of accurate assessments and expressly indicate whether it has taken into account new data on mitigation methods.

The Corps continually works to improve its mitigation approaches at the Corps district level. The Corps districts are where the local technical expertise

resides and they continually adjust the program based on new information.

One commenter stated that the Corps should reassert its policy and preference of utilizing mitigation banking versus in-lieu-fee or other types of compensation for mitigation in the context of General permits.

The Corps needs to use all mitigation options in its tool box, including mitigation banks and in lieu fees. These methods are extensively used and will continue to be extensively used because they are effective and simple for the applicant.

One commenter stated that mitigation bankers acknowledge financial considerations and not always ecological considerations in locating mitigation banks. This does not ensure that functions and values lost within a local watershed will be replaced, a fact acknowledged by the Corps in the last version of the NWPs—mitigation banks are usually constructed and maintained by entrepreneurs, who locate mitigation banks in areas where they believe the established credits will sell quickly''.

The Corps requires mitigation that will offset the permitted adverse effects on the aquatic environment. The Corps identifies service areas for mitigation banks based on reasonably focusing mitigation in watersheds where impacts are permitted. We will continue to approve mitigation bank service areas in a manner that recognizes the need to offset impacts in the same watershed to the extent practicable. The fact that mitigation banks are designed to be financially successful does not mean that they will not also be ecologically successful. On the contrary, ecological success is a prerequisite for financial success.

One commenter stated that the Corps should prohibit the use of in-lieu-fee mitigation since it does not ensure no net loss of wetlands, and at best may provide some protection for existing wetlands. The time constraints of the review and approval process for NWP's limits adequate analysis of this type of mitigation. In the absence of meaningful resource agency and public review, in-lieu-fee mitigation is not consistent with the goals of the CWA of ''restoring/maintaining the chemical, biological * * *''

This commenter appears not to understand in lieu fee programs approved by the Corps. The majority of in lieu fee mitigation involves some type of restoration, creation or enhancement of aquatic areas. Some of the mitigation is preservation, but not all mitigation under in lieu fees involves only preservation. In lieu fee arrangements are getting better as time goes forward. The GAO report that raised concerns about the Corps use of in lieu fees was incomplete in that it limited its in lieu fee program analysis to in lieu fees programs that were in place as of 1997, when the approach was still very new. Substantial improvement has occurred since 1997 in the Corps use of in lieu fees.

One commenter objected to any changes and additions to mitigation requirements after the environmental documents have been completed and a Record of Decision issued, stating that it is a violation of Congress' mandate for streamlining as well as a violation of NEPA and should be prohibited in the permitting process.

The environmental documentation will be finalized as we issue the nationwide permits in final form. No changes to the new permits will occur after that, unless they are revised or reissued following opportunity for public comment.

One commenter indicated that offsite mitigation greatly reduces overall aquatic habitat quality and natural functioning. Mitigated wetlands have been demonstrated time after time to ''show a decrease in native plant species diversity'', and are ''not functionally equivalent to reference sites'' in terms of ''flood retention, water quality improvement and habitat provision.''

The Corps will take a holistic watershed approach to mitigating impacts permitted. Onsite mitigation is typically best for water quality measures including vegetated buffers and stormwater management. However, onsite mitigation for loss of habitat, such as wetlands is usually less preferable to offsite. Moreover, consolidated mitigation such as that in mitigation banks and in lieu fee operations is generally more successful than project specific mitigation. All of these principles are consistent with the findings of the recently issued NRC/NAS report. In fact, the changes to General Condition 19, are intended to facilitate the adoption of some of the report's recommendations, by moving toward a watershed approach.

One commenter objected to the use of in-lieu-fee agreements for compensatory mitigation, especially in areas where land prices are high and in-lieu fees low. Money must sit in an account for many years before any use can be made of it, while the nation suffers temporal loss of wetlands and the in-lieu-fee cannot provide adequate compensation.

The Corps is improving its in lieu fee arrangements to ensure that ecological mitigation will occur within 2 years of accepting funds from permittees.

A commenter stated that mitigation should be required for any length of piping or filling of streams covered by NWP. The US has lost thousands of miles of headwater and streams from the landscape. It is time to recognize the ecological services provided by these ecosystems [in addition to wetland].

The proposed changes to General Condition 19 are specifically designed to improve our ability to consider and properly mitigate impacts to streams. We agree that too often in the past stream impacts may have been overlooked. Decisions on the level of mitigation required by the Corps will be made on a case-by-case basis by the Corps districts.

The General Condition is adopted with the wording clarifications discussed above.

20. *Spawning Areas*. There were no changes proposed to this General Condition. However, one commenter recommended that the statement ''important spawning area'' should be rewritten to say ''spawning areas that support federally-listed or special status fish''. Another commenter agreed that this General Condition 20 is acceptable but stated that it would not sufficiently protect the areas intended. This commenter suggested that discharges into spawning areas should be prohibited year round and not just during spawning season. The commenter requested that the second paragraph, which states ''Activities that result in the physical destruction of an important spawning area are not authorized'' be changed to ''Activities that could result in the physical destruction of an important spawning area, up or downstream, are not authorized''.

We disagree with these comments. It is not appropriate to narrow this condition to cover only Federally-listed or special status fish. General Condition 20 prohibits the physical destruction of important spawning areas. However, it does allow temporary effects provided they occur outside of the spawning season. We believe this adequately protects such spawning areas and ensures that there will be no more than minimal adverse effects on the aquatic environment, individually and cumulatively.

The General Condition is adopted without change.

21. *Management of Water Flows*. The Corps proposed to revise the wording of this General Condition to clarify that normally detailed studies and monitoring would not be required, but may be required in appropriate cases. Several commenters agreed with the proposed clarification. One commenter

supported the clarification but believed the Corps is exceeding its authority by regulating water flow and suggested the Corps delete the requirement to maintain preconstruction flow or clarify how compliance with this requirement will be judged. A few commenters opposed the proposed clarification because without flow information it will be hard to determine if the impacts are only minimal to the aquatic environment, including indirect impacts. One commenter recommended that each applicant be required to submit a written description of how the requirements of General Condition 21 will be met. One commenter suggested that General Condition 21 should state that the Corps defers to state and local authorities when local regulations are in place.

Authorized activities or improvements to aquatic systems typically will cause deviation from pre-construction flow conditions. NWPs authorize only those activities that will have no more than minimal adverse effect on the aquatic system including water flows. Typically, well-established design features are included as part of projects without a need for detailed engineering studies. State or local agencies often require these design features. Consequently, we believe that detailed studies and monitoring would not normally be required by this condition. Where appropriate, the Corps will review projects to ensure that design features that address flows are included, such as limited channelization, proper design for culverts, and retention ponds, but generally will not require detailed studies of post-project flow. However, in some cases, detailed studies may be required where there is a potential for substantial impacts. Compliance with state and local flow management requirements, where these exist, is usually sufficient to satisfy this General Condition.

The General Condition is adopted as proposed.

22. *Adverse Effects from Impoundments.* There were no changes proposed to this General Condition. One commenter stated that impacts associated with impoundments result in more than minimal impacts, should be evaluated as an individual permit, and General Condition 22 should be deleted.

We disagree. Some small impoundments do not result in more than minimal impacts. However, where they do result in more than minimal adverse effects to the aquatic environment, individually or cumulatively, an individual permit will be required.

The General Condition is adopted without change.

23. *Waterfowl Breeding Areas.* There were no changes proposed to this General Condition. Two commenters suggested this condition be amended to prohibit discharges into breeding areas for migratory waterfowl as well as other migratory birds.

The Corps believes this would place an unreasonable and overly restrictive limitation on this NWP and that the condition, as worded, provides sufficient protection of aquatic resources.

The General Condition is adopted without change.

24. *Removal of Temporary Fills.* There were no changes proposed to this General Condition. One commenter suggested this condition be amended to require any temporary fills be removed in their entirety and affected areas returned to their preexisting elevations immediately upon removal of the fill.

The condition as stated requires that the affected area be returned to preexisting elevation concurrent with the removal of the fill. We do not agree that this condition should require immediate restoration in all cases. Corps districts can add a time period for when the restoration to preexisting elevations should take place, when necessary.

The General Condition is adopted without change.

25. *Designated Critical Resource Waters.* There were no changes proposed to this General Condition. One commenter in favor of General Condition 25 suggested it be amended to include ''source waters used for drinking water or ground water recharge'' in the definition of ''critical resource waters''. The commenter added that there should be no provision for discretionary authority for discharges of dredged or fill material into designated critical resource waters or wetlands within the NWP program.

Concerns regarding impacts to sources for drinking water and ground water recharge are more appropriately addressed through regional conditioning of the NWPs or case-specific review of PCNs for specific and identified waters. Division engineers can regionally condition the NWPs to prohibit or limit their use in such high value waters. District engineers should continue to exercise discretionary authority and require individual permits for activities proposed in such valuable waters when they will result in more than minimal adverse effects on the aquatic environment.

One commenter recommended that the Corps exempt utility activities within designated critical resource waters affecting ½ acre or less from the prohibition in General Condition 25 because utility projects have only minimal impacts and should be allowed under NWP 12 without requirement of notification or consultation.

While utility line activities that comply with NWP 12 normally do have no more than minimal adverse effect on the aquatic environment, individually and cumulatively, we remain concerned that this will often not be the case in designated critical resource waters. Therefore, unless there is evidence to the contrary, we believe that the restriction on NWP 12 should remain.

One commenter recommended the title of General Condition 25 be changed to ''Critical Resource Waters''. The commenter also recommended that the condition be changed to read ''Discharges within or affecting Critical Resource Waters, including wetlands adjacent to those waters, are not authorized under the NWP program except as specified in National Wild and Scenic Rivers, provided that the activity complies with General Condition 7''.

The Corps does not agree with the suggested title change. In order to apply this condition to critical waters those waters need to be designated so the Corps and the public know where the condition is applicable. The Corps continues to believe that an activity can occur in designated critical habitat if it is compliance with the Endangered Species Act.

The General Condition is adopted without change.

26. *Fills Within the 100-year Floodplain.*

The Corps proposed to delete the ''notification'' requirement, to delete the requirement to document that the project meets Federal Emergency Management Agency (FEMA) approved requirements and to modify the condition to require that all projects authorized by the NWPs must comply with any applicable FEMA approved state or local floodplain management requirements. In addition, we proposed to remove the prohibitions in paragraphs 26(a) and 26(b) for NWPs 12, 14, and 29, and the prohibition in 26(b) for NWP 43. We also requested comment on allowing projects to proceed under this condition below the headwaters where the project provides additional flood storage.

Many commenters supported the Corps proposal to remove the notification requirement and the requirement to document that the project meets FEMA approved requirements for fills within the 100-year floodplain. One commenter stated that this revision would reduce

redundancy since they must comply with E.O. 11988 for all structures associated with roadway construction and routinely provide documentation to federal and state agencies for review. A few commenters stated that the Corps is beyond its statutory authority and the existing documentation requirements have done nothing to affect compliance with FEMA approved floodplain management requirements. One commenter recommended that the Corps delete the notification requirement for NWP 12.

The Corps continues to believe that the notification should be removed from this condition. We agree that this change would reduce some paper work redundancy at various levels of government while retaining the restrictions on floodplain development. We agree that the notification requirement for NWPs under this condition, including NWP 12, should be removed.

Many commenters objected to the change. One commenter stated that documenting compliance with FEMA approved requirements is very important and strong motivation for ensuring that projects meet local floodplain regulations.

The Corps has found that requiring applicants to document that they have met FEMA approved requirements has done little to change or enhance compliance with these requirements. We believe that a General Condition clearly requiring that ALL permittees comply with FEMA approved requirements will be just as effective.

One commenter stated that the Corps added additional wording without providing proper notice in the preamble of the notice and failed to provide the legally required explanation for their action. Specifically, the first sentence of the current General Condition 26 states that, ''For purposes of this General Condition, 100-year floodplains will be identified through Federal Emergency Management Agency's (FEMA) Flood Insurance Rate Maps or FEMA-approved local floodplain maps'', and the first sentence of proposed General Condition 26 states that, ''For purposes of this General Condition, 100-year floodplains will be identified through the *existing* Federal Emergency Management Agency's (FEMA) Flood Insurance Rate Maps or FEMA-approved local floodplain maps.

The word ''existing'' was addressed and discussed in the preamble of the March 9, 2000, NWPs. The word ''existing'' was placed in the proposed NWPs to clarify questions raised by Corps personnel and the public.

One commenter stated that the Corps should not rely on often out-of-date and inaccurate floodplain maps and suggested that General Condition 26 should apply to all 100-year floodplains, including those not mapped by FEMA. One commenter requested clarification where no FEMA floodplain maps exist. One commenter suggested that where no FEMA maps exist, permits should require applicants to obtain a determination from a registered hydrologist that their project is not within the 100-year floodplain.

To effectively implement the requirements of this General Condition and to be consistent with other Federal programs, 100-year floodplains will be identified through the latest Flood Insurance Rate Maps (FIRMs) published by FEMA or FEMA-approved local floodplain maps. We believe that these maps are adequate for the purposes of this General Condition. Further, utilizing existing FIRMs and FEMA-approved local floodplain maps eliminates the additional burdens on local governments or landowners that existed in the proposed condition. If there are no FIRMs or FEMA-approved local floodplain maps available for the area where the proposed work is located, then the requirements of this General Condition do not apply. In such cases, the Corps will still consider the impacts of proposed projects through the PCN review process. In addition, we believe that the prospective permittee should not routinely be required to incur the cost of having a licensed professional engineer or hydrologist certify whether or not the proposed work is within a 100-year floodplain, particularly considering the very small scale of many permitted projects. Where appropriate, the District Engineer can require additional documentation on a case-by-case basis.

Several commenters agreed with the Corps proposal allowing DE's the discretion to approve projects in the floodplain below the headwaters where the project could improve flood storage. One commenter agreed provided the project complies with FEMA approved requirements. One commenter stated that floodplains are the best sites for creating stormwater management facilities. One commenter agreed and stated that these types of activities and facilities authorized under NWP 43 increase floodplain capacity. One commenter suggested that if NWP 43 is not removed from part (b) of General Condition 26, the DE should be authorized to waive this restriction on a project specific basis. One commenter requested that the Corps define increased flood storage. One commenter agreed with the Corps observation that some activities authorized by NWP 39, 40, and 42–44 provide additional flood storage capacity and recommends that such projects below the head waters should be allowed to proceed even if they result in permanent above grade fills.

The Corps has decided not to make this change at this time. We need to consider the specific language that would be needed to effectively implement this option. If we can develop acceptable language, we will consider proposing such a provision for public notice and comment.

A dozen or so commenters objected to the Corps proposal to remove NWP43 from part (b) of General Condition 26. A couple of commenters stated that the proposal could result in unacceptable threats to life and property. One commenter stated additional case-by-case review will increase workload. The commenter requested our rationale for considering that NWP 43 projects such as golf courses could provide additional flood storage. One commenter cited that other public interest factors should be evaluated, which highlights the need for completing a comprehensive PEIS. One commenter stated that the change was made without discussing it in the preamble and with no explanation supported by substantial evidence. This commenter requested that the Corps place NWP 43 back into part b of General Condition 26. One commenter stated that while providing additional flood storage is generally beneficial, there may be situations where such actions could cause adverse hydraulic or other impacts on the floodplain and increase risk of damage to existing floodplain properties. The commenter suggests that the Corps allow discretion on these projects only if the action is in furtherance of a local stormwater or watershed plan that has already assessed the hydrologic and hydraulic and other impacts of the action. One commenter stated the prohibitions of General Condition 26(a) and (b) do not allow for NWP 43 to be authorized in a floodplain but does allow projects to be authorized in a floodway. The commenter requested further clarification and explanation.

We are keeping the prohibition on the of NWP 43 in the floodplain below the headwaters. However, allowing NWP 43 to be used for projects above the headwaters but keeping them out of the floodway would be counterproductive. We believe that above the headwaters the only feasible alternative will often be to place them in the floodway. General Condition requires that the project avoid and minimize impacts to

waters. For stormwater management facilities this means keeping them out of the waters and the floodway, if practicable. Since the purpose of stormwater management facilities is to minimize flooding impacts, when they must be located in the floodway, there is no value added to the aquatic environment by requiring a more costly and lengthy individual permit process.

One commenter suggested that parts (a) and (b) of General Condition 26 should be removed because the requirements in pact (c) that the applicant must comply would be a sufficient safeguard. A few commenters stated that General Condition 26 should be removed because it is a duplication of activities regulated by local floodplain administrators. One commenter stated that the 100-year floodplain restrictions have increased the time required for reviewing small projects and leave the Corps less time and resources to focus on projects that may have significant impacts.

We continue to believe that the NWPs listed in General Condition 26(a) and (b) need to be restricted in the flood plain. This provides an added measure of protection of floodplains beyond that in paragraph 26(c). There has been some increase in workload due to the general condition. We believe that the adopted modifications to this General Condition will reduce that workload somewhat, which will allow the Corps to focus those resources on areas where the Corps can provide added protection to the aquatic environment.

One commenter stated that General Condition 26 is unnecessary and duplicative of existing FEMA requirements and would like the Corps to provide any data to show any correlation between wetlands loss and flooding. One commenter suggested that the Corps delete General Condition 26 for all permits and retain the flexibility to authorize all projects resulting in minimal adverse effects to proceed under NWPs, regardless of where those waters are located within the landscape. The same commenter recommended that any project located within a floodplain that meets FEMA requirements and the minimal impact test should be allowed to proceed under a NWP. One commenter stated that General Condition 26 is redundant and believes that the ban on permanent fills should not extend to all waters, specifically ephemeral streams above headwaters.

We agree that we are using the FEMA requirements that are applied to flood insurance programs for projects that occur in the flood plain. To this extent General Condition 26 is somewhat duplicative with that program. However, we believe that General Condition 26 plays an important role in reinforcing the FEMA program to minimize impacts to flood plains.

Several commenters objected to the changes to General Condition 26 and some commenters requested that the Corps retain General Condition 26 without any changes. A couple of commenters stated that the Corps must consider other aspects of flood plains such as water quality, ground water recharge, fish, wildlife, plant resources, and open space. Several commenters objected to development within 100-year flood plain. A couple of commenters objected to development within the floodplain. One commenter stated that the proposal would no longer discourage above grade fills with the floodplain. One commenter suggested that NWPs should not be used in counties designated as federal flood hazard areas at least once in the past 10 years. One commenter objected to the use of NWP 39, 40, 42, 43, and 44 within the 100-year floodplain. One commenter suggested that NWPs located within a floodplain should be required to demonstrate that the project is essential and has no alternative, the public should be able to comment on these types of projects, and they should be reviewed as an individual permit. One commenter stated that FEMA approved requirements are inadequate in many locations. A hand full of commenters suggested that the Corps should not allow the use of expedited permits for any filling activities in the entire 100-year floodplain.

We are very concerned with the loss of life and property resulting from unwise development in the floodplain. The Corps has recently advocated the strengthening of floodplain policy and the use of non-structural measures to reduce flood damages. We believe that the changes to the NWP program published today and two years ago will play an important role in reducing damages associated with development in the floodplain. Specifically, we are now requiring that ALL projects comply with FEMA approved state and local floodplain management requirements. We will monitor carefully the effectiveness of the new floodplain condition to ensure that it has the intended impact on reducing floodplain development.

A couple of commenters agreed with the Corps proposal to remove the prohibitions of General Condition 26 (a) and (b) from NWP 12, 14, and 29. One commenter suggested that part (b) of General Condition 26 should be changed to allow the use of NWP 39, 40, 42, or 43 with a PCN requirement. A few commenters suggested that the Corps retain prohibitions of General Condition 26 (a) and (b) for NWPs 12, 14, 29. One commenter objected to removing the prohibitions because it will increase damage and destruction of aquatic habitat and should not be permitted. A few commenters agreed with the Corps proposal to remove the prohibitions of General Condition 26 (a) and (b) from NWP 12 and 14. One commenter recommended that the prohibitions of General Condition 26 (a) and (b) should be retained for NWP 29 because local FEMA authorizes can come under tremendous pressure to stretch the regulations for certain projects. One commenter agreed with the Corps proposal to remove the prohibitions of General Condition 26 (a) and (b) from NWP 12 but wants to keep the prohibitions for NWP 14 & 29. The commenter stated that homes and other structures create a potential for increased downstream flooding due to floodplain storage capacity and transmission line projects occupy very little volume of the 100-year floodplain and would have only a minimal effect on floodplain storage capacity. One commenter suggested reducing the PCN requirements and raising the acreage thresholds for NWP 12. Numerous commenters objected to the removal of the prohibitions of General Condition 26(a) and 26(b) from NWP 29. A couple of commenters objected because it could result in unacceptable threats to life and property. A couple of commenters objected because it will have long-term negative consequences, including the potential to heighten downstream flooding. One commenter stated that the removal will make it easier to build homes and developments in floodplains, will place families at greater risk, and cost taxpayers for the inevitable cycle of flooding and rebuilding. A couple of commenters suggested that NWP 12 and 29, in light of the requirements of General Condition 21, continue to be subject to all of the limitations in General Condition 26. Given that these permits are subject to General Condition 21, the commenters stated concerns that improper use of these permits could adversely impact flooding, because linear projects are likely to obstruct flood flows while single-family housing can result in cumulative losses of flood storage. Both commenters stated that if the Corps removes the prohibition of General Condition 26(a) and (b) from NWP 12 and 29, the Corps should closely monitor activities authorized under these permits over time to ensure

that cumulative impacts on flooding are in fact minimal.

The Corps believes that it is appropriate to remove NWPs 12, 14 and 29 from the prohibition below headwaters and retain the prohibition for NWPs 39, 40, 42, 43, and 44. The permanent above grade fill authorized by these NWPs are small and do not occur very often especially in the same watershed. Furthermore, these activities must comply with the applicable FEMA approved requirements. We believe that activities authorized by these NWPs that are in full compliance with FEMA approved requirements will have no more than minimal impacts on the flood plain.

The General Condition is adopted as proposed.

27. *Construction Period.*

We proposed a new General Condition for activities for which the Corps has received notification and a construction schedule has been reviewed, and verification issued by the Corps. The condition will allow the Corps to establish project completion dates beyond the expiration of the NWPs.

Several commenters stated that they are in favor of this new condition. Some commenters suggested that this condition be applicable to all permit authorizations that are currently in effect including activities, which were authorized under NWP 26 and are still under the grandfather rule, and the District Engineer should be urged to authorize extensions providing conditions have not changed substantially. One commenter in favor of General Condition 27 requested that the Corps revise the condition to have a definite extension period and remove the language ''reasonable period''. One commenter in favor of General Condition 27 suggested that it be amended specifically to include an extension of the completion date for multi-phase linear transportation projects that have been verified and the extension request should be submitted 30 days prior to the previously approved completion date. One commenter suggested that the life of the permit be extended instead of adopting General Condition 27. One commenter stated that General Condition 27 will reduce protection for listed species and critical habitat. Two commenters suggested that there is no need to extend an NWP beyond the current expiration date because the permittee is offered sufficient time within the current time parameters to complete an authorized project. Two commenters stated that General Condition 27 violates the terms and conditions of the Clean Water Act and this condition would establish National policy on what is considered a reasonable timeframe to complete a minimal impact activity. One commenter recommended that the permit be modified to change the extension date of those activities not verified by the Corps from 12 months to 3 months and that all future projects be verified by the Corps.

The NWPs authorize many activities that have no more than minimal adverse effects on the aquatic environment and generally involve projects that need a relatively short period for construction. For some projects, obtaining a Corps permit is one of the many steps necessary to complete that project. It may be two, three or more years after obtaining the Corps permit before the work can be completed. Under the existing NWPs, if such projects obtain a Corps NWP verification near the expiration date of the NWP, the permittee can not necessarily rely on that permit to continue in effect through the lengthy and costly process of developing and planning the project. This causes uncertainty regarding the NWP authorization for the project because the construction phase was not completed before the NWP authorization expired. Many logistical issues may delay construction projects sometimes for considerable periods. We believe that the district office that is reviewing the project is best able to determine a reasonable time to complete the work. Projects will vary in the amount of time it takes to complete the activity. We believe that general condition 11 will ensure that NWP authorized activities will comply with the Endangered Species Act. The Crops is not proposing to change the completion period for unverified NWP activities.

The General Condition is adopted as proposed.

Definitions

There were no comments on the definitions not listed below. There were no changes proposed to those definitions. Those definitions are adopted without change.

Floodway. There were no changes proposed to this definition. One commenter believes that the definition of floodways is very broad.

The Corps is using the definition of flood way as it is determined by the Federal Emergency Management Agency for the purposes of the national flood insurance program. This is the standard that is most used by Federal agencies for compliance with Executive Order 11988, Floodplain Management. It is the definition of the term that is used in general condition 26 of the NWPs. The definition is adopted without change.

Independent Utility. There were no changes proposed to this definition. One commenter said that the definition of the term ''independent utility'' should exclude highway projects, because a single project within the limits of the particular logical termini may need to be reviewed and authorized under the same NWP multiple times.

We do not agree that the definition of this term should exclude highway projects. The Corps issues permits for a highway to cross a waterbody not for the highway itself. Normally the separate crossings will have independent utility. Only in rare circumstances would a highway project be considered a single and complete project as discussed in Corps regulations at 33 CFR 330. The terms and conditions of the NWPs, as well as the PCN process and the ability of district engineers to exercise discretionary authority, will ensure that highway projects authorized by NWPs, such as NWP 14, result in minimal adverse effects on the aquatic environment. The definition is adopted without change.

Loss of waters of the US. The Corps proposed to clarify this definition, consistent with the explanation provided in the preamble to the March 9, 2000, NWPs **Federal Register** notice, which reflects the current practice for measuring the acreage and linear foot impacts for determining compliance with the threshold limits of the NWPs. In other words, this clarification does not change the current application of this term.

One commenter noted that the Corps proposed to change the definition of ''loss of waters of the US'' without discussing the proposed change in preamble of the August 9, 2001, **Federal Register** notice. The commenter suggested that the definition remain as defined in the March 9, 2000, **Federal Register** notice that announced the issuance of new and modified NWPs to replace NWP 26. The definition in the March 9, 2000, notice stated that ''* * * the loss of stream bed includes the linear feet of stream bed that is filled or excavated.'' The commenter suggested explicitly including perennial, intermittent, and ephemeral reaches in this definition. One commenter stated that the proposed change to limit the definition of ''loss of waters of the US'' to perennial or intermittent stream could weaken protection for ephemeral streams.

The Corps believes that it is necessary to clarify, that for determining the acreage and linear thresholds for the NWPs, ephemeral waters and streams

are not included in the measurement. This was previously explained on page 12881 of the March 9, 2000, preamble of the NWPs, but not included in the permit language. We now believe that it is important to include this language in the formal definition to avoid the confusion that was created by having this information in a Preamble discussion only and not in the definition itself. However, the Corps had proposed modifying language that we now believe did not fully and clearly address the issue. Therefore we are retaining the current language of this definition, but adding a new sentence at the end of the definition. The new sentence will clearly state that for measuring the threshold limitation only will we not include impacts to ephemeral waters. As with the proposed change, the new sentence will not change the current application of this term.

Note that in excluding ephemeral streams from the definition of ''Loss of Waters of the US'' for the purposes of determining compliance with NWP acreage and linear foot limitations, we are not suggesting that ephemeral streams are not jurisdictional waters under the Clean Water Act.

One commenter requested clarification concerning the placement of box culverts and the definition of ''loss of the water of the US''. This commenter said that if the placement of a culvert in waters of the US does not change the bottom elevation, then the activity should not be considered to result in a loss of waters of the US.

The placement of a culvert in waters of the United States would be considered a loss of waters of the United States, even if the activity would not result in a change in the bottom elevation. The definition of the term ''loss of waters of the US'' includes activities that change the use of the waterbody. The placement of a culvert in a stream or other water of the United States changes the use of that waterbody, and therefore the area changed by the installation of the culvert would be considered when determining whether the proposed work exceeded the acreage limit of an NWP.

The definition is adopted with the change discussed above.

Minimal effects. The Corps did not propose to define this term. Several commenters said that the term ''minimal effects'' should be defined. One commenter requested that the Corps develop an evaluation criteria for determining when an activity results in more than minimal impacts.

We maintain our position that the term ''minimal effects'', as used in the context of the NWP program, cannot be simply defined. Aquatic resource functions and values vary considerably across the country, and the minimal adverse effects criterion for general permit must be subjectively applied by district engineers. Site-specific factors, such as the quality of waters that may be impacted by the proposed work, the functions and values of those waters, the geographic setting, and other factors must be considered when determining whether a particular activity results in minimal adverse effects on the aquatic environment. Further, in order to adopt such a term the Corps would have to publish a proposed definition for public notice and comment. A definition of this term is not being adopted.

Open water. There were no changes proposed to this definition. One commenter stated that the definition of the term ''open water'' should be refined. This commenter said that sparsely vegetated areas of obligate emergent vegetation still meet the definition of a wetland and that vegetated shallows are special aquatic sites, such as seagrass beds. Sparsely vegetated waters inhabited by emergent vegetation may be identified as wetlands, provided the area meets the criteria required by the *1987 Corps of Engineers Wetlands Delineation Manual* (Technical Report Y–87–1) and associated guidance. Vegetated waters inhabited by non-emergent vegetation, such as beds of submersed aquatic vegetation often found in estuaries, lakes, and ponds, are considered open waters for the purpose of the NWP program.

The definition is adopted without change.

Mechanized Land Clearing. The Corps did not propose to define this term. One commenter stated that the term ''mechanized land clearing'' is not defined in the ''Definitions'' section of the NWPs and recommends that the Corps adds a definition for this term.

We do not agree that it is necessary to include a definition of the term ''mechanized land clearing'' in the NWPs. Matters related to mechanized landclearing have been most recently addressed in the changes to 33 CFR 323.2 that were published in the January 17, 2001, issue of the **Federal Register** (66 FR 4550). A definition of this term is not being adopted.

Stream Definitions. There were no changes proposed to these definitions. One commenter said that the definitions of ephemeral and intermittent streams do not address streams that may flow for longer periods due to snowmelt, artificial discharges, or other water sources beside groundwater and precipitation. This commenter also suggested that artificial water discharges should not be used for the definitions of ephemeral and intermittent streams and if a water course is naturally ephemeral and a water treatment plant outfall is constructed, the watercourse should continue to be defined as ephemeral for Section 404 purposes.

When determining whether a particular stream segment is perennial, intermittent, or ephemeral, district engineers should consider the source of hydrology and the normal circumstance of that hydrology. They will make these determinations on a case-by-case basis. We believe that these definitions are sufficient for the Corps Regulatory Program. The stream definitions are adopted without change.

Executive Order 13212—Energy-related Projects Issues

One commenter indicated that NWPs have already been designed to expedite permit processing and any new energy related projects (i.e. drilling oil in the Arctic National Wildlife Refuge, construction of new nuclear power plants, or electric power generation dams) not covered by existing NWPs should receive full consideration under the National Environmental Policy Act (Act) and not be authorized by NWPs. One commenter said that states have provisions similar to Executive Order 13212 and this commenter believes that the current coordination process and the expedited review process provided by the NWPs are sufficient. One commenter asserted that the expiration of NWP 26 reduced the ability of the Corps to efficiently authorize energy-related projects. This commenter suggested that other NWPs be amended to expedite energy-related projects or revisit the development of a regional permit for such activities.

President George W. Bush signed Executive Order 13212 (66 FR 28357–28358, May 22, 2001) on May 18, 2001, directing new policy actions to expedite the increased supply and availability of energy to our Nation. This Executive Order directs all agencies to take appropriate actions, to the extent consistent with applicable law, to expedite projects that will increase energy production, transmission, or conservation, while maintaining protection of the environment. We believe that the NWP program provides an opportunity to expeditiously authorize energy-related activities that have no more than minimal adverse effects on the aquatic environment, individually and cumulatively. Energy related projects that have more than minimal individual and cumulative

adverse effects on the aquatic environment cannot be authorized by NWPs and will be expeditiously reviewed under the individual permit process.

Executive Order 13211—Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use (Statement of Energy Effects)

The NWP Program is designed to regulate certain activities having no more than minimal adverse effects with little, if any, delay or paperwork. NWPs allow smaller, repetitive, low impact projects with no more than minimal adverse effects on the aquatic environment, to be reviewed and authorized in a shorter period than larger complex projects that require an Individual Permit review. Many energy related projects, such as petroleum pipelines and electric utility lines, are expeditiously authorized by Nationwide Permits. The Corps is adopting changes to the Nationwide Permits that will maintain the expedited process for these energy related projects. Therefore, the Corps concludes that the proposed NWPs will not significantly affect the supply, distribution, and use of energy and fully complies with Executive Order 13211.

Regional Conditioning of Nationwide Permits

Concurrent with this **Federal Register** notice, District Engineers are issuing local public notices. In addition to the changes to some NWPs and NWP conditions required by the Chief of Engineers, the Division and District Engineers may propose regional conditions or propose revocation of NWP authorization for all, some, or portions of the NWPs. Regional conditions may also be required by state Section 401 water quality certification or for state coastal zone consistency. District engineers will announce regional conditions or revocations by issuing local public notices. Information on regional conditions and revocation can be obtained from the appropriate District Engineer, as indicated below. Furthermore, this and additional information can be obtained on the internet at *http://www.usace.army.mil/where.html#State* by clicking on the appropriate District office.

Alabama

Mobile District Engineer, ATTN: CESAM–OP–S, 109 St. Joseph Street, Mobile, AL 36602–3630

Alaska

Alaska District Engineer, ATTN: CEPOA–CO–R, P.O. Box 898, Anchorage, AK 99506–0898

Arizona

Los Angeles District Engineer, ATTN: CESPL–CO–R, P.O. Box 532711, Los Angeles, CA 90053–2325

Arkansas

Little Rock District Engineer, ATTN: CESWL–PR–R, P.O. Box 867, Little Rock, AR 72203–0867

California

Sacramento District Engineer, ATTN: CESPK–CO–R, 1325 J Street, Sacramento, CA 95814–2922

Colorado

Albuquerque District Engineer, ATTN: CESPA–OD–R, 4101 Jefferson Plaza NE, Albuquerque, NM 87109–3435

Connecticut

New England District Engineer, ATTN: CENAE–R, 696 Virginia Road, Concord, MA 01742–2751

Delaware

Philadelphia District Engineer, ATTN: CENAP–OP–R, Wannamaker Building, 100 Penn Square East Philadelphia, PA 19107–3390

Florida

Jacksonville District Engineer, ATTN: CESAJ–CO–R, P.O. Box 4970, Jacksonville, FL 32202–4412

Georgia

Savannah District Engineer, ATTN: CESAS–OP–F, P.O. Box 889, Savannah, GA 31402–0889

Hawaii

Honolulu District Engineer, ATTN: CEPOH–EC–R, Building 230, Fort Shafter, Honolulu, HI 96858–5440

Idaho

Walla Walla District Engineer, ATTN: CENWW–OD–RF, 210 N. Third Avenue, Walla Walla, WA 99362–1876

Illinois

Rock Island District Engineer, ATTN: CEMVR–OD–P, P.O. Box 2004, Rock Island, IL 61204–2004

Indiana

Louisville District Engineer, ATTN: CELRL–OP–F, P.O. Box 59, Louisville, KY 40201–0059

Iowa

Rock Island District Engineer, ATTN: CEMVR–OD–P, P.O. Box 2004, Rock Island, IL 61204–2004

Kansas

Kansas City District Engineer, ATTN: CENWK–OD–R, 700 Federal Building, 601 E. 12th Street, Kansas City, MO 64106–2896

Kentucky

Louisville District Engineer, ATTN: CELRL–OP–F, P.O. Box 59, Louisville, KY 40201–0059

Louisiana

New Orleans District Engineer, ATTN: CEMVN–OD–S, P.O. Box 60267, New Orleans, LA 70160–0267

Maine

New England District Engineer, ATTN: CENAE–R, 696 Virginia Road, Concord, MA 01742–2751

Maryland

Baltimore District Engineer, ATTN: CENAB–OP–R, P.O. Box 1715, Baltimore, MD 21203–1715

Massachusetts

New England District Engineer, ATTN: CENAE–R, 696 Virginia Road, Concord, MA 01742–2751

Michigan

Detroit District Engineer, ATTN: CELRE–RG, P.O. Box 1027, Detroit, MI 48231–1027

Minnesota

St. Paul District Engineer, ATTN: CEMVP–CO–R, 190 Fifth Street East, St. Paul, MN 55101–1638

Mississippi

Vicksburg District Engineer, ATTN: CEMVK–OD–F, 4155 Clay Street, Vicksburg, MS 39183–3435

Missouri

Kansas City District Engineer, ATTN: CENWK–OD–R, 700 Federal Building, 601 E. 12th Street, Kansas City, MO 64106–2896

Montana

Omaha District Engineer, ATTN: CENWO–OP–R, 106 South 15th Street, Omaha, NE 68102–1618

Nebraska

Omaha District Engineer, ATTN: CENWO–OP–R, 106 South 15th Street, Omaha, NE 68102–1618

Nevada

Sacramento District Engineer, ATTN: CESPK–CO–R, 1325 J Street, Sacramento, CA 95814–2922

New Hampshire

New England District Engineer, ATTN: CENAE–R, 696 Virginia Road, Concord, MA 01742–2751

New Jersey

Philadelphia District Engineer, ATTN: CENAP–OP–R, Wannamaker Building, 100 Penn Square East, Philadelphia, PA 19107–3390

New Mexico

Albuquerque District Engineer, ATTN: CESPA–OD–R, 4101 Jefferson Plaza NE, Albuquerque, NM 87109–3435

New York

New York District Engineer, ATTN: CENAN–OP–R, 26 Federal Plaza, New York, NY 10278–0090

North Carolina

Wilmington District Engineer, ATTN: CESAW–RG, P.O. Box 1890, Wilmington, NC 28402–1890

North Dakota

Omaha District Engineer, ATTN: CENWO–OP–R, 106 South 15th Street, Omaha, NE 68102–1618

Ohio

Huntington District Engineer, ATTN: CELRH–OR–F, 502 8th Street, Huntington, WV 25701–2070

Oklahoma

Tulsa District Engineer, ATTN: CESWT—PE–R, 1645 S. 101st East Ave, Tulsa, OK 74128–4609

Oregon

Portland District Engineer, ATTN: CENWP–PE–G, P.O. Box 2946, Portland, OR 97208–2946

Pennsylvania

Baltimore District Engineer, ATTN: CENAB–OP–R, P.O. Box 1715, Baltimore, MD 21203–1715

Rhode Island

New England District Engineer, ATTN: CENAE–R, 696 Virginia Road, Concord, MA 01742–2751

South Carolina

Charleston District Engineer, ATTN: CESAC–CO–P, P.O. Box 919, Charleston, SC 29402–0919

South Dakota

Omaha District Engineer, ATTN: CENWO–OP–R, 106 South 15th Street, Omaha, NE 68102–1618

Tennessee

Nashville District Engineer, ATTN: CELRN–OP–F, P.O. Box 1070, Nashville, TN 37202–1070

Texas

Ft. Worth District Engineer, ATTN: CESWF–PER–R, P.O. Box 17300, Ft. Worth, TX 76102–0300

Utah

Sacramento District Engineer, ATTN: CESPK–CO–R, 1325 J Street, CA 95814–2922

Vermont

New England District Engineer, ATTN: CENAE–R, 696 Virginia Road, Concord, MA 01742–2751

Virginia

Norfolk District Engineer, ATTN: CENAO–OP–R, 803 Front Street, Norfolk, VA 23510–1096

Washington

Seattle District Engineer, ATTN: CENWS–OP–RG, P.O. Box 3755, Seattle, WA 98124–2255

West Virginia

Huntington District Engineer, ATTN: CELRH–OR–F, 502 8th Street, Huntington, WV 25701–2070

Wisconsin

St. Paul District Engineer, ATTN: CEMVP–CO–R, 190 Fifth Street East, St. Paul, MN 55101–1638

Wyoming

Omaha District Engineer, ATTN: CENWO–OP–R, 106 South 15th Street, Omaha, NE 68102–1618

District of Columbia

Baltimore District Engineer, ATTN: CENAB–OP–R, P.O. Box 1715, Baltimore, MD 21203–1715

Pacific Territories (American Samoa, Guam, & Commonwealth of the Northern Mariana Islands)

Honolulu District Engineer, ATTN: CEPOH–EC–R, Building 230, Fort Shafter, Honolulu, HI 96858–5440

Puerto Rico & Virgin Islands

Jacksonville District Engineer, ATTN: CESAJ–CO–R, P.O. Box 4970, Jacksonville, FL 32202–4412

Dated: January 4, 2002.

Approved:

Robert H. Griffin,

Brigadier General, U.S. Army, Director of Civil Works.

Nationwide Permits, Conditions, Further Information, and Definitions

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B. Nationwide Permits

1. *Aids to Navigation.* The placement of aids to navigation and Regulatory markers which are approved by and installed in accordance with the requirements of the U.S. Coast Guard (USCG) (See 33 CFR, chapter I, subchapter C part 66). (Section 10)

2. *Structures in Artificial Canals.* Structures constructed in artificial canals within principally residential developments where the connection of the canal to navigable water of the US has been previously authorized (see 33 CFR 322.5(g)). (Section 10)

3. *Maintenance.* Activities related to:

(i) The repair, rehabilitation, or replacement of any previously authorized, currently serviceable, structure, or fill, or of any currently serviceable structure or fill authorized by 33 CFR 330.3, provided that the structure or fill is not to be put to uses differing from those uses specified or contemplated for it in the original permit or the most recently authorized modification. Minor deviations in the structure's configuration or filled area including those due to changes in materials, construction techniques, or current construction codes or safety standards which are necessary to make repair, rehabilitation, or replacement are permitted, provided the adverse environmental effects resulting from such repair, rehabilitation, or replacement are minimal. Currently serviceable means useable as is or with some maintenance, but not so degraded as to essentially require reconstruction. This NWP authorizes the repair, rehabilitation, or replacement of those structures or fills destroyed or damaged by storms, floods, fire or other discrete events, provided the repair, rehabilitation, or replacement is commenced, or is under contract to commence, within two years of the date of their destruction or damage. In cases of catastrophic events, such as hurricanes or tornadoes, this two-year limit may be waived by the District Engineer, provided the permittee can demonstrate funding, contract, or other similar delays.

(ii) Discharges of dredged or fill material, including excavation, into all waters of the US to remove accumulated sediments and debris in the vicinity of, and within, existing structures (e.g., bridges, culverted road crossings, water intake structures, etc.) and the placement of new or additional riprap to protect the structure, provided the permittee notifies the District Engineer in accordance with General Condition 13. The removal of sediment is limited to the minimum necessary to restore the waterway in the immediate vicinity of the structure to the approximate dimensions that existed when the structure was built, but cannot extend further than 200 feet in any direction from the structure. The placement of rip rap must be the minimum necessary to protect the structure or to ensure the safety of the structure. All excavated materials must be deposited and retained in an upland area unless otherwise specifically approved by the District Engineer under separate authorization. Any bank stabilization measures not directly associated with the structure will require a separate authorization from the District Engineer.

(iii) Discharges of dredged or fill material, including excavation, into all waters of the US for activities associated with the restoration of upland areas damaged by a storm, flood, or other discrete event, including the construction, placement, or installation of upland protection structures and minor dredging to remove obstructions in a water of the US. (Uplands lost as a result of a storm, flood, or other discrete event can be replaced without a Section 404 permit provided the uplands are restored to their original pre-event location. This NWP is for the activities in waters of the US associated with the replacement of the uplands.) The permittee must notify the District Engineer, in accordance with General Condition 13, within 12-months of the date of the damage and the work must commence, or be under contract to commence, within two years of the date of the damage. The permittee should provide evidence, such as a recent topographic survey or photographs, to justify the extent of the proposed restoration. The restoration of the damaged areas cannot exceed the contours, or ordinary high water mark, that existed before the damage. The District Engineer retains the right to determine the extent of the pre-existing conditions and the extent of any restoration work authorized by this permit. Minor dredging to remove obstructions from the adjacent waterbody is limited to 50 cubic yards below the plane of the ordinary high water mark, and is limited to the amount necessary to restore the pre-existing bottom contours of the waterbody. The dredging may not be done primarily to obtain fill for any restoration activities. The discharge of dredged or fill material and all related work needed to restore the upland must be part of a single and complete project. This permit cannot be used in conjunction with NWP 18 or NWP 19 to restore damaged upland areas. This permit cannot be used to reclaim historic lands lost, over an extended period, to normal erosion processes.

This permit does not authorize maintenance dredging for the primary purpose of navigation and beach restoration. This permit does not authorize new stream channelization or stream relocation projects. Any work authorized by this permit must not cause more than minimal degradation of water quality, more than minimal changes to the flow characteristics of the stream, or increase flooding (See General Conditions 9 and 21). (Sections 10 and 404)

Note: This NWP authorizes the repair, rehabilitation, or replacement of any previously authorized structure or fill that does not qualify for the Section 404(f) exemption for maintenance.

4. *Fish and Wildlife Harvesting, Enhancement, and Attraction Devices and Activities.* Fish and wildlife harvesting devices and activities such as pound nets, crab traps, crab dredging, eel pots, lobster traps, duck blinds, clam and oyster digging; and small fish attraction devices such as open water fish concentrators (sea kites, etc.). This NWP authorizes shellfish seeding provided this activity does not occur in wetlands or sites that support submerged aquatic vegetation (including sites where submerged aquatic vegetation is documented to exist, but may not be present in a given year.). This NWP does not authorize artificial reefs or impoundments and semi-impoundments of waters of the US for the culture or holding of motile species such as lobster or the use of covered oyster trays or clam racks. (Sections 10 and 404)

5. *Scientific Measurement Devices.* Devices, whose purpose is to measure and record scientific data such as staff gages, tide gages, water recording devices, water quality testing and improvement devices and similar structures. Small weirs and flumes constructed primarily to record water quantity and velocity are also authorized provided the discharge is limited to 25 cubic yards and further for discharges of 10 to 25 cubic yards provided the permittee notifies the District Engineer in accordance with the ''Notification'' General Condition. (Sections 10 and 404)

6. *Survey Activities.* Survey activities including core sampling, seismic exploratory operations, plugging of seismic shot holes and other exploratory-type bore holes, soil survey, sampling, and historic resources surveys. Discharges and structures associated with the recovery of historic resources are not authorized by this NWP. Drilling and the discharge of excavated material from test wells for oil and gas exploration is not authorized by this NWP; the plugging of such wells is authorized. Fill placed for roads, pads and other similar activities is not authorized by this NWP. The NWP does not authorize any permanent structures. The discharge of drilling mud and cuttings may require a permit under section 402 of the CWA. (Sections 10 and 404)

7. *Outfall Structures and Maintenance.* Activities related to:

(i) Construction of outfall structures and associated intake structures where the effluent from the outfall is authorized, conditionally authorized, or specifically exempted, or are otherwise in compliance with regulations issued under the National Pollutant Discharge Elimination System Program (Section 402 of the CWA), and

(ii) Maintenance excavation, including dredging, to remove accumulated sediments blocking or restricting outfall and intake structures, accumulated sediments from small impoundments associated with outfall and intake structures, and accumulated sediments from canals associated with outfall and intake structures, provided that the activity meets all of the following criteria:

a. The permittee notifies the District Engineer in accordance with General Condition 13;

b. The amount of excavated or dredged material must be the minimum necessary to restore the outfalls, intakes, small impoundments, and canals to original design capacities and design configurations (i.e., depth and width);

c. The excavated or dredged material is deposited and retained at an upland site, unless otherwise approved by the District Engineer under separate authorization; and

d. Proper soil erosion and sediment control measures are used to minimize reentry of sediments into waters of the US.

The construction of intake structures is not authorized by this NWP, unless they are directly associated with an authorized outfall structure. For maintenance excavation and dredging to remove accumulated sediments, the notification must include information regarding the original design capacities and configurations of the facility and the presence of special aquatic sites (e.g., vegetated shallows) in the vicinity of the proposed work. (Sections 10 and 404)

8. *Oil and Gas Structures.* Structures for the exploration, production, and transportation of oil, gas, and minerals on the outer continental shelf within areas leased for such purposes by the DOI, Minerals Management Service (MMS). Such structures shall not be placed within the limits of any designated shipping safety fairway or traffic separation scheme, except temporary anchors that comply with the fairway regulations in 33 CFR 322.5(l). (Where such limits have not been designated, or where changes are anticipated, District Engineers will consider asserting discretionary authority in accordance with 33 CFR 330.4(e) and will also review such proposals to ensure they comply with the provisions of the fairway regulations in 33 CFR 322.5(l). Any Corps review under this permit will be limited to the effects on navigation and national security in accordance with 33 CFR 322.5(f)). Such structures will not be placed in established danger zones or restricted areas as designated in 33 CFR part 334: nor will such structures be permitted in EPA or Corps designated dredged material disposal areas. (Section 10)

9. *Structures in Fleeting and Anchorage Areas.* Structures, buoys, floats and other devices placed within anchorage or fleeting areas to facilitate moorage of vessels where the USCG has established such areas for that purpose. (Section 10)

10. *Mooring Buoys.* Non-commercial, single-boat, mooring buoys. (Section 10)

11. *Temporary Recreational Structures.* Temporary buoys, markers, small floating docks, and similar structures placed for recreational use during specific events such as water skiing competitions and boat races or seasonal use provided that such structures are removed within 30 days after use has been discontinued. At Corps of Engineers reservoirs, the reservoir manager must approve each buoy or marker individually. (Section 10)

12. *Utility Line Activities.* Activities required for the construction, maintenance and repair of utility lines and associated facilities in waters of the US as follows:

(i) Utility lines: The construction, maintenance, or repair of utility lines, including outfall and intake structures and the associated excavation, backfill, or bedding for the utility lines, in all waters of the US, provided there is no change in preconstruction contours. A ''utility line'' is defined as any pipe or pipeline for the transportation of any gaseous, liquid, liquescent, or slurry substance, for any purpose, and any cable, line, or wire for the transmission for any purpose of electrical energy, telephone, and telegraph messages, and radio and television communication (see Note 1, below). Material resulting from trench excavation may be temporarily sidecast (up to three months) into waters of the US, provided that the material is not placed in such a manner that it is dispersed by currents or other forces. The District Engineer may extend the period of temporary side casting not to exceed a total of 180 days, where appropriate. In wetlands, the top 6″ to 12″ of the trench should normally be backfilled with topsoil from the trench. Furthermore, the trench cannot be constructed in such a manner as to drain waters of the US (e.g., backfilling with extensive gravel layers, creating a french drain effect). For example, utility line trenches can be backfilled with clay blocks to ensure that the trench does not drain the waters of the US through which the utility line is installed. Any exposed slopes and stream banks must be stabilized immediately upon completion of the utility line crossing of each waterbody.

(ii) Utility line substations: The construction, maintenance, or expansion of a substation facility associated with a power line or utility line in non-tidal waters of the US, excluding non-tidal wetlands adjacent to tidal waters, provided the activity does not result in the loss of greater than ½-acre of non-tidal waters of the US.

(iii) Foundations for overhead utility line towers, poles, and anchors: The construction or maintenance of foundations for overhead utility line towers, poles, and anchors in all waters of the US, provided the foundations are the minimum size necessary and separate footings for each tower leg (rather than a larger single pad) are used where feasible.

(iv) Access roads: The construction of access roads for the construction and maintenance of utility lines, including overhead power lines and utility line substations, in non-tidal waters of the US, excluding non-tidal wetlands adjacent to tidal waters, provided the discharges do not cause the loss of greater than ½-acre of non-tidal waters of the US. Access roads shall be the minimum width necessary (see Note 2, below). Access roads must be constructed so that the length of the road minimizes the adverse effects on waters of the US and as near as possible to preconstruction contours and

elevations (e.g., at grade corduroy roads or geotextile/gravel roads). Access roads constructed above preconstruction contours and elevations in waters of the US must be properly bridged or culverted to maintain surface flows.

The term ''utility line'' does not include activities which drain a water of the US, such as drainage tile, or french drains; however, it does apply to pipes conveying drainage from another area. For the purposes of this NWP, the loss of waters of the US includes the filled area plus waters of the US that are adversely affected by flooding, excavation, or drainage as a result of the project. Activities authorized by paragraph (i) through (iv) may not exceed a total of ½-acre loss of waters of the US. Waters of the US temporarily affected by filling, flooding, excavation, or drainage, where the project area is restored to preconstruction contours and elevation, is not included in the calculation of permanent loss of waters of the US. This includes temporary construction mats (e.g., timber, steel, geotextile) used during construction and removed upon completion of the work. Where certain functions and values of waters of the US are permanently adversely affected, such as the conversion of a forested wetland to a herbaceous wetland in the permanently maintained utility line right-of-way, mitigation will be required to reduce the adverse effects of the project to the minimal level.

Mechanized land clearing necessary for the construction, maintenance, or repair of utility lines and the construction, maintenance and expansion of utility line substations, foundations for overhead utility lines, and access roads is authorized, provided the cleared area is kept to the minimum necessary and preconstruction contours are maintained as near as possible. The area of waters of the US that is filled, excavated, or flooded must be limited to the minimum necessary to construct the utility line, substations, foundations, and access roads. Excess material must be removed to upland areas immediately upon completion of construction. This NWP may authorize utility lines in or affecting navigable waters of the US even if there is no associated discharge of dredged or fill material (See 33 CFR part 322).

Notification: The permittee must notify the District Engineer in accordance with General Condition 13, if any of the following criteria are met:

(a) Mechanized land clearing in a forested wetland for the utility line right-of-way;

(b) A Section 10 permit is required;

(c) The utility line in waters of the US, excluding overhead lines, exceeds 500 feet;

(d) The utility line is placed within a jurisdictional area (i.e., water of the US), and it runs parallel to a stream bed that is within that jurisdictional area;

(e) Discharges associated with the construction of utility line substations that result in the loss of greater than ⅒-acre of waters of the US; or

(f) Permanent access roads constructed above grade in waters of the US for a distance of more than 500 feet.

(g) Permanent access roads constructed in waters of the US with impervious materials. (Sections 10 and 404)

Note 1: Overhead utility lines constructed over Section 10 waters and utility lines that are routed in or under Section 10 waters without a discharge of dredged or fill material require a Section 10 permit; except for pipes or pipelines used to transport gaseous, liquid, liquescent, or slurry substances over navigable waters of the US, which are considered to be bridges, not utility lines, and may require a permit from the USCG pursuant to section 9 of the Rivers and Harbors Act of 1899. However, any discharges of dredged or fill material associated with such pipelines will require a Corps permit under Section 404.

Note 2: Access roads used for both construction and maintenance may be authorized, provided they meet the terms and conditions of this NWP. Access roads used solely for construction of the utility line must be removed upon completion of the work and the area restored to preconstruction contours, elevations, and wetland conditions. Temporary access roads for construction may be authorized by NWP 33.

Note 3: Where the proposed utility line is constructed or installed in navigable waters of the US (*i.e.,* Section 10 waters), copies of the PCN and NWP verification will be sent by the Corps to the National Oceanic and Atmospheric Administration (NOAA), National Ocean Service (NOS), for charting the utility line to protect navigation.

13. *Bank Stabilization.* Bank stabilization activities necessary for erosion prevention provided the activity meets all of the following criteria:

a. No material is placed more than the minimum needed for erosion protection;

b. The bank stabilization activity is less than 500 feet in length;

c. The activity will not exceed an average of one cubic yard per running foot placed along the bank below the plane of the ordinary high water mark or the high tide line;

d. No material is placed in any special aquatic site, including wetlands;

e. No material is of the type, or is placed in any location, or in any manner, to impair surface water flow into or out of any wetland area;

f. No material is placed in a manner that will be eroded by normal or expected high flows (properly anchored trees and treetops may be used in low energy areas); and,

g. The activity is part of a single and complete project.

Bank stabilization activities in excess of 500 feet in length or greater than an average of one cubic yard per running foot may be authorized if the permittee notifies the District Engineer in accordance with the ''*Notification*'' General Condition 13 and the District Engineer determines the activity complies with the other terms and conditions of the NWP and the adverse environmental effects are minimal both individually and cumulatively. This NWP may not be used for the channelization of waters of the US. (Sections 10 and 404)

14. *Linear Transportation Projects.* Activities required for the construction, expansion, modification, or improvement of linear transportation crossings (e.g., highways, railways, trails, airport runways, and taxiways) in waters of the US, including wetlands, if the activity meets the following criteria:

a. This NWP is subject to the following acreage limits:

(1) For linear transportation projects in non-tidal waters, provided the discharge does not cause the loss of greater than ½-acre of waters of the US;

(2) For linear transportation projects in tidal waters, provided the discharge does not cause the loss of greater than ⅓-acre of waters of the US.

b. The permittee must notify the District Engineer in accordance with General Condition 13 if any of the following criteria are met:

(1) The discharge causes the loss of greater than ⅒-acre of waters of the US; or

(2) There is a discharge in a special aquatic site, including wetlands;

c. The *notification* must include a compensatory mitigation proposal to offset permanent losses of waters of the US to ensure that those losses result only in minimal adverse effects to the aquatic environment and a statement describing how temporary losses will be minimized to the maximum extent practicable;

d. For discharges in special aquatic sites, including wetlands, and stream riffle and pool complexes, the *notification* must include a delineation of the affected special aquatic sites;

e. The width of the fill is limited to the minimum necessary for the crossing;

f. This permit does not authorize stream channelization, and the authorized activities must not cause more than minimal changes to the hydraulic flow characteristics of the stream, increase flooding, or cause more

than minimal degradation of water quality of any stream (see General Conditions 9 and 21);

g. This permit cannot be used to authorize non-linear features commonly associated with transportation projects, such as vehicle maintenance or storage buildings, parking lots, train stations, or aircraft hangars; and

h. The crossing is a single and complete project for crossing waters of the US. Where a road segment (*i.e.,* the shortest segment of a road with independent utility that is part of a larger project) has multiple crossings of streams (several single and complete projects) the Corps will consider whether it should use its discretionary authority to require an Individual Permit. (Sections 10 and 404)

Note: Some discharges for the construction of farm roads, forest roads, or temporary roads for moving mining equipment may be eligible for an exemption from the need for a Section 404 permit (see 33 CFR 323.4).

15. *U.S. Coast Guard Approved Bridges.* Discharges of dredged or fill material incidental to the construction of bridges across navigable waters of the US, including cofferdams, abutments, foundation seals, piers, and temporary construction and access fills provided such discharges have been authorized by the USCG as part of the bridge permit. Causeways and approach fills are not included in this NWP and will require an individual or regional Section 404 permit. (Section 404)

16. *Return Water From Upland Contained Disposal Areas.* Return water from upland, contained dredged material disposal area. The dredging itself may require a Section 404 permit (33 CFR 323.2(d)), but will require a Section 10 permit if located in navigable waters of the US. The return water from a contained disposal area is administratively defined as a discharge of dredged material by 33 CFR 323.2(d), even though the disposal itself occurs on the upland and does not require a Section 404 permit. This NWP satisfies the technical requirement for a Section 404 permit for the return water where the quality of the return water is controlled by the state through the Section 401 certification procedures. (Section 404)

17. *Hydropower Projects.* Discharges of dredged or fill material associated with (a) small hydropower projects at existing reservoirs where the project, which includes the fill, are licensed by the Federal Energy Regulatory Commission (FERC) under the Federal Power Act of 1920, as amended; and has a total generating capacity of not more than 5000 kW; and the permittee notifies the District Engineer in accordance with the ''Notification'' General Condition; or (b) hydropower projects for which the FERC has granted an exemption from licensing pursuant to section 408 of the Energy Security Act of 1980 (16 U.S.C. 2705 and 2708) and section 30 of the Federal Power Act, as amended; provided the permittee notifies the District Engineer in accordance with the ''Notification'' General Condition. (Section 404)

18. *Minor Discharges.* Minor discharges of dredged or fill material into all waters of the US if the activity meets all of the following criteria:

a. The quantity of discharged material and the volume of area excavated do not exceed 25 cubic yards below the plane of the ordinary high water mark or the high tide line;

b. The discharge, including any excavated area, will not cause the loss of more than 1/10-acre of a special aquatic site, including wetlands. For the purposes of this NWP, the acreage limitation includes the filled area and excavated area plus special aquatic sites that are adversely affected by flooding and special aquatic sites that are drained so that they would no longer be a water of the US as a result of the project;

c. If the discharge, including any excavated area, exceeds 10 cubic yards below the plane of the ordinary high water mark or the high tide line or if the discharge is in a special aquatic site, including wetlands, the permittee notifies the District Engineer in accordance with the ''Notification'' General Condition. For discharges in special aquatic sites, including wetlands, the notification must also include a delineation of affected special aquatic sites, including wetlands (also see 33 CFR 330.1(e)); and

d. The discharge, including all attendant features, both temporary and permanent, is part of a single and complete project and is not placed for the purpose of a stream diversion. (Sections 10 and 404)

19. *Minor Dredging.* Dredging of no more than 25 cubic yards below the plane of the ordinary high water mark or the mean high water mark from navigable waters of the US (i.e., Section 10 waters) as part of a single and complete project. This NWP does not authorize the dredging or degradation through siltation of coral reefs, sites that support submerged aquatic vegetation (including sites where submerged aquatic vegetation is documented to exist, but may not be present in a given year), anadromous fish spawning areas, or wetlands, or the connection of canals or other artificial waterways to navigable waters of the US (see 33 CFR 322.5(g)). (Sections 10 and 404)

20. *Oil Spill Cleanup.* Activities required for the containment and cleanup of oil and hazardous substances which are subject to the National Oil and Hazardous Substances Pollution Contingency Plan (40 CFR part 300) provided that the work is done in accordance with the Spill Control and Countermeasure Plan required by 40 CFR 112.3 and any existing state contingency plan and provided that the Regional Response Team (if one exists in the area) concurs with the proposed containment and cleanup action. (Sections 10 and 404)

21. *Surface Coal Mining Activities.* Discharges of dredged or fill material into waters of the US associated with surface coal mining and reclamation operations provided the coal mining activities are authorized by the DOI, Office of Surface Mining (OSM), or by states with approved programs under Title V of the Surface Mining Control and Reclamation Act of 1977 and provided the permittee notifies the District Engineer in accordance with the ''Notification'' General Condition. In addition, to be authorized by this NWP, the District Engineer must determine that the activity complies with the terms and conditions of the NWP and that the adverse environmental effects are minimal both individually and cumulatively and must notify the project sponsor of this determination in writing. The Corps, at the discretion of the District Engineer, may require a bond to ensure success of the mitigation, if no other Federal or state agency has required one. For discharges in special aquatic sites, including wetlands, and stream riffle and pool complexes, the notification must also include a delineation of affected special aquatic sites, including wetlands. (also, see 33 CFR 330.1(e))

Mitigation: In determining the need for as well as the level and type of mitigation, the District Engineer will ensure no more than minimal adverse effects to the aquatic environment occur. As such, District Engineers will determine on a case-by-case basis the requirement for adequate mitigation to ensure the effects to aquatic systems are minimal. In cases where OSM or the state has required mitigation for the loss of aquatic habitat, the Corps may consider this in determining appropriate mitigation under Section 404. (Sections 10 and 404)

22. *Removal of Vessels.* Temporary structures or minor discharges of dredged or fill material required for the removal of wrecked, abandoned, or disabled vessels, or the removal of man-

made obstructions to navigation. This NWP does not authorize the removal of vessels listed or determined eligible for listing on the National Register of Historic Places unless the District Engineer is notified and indicates that there is compliance with the ''Historic Properties'' General Condition. This NWP does not authorize maintenance dredging, shoal removal, or riverbank snagging. Vessel disposal in waters of the US may need a permit from EPA (see 40 CFR 229.3). (Sections 10 and 404)

23. *Approved Categorical Exclusions.* Activities undertaken, assisted, authorized, regulated, funded, or financed, in whole or in part, by another Federal agency or department where that agency or department has determined, pursuant to the Council on Environmental Quality Regulation for Implementing the Procedural Provisions of the National Environmental Policy Act (NEPA) (40 CFR part 1500 *et seq.*), that the activity, work, or discharge is categorically excluded from environmental documentation, because it is included within a category of actions which neither individually nor cumulatively have a significant effect on the human environment, and the Office of the Chief of Engineers (ATTN: CECW-OR) has been furnished notice of the agency's or department's application for the categorical exclusion and concurs with that determination. Before approval for purposes of this NWP of any agency's categorical exclusions, the Chief of Engineers will solicit public comment. In addressing these comments, the Chief of Engineers may require certain conditions for authorization of an agency's categorical exclusions under this NWP. (Sections 10 and 404)

24. *State Administered Section 404 Program.* Any activity permitted by a state administering its own Section 404 permit program pursuant to 33 U.S.C. 1344(g)–(l) is permitted pursuant to section 10 of the Rivers and Harbors Act of 1899. Those activities that do not involve a Section 404 state permit are not included in this NWP, but certain structures will be exempted by section 154 of Pub. L. 94–587, 90 Stat. 2917 (33 U.S.C. 591) (see 33 CFR 322.3(a)(2)). (Section 10)

25. *Structural Discharges.* Discharges of material such as concrete, sand, rock, etc., into tightly sealed forms or cells where the material will be used as a structural member for standard pile supported structures, such as bridges, transmission line footings, and walkways or for general navigation, such as mooring cells, including the excavation of bottom material from within the form prior to the discharge of concrete, sand, rock, etc. This NWP does not authorize filled structural members that would support buildings, building pads, homes, house pads, parking areas, storage areas and other such structures. The structure itself may require a Section 10 permit if located in navigable waters of the US. (Section 404)

26. [Reserved]

27. *Stream and Wetland Restoration Activities.* Activities in waters of the US associated with the restoration of former waters, the enhancement of degraded tidal and non-tidal wetlands and riparian areas, the creation of tidal and non-tidal wetlands and riparian areas, and the restoration and enhancement of non-tidal streams and non-tidal open water areas as follows:

(a) *The activity is conducted on:*

(1) Non-Federal public lands and private lands, in accordance with the terms and conditions of a binding wetland enhancement, restoration, or creation agreement between the landowner and the U.S. Fish and Wildlife Service (FWS) or the Natural Resources Conservation Service (NRCS), the National Marine Fisheries Service, the National Ocean Service, or voluntary wetland restoration, enhancement, and creation actions documented by the NRCS pursuant to NRCS regulations; or

(2) Reclaimed surface coal mine lands, in accordance with a Surface Mining Control and Reclamation Act permit issued by the OSM or the applicable state agency (the future reversion does not apply to streams or wetlands created, restored, or enhanced as mitigation for the mining impacts, nor naturally due to hydrologic or topographic features, nor for a mitigation bank); or

(3) Any other public, private or tribal lands;

(b) *Notification:* For activities on any public or private land that are not described by paragraphs (a)(1) or (a)(2) above, the permittee must notify the District Engineer in accordance with General Condition 13; and

(c) Planting of only native species should occur on the site.

Activities authorized by this NWP include, to the extent that a Corps permit is required, but are not limited to: the removal of accumulated sediments; the installation, removal, and maintenance of small water control structures, dikes, and berms; the installation of current deflectors; the enhancement, restoration, or creation of riffle and pool stream structure; the placement of in-stream habitat structures; modifications of the stream bed and/or banks to restore or create stream meanders; the backfilling of artificial channels and drainage ditches; the removal of existing drainage structures; the construction of small nesting islands; the construction of open water areas; the construction of oyster habitat over unvegetated bottom in tidal waters; activities needed to reestablish vegetation, including plowing or discing for seed bed preparation and the planting of appropriate wetland species; mechanized land clearing to remove non-native invasive, exotic or nusiance vegetation; and other related activities.

This NWP does not authorize the conversion of a stream to another aquatic use, such as the creation of an impoundment for waterfowl habitat. This NWP does not authorize stream channelization. This NWP does not authorize the conversion of natural wetlands to another aquatic use, such as creation of waterfowl impoundments where a forested wetland previously existed. However, this NWP authorizes the relocation of non-tidal waters, including non-tidal wetlands, on the project site provided there are net gains in aquatic resource functions and values. For example, this NWP may authorize the creation of an open water impoundment in a non-tidal emergent wetland, provided the non-tidal emergent wetland is replaced by creating that wetland type on the project site. This NWP does not authorize the relocation of tidal waters or the conversion of tidal waters, including tidal wetlands, to other aquatic uses, such as the conversion of tidal wetlands into open water impoundments.

Reversion. For enhancement, restoration, and creation projects conducted under paragraphs (a)(3), this NWP does not authorize any future discharge of dredged or fill material associated with the reversion of the area to its prior condition. In such cases a separate permit would be required for any reversion. For restoration, enhancement, and creation projects conducted under paragraphs (a)(1) and (a)(2), this NWP also authorizes any future discharge of dredged or fill material associated with the reversion of the area to its documented prior condition and use (i.e., prior to the restoration, enhancement, or creation activities). The reversion must occur within five years after expiration of a limited term wetland restoration or creation agreement or permit, even if the discharge occurs after this NWP expires. This NWP also authorizes the reversion of wetlands that were restored, enhanced, or created on prior-converted cropland that has not been abandoned, in accordance with a binding agreement

between the landowner and NRCS or FWS (even though the restoration, enhancement, or creation activity did not require a Section 404 permit). The five-year reversion limit does not apply to agreements without time limits reached under paragraph (a)(1). The prior condition will be documented in the original agreement or permit, and the determination of return to prior conditions will be made by the Federal agency or appropriate state agency executing the agreement or permit. Before any reversion activity the permittee or the appropriate Federal or state agency must notify the District Engineer and include the documentation of the prior condition. Once an area has reverted to its prior physical condition, it will be subject to whatever the Corps Regulatory requirements will be at that future date. (Sections 10 and 404)

Note: Compensatory mitigation is not required for activities authorized by this NWP, provided the authorized work results in a net increase in aquatic resource functions and values in the project area. This NWP can be used to authorize compensatory mitigation projects, including mitigation banks, provided the permittee notifies the District Engineer in accordance with General Condition 13, and the project includes compensatory mitigation for impacts to waters of the US caused by the authorized work. However, this NWP does not authorize the reversion of an area used for a compensatory mitigation project to its prior condition. NWP 27 can be used to authorize impacts at a mitigation bank, but only in circumstances where it has been approved under the Interagency Federal Mitigation Bank Guidelines.

28. *Modifications of Existing Marinas.* Reconfiguration of existing docking facilities within an authorized marina area. No dredging, additional slips, dock spaces, or expansion of any kind within waters of the US is authorized by this NWP. (Section 10)

29. *Single-family Housing.* Discharges of dredged or fill material into non-tidal waters of the US, including non-tidal wetlands for the construction or expansion of a single-family home and attendant features (such as a garage, driveway, storage shed, and/or septic field) for an Individual Permittee provided that the activity meets all of the following criteria:

a. The discharge does not cause the loss of more than ¼-acre of non-tidal waters of the US, including non-tidal wetlands;

b. The permittee notifies the District Engineer in accordance with the ''Notification'' General Condition;

c. The permittee has taken all practicable actions to minimize the on-site and off-site impacts of the discharge. For example, the location of the home may need to be adjusted on-site to avoid flooding of adjacent property owners;

d. The discharge is part of a single and complete project; furthermore, that for any subdivision created on or after November 22, 1991, the discharges authorized under this NWP may not exceed an aggregate total loss of waters of the US of ¼-acre for the entire subdivision;

e. An individual may use this NWP only for a single-family home for a personal residence;

f. This NWP may be used only once per parcel;

g. This NWP may not be used in conjunction with NWP 14 or NWP 18, for any parcel; and,

h. Sufficient vegetated buffers must be maintained adjacent to all open water bodies, streams, etc., to preclude water quality degradation due to erosion and sedimentation.

For the purposes of this NWP, the acreage of loss of waters of the US includes the filled area previously permitted, the proposed filled area, and any other waters of the US that are adversely affected by flooding, excavation, or drainage as a result of the project. This NWP authorizes activities only by individuals; for this purpose, the term ''individual'' refers to a natural person and/or a married couple, but does not include a corporation, partnership, or similar entity. For the purposes of this NWP, a parcel of land is defined as ''the entire contiguous quantity of land in possession of, recorded as property of, or owned (in any form of ownership, including land owned as a partner, corporation, joint tenant, etc.) by the same individual (and/or that individual's spouse), and comprises not only the area of wetlands sought to be filled, but also all land contiguous to those wetlands, owned by the individual (and/or that individual's spouse) in any form of ownership.'' (Sections 10 and 404)

30. *Moist Soil Management for Wildlife.* Discharges of dredged or fill material and maintenance activities that are associated with moist soil management for wildlife performed on non-tidal Federally-owned or managed, state-owned or managed property, and local government agency-owned or managed property, for the purpose of continuing ongoing, site-specific, wildlife management activities where soil manipulation is used to manage habitat and feeding areas for wildlife. Such activities include, but are not limited to: The repair, maintenance or replacement of existing water control structures; the repair or maintenance of dikes; and plowing or discing to impede succession, prepare seed beds, or establish fire breaks. Sufficient vegetated buffers must be maintained adjacent to all open water bodies, streams, etc., to preclude water quality degradation due to erosion and sedimentation. This NWP does not authorize the construction of new dikes, roads, water control structures, etc. associated with the management areas. This NWP does not authorize converting wetlands to uplands, impoundments or other open water bodies. (Section 404)

31. *Maintenance of Existing Flood Control Facilities.* Discharge of dredge or fill material resulting from activities associated with the maintenance of existing flood control facilities, including debris basins, retention/detention basins, and channels that

(i) were previously authorized by the Corps by Individual Permit, General Permit, by 33 CFR 330.3, or did not require a permit at the time it was constructed, or

(ii) were constructed by the Corps and transferred to a non-Federal sponsor for operation and maintenance. Activities authorized by this NWP are limited to those resulting from maintenance activities that are conducted within the ''maintenance baseline,'' as described in the definition below. Activities including the discharges of dredged or fill materials, associated with maintenance activities in flood control facilities in any watercourse that has previously been determined to be within the maintenance baseline, are authorized under this NWP. The NWP does not authorize the removal of sediment and associated vegetation from the natural water courses except to the extent that these have been included in the maintenance baseline. All dredged material must be placed in an upland site or an authorized disposal site in waters of the US, and proper siltation controls must be used. (Activities of any kind that result in only incidental fallback, or only the cutting and removing of vegetation above the ground, e.g., mowing, rotary cutting, and chainsawing, where the activity neither substantially disturbs the root system nor involves mechanized pushing, dragging, or other similar activities that redeposit excavated soil material, do not require a Section 404 permit in accordance with 33 CFR 323.2(d)(2)).

Notification: After the maintenance baseline is established, and before any maintenance work is conducted, the permittee must notify the District Engineer in accordance with the ''Notification'' General Condition. The notification may be for activity-specific

maintenance or for maintenance of the entire flood control facility by submitting a five year (or less) maintenance plan.

Maintenance Baseline: The maintenance baseline is a description of the physical characteristics (e.g., depth, width, length, location, configuration, or design flood capacity, etc.) of a flood control project within which maintenance activities are normally authorized by NWP 31, subject to any case-specific conditions required by the District Engineer. The District Engineer will approve the maintenance baseline based on the approved or constructed capacity of the flood control facility, whichever is smaller, including any areas where there are no constructed channels, but which are part of the facility. If no evidence of the constructed capacity exist, the approved constructed capacity will be used. The prospective permittee will provide documentation of the physical characteristics of the flood control facility (which will normally consist of as-built or approved drawings) and documentation of the design capacities of the flood control facility. The documentation will also include BMPs to ensure that the impacts to the aquatic environment are minimal, especially in maintenance areas where there are no constructed channels. (The Corps may request maintenance records in areas where there has not been recent maintenance.) Revocation or modification of the final determination of the maintenance baseline can only be done in accordance with 33 CFR 330.5. Except in emergencies as described below, this NWP can not be used until the District Engineer approves the maintenance baseline and determines the need for mitigation and any regional or activity-specific conditions. Once determined, the maintenance baseline will remain valid for any subsequent reissuance of this NWP. This permit does not authorize maintenance of a flood control facility that has been abandoned. A flood control facility will be considered abandoned if it has operated at a significantly reduced capacity without needed maintenance being accomplished in a timely manner.

Mitigation: The District Engineer will determine any required mitigation one-time only for impacts associated with maintenance work at the same time that the maintenance baseline is approved. Such one-time mitigation will be required when necessary to ensure that adverse environmental impacts are no more than minimal, both individually and cumulatively. Such mitigation will only be required once for any specific reach of a flood control project. However, if one-time mitigation is required for impacts associated with maintenance activities, the District Engineer will not delay needed maintenance, provided the District Engineer and the permittee establish a schedule for identification, approval, development, construction and completion of any such required mitigation. Once the one-time mitigation described above has been completed, or a determination made that mitigation is not required, no further mitigation will be required for maintenance activities within the maintenance baseline. In determining appropriate mitigation, the District Engineer will give special consideration to natural water courses that have been included in the maintenance baseline and require compensatory mitigation and/or BMPs as appropriate.

Emergency Situations: In emergency situations, this NWP may be used to authorize maintenance activities in flood control facilities for which no maintenance baseline has been approved. Emergency situations are those which would result in an unacceptable hazard to life, a significant loss of property, or an immediate, unforeseen, and significant economic hardship if action is not taken before a maintenance baseline can be approved. In such situations, the determination of mitigation requirements, if any, may be deferred until the emergency has been resolved. Once the emergency has ended, a maintenance baseline must be established expeditiously, and mitigation, including mitigation for maintenance conducted during the emergency, must be required as appropriate. (Sections 10 and 404)

32. *Completed Enforcement Actions.* Any structure, work or discharge of dredged or fill material, remaining in place, or undertaken for mitigation, restoration, or environmental benefit in compliance with either:

(i) The terms of a final written Corps non-judicial settlement agreement resolving a violation of section 404 of the CWA and/or section 10 of the Rivers and Harbors Act of 1899; or the terms of an EPA 309(a) order on consent resolving a violation of section 404 of the CWA, provided that:

a. The unauthorized activity affected no more than 5 acres of non-tidal wetlands or 1 acre of tidal wetlands;

b. The settlement agreement provides for environmental benefits, to an equal or greater degree, than the environmental detriments caused by the unauthorized activity that is authorized by this NWP; and

c. The District Engineer issues a verification letter authorizing the activity subject to the terms and conditions of this NWP and the settlement agreement, including a specified completion date; or

(ii) The terms of a final Federal court decision, consent decree, or settlement agreement resulting from an enforcement action brought by the U.S. under section 404 of the CWA and/or section 10 of the Rivers and Harbors Act of 1899; or

(iii) The terms of a final court decision, consent decree, settlement agreement, or non-judicial settlement agreement resulting from a natural resource damage claim brought by a trustee or trustees for natural resources (as defined by the National Contingency Plan at 40 CFR subpart G) under section 311 of the Clean Water Act (CWA), section 107 of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA or Superfund), section 312 of the National Marine Sanctuaries Act (NMSA), section 1002 of the Oil Pollution Act of 1990 (OPA), or the Park System Resource Protection Act at 16 U.S.C. '19jj, to the extent that a Corps permit is required.

For either (i), (ii) or (iii) above, compliance is a condition of the NWP itself. Any authorization under this NWP is automatically revoked if the permittee does not comply with the terms of this NWP or the terms of the court decision, consent decree, or judicial/non-judicial settlement agreement or fails to complete the work by the specified completion date. This NWP does not apply to any activities occurring after the date of the decision, decree, or agreement that are not for the purpose of mitigation, restoration, or environmental benefit. Before reaching any settlement agreement, the Corps will ensure compliance with the provisions of 33 CFR part 326 and 33 CFR 330.6 (d)(2) and (e). (Sections 10 and 404)

33. *Temporary Construction, Access and Dewatering.* Temporary structures, work and discharges, including cofferdams, necessary for construction activities or access fills or dewatering of construction sites; provided that the associated primary activity is authorized by the Corps of Engineers or the USCG, or for other construction activities not subject to the Corps or USCG regulations. Appropriate measures must be taken to maintain near normal downstream flows and to minimize flooding. Fill must be of materials, and placed in a manner, that will not be eroded by expected high flows. The use of dredged material may be allowed if it is determined by the District Engineer that it will not cause more than minimal adverse effects on aquatic resources.

Temporary fill must be entirely removed to upland areas, or dredged material returned to its original location, following completion of the construction activity, and the affected areas must be restored to the pre-project conditions. Cofferdams cannot be used to dewater wetlands or other aquatic areas to change their use. Structures left in place after cofferdams are removed require a Section 10 permit if located in navigable waters of the U.S. (See 33 CFR part 322). The permittee must notify the District Engineer in accordance with the ''Notification'' General Condition. The notification must also include a restoration plan of reasonable measures to avoid and minimize adverse effects to aquatic resources. The District Engineer will add Special Conditions, where necessary, to ensure environmental adverse effects is minimal. Such conditions may include: limiting the temporary work to the minimum necessary; requiring seasonal restrictions; modifying the restoration plan; and requiring alternative construction methods (e.g. construction mats in wetlands where practicable.). (Sections 10 and 404)

34. *Cranberry Production Activities.* Discharges of dredged or fill material for dikes, berms, pumps, water control structures or leveling of cranberry beds associated with expansion, enhancement, or modification activities at existing cranberry production operations provided that the activity meets all of the following criteria:

a. The cumulative total acreage of disturbance per cranberry production operation, including but not limited to, filling, flooding, ditching, or clearing, does not exceed 10 acres of waters of the U.S., including wetlands;

b. The permittee notifies the District Engineer in accordance with the ''Notification'' General Condition. The notification must include a delineation of affected special aquatic sites, including wetlands; and,

c. The activity does not result in a net loss of wetland acreage. This NWP does not authorize any discharge of dredged or fill material related to other cranberry production activities such as warehouses, processing facilities, or parking areas. For the purposes of this NWP, the cumulative total of 10 acres will be measured over the period that this NWP is valid. (Section 404)

35. *Maintenance Dredging of Existing Basins.* Excavation and removal of accumulated sediment for maintenance of existing marina basins, access channels to marinas or boat slips, and boat slips to previously authorized depths or controlling depths for ingress/egress, whichever is less, provided the dredged material is disposed of at an upland site and proper siltation controls are used. (Section 10)

36. *Boat Ramps.* Activities required for the construction of boat ramps provided:

a. The discharge into waters of the U.S. does not exceed 50 cubic yards of concrete, rock, crushed stone or gravel into forms, or placement of pre-cast concrete planks or slabs. (Unsuitable material that causes unacceptable chemical pollution or is structurally unstable is not authorized);

b. The boat ramp does not exceed 20 feet in width;

c. The base material is crushed stone, gravel or other suitable material;

d. The excavation is limited to the area necessary for site preparation and all excavated material is removed to the upland; and,

e. No material is placed in special aquatic sites, including wetlands.

Another NWP, Regional General Permit, or Individual Permit may authorize dredging to provide access to the boat ramp after obtaining a Section 10 if located in navigable waters of the U.S. (Sections 10 and 404)

37. *Emergency Watershed Protection and Rehabilitation.* Work done by or funded by:

a. The NRCS which is a situation requiring immediate action under its emergency Watershed Protection Program (7 CFR part 624); or

b. The USFS under its Burned-Area Emergency Rehabilitation Handbook (FSH 509.13); or

c. The DOI for wildland fire management burned area emergency stabilization and rehabilitation (DOI Manual part 620, Ch. 3).

For all of the above provisions, the District Engineer must be notified in accordance with the General Condition 13. (Also, see 33 CFR 330.1(e)). (Sections 10 and 404)

38. *Cleanup of Hazardous and Toxic Waste.* Specific activities required to effect the containment, stabilization, or removal of hazardous or toxic waste materials that are performed, ordered, or sponsored by a government agency with established legal or regulatory authority provided the permittee notifies the District Engineer in accordance with the ''Notification'' General Condition. For discharges in special aquatic sites, including wetlands, the notification must also include a delineation of affected special aquatic sites, including wetlands. Court ordered remedial action plans or related settlements are also authorized by this NWP. This NWP does not authorize the establishment of new disposal sites or the expansion of existing sites used for the disposal of hazardous or toxic waste. Activities undertaken entirely on a Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) site by authority of CERCLA as approved or required by EPA, are not required to obtain permits under section 404 of the CWA or section 10 of the Rivers and Harbors Act. (Sections 10 and 404)

39. *Residential, Commercial, and Institutional Developments.* Discharges of dredged or fill material into non-tidal waters of the U.S., excluding non-tidal wetlands adjacent to tidal waters, for the construction or expansion of residential, commercial, and institutional building foundations and building pads and attendant features that are necessary for the use and maintenance of the structures. Attendant features may include, but are not limited to, roads, parking lots, garages, yards, utility lines, stormwater management facilities, and recreation facilities such as playgrounds, playing fields, and golf courses (provided the golf course is an integral part of the residential development). The construction of new ski areas or oil and gas wells is not authorized by this NWP.

Residential developments include multiple and single unit developments. Examples of commercial developments include retail stores, industrial facilities, restaurants, business parks, and shopping centers. Examples of institutional developments include schools, fire stations, government office buildings, judicial buildings, public works buildings, libraries, hospitals, and places of worship. The activities listed above are authorized, provided the activities meet all of the following criteria:

a. The discharge does not cause the loss of greater than ½-acre of non-tidal waters of the U.S., excluding non-tidal wetlands adjacent to tidal waters;

b. The discharge does not cause the loss of greater than 300 linear-feet of a stream bed, unless for intermittent stream beds this criterion is waived in writing pursuant to a determination by the District Engineer, as specified below, that the project complies with all terms and conditions of this NWP and that any adverse impacts of the project on the aquatic environment are minimal, both individually and cumulatively;

c. The permittee must notify the District Engineer in accordance with General Condition 13, if any of the following criteria are met:

(1) The discharge causes the loss of greater than 1/10-acre of non-tidal waters of the US, excluding non-tidal wetlands adjacent to tidal waters; or

(2) The discharge causes the loss of any open waters, including perennial or intermittent streams, below the ordinary high water mark (see Note, below); or

(3) The discharge causes the loss of greater than 300 linear feet of intermittent stream bed. In such case, to be authorized the District Engineer must determine that the activity complies with the other terms and conditions of the NWP, determine adverse environmental effects are minimal both individually and cumulatively, and waive the limitation on stream impacts in writing before the permittee may proceed;

d. For discharges in special aquatic sites, including wetlands, the notification must include a delineation of affected special aquatic sites;

e. The discharge is part of a single and complete project;

f. The permittee must avoid and minimize discharges into waters of the US at the project site to the maximum extent practicable. The notification, when required, must include a written statement explaining how avoidance and minimization of losses of waters of the US were achieved on the project site. Compensatory mitigation will normally be required to offset the losses of waters of the US. (See General Condition 19.) The notification must also include a compensatory mitigation proposal for offsetting unavoidable losses of waters of the US. If an applicant asserts that the adverse effects of the project are minimal without mitigation, then the applicant may submit justification explaining why compensatory mitigation should not be required for the District Engineer's consideration;

g. When this NWP is used in conjunction with any other NWP, any combined total permanent loss of waters of the US exceeding 1/10-acre requires that the permittee notify the District Engineer in accordance with General Condition 13;

h. Any work authorized by this NWP must not cause more than minimal degradation of water quality or more than minimal changes to the flow characteristics of any stream (see General Conditions 9 and 21);

i. For discharges causing the loss of 1/10-acre or less of waters of the US, the permittee must submit a report, within 30 days of completion of the work, to the District Engineer that contains the following information: (1) The name, address, and telephone number of the permittee; (2) The location of the work; (3) A description of the work; (4) The type and acreage of the loss of waters of the US (e.g., 1/12-acre of emergent wetlands); and (5) The type and acreage of any compensatory mitigation used to offset the loss of waters of the US (e.g., 1/12-acre of emergent wetlands created on-site);

j. If there are any open waters or streams within the project area, the permittee will establish and maintain, to the maximum extent practicable, wetland or upland vegetated buffers next to those open waters or streams consistent with General Condition 19. Deed restrictions, conservation easements, protective covenants, or other means of land conservation and preservation are required to protect and maintain the vegetated buffers established on the project site.

Only residential, commercial, and institutional activities with structures on the foundation(s) or building pad(s), as well as the attendant features, are authorized by this NWP. The compensatory mitigation proposal that is required in paragraph (e) of this NWP may be either conceptual or detailed. The wetland or upland vegetated buffer required in paragraph (i) of this NWP will be determined on a case-by-case basis by the District Engineer for addressing water quality concerns. The required wetland or upland vegetated buffer is part of the overall compensatory mitigation requirement for this NWP. If the project site was previously used for agricultural purposes and the farm owner/operator used NWP 40 to authorize activities in waters of the US to increase production or construct farm buildings, NWP 39 cannot be used by the developer to authorize additional activities. This is more than the acreage limit for NWP 39 impacts to waters of the US (i.e., the combined acreage loss authorized under NWPs 39 and 40 cannot exceed 1/2-acre, see General Condition 15).

Subdivisions: For residential subdivisions, the aggregate total loss of waters of US authorized by NWP 39 can not exceed 1/2-acre. This includes any loss of waters associated with development of individual subdivision lots. (Sections 10 and 404)

Note: Areas where wetland vegetation is not present should be determined by the presence or absence of an ordinary high water mark or bed and bank. Areas that are waters of the US based on this criterion would require a PCN although water is infrequently present in the stream channel (except for ephemeral waters, which do not require PCNs).

40. *Agricultural Activities.* Discharges of dredged or fill material into non-tidal waters of the US, excluding non-tidal wetlands adjacent to tidal waters, for improving agricultural production and the construction of building pads for farm buildings. Authorized activities include the installation, placement, or construction of drainage tiles, ditches, or levees; mechanized land clearing; land leveling; the relocation of existing serviceable drainage ditches constructed in waters of the US; and similar activities, provided the permittee complies with the following terms and conditions:

a. For discharges into non-tidal wetlands to improve agricultural production, the following criteria must be met if the permittee is an United States Department of Agriculture (USDA) Program participant:

(1) The permittee must obtain a categorical minimal effects exemption, minimal effect exemption, or mitigation exemption from NRCS in accordance with the provisions of the Food Security Act of 1985, as amended (16 U.S.C. 3801 et seq.);

(2) The discharge into non-tidal wetlands does not result in the loss of greater than 1/2-acre of non-tidal wetlands on a farm tract;

(3) The permittee must have NRCS-certified wetland delineation;

(4) The permittee must implement an NRCS-approved compensatory mitigation plan that fully offsets wetland losses, if required; and

(5) The permittee must submit a report, within 30 days of completion of the authorized work, to the District Engineer that contains the following information: (a) The name, address, and telephone number of the permittee; (b) The location of the work; (c) A description of the work; (d) The type and acreage (or square feet) of the loss of wetlands (e.g., 1/3-acre of emergent wetlands); and (e) The type, acreage (or square feet), and location of compensatory mitigation (e.g. 1/3-acre of emergent wetland on a farm tract; credits purchased from a mitigation bank); or

b. For discharges into non-tidal wetlands to improve agricultural production, the following criteria must be met if the permittee is not a USDA Program participant (or a USDA Program participant for which the proposed work does not qualify for authorization under paragraph (a) of this NWP):

(1) The discharge into non-tidal wetlands does not result in the loss of greater than 1/2-acre of non-tidal wetlands on a farm tract;

(2) The permittee must notify the District Engineer in accordance with General Condition 13, if the discharge results in the loss of greater than 1/10-acre of non-tidal wetlands;

(3) The notification must include a delineation of affected wetlands; and

(4) The notification must include a compensatory mitigation proposal to offset losses of waters of the US; or

c. For the construction of building pads for farm buildings, the discharge does not cause the loss of greater than ½-acre of non-tidal wetlands that were in agricultural production prior to December 23, 1985, (i.e., farmed wetlands) and the permittee must notify the District Engineer in accordance with General Condition 13; and

d. Any activity in other waters of the US is limited to the relocation of existing serviceable drainage ditches constructed in non-tidal streams. This NWP does not authorize the relocation of greater than 300 linear-feet of existing serviceable drainage ditches constructed in non-tidal streams unless, for drainage ditches constructed in intermittent non-tidal streams, the District Engineer waives this criterion in writing, and the District Engineer has determined that the project complies with all terms and conditions of this NWP, and that any adverse impacts of the project on the aquatic environment are minimal, both individually and cumulatively. For impacts exceeding 300-linear feet of impacts to existing serviceable ditches constructed in intermittent non-tidal streams, the permittee must notify the District Engineer in accordance with the ''Notification'' General Condition 13; and

e. The term ''farm tract'' refers to a parcel of land identified by the Farm Service Agency. The Corps will identify other waters of the US on the farm tract. NRCS will determine if a proposed agricultural activity meets the terms and conditions of paragraph a. of this NWP, except as provided below. For those activities that require notification, the District Engineer will determine if a proposed agricultural activity is authorized by paragraphs b., c., and/or d. of this NWP. USDA Program participants requesting authorization for discharges of dredged or fill material into waters of the US authorized by paragraphs (c) or (d) of this NWP, in addition to paragraph (a), must notify the District Engineer in accordance with General Condition 13 and the District Engineer will determine if the entire single and complete project is authorized by this NWP. Discharges of dredged or fill material into waters of the US associated with completing required compensatory mitigation are authorized by this NWP. However, total impacts, including other authorized impacts under this NWP, may not exceed the ½-acre limit of this NWP. This NWP does not affect, or otherwise regulate, discharges associated with agricultural activities when the discharge qualifies for an exemption under section 404(f) of the CWA, even though a categorical minimal effects exemption, minimal effect exemption, or mitigation exemption from NRCS pursuant to the Food Security Act of 1985, as amended, may be required. Activities authorized by paragraphs a. through d. may not exceed a total of ½-acre on a single farm tract. If the site was used for agricultural purposes and the farm owner/operator used either paragraphs a., b., or c. of this NWP to authorize activities in waters of the US to increase agricultural production or construct farm buildings, and the current landowner wants to use NWP 39 to authorize residential, commercial, or industrial development activities in waters of the US on the site, the combined acreage loss authorized by NWPs 39 and 40 cannot exceed ½-acre (see General Condition 15). (Section 404)

41. *Reshaping Existing Drainage Ditches.* Discharges of dredged or fill material into non-tidal waters of the US, excluding non-tidal wetlands adjacent to tidal waters, to modify the cross-sectional configuration of currently serviceable drainage ditches constructed in waters of the US. The reshaping of the ditch cannot increase drainage capacity beyond the original design capacity. Nor can it expand the area drained by the ditch as originally designed (i.e., the capacity of the ditch must be the same as originally designed and it cannot drain additional wetlands or other waters of the US). Compensatory mitigation is not required because the work is designed to improve water quality (e.g., by regrading the drainage ditch with gentler slopes, which can reduce erosion, increase growth of vegetation, increase uptake of nutrients and other substances by vegetation, etc.).

Notification: The permittee must notify the District Engineer in accordance with General Condition 13 if greater than 500 linear feet of drainage ditch will be reshaped. Material resulting from excavation may not be permanently sidecast into waters but may be temporarily sidecast (up to three months) into waters of the US, provided the material is not placed in such a manner that it is dispersed by currents or other forces. The District Engineer may extend the period of temporary sidecasting not to exceed a total of 180 days, where appropriate. In general, this NWP does not apply to reshaping drainage ditches constructed in uplands, since these areas are generally not waters of the US, and thus no permit from the Corps is required, or to the maintenance of existing drainage ditches to their original dimensions and configuration, which does not require a Section 404 permit (see 33 CFR 323.4(a)(3)). This NWP does not authorize the relocation of drainage ditches constructed in waters of the US; the location of the centerline of the reshaped drainage ditch must be approximately the same as the location of the centerline of the original drainage ditch. This NWP does not authorize stream channelization or stream relocation projects. (Section 404)

42. *Recreational Facilities.* Discharges of dredged or fill material into non-tidal waters of the US, excluding non-tidal wetlands adjacent to tidal waters, for the construction or expansion of recreational facilities, provided the activity meets all of the following criteria:

a. The discharge does not cause the loss of greater than ½-acre of non-tidal waters of the US, excluding non-tidal wetlands adjacent to tidal waters;

b. The discharge does not cause the loss of greater than 300 linear-feet of a stream bed, unless for intermittent stream beds this criterion is waived in writing pursuant to a determination by the District Engineer, as specified below, that the project complies with all terms and conditions of this NWP and that any adverse impacts of the project on the aquatic environment are minimal, both individually and cumulatively;

c. The permittee notifies the District Engineer in accordance with the ''Notification'' General Condition 13 for discharges exceeding 300 linear feet of impact of intermittent stream beds. In such cases, to be authorized the District Engineer must determine that the activity complies with the other terms and conditions of the NWP, determine the adverse environmental effects are minimal both individually and cumulatively, and waive this limitation in writing before the permittee may proceed;

d. For discharges causing the loss of greater than 1/10-acre of non-tidal waters of the US, the permittee notifies the District Engineer in accordance with General Condition 13;

e. For discharges in special aquatic sites, including wetlands, the notification must include a delineation of affected special aquatic sites;

f. The discharge is part of a single and complete project; and

g. Compensatory mitigation will normally be required to offset the losses of waters of the US. The notification must also include a compensatory mitigation proposal to offset authorized losses of waters of the US.

For the purposes of this NWP, the term ''recreational facility'' is defined as a recreational activity that is integrated into the natural landscape and does not substantially change preconstruction grades or deviate from natural landscape contours. For the purpose of this permit, the primary function of recreational facilities does not include the use of motor vehicles, buildings, or impervious surfaces. Examples of recreational facilities that may be authorized by this NWP include hiking trails, bike paths, horse paths, nature centers, and campgrounds (excluding trailer parks). This NWP may authorize the construction or expansion of golf courses and the expansion of ski areas, provided the golf course or ski area does not substantially deviate from natural landscape contours. Additionally, these activities are designed to minimize adverse effects to waters of the US and riparian areas through the use of such practices as integrated pest management, adequate stormwater management facilities, vegetated buffers, reduced fertilizer use, etc. The facility must have an adequate water quality management plan in accordance with General Condition 9, such as a stormwater management facility, to ensure that the recreational facility results in no substantial adverse effects to water quality. This NWP also authorizes the construction or expansion of small support facilities, such as maintenance and storage buildings and stables that are directly related to the recreational activity. This NWP does not authorize other buildings, such as hotels, restaurants, etc. The construction or expansion of playing fields (e.g., baseball, soccer, or football fields), basketball and tennis courts, racetracks, stadiums, arenas, and the construction of new ski areas are not authorized by this NWP. (Section 404)

43. *Stormwater Management Facilities.* Discharges of dredged or fill material into non-tidal waters of the US, excluding non-tidal wetlands adjacent to tidal waters, for the construction and maintenance of stormwater management facilities, including activities for the excavation of stormwater ponds/facilities, detention basins, and retention basins; the installation and maintenance of water control structures, outfall structures and emergency spillways; and the maintenance dredging of existing stormwater management ponds/facilities and detention and retention basins, provided the activity meets all of the following criteria:

a. The discharge for the construction of new stormwater management facilities does not cause the loss of greater than ½-acre of non-tidal waters of the US, excluding non-tidal wetlands adjacent to tidal waters;

b. The discharge does not cause the loss of greater than 300 linear-feet of a stream bed, unless for intermittent stream beds this criterion is waived in writing pursuant to a determination by the District Engineer, as specified below, that the project complies with all terms and conditions of this NWP and that any adverse impacts of the project on the aquatic environment are minimal, both individually and cumulatively;

c. For discharges causing the loss of greater than 300 linear feet of intermittent stream beds, the permittee notifies the District Engineer in accordance with the ''Notification'' General Condition 13. In such cases, to be authorized the District Engineer must determine that the activity complies with the other terms and conditions of the NWP, determine the adverse environmental effects are minimal both individually and cumulatively, and waive this limitation in writing before the permittee may proceed;

d. The discharges of dredged or fill material for the construction of new stormwater management facilities in perennial streams is not authorized;

e. For discharges or excavation for the construction of new stormwater management facilities or for the maintenance of existing stormwater management facilities causing the loss of greater than ⅒-acre of non-tidal waters, excluding non-tidal wetlands adjacent to tidal waters, provided the permittee notifies the District Engineer in accordance with the ''Notification'' General Condition 13. In addition, the notification must include:

(1) A maintenance plan. The maintenance plan should be in accordance with state and local requirements, if any such requirements exist;

(2) For discharges in special aquatic sites, including wetlands and submerged aquatic vegetation, the notification must include a delineation of affected areas; and

(3) A compensatory mitigation proposal that offsets the loss of waters of the US. Maintenance in constructed areas will not require mitigation provided such maintenance is accomplished in designated maintenance areas and not within compensatory mitigation areas (i.e., District Engineers may designate non-maintenance areas, normally at the downstream end of the stormwater management facility, in existing stormwater management facilities). (No mitigation will be required for activities that are exempt from Section 404 permit requirements);

f. The permittee must avoid and minimize discharges into waters of the US at the project site to the maximum extent practicable, and the notification must include a written statement to the District Engineer detailing compliance with this condition (i.e. why the discharge must occur in waters of the US and why additional minimization cannot be achieved);

g. The stormwater management facility must comply with General Condition 21 and be designed using BMPs and watershed protection techniques. Examples may include forebays (deeper areas at the upstream end of the stormwater management facility that would be maintained through excavation), vegetated buffers, and siting considerations to minimize adverse effects to aquatic resources. Another example of a BMP would be bioengineering methods incorporated into the facility design to benefit water quality and minimize adverse effects to aquatic resources from storm flows, especially downstream of the facility, that provide, to the maximum extent practicable, for long term aquatic resource protection and enhancement;

h. Maintenance excavation will be in accordance with an approved maintenance plan and will not exceed the original contours of the facility as approved and constructed; and

i. The discharge is part of a single and complete project. (Section 404)

44. *Mining Activities.* Discharges of dredged or fill material into:

(i) Isolated waters; streams where the annual average flow is 1 cubic foot per second or less, and non-tidal wetlands adjacent to headwater streams, for aggregate mining (i.e., sand, gravel, and crushed and broken stone) and associated support activities;

(ii) Lower perennial streams, excluding wetlands adjacent to lower perennial streams, for aggregate mining activities (support activities in lower perennial streams or adjacent wetlands are not authorized by this NWP); and/or

(iii) Isolated waters and non-tidal wetlands adjacent to headwater streams, for hard rock/mineral mining activities (i.e., extraction of metalliferous ores from subsurface locations) and associated support activities, provided the discharge meets the following criteria:

a. The mined area within waters of the US, plus the acreage loss of waters of the US resulting from support activities, cannot exceed ½-acre;

b. The permittee must avoid and minimize discharges into waters of the

US at the project site to the maximum extent practicable, and the notification must include a written statement detailing compliance with this condition (i.e., why the discharge must occur in waters of the US and why additional minimization cannot be achieved);

c. In addition to General Conditions 17 and 20, activities authorized by this permit must not substantially alter the sediment characteristics of areas of concentrated shellfish beds or fish spawning areas. Normally, the mandated water quality management plan should address these impacts;

d. The permittee must implement necessary measures to prevent increases in stream gradient and water velocities and to prevent adverse effects (e.g., head cutting, bank erosion) to upstream and downstream channel conditions;

e. Activities authorized by this permit must not result in adverse effects on the course, capacity, or condition of navigable waters of the US;

f. The permittee must use measures to minimize downstream turbidity;

g. Wetland impacts must be compensated through mitigation approved by the Corps;

h. Beneficiation and mineral processing for hard rock/mineral mining activities may not occur within 200 feet of the ordinary high water mark of any open waterbody. Although the Corps does not regulate discharges from these activities, a CWA section 402 permit may be required;

i. All activities authorized must comply with General Conditions 9 and 21. Further, the District Engineer may require modifications to the required water quality management plan to ensure that the authorized work results in minimal adverse effects to water quality;

j. Except for aggregate mining activities in lower perennial streams, no aggregate mining can occur within stream beds where the average annual flow is greater than 1 cubic foot per second or in waters of the US within 100 feet of the ordinary high water mark of headwater stream segments where the average annual flow of the stream is greater than 1 cubic foot per second (aggregate mining can occur in areas immediately adjacent to the ordinary high water mark of a stream where the average annual flow is 1 cubic foot per second or less);

k. Single and complete project: The discharge must be for a single and complete project, including support activities. Discharges of dredged or fill material into waters of the US for multiple mining activities on several designated parcels of a single and complete mining operation can be authorized by this NWP provided the ½-acre limit is not exceeded; and

l. *Notification:* The permittee must notify the District Engineer in accordance with General Condition 13. The notification must include: (1) A description of waters of the US adversely affected by the project; (2) A written statement to the District Engineer detailing compliance with paragraph (b), above (i.e., why the discharge must occur in waters of the US and why additional minimization cannot be achieved); (3) A description of measures taken to ensure that the proposed work complies with paragraphs (c) through (f), above; and (4) A reclamation plan (for aggregate mining in isolated waters and non-tidal wetlands adjacent to headwaters and hard rock/mineral mining only).

This NWP does not authorize hard rock/mineral mining, including placer mining, in streams. No hard rock/mineral mining can occur in waters of the US within 100 feet of the ordinary high water mark of headwater streams. The term's ''headwaters'' and ''isolated waters'' are defined at 33 CFR 330.2(d) and (e), respectively. For the purposes of this NWP, the term ''lower perennial stream'' is defined as follows: ''A stream in which the gradient is low and water velocity is slow, there is no tidal influence, some water flows throughout the year, and the substrate consists mainly of sand and mud.'' (Sections 10 and 404)

C. Nationwide Permit General Conditions

The following General Conditions must be followed in order for any authorization by an NWP to be valid:

1. *Navigation.* No activity may cause more than a minimal adverse effect on navigation.

2. *Proper Maintenance.* Any structure or fill authorized shall be properly maintained, including maintenance to ensure public safety.

3. *Soil Erosion and Sediment Controls.* Appropriate soil erosion and sediment controls must be used and maintained in effective operating condition during construction, and all exposed soil and other fills, as well as any work below the ordinary high water mark or high tide line, must be permanently stabilized at the earliest practicable date. Permittees are encouraged to perform work within waters of the United States during periods of low-flow or no-flow.

4. *Aquatic Life Movements.* No activity may substantially disrupt the necessary life-cycle movements of those species of aquatic life indigenous to the waterbody, including those species that normally migrate through the area, unless the activity's primary purpose is to impound water. Culverts placed in streams must be installed to maintain low flow conditions.

5. *Equipment.* Heavy equipment working in wetlands must be placed on mats, or other measures must be taken to minimize soil disturbance.

6. *Regional and Case-By-Case Conditions.* The activity must comply with any regional conditions that may have been added by the Division Engineer (see 33 CFR 330.4(e)). Additionally, any case specific conditions added by the Corps or by the state or tribe in its Section 401 Water Quality Certification and Coastal Zone Management Act consistency determination.

7. *Wild and Scenic Rivers.* No activity may occur in a component of the National Wild and Scenic River System; or in a river officially designated by Congress as a ''study river'' for possible inclusion in the system, while the river is in an official study status; unless the appropriate Federal agency, with direct management responsibility for such river, has determined in writing that the proposed activity will not adversely affect the Wild and Scenic River designation, or study status. Information on Wild and Scenic Rivers may be obtained from the appropriate Federal land management agency in the area (e.g., National Park Service, U.S. Forest Service, Bureau of Land Management, U.S. Fish and Wildlife Service).

8. *Tribal Rights.* No activity or its operation may impair reserved tribal rights, including, but not limited to, reserved water rights and treaty fishing and hunting rights.

9. *Water Quality.* (a) In certain states and tribal lands an individual 401 Water Quality Certification must be obtained or waived (See 33 CFR 330.4(c)).

(b) For NWPs 12, 14, 17, 18, 32, 39, 40, 42, 43, and 44, where the state or tribal 401 certification (either generically or individually) does not require or approve water quality management measures, the permittee must provide water quality management measures that will ensure that the authorized work does not result in more than minimal degradation of water quality (or the Corps determines that compliance with state or local standards, where applicable, will ensure no more than minimal adverse effect on water quality). An important component of water quality management includes stormwater management that minimizes degradation of the downstream aquatic system, including water quality (refer to General Condition 21 for stormwater

management requirements). Another important component of water quality management is the establishment and maintenance of vegetated buffers next to open waters, including streams (refer to General Condition 19 for vegetated buffer requirements for the NWPs).

This condition is only applicable to projects that have the potential to affect water quality. While appropriate measures must be taken, in most cases it is not necessary to conduct detailed studies to identify such measures or to require monitoring.

10. *Coastal Zone Management.* In certain states, an individual state coastal zone management consistency concurrence must be obtained or waived (see Section 330.4(d)).

11. *Endangered Species.* (a) No activity is authorized under any NWP which is likely to jeopardize the continued existence of a threatened or endangered species or a species proposed for such designation, as identified under the Federal Endangered Species Act (ESA), or which will destroy or adversely modify the critical habitat of such species. Non-federal permittees shall notify the District Engineer if any listed species or designated critical habitat might be affected or is in the vicinity of the project, or is located in the designated critical habitat and shall not begin work on the activity until notified by the District Engineer that the requirements of the ESA have been satisfied and that the activity is authorized. For activities that may affect Federally-listed endangered or threatened species or designated critical habitat, the notification must include the name(s) of the endangered or threatened species that may be affected by the proposed work or that utilize the designated critical habitat that may be affected by the proposed work. As a result of formal or informal consultation with the FWS or NMFS the District Engineer may add species-specific regional endangered species conditions to the NWPs.

(b) Authorization of an activity by a NWP does not authorize the ''take'' of a threatened or endangered species as defined under the ESA. In the absence of separate authorization (e.g., an ESA Section 10 Permit, a Biological Opinion with ''incidental take'' provisions, etc.) from the USFWS or the NMFS, both lethal and non-lethal ''takes'' of protected species are in violation of the ESA. Information on the location of threatened and endangered species and their critical habitat can be obtained directly from the offices of the USFWS and NMFS or their world wide web pages at *http://www.fws.gov/r9endspp/endspp.html* and *http://www.nfms.gov/prot_res/esahome.html* respectively.

12. *Historic Properties.* No activity which may affect historic properties listed, or eligible for listing, in the National Register of Historic Places is authorized, until the District Engineer has complied with the provisions of 33 CFR part 325, Appendix C. The prospective permittee must notify the District Engineer if the authorized activity may affect any historic properties listed, determined to be eligible, or which the prospective permittee has reason to believe may be eligible for listing on the National Register of Historic Places, and shall not begin the activity until notified by the District Engineer that the requirements of the National Historic Preservation Act have been satisfied and that the activity is authorized. Information on the location and existence of historic resources can be obtained from the State Historic Preservation Office and the National Register of Historic Places (see 33 CFR 330.4(g)). For activities that may affect historic properties listed in, or eligible for listing in, the National Register of Historic Places, the notification must state which historic property may be affected by the proposed work or include a vicinity map indicating the location of the historic property.

13. *Notification.*

(a) *Timing;* where required by the terms of the NWP, the prospective permittee must notify the District Engineer with a preconstruction notification (PCN) as early as possible. The District Engineer must determine if the notification is complete within 30 days of the date of receipt and can request additional information necessary to make the PCN complete only once. However, if the prospective permittee does not provide all of the requested information, then the District Engineer will notify the prospective permittee that the notification is still incomplete and the PCN review process will not commence until all of the requested information has been received by the District Engineer. The prospective permittee shall not begin the activity:

(1) Until notified in writing by the District Engineer that the activity may proceed under the NWP with any special conditions imposed by the District or Division Engineer; or

(2) If notified in writing by the District or Division Engineer that an Individual Permit is required; or

(3) Unless 45 days have passed from the District Engineer's receipt of the complete notification and the prospective permittee has not received written notice from the District or Division Engineer. Subsequently, the permittee's right to proceed under the NWP may be modified, suspended, or revoked only in accordance with the procedure set forth in 33 CFR 330.5(d)(2).

(b) *Contents of Notification:* The notification must be in writing and include the following information:

(1) Name, address and telephone numbers of the prospective permittee;

(2) Location of the proposed project;

(3) Brief description of the proposed project; the project's purpose; direct and indirect adverse environmental effects the project would cause; any other NWP(s), Regional General Permit(s), or Individual Permit(s) used or intended to be used to authorize any part of the proposed project or any related activity. Sketches should be provided when necessary to show that the activity complies with the terms of the NWP (Sketches usually clarify the project and when provided result in a quicker decision.);

(4) For NWPs 7, 12, 14, 18, 21, 34, 38, 39, 41, 42, and 43, the PCN must also include a delineation of affected special aquatic sites, including wetlands, vegetated shallows (e.g., submerged aquatic vegetation, seagrass beds), and riffle and pool complexes (see paragraph 13(f));

(5) For NWP 7 (Outfall Structures and Maintenance), the PCN must include information regarding the original design capacities and configurations of those areas of the facility where maintenance dredging or excavation is proposed;

(6) For NWP 14 (Linear Transportation Crossings), the PCN must include a compensatory mitigation proposal to offset permanent losses of waters of the US and a statement describing how temporary losses of waters of the US will be minimized to the maximum extent practicable;

(7) For NWP 21 (Surface Coal Mining Activities), the PCN must include an Office of Surface Mining (OSM) or state-approved mitigation plan, if applicable. To be authorized by this NWP, the District Engineer must determine that the activity complies with the terms and conditions of the NWP and that the adverse environmental effects are minimal both individually and cumulatively and must notify the project sponsor of this determination in writing;

(8) For NWP 27 (Stream and Wetland Restoration), the PCN must include documentation of the prior condition of the site that will be reverted by the permittee;

(9) For NWP 29 (Single-Family Housing), the PCN must also include:

(i) Any past use of this NWP by the Individual Permittee and/or the permittee's spouse;

(ii) A statement that the single-family housing activity is for a personal residence of the permittee;

(iii) A description of the entire parcel, including its size, and a delineation of wetlands. For the purpose of this NWP, parcels of land measuring ¼-acre or less will not require a formal on-site delineation. However, the applicant shall provide an indication of where the wetlands are and the amount of wetlands that exists on the property. For parcels greater than ¼-acre in size, formal wetland delineation must be prepared in accordance with the current method required by the Corps. (See paragraph 13(f));

(iv) A written description of all land (including, if available, legal descriptions) owned by the prospective permittee and/or the prospective permittee's spouse, within a one mile radius of the parcel, in any form of ownership (including any land owned as a partner, corporation, joint tenant, co-tenant, or as a tenant-by-the-entirety) and any land on which a purchase and sale agreement or other contract for sale or purchase has been executed;

(10) For NWP 31 (Maintenance of Existing Flood Control Projects), the prospective permittee must either notify the District Engineer with a PCN prior to each maintenance activity or submit a five year (or less) maintenance plan. In addition, the PCN must include all of the following:

(i) Sufficient baseline information identifying the approved channel depths and configurations and existing facilities. Minor deviations are authorized, provided the approved flood control protection or drainage is not increased;

(ii) A delineation of any affected special aquatic sites, including wetlands; and,

(iii) Location of the dredged material disposal site;

(11) For NWP 33 (Temporary Construction, Access, and Dewatering), the PCN must also include a restoration plan of reasonable measures to avoid and minimize adverse effects to aquatic resources;

(12) For NWPs 39, 43 and 44, the PCN must also include a written statement to the District Engineer explaining how avoidance and minimization for losses of waters of the US were achieved on the project site;

(13) For NWP 39 and NWP 42, the PCN must include a compensatory mitigation proposal to offset losses of waters of the US or justification explaining why compensatory mitigation should not be required. For discharges that cause the loss of greater than 300 linear feet of an intermittent stream bed, to be authorized, the District Engineer must determine that the activity complies with the other terms and conditions of the NWP, determine adverse environmental effects are minimal both individually and cumulatively, and waive the limitation on stream impacts in writing before the permittee may proceed;

(14) For NWP 40 (Agricultural Activities), the PCN must include a compensatory mitigation proposal to offset losses of waters of the US. This NWP does not authorize the relocation of greater than 300 linear-feet of existing serviceable drainage ditches constructed in non-tidal streams unless, for drainage ditches constructed in intermittent non-tidal streams, the District Engineer waives this criterion in writing, and the District Engineer has determined that the project complies with all terms and conditions of this NWP, and that any adverse impacts of the project on the aquatic environment are minimal, both individually and cumulatively;

(15) For NWP 43 (Stormwater Management Facilities), the PCN must include, for the construction of new stormwater management facilities, a maintenance plan (in accordance with state and local requirements, if applicable) and a compensatory mitigation proposal to offset losses of waters of the US. For discharges that cause the loss of greater than 300 linear feet of an intermittent stream bed, to be authorized, the District Engineer must determine that the activity complies with the other terms and conditions of the NWP, determine adverse environmental effects are minimal both individually and cumulatively, and waive the limitation on stream impacts in writing before the permittee may proceed;

(16) For NWP 44 (Mining Activities), the PCN must include a description of all waters of the US adversely affected by the project, a description of measures taken to minimize adverse effects to waters of the US, a description of measures taken to comply with the criteria of the NWP, and a reclamation plan (for all aggregate mining activities in isolated waters and non-tidal wetlands adjacent to headwaters and any hard rock/mineral mining activities);

(17) For activities that may adversely affect Federally-listed endangered or threatened species, the PCN must include the name(s) of those endangered or threatened species that may be affected by the proposed work or utilize the designated critical habitat that may be affected by the proposed work; and

(18) For activities that may affect historic properties listed in, or eligible for listing in, the National Register of Historic Places, the PCN must state which historic property may be affected by the proposed work or include a vicinity map indicating the location of the historic property.

(c) *Form of Notification:* The standard Individual Permit application form (Form ENG 4345) may be used as the notification but must clearly indicate that it is a PCN and must include all of the information required in (b) (1)–(18) of General Condition 13. A letter containing the requisite information may also be used.

(d) *District Engineer's Decision:* In reviewing the PCN for the proposed activity, the District Engineer will determine whether the activity authorized by the NWP will result in more than minimal individual or cumulative adverse environmental effects or may be contrary to the public interest. The prospective permittee may submit a proposed mitigation plan with the PCN to expedite the process. The District Engineer will consider any proposed compensatory mitigation the applicant has included in the proposal in determining whether the net adverse environmental effects to the aquatic environment of the proposed work are minimal. If the District Engineer determines that the activity complies with the terms and conditions of the NWP and that the adverse effects on the aquatic environment are minimal, after considering mitigation, the District Engineer will notify the permittee and include any conditions the District Engineer deems necessary. The District Engineer must approve any compensatory mitigation proposal before the permittee commences work. If the prospective permittee is required to submit a compensatory mitigation proposal with the PCN, the proposal may be either conceptual or detailed. If the prospective permittee elects to submit a compensatory mitigation plan with the PCN, the District Engineer will expeditiously review the proposed compensatory mitigation plan. The District Engineer must review the plan within 45 days of receiving a complete PCN and determine whether the conceptual or specific proposed mitigation would ensure no more than minimal adverse effects on the aquatic environment. If the net adverse effects of the project on the aquatic environment (after consideration of the compensatory mitigation proposal) are determined by the District Engineer to

be minimal, the District Engineer will provide a timely written response to the applicant. The response will state that the project can proceed under the terms and conditions of the NWP.

If the District Engineer determines that the adverse effects of the proposed work are more than minimal, then the District Engineer will notify the applicant either: (1) That the project does not qualify for authorization under the NWP and instruct the applicant on the procedures to seek authorization under an Individual Permit; (2) that the project is authorized under the NWP subject to the applicant's submission of a mitigation proposal that would reduce the adverse effects on the aquatic environment to the minimal level; or (3) that the project is authorized under the NWP with specific modifications or conditions. Where the District Engineer determines that mitigation is required to ensure no more than minimal adverse effects occur to the aquatic environment, the activity will be authorized within the 45-day PCN period. The authorization will include the necessary conceptual or specific mitigation or a requirement that the applicant submit a mitigation proposal that would reduce the adverse effects on the aquatic environment to the minimal level. When conceptual mitigation is included, or a mitigation plan is required under item (2) above, no work in waters of the US will occur until the District Engineer has approved a specific mitigation plan.

(e) *Agency Coordination:* The District Engineer will consider any comments from Federal and state agencies concerning the proposed activity's compliance with the terms and conditions of the NWPs and the need for mitigation to reduce the project's adverse environmental effects to a minimal level.

For activities requiring notification to the District Engineer that result in the loss of greater than ½-acre of waters of the US, the District Engineer will provide immediately (e.g., via facsimile transmission, overnight mail, or other expeditious manner) a copy to the appropriate Federal or state offices (USFWS, state natural resource or water quality agency, EPA, State Historic Preservation Officer (SHPO), and, if appropriate, the NMFS). With the exception of NWP 37, these agencies will then have 10 calendar days from the date the material is transmitted to telephone or fax the District Engineer notice that they intend to provide substantive, site-specific comments. If so contacted by an agency, the District Engineer will wait an additional 15 calendar days before making a decision on the notification. The District Engineer will fully consider agency comments received within the specified time frame, but will provide no response to the resource agency, except as provided below. The District Engineer will indicate in the administrative record associated with each notification that the resource agencies' concerns were considered. As required by section 305(b)(4)(B) of the Magnuson-Stevens Fishery Conservation and Management Act, the District Engineer will provide a response to NMFS within 30 days of receipt of any Essential Fish Habitat conservation recommendations. Applicants are encouraged to provide the Corps multiple copies of notifications to expedite agency notification.

(f) *Wetland Delineations:* Wetland delineations must be prepared in accordance with the current method required by the Corps (For NWP 29 see paragraph (b)(9)(iii) for parcels less than (¼-acre in size). The permittee may ask the Corps to delineate the special aquatic site. There may be some delay if the Corps does the delineation. Furthermore, the 45-day period will not start until the wetland delineation has been completed and submitted to the Corps, where appropriate.

14. *Compliance Certification.* Every permittee who has received NWP verification from the Corps will submit a signed certification regarding the completed work and any required mitigation. The certification will be forwarded by the Corps with the authorization letter and will include:

(a) A statement that the authorized work was done in accordance with the Corps authorization, including any general or specific conditions;

(b) A statement that any required mitigation was completed in accordance with the permit conditions; and

(c) The signature of the permittee certifying the completion of the work and mitigation.

15. *Use of Multiple Nationwide Permits.* The use of more than one NWP for a single and complete project is prohibited, except when the acreage loss of waters of the US authorized by the NWPs does not exceed the acreage limit of the NWP with the highest specified acreage limit (e.g. if a road crossing over tidal waters is constructed under NWP 14, with associated bank stabilization authorized by NWP 13, the maximum acreage loss of waters of the US for the total project cannot exceed ⅓-acre).

16. *Water Supply Intakes.* No activity, including structures and work in navigable waters of the US or discharges of dredged or fill material, may occur in the proximity of a public water supply intake except where the activity is for repair of the public water supply intake structures or adjacent bank stabilization.

17. *Shellfish Beds.* No activity, including structures and work in navigable waters of the US or discharges of dredged or fill material, may occur in areas of concentrated shellfish populations, unless the activity is directly related to a shellfish harvesting activity authorized by NWP 4.

18. *Suitable Material.* No activity, including structures and work in navigable waters of the US or discharges of dredged or fill material, may consist of unsuitable material (e.g., trash, debris, car bodies, asphalt, etc.) and material used for construction or discharged must be free from toxic pollutants in toxic amounts (see section 307 of the CWA).

19. *Mitigation.* The District Engineer will consider the factors discussed below when determining the acceptability of appropriate and practicable mitigation necessary to offset adverse effects on the aquatic environment that are more than minimal.

(a) The project must be designed and constructed to avoid and minimize adverse effects to waters of the US to the maximum extent practicable at the project site (i.e., on site).

(b) Mitigation in all its forms (avoiding, minimizing, rectifying, reducing or compensating) will be required to the extent necessary to ensure that the adverse effects to the aquatic environment are minimal.

(c) Compensatory mitigation at a minimum one-for-one ratio will be required for all wetland impacts requiring a PCN, unless the District Engineer determines in writing that some other form of mitigation would be more environmentally appropriate and provides a project-specific waiver of this requirement. Consistent with National policy, the District Engineer will establish a preference for restoration of wetlands as compensatory mitigation, with preservation used only in exceptional circumstances.

(d) Compensatory mitigation (i.e., replacement or substitution of aquatic resources for those impacted) will not be used to increase the acreage losses allowed by the acreage limits of some of the NWPs. For example, ¼-acre of wetlands cannot be created to change a ¾-acre loss of wetlands to a ½-acre loss associated with NWP 39 verification. However, ½-acre of created wetlands can be used to reduce the impacts of a ½-acre loss of wetlands to the minimum impact level in order to meet the

minimal impact requirement associated with NWPs.

(e) To be practicable, the mitigation must be available and capable of being done considering costs, existing technology, and logistics in light of the overall project purposes. Examples of mitigation that may be appropriate and practicable include, but are not limited to: reducing the size of the project; establishing and maintaining wetland or upland vegetated buffers to protect open waters such as streams; and replacing losses of aquatic resource functions and values by creating, restoring, enhancing, or preserving similar functions and values, preferably in the same watershed.

(f) Compensatory mitigation plans for projects in or near streams or other open waters will normally include a requirement for the establishment, maintenance, and legal protection (e.g., easements, deed restrictions) of vegetated buffers to open waters. In many cases, vegetated buffers will be the only compensatory mitigation required. Vegetated buffers should consist of native species. The width of the vegetated buffers required will address documented water quality or aquatic habitat loss concerns. Normally, the vegetated buffer will be 25 to 50 feet wide on each side of the stream, but the District Engineers may require slightly wider vegetated buffers to address documented water quality or habitat loss concerns. Where both wetlands and open waters exist on the project site, the Corps will determine the appropriate compensatory mitigation (e.g., stream buffers or wetlands compensation) based on what is best for the aquatic environment on a watershed basis. In cases where vegetated buffers are determined to be the most appropriate form of compensatory mitigation, the District Engineer may waive or reduce the requirement to provide wetland compensatory mitigation for wetland impacts.

(g) Compensatory mitigation proposals submitted with the ''notification'' may be either conceptual or detailed. If conceptual plans are approved under the verification, then the Corps will condition the verification to require detailed plans be submitted and approved by the Corps prior to construction of the authorized activity in waters of the US.

(h) Permittees may propose the use of mitigation banks, in-lieu fee arrangements or separate activity-specific compensatory mitigation. In all cases that require compensatory mitigation, the mitigation provisions will specify the party responsible for accomplishing and/or complying with the mitigation plan.

20. *Spawning Areas.* Activities, including structures and work in navigable waters of the US or discharges of dredged or fill material, in spawning areas during spawning seasons must be avoided to the maximum extent practicable. Activities that result in the physical destruction (e.g., excavate, fill, or smother downstream by substantial turbidity) of an important spawning area are not authorized.

21. *Management of Water Flows.* To the maximum extent practicable, the activity must be designed to maintain preconstruction downstream flow conditions (e.g., location, capacity, and flow rates). Furthermore, the activity must not permanently restrict or impede the passage of normal or expected high flows (unless the primary purpose of the fill is to impound waters) and the structure or discharge of dredged or fill material must withstand expected high flows. The activity must, to the maximum extent practicable, provide for retaining excess flows from the site, provide for maintaining surface flow rates from the site similar to preconstruction conditions, and provide for not increasing water flows from the project site, relocating water, or redirecting water flow beyond preconstruction conditions. Stream channelizing will be reduced to the minimal amount necessary, and the activity must, to the maximum extent practicable, reduce adverse effects such as flooding or erosion downstream and upstream of the project site, unless the activity is part of a larger system designed to manage water flows. In most cases, it will not be a requirement to conduct detailed studies and monitoring of water flow.

This condition is only applicable to projects that have the potential to affect waterflows. While appropriate measures must be taken, it is not necessary to conduct detailed studies to identify such measures or require monitoring to ensure their effectiveness. Normally, the Corps will defer to state and local authorities regarding management of water flow.

22. *Adverse Effects From Impoundments.* If the activity creates an impoundment of water, adverse effects to the aquatic system due to the acceleration of the passage of water, and/or the restricting its flow shall be minimized to the maximum extent practicable. This includes structures and work in navigable waters of the US, or discharges of dredged or fill material.

23. *Waterfowl Breeding Areas.* Activities, including structures and work in navigable waters of the US or discharges of dredged or fill material, into breeding areas for migratory waterfowl must be avoided to the maximum extent practicable.

24. *Removal of Temporary Fills.* Any temporary fills must be removed in their entirety and the affected areas returned to their preexisting elevation.

25. *Designated Critical Resource Waters.* Critical resource waters include, NOAA-designated marine sanctuaries, National Estuarine Research Reserves, National Wild and Scenic Rivers, critical habitat for Federally listed threatened and endangered species, coral reefs, state natural heritage sites, and outstanding national resource waters or other waters officially designated by a state as having particular environmental or ecological significance and identified by the District Engineer after notice and opportunity for public comment. The District Engineer may also designate additional critical resource waters after notice and opportunity for comment.

(a) Except as noted below, discharges of dredged or fill material into waters of the US are not authorized by NWPs 7, 12, 14, 16, 17, 21, 29, 31, 35, 39, 40, 42, 43, and 44 for any activity within, or directly affecting, critical resource waters, including wetlands adjacent to such waters. Discharges of dredged or fill materials into waters of the US may be authorized by the above NWPs in National Wild and Scenic Rivers if the activity complies with General Condition 7. Further, such discharges may be authorized in designated critical habitat for Federally listed threatened or endangered species if the activity complies with General Condition 11 and the USFWS or the NMFS has concurred in a determination of compliance with this condition.

(b) For NWPs 3, 8, 10, 13, 15, 18, 19, 22, 23, 25, 27, 28, 30, 33, 34, 36, 37, and 38, notification is required in accordance with General Condition 13, for any activity proposed in the designated critical resource waters including wetlands adjacent to those waters. The District Engineer may authorize activities under these NWPs only after it is determined that the impacts to the critical resource waters will be no more than minimal.

26. *Fills Within 100-Year Floodplains.* For purposes of this General Condition, 100-year floodplains will be identified through the existing Federal Emergency Management Agency's (FEMA) Flood Insurance Rate Maps or FEMA-approved local floodplain maps.

(a) *Discharges in Floodplain; Below Headwaters.* Discharges of dredged or fill material into waters of the US within the mapped 100-year floodplain, below

headwaters (i.e. five cfs), resulting in permanent above-grade fills, are not authorized by NWPs 39, 40, 42, 43, and 44.

(b) *Discharges in Floodway; Above Headwaters.* Discharges of dredged or fill material into waters of the US within the FEMA or locally mapped floodway, resulting in permanent above-grade fills, are not authorized by NWPs 39, 40, 42, and 44.

(c) The permittee must comply with any applicable FEMA-approved state or local floodplain management requirements.

27. *Construction Period.* For activities that have not been verified by the Corps and the project was commenced or under contract to commence by the expiration date of the NWP (or modification or revocation date), the work must be completed within 12-months after such date (including any modification that affects the project).

For activities that have been verified and the project was commenced or under contract to commence within the verification period, the work must be completed by the date determined by the Corps.

For projects that have been verified by the Corps, an extension of a Corps approved completion date maybe requested. This request must be submitted at least one month before the previously approved completion date.

D. Further Information

1. District Engineers have authority to determine if an activity complies with the terms and conditions of an NWP.

2. NWPs do not obviate the need to obtain other Federal, state, or local permits, approvals, or authorizations required by law.

3. NWPs do not grant any property rights or exclusive privileges.

4. NWPs do not authorize any injury to the property or rights of others.

5. NWPs do not authorize interference with any existing or proposed Federal project.

E. Definitions

B*est Management Practices (BMPs):* BMPs are policies, practices, procedures, or structures implemented to mitigate the adverse environmental effects on surface water quality resulting from development. BMPs are categorized as structural or non-structural. A BMP policy may affect the limits on a development.

Compensatory Mitigation: For purposes of Section 10/404, compensatory mitigation is the restoration, creation, enhancement, or in exceptional circumstances, preservation of wetlands and/or other aquatic resources for the purpose of compensating for unavoidable adverse impacts which remain after all appropriate and practicable avoidance and minimization has been achieved.

Creation: The establishment of a wetland or other aquatic resource where one did not formerly exist.

Enhancement: Activities conducted in existing wetlands or other aquatic resources that increase one or more aquatic functions.

Ephemeral Stream: An ephemeral stream has flowing water only during and for a short duration after, precipitation events in a typical year. Ephemeral stream beds are located above the water table year-round. Groundwater is not a source of water for the stream. Runoff from rainfall is the primary source of water for stream flow.

Farm Tract: A unit of contiguous land under one ownership that is operated as a farm or part of a farm.

Flood Fringe: That portion of the 100-year floodplain outside of the floodway (often referred to as ''floodway fringe'').

Floodway: The area regulated by Federal, state, or local requirements to provide for the discharge of the base flood so the cumulative increase in water surface elevation is no more than a designated amount (not to exceed one foot as set by the National Flood Insurance Program) within the 100-year floodplain.

Independent Utility: A test to determine what constitutes a single and complete project in the Corps regulatory program. A project is considered to have independent utility if it would be constructed absent the construction of other projects in the project area. Portions of a multi-phase project that depend upon other phases of the project do not have independent utility. Phases of a project that would be constructed even if the other phases were not built can be considered as separate single and complete projects with independent utility.

Intermittent Stream: An intermittent stream has flowing water during certain times of the year, when groundwater provides water for stream flow. During dry periods, intermittent streams may not have flowing water. Runoff from rainfall is a supplemental source of water for stream flow.

Loss of Waters of the US: Waters of the US that include the filled area and other waters that are permanently adversely affected by flooding, excavation, or drainage because of the regulated activity. Permanent adverse effects include permanent above-grade, at-grade, or below-grade fills that change an aquatic area to dry land, increase the bottom elevation of a waterbody, or change the use of a waterbody. The acreage of loss of waters of the US is the threshold measurement of the impact to existing waters for determining whether a project may qualify for an NWP; it is not a net threshold that is calculated after considering compensatory mitigation that may be used to offset losses of aquatic functions and values. The loss of stream bed includes the linear feet of stream bed that is filled or excavated. Waters of the US temporarily filled, flooded, excavated, or drained, but restored to preconstruction contours and elevations after construction, are not included in the measurement of loss of waters of the US. Impacts to ephemeral waters are only not included in the acreage or linear foot measurements of loss of waters of the US or loss of stream bed, for the purpose of determining compliance with the threshold limits of the NWPs.

Non-tidal Wetland: A non-tidal wetland is a wetland (i.e., a water of the US) that is not subject to the ebb and flow of tidal waters. The definition of a wetland can be found at 33 CFR 328.3(b). Non-tidal wetlands contiguous to tidal waters are located landward of the high tide line (i.e., spring high tide line).

Open Water: An area that, during a year with normal patterns of precipitation, has standing or flowing water for sufficient duration to establish an ordinary high water mark. Aquatic vegetation within the area of standing or flowing water is either non-emergent, sparse, or absent. Vegetated shallows are considered to be open waters. The term ''open water'' includes rivers, streams, lakes, and ponds. For the purposes of the NWPs, this term does not include ephemeral waters.

Perennial Stream: A perennial stream has flowing water year-round during a typical year. The water table is located above the stream bed for most of the year. Groundwater is the primary source of water for stream flow. Runoff from rainfall is a supplemental source of water for stream flow.

Permanent Above-grade Fill: A discharge of dredged or fill material into waters of the US, including wetlands, that results in a substantial increase in ground elevation and permanently converts part or all of the waterbody to dry land. Structural fills authorized by NWPs 3, 25, 36, etc. are not included.

Preservation: The protection of ecologically important wetlands or other aquatic resources in perpetuity through the implementation of appropriate legal and physical mechanisms. Preservation may include protection of upland areas adjacent to wetlands as necessary to

ensure protection and/or enhancement of the overall aquatic ecosystem.

Restoration: Re-establishment of wetland and/or other aquatic resource characteristics and function(s) at a site where they have ceased to exist, or exist in a substantially degraded state.

Riffle and Pool Complex: Riffle and pool complexes are special aquatic sites under the 404(b)(1) Guidelines. Riffle and pool complexes sometimes characterize steep gradient sections of streams. Such stream sections are recognizable by their hydraulic characteristics. The rapid movement of water over a course substrate in riffles results in a rough flow, a turbulent surface, and high dissolved oxygen levels in the water. Pools are deeper areas associated with riffles. A slower stream velocity, a streaming flow, a smooth surface, and a finer substrate characterize pools.

Single and Complete Project: The term ''single and complete project'' is defined at 33 CFR 330.2(i) as the total project proposed or accomplished by one owner/developer or partnership or other association of owners/developers (see definition of independent utility). For linear projects, the ''single and complete project'' (i.e., a single and complete crossing) will apply to each crossing of a separate water of the US (i.e., a single waterbody) at that location. An exception is for linear projects crossing a single waterbody several times at separate and distant locations: each crossing is considered a single and complete project. However, individual channels in a braided stream or river, or individual arms of a large, irregularly shaped wetland or lake, etc., are not separate waterbodies.

Stormwater Management: Stormwater management is the mechanism for controlling stormwater runoff for the purposes of reducing downstream erosion, water quality degradation, and flooding and mitigating the adverse effects of changes in land use on the aquatic environment.

Stormwater Management Facilities: Stormwater management facilities are those facilities, including but not limited to, stormwater retention and detention ponds and BMPs, which retain water for a period of time to control runoff and/or improve the quality (i.e., by reducing the concentration of nutrients, sediments, hazardous substances and other pollutants) of stormwater runoff.

Stream Bed: The substrate of the stream channel between the ordinary high water marks. The substrate may be bedrock or inorganic particles that range in size from clay to boulders. Wetlands contiguous to the stream bed, but outside of the ordinary high water marks, are not considered part of the stream bed.

Stream Channelization: The manipulation of a stream channel to increase the rate of water flow through the stream channel. Manipulation may include deepening, widening, straightening, armoring, or other activities that change the stream cross-section or other aspects of stream channel geometry to increase the rate of water flow through the stream channel. A channelized stream remains a water of the US, despite the modifications to increase the rate of water flow.

Tidal Wetland: A tidal wetland is a wetland (i.e., water of the US) that is inundated by tidal waters. The definitions of a wetland and tidal waters can be found at 33 CFR 328.3(b) and 33 CFR 328.3(f), respectively. Tidal waters rise and fall in a predictable and measurable rhythm or cycle due to the gravitational pulls of the moon and sun. Tidal waters end where the rise and fall of the water surface can no longer be practically measured in a predictable rhythm due to masking by other waters, wind, or other effects. Tidal wetlands are located channelward of the high tide line (i.e., spring high tide line) and are inundated by tidal waters two times per lunar month, during spring high tides.

Vegetated Buffer: A vegetated upland or wetland area next to rivers, streams, lakes, or other open waters which separates the open water from developed areas, including agricultural land. Vegetated buffers provide a variety of aquatic habitat functions and values (e.g., aquatic habitat for fish and other aquatic organisms, moderation of water temperature changes, and detritus for aquatic food webs) and help improve or maintain local water quality. A vegetated buffer can be established by maintaining an existing vegetated area or planting native trees, shrubs, and herbaceous plants on land next to open-waters. Mowed lawns are not considered vegetated buffers because they provide little or no aquatic habitat functions and values. The establishment and maintenance of vegetated buffers is a method of compensatory mitigation that can be used in conjunction with the restoration, creation, enhancement, or preservation of aquatic habitats to ensure that activities authorized by NWPs result in minimal adverse effects to the aquatic environment. (See General Condition 19.)

Vegetated Shallows: Vegetated shallows are special aquatic sites under the 404(b)(1) Guidelines. They are areas that are permanently inundated and under normal circumstances have rooted aquatic vegetation, such as seagrasses in marine and estuarine systems and a variety of vascular rooted plants in freshwater systems.

Waterbody: A waterbody is any area that in a normal year has water flowing or standing above ground to the extent that evidence of an ordinary high water mark is established. Wetlands contiguous to the waterbody are considered part of the waterbody.

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Part III

Department of Transportation

Federal Aviation Administration

14 CFR Parts 43 and 45

Safe Disposition of Life-Limited Aircraft Parts; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 43 and 45

[Docket No.: FAA–2000–8017; Amendment No. 43–38 and 45–23]

RIN 2120–AH11

Safe Disposition of Life-Limited Aircraft Parts

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action responds to the Wendell H. Ford Investment and Reform Act for the 21st Century by requiring that all persons who remove any life-limited aircraft part safely control that pat. The disposition must deter the installation of that part after it has reached its life limit. The rule will reduce the risk of life-limited parts being used beyond their life limits. This rule also requires that type certificate and design approval holders of life-limited parts provide instructions on how to mark a part indicating its current status, when requested by persons removing such a part.

EFFECTIVE DATE: Effective April 15, 2002.

FOR FURTHER INFORMATION CONTACT: Al Michaels, Flight Standards Service, AFS–300, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–7501, facsimile (202) 267–5115, or e-mail: *albert.michaels@faa.gov.*

SUPPLEMENTARY INFORMATION:

Availability of Rulemaking Documents

You can get an electronic copy using the Internet by taking the following steps:

(1) Go to the search function of the Department of Transportation's electronic Docket Management System (DMS) web page *(http://dms.dot.gov/search).*

(2) On the search page type in the last four digits of the Docket number shown at the beginning of this notice. Click on ''search.''

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You can also get an electronic copy using the Internet through FAA's web page at *http://www.faa.gov/avr/armhome.htm* or the **Federal Register's** web page at *http://www.access.gpo.gov.su_docs/aces/aces140.html.*

You can also get a copy by submitting a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267–9680. Make sure to identify the amendment number or docket number of this rulemaking.

Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 requires FAA to comply with small entity requests for information or advice about compliance with statutes and regulations within its jurisdiction. Therefore, any small entity that has a question regarding this document may contact their local FAA official, or the person listed under **FOR FURTHER INFORMATION CONTACT**. You can find out more about SBREFA on the Internet at our site, *http://www.faa.gov/avr/arm/sbrefa.htm.* For more information on SBREFA, e-mail us *9–AWA–SBREFA@faa.gov.*

Background

The FAA has found life-limited parts that exceeded their life-limits installed on type-certificated products during accident investigations and in routine surveillance. Although such installation of life-limited parts violates existing FAA regulations, concerns have arisen regarding the disposition of these life-limited parts when they have reached their life limits.

Concerns over the use of life-limited aircraft parts led Congress to pass a law requiring the safe disposition of these parts. The Wendell H. Ford Investment and Reform Act for the 21st Century (Public Law 106–181), added section 44725 to Title 49, United States Code, as follows:

Sec. 44725. Life-limited Aircraft Parts

IN GENERAL—The Administrator of the Federal Aviation Administration shall conduct a rulemaking proceeding to require the safe disposition of life-limited parts removed from an aircraft. The rulemking proceeding shall ensure that the disposition deter installation on an aircraft of a life-limited part that has reached or exceeded its life limits.

(b) SAFE DISPOSITION—For the purposes of this section, safe disposition includes any of the following methods:

(1) The part may be segregated under circumstances that preclude its installation on an aircraft.

(2) The part may be permanently marked to indicate its used life status.

(3) The part may be destroyed in any manner calculated to prevent reinstallation in an aircraft.

(4) The part may be marked, if practicable, to include the recordation of hours, cycles, or other airworthiness information. If the parts are marked with cycles or hours of usage, that information must be updated every time the part is removed from service or when the part is retired from service.

(5) Any other method approved by the Administrator.

(c) * * *

(d) PRIOR-REMOVED LIFE-LIMITED PARTS—No rule issued under subsection (a) shall require the marking of parts removed from aircraft before the effective date of the rules issued under subsection (a), nor shall any such rule forbid the installation of an otherwise airworthy life-limited part.

This rule carries out the requirements of section 44725.

Current Requirements

The type design of an aircraft, aircraft engine, or propeller includes the Instructions for Continued Airworthiness (ICA), which includes the Airworthiness Limitations that describe life limits for parts installed on the product. See, for instance, 14 CFR 21.3(c) and 21.50.

In order for an aviation product to comply with its type design, the life-limited parts installed on it must fall within the acceptable ranges described in the Airworthiness Limitations section of the Instructions for Continued Airworthiness. For this reason, installation of a life-limited part after the mandatory replacement time has been reached would be a violation of the maintenance regulations. Section 43.13(b) requires that maintenance work be completed so that the product worked on ''will be at least equal to its original or properly altered condition.* * *'' The product is not at least equal to its original or properly altered condition if a life-limited part has reached or exceeded its life limit.

Existing regulations require that specific markings be placed on all life-limited parts at the time of manufacture. This includes permanently marking the part with a part number (or equivalent) and a serial number (or equivalent). See 14 CFR 45.14.

Persons who install parts must have adequate information to determine a part's current life status. In particular, documentation problems may mislead an installer concerning the life remaining for a life-limited part. This rule further provides for the data needs of subsequent installers to ensure they know the life remaining on a part and prevent the part being used beyond its life limit.

Existing regulations provide for records on life-limited parts that are installed on aircraft. The regulations require that each owner or operator under § 91.417(a)(2)(ii) and each certificate holder under

§ 121.380(a)(2)(iii) or § 135.439(a)(2)(ii), maintain records showing ''the current status of life-limited parts of each airframe, engine, propeller, rotor, and appliance.'' These regulations do not govern the disposition of the part when it is removed from the aircraft. If the part is intended to be reinstalled, however, a record of the life status of the part will be needed at the time of reinstallation to show that the part is within its life limit and to create the required record under §§ 91.417(a)(2)(ii), 121.380(a)(2)(iii), or 135.439(a)(2)(ii), as applicable. Therefore, when a life-limited part is removed from an aircraft and that part is intended to be reinstalled in an aircraft, industry practice is to make a record of the part's current status at the time of removal. Repair stations, air carriers, and fixed base operators (FBO's) have systems in place to keep accurate records of such parts to ensure that they can reinstall the parts and have the required records to show that the part is airworthy.

If the part is not intended to be reinstalled, however, under existing regulations and practice there is no record required or routinely made when a part is removed from an aircraft. The part may be at the end of its life limit and not eligible for installation. Or, the part may not have reached the end of its life limit, but is so close that reinstallation would not be practicable. In these cases industry practices vary. For instance, the part might be put in a bin and later sold as scrap metal, it might be used as a training aid, or it might be mutilated.

The Notice of Proposed Rulemaking, Notice No. 00–11, proposed procedures for carrying out the statute. 65 FR 58878 (October 2, 2000).

Discussion of Comments and Section by Section Analysis

Thirty-nine commenters provided comments on the proposed rule. The commenters included industry associations, air carriers, manufacturers, repair stations, representatives of employees, a foreign civil air authority, and individuals.

The FAA has made changes to the final rule in response to the comments. The comments are discussed below along with the provisions of the final rule. First we discuss comments not specific to one section, then we discuss more specific comments organized by section. The final rule as adopted is described below.

General Comments

Comment: Some commenters urge that the statute ''requires the safe disposition of life-limited parts *that have reached or exceeded their life limits.*'' Comment 33 at 4,[1] emphasis in original. Some commenters state that the statute was intended to apply only when the part has reached or exceeded its life limit, not each time during the life of the part that it is removed from an aircraft.

FAA Response: The FAA disagrees with the commenters' interpretation of the statute. In paraphrasing the statute the commenters omitted the end of the first sentence and the beginning of the second sentence of section 44725(a). Those portions have meaning, however. Section 44725(a) provides:

> The Administrator of the Federal Aviation Administration shall conduct a rulemaking proceeding to require the safe disposition of life-limited parts removed from an aircraft. The rulemaking proceeding shall ensure that the disposition deter installation on an aircraft of a life-limited part that has reached or exceeded its life limits.

The first sentence does not apply only to parts that have reached or exceeded their life limit. It requires safe disposition of all life-limited parts that are removed from aircraft. Note that one method of safe disposition permitted in section 44725(b)(4) is updating the marking on a part ''every time the part is removed form service or when the part is retired from service.'' This shows that the safe disposition of parts must occur every time the part is removed, not just when the part has reached the end of its life limit or is retired from service.

The second sentence in section 44725(a) requires that the rule deter use of parts beyond their life limits. This does not mean that safe disposition is only required when parts reach their life limits. Indeed, no one can determine whether a part has reached the end of its life unless it has been properly disposed of each time it is removed from an aircraft during its life, ensuring that its current life status is accurately reflected in marking or other records. The NPRM, and the final rule, deter the use of parts beyond their life limits by requiring accurate records each time the part is removed from a type certificated product.

Further, it is FAA's experience that most parts that are retired from service have not reached or exceeded their life limits. They may have a few hours or cycles left, and are not considered to have enough life left to make it practical to reinstall them. These parts now often are treated as scrap or discarded. If the FAA were to agree with the commenters that the statute does not apply to such parts, these parts could continue to be placed in the scrap bin with no accurate life status on their markings or other records. The FAA has seen instances in which parts sent for scrap have been reinstalled on aircraft. However, if the part were returned to service, it soon would reach or exceed its life limit. The rule deters use of such parts beyond their life limits by ensuring that the current life status accompanies the part and informs the next user about the life status of that part.

We note also if FAA were to agree with the commenters that the statute does not apply to parts that are retired from service before they have reached their life limits, the statute would apply to very few parts. The FAA does not believe Congress intended the statute to be almost a nullity.

Comment: One commenter suggested that FAA add to § 43.5, Approval for return to service after maintenance, preventive maintenance, rebuilding, or alteration, a new paragraph (d) stating, ''The records for life-limited parts show that any such part is serviceable and the remaining life is identified.''

FAA Response: The FAA does not concur with this recommendation as this is covered in other portions of the Code of Federal Regulations, which require that records contain ''the current status of life-limited parts of each airframe, engine, propeller, rotor, and applicant.'' See §§ 91.417(a)(2)(ii), 121.380(a)(2)(iii), and 135.439(a)(2)(ii).

Comment: One commenter states that air carriers will have to change their existing record keeping system. Another states that FAA form 8130–3, Airworthiness, Approval Tag, should be used rather than creating a new system.

FAA Response: FAA has added new § 43.10(c)(1) that permits the part to be controlled using any record keeping system that substantiates the part number, serial number, and current status. The FAA recognizes that many current systems already meet the requirements of the rule.

Comment: One commenter states that the rule should apply to ''all life-limited parts at the time of return to service after the effective date.'' Another commenter states that the rule should state clearly that it is the installer's responsibility to ensure the part is serviceable before it is installed.

FAA Response: Section 44725 of the statute specifically requires the safe disposition of life-limited parts at the time of removal. The FAA agrees that it is the installer's responsibility to determine airworthiness before returning a part to service. This rule assists the installer by ensuring that an

[1] The documents in the electronic docket are numbered in the order in which they were posted.

accurate record is made at the time of removal.

Comment: One commenter states that the rule does not define responsible persons as certificated persons. Two commenters expressed concerns that non-certificated persons and owners/operators are subject to the proposed rule.

FAA Response: The rule does not apply only to certificated persons that remove parts; it applies to all persons that remove parts. The same safety considerations apply whether the remover is a certificated person or not.

Section by Section Comments

§ 43.1(c) Applicability

Proposal: We proposed a new paragraph (c) in the applicability section of part 43 to include persons who remove, store, and disposition life-limited parts from a type-certificated product.

Comment: Some commenters state that currently the FAA rules do not consider removal of parts as maintenance. They state that including proposed § 43.10 in part 43 will make these activities maintenance and will require that persons who remove, segregate, and disposition life-limited parts be certificated by the FAA. Another commenter states that removal, segregation, and disposing of parts are already standard maintenance practices. Another commenter feels that § 43.1, Applicability, is not needed because proper management of parts is already a part of maintenance.

FAA Response: The NPRM did not address under what circumstances removal, segregation, and disposition of life-limited parts is part of maintenance. The NPRM did not propose that all removal, segregation, and dispositioning must be done by a certificated person. Indeed, the NPRM proposed to expand the applicability of part 43 to clearly cover these tasks in all cases, by adding § 43.1(c).

We note that removal, segregation, and dispositioning of parts is closely related to maintenance, and often is considered to be maintenance. See *In the Matter of Stambaugh's Air Service, Inc.,* FAA Order No. 2001–7 (2001), in which the removal of an engine from a Boeing 737, not for the purpose of performing other maintenance on the aircraft or engine, was itself considered to be maintenance. Proper removal procedures must be used in order to ensure the continued airworthiness of not only the parts removed but also adjacent parts or assemblies. Maintenance manuals have maintenance instructions for proper disassembly and removal procedures to be used in maintaining the aircraft. To maintain the current status of a life-limited part required by regulation, parts must be controlled from the time they are originally installed new through subsequent installations. These controls include maintaining accurate records, proper storage, and approved procedures used for installation and/or removal of the parts.

In any event, this rulemaking does not address under what circumstances removal of a part is considered to be maintenance and must be done by a certificated person, and when removal is not maintenance. This rulemaking does provide that whenever a life-limited part is removed from a type certificated product, the remover must control the part in accordance with this rule.

New § 43.1(c): We changed the wording to be parallel with other § 43.1 paragraphs.

§ 43.10 Disposition of Life-Limited Aircraft Parts

Proposal: We proposed adding a new section (§ 43.10) to part 43 to incorporate the new legislation.

Comment: No comments were received on creating a new § 43.10.

New § 43.10: This section carries out section 44725.

§ 43.10(a) Definitions Used in This Section

Proposal: Paragraph (a) proposed definitions for ''life-limited part'' and ''life status.''

Comment: Seven commenters either oppose placing the definition of life-limited part in part 43, or suggest it be moved to part 1, Definitions and abbreviations.

FAA Response: The definition was placed in part 43 as part of this rulemaking to better enhance the understanding of the requirements for life-limited parts.

Comment: Two comments state that the rule applies to type certificated products not used in civil aviation and any civil aircraft with an airworthiness certificate.

FAA Response: The FAA has no jurisdiction over products used for non-aviation purposes. If a product is used for a non-aviation purpose, removal of a part from that product is not governed by part 43 regardless of whether the product also is type certificated for aviation purposes.

Comment: One commenter states that the reference to the ''type certificate holder'' in the definition of ''life-limited part'' is not appropriate because some limitations are not included in the type certificate holder's maintenance manual or Instructions for Continued Airworthiness.

FAA Response: Under § 21.31 life limits are considered to be part of the type design; specifically, they are part of the Airworthiness Limitations in the Instructions for Continued Airworthiness in the type design. However, they may actually be published on the type data sheet, in the maintenance manual, or elsewhere, so it might not be obvious that they are part of the ICA. The FAA agrees with the commenter that this could create confusion. The new definition for life-limited part includes the reference to the type design, the Instructions for Continued Airworthiness, and the maintenance manual.

Comment: One commenter asks for an explanation of what could be a mandatory replacement interval other than hours or cycles. Another commenter wants to add such terms as number of landings and flight cycles to the definition of ''life status.''

FAA Response: The ICA may place limits on the part in such terms as calendar time, number of lifts on a heavy-lift helicopter, or number of allowed overhauls.

Comment: One commenter states that the definition of life-limited part includes non-critical parts and asks whether this was intended.

FAA Response: Yes, both the statute and the rule do not differentiate between critical and non-critical life-limited parts.

New § 43.10(a): This paragraph defines ''life-limited part'' to mean any part for which a mandatory replacement limit is specified in the type design, the Instructions for Continued Airworthiness, or the maintenance manual. The ICA contains the airworthiness limitations, including life limits. It is considered to be part of the type design. See § 21.31(c). The ICA may be published as part of the maintenance manual, however, or may appear on the type certificate data sheet or elsewhere. Thus the rule refers to the type design, the Instructions for Continued Airworthiness, and the maintenance manual. The rule also defines ''life status'' to mean the accumulated cycles, hours, or any other mandatory replacement limit of a life-limited part.

New § 43.10(b) Temporary Removal of Parts From Type-Certificated Products

Proposal: This paragraph was not proposed in the NPRM.

Comment: Some commenters appear to believe that the rule would apply when a life-limited part was temporarily

removed and then reinstalled. This would greatly increase the work of mechanics and others while they removed and reinstalled parts during maintenance.

FAA Response: The FAA did not intend the rule to apply during temporary removal. The final rule provides an exception.

New § 43.10(b): This paragraph provides that when a life-limited part is temporarily removed and reinstalled for the purpose of performing maintenance, no disposition under this section is required under specified circumstances. Those circumstances include that the life status of the part has not changed; the removal and reinstallation is performed on the same serial numbered product; and that product does not accumulate time in service while the part is removed.

This situation may occur, for instance, when a life-limited helicopter rotor blade is removed in order to maintain the hub and then reinstalled. The life status of the helicopter and the rotor blade have not changed. There is no purpose served by marking, tagging, or otherwise carrying out paragraph (c) of this section while the rotor blade is temporarily removed.

New § 43.10(c) Disposition of Parts Removed From Type-Certificated Products (Proposed § 43.10(b)) Temporary Text

Proposal: This paragraph proposed requirements for the safe disposition of any life-limited part removed from a type-certificated product and provided methods to control these parts.

Comment: A commenter states that covering both airworthy and unairworthy parts in this rule may restrict the use of airworthy parts. This would be inconsistent with section 44725(d), which provides that the rule may not forbid the installation of an airworthy part. The commenter believes this would be solved by permitting the use of component history cards rather than marking the parts.

FAA Response: The FAA does not agree that the statute requires safe disposition only of unairworthy parts. As previously discussed, the statute applies to all life-limited parts that are removed from aircraft. The FAA agrees that the safety objective can be achieved by use of a record keeping system rather than marking each part, and the final rule provides for use of a record system.

Comment: Two commenters feel that the new rule seems to mix airworthy parts with unairworthy parts. One commenter states § 43.10 is unclear in distinguishing between when a part fails, when it is removed and returned for service, and when it reaches its life limit.

FAA Response: The intent of this rule is to control life-limited parts when removed from a type certificated product. The FAA added a section that specifically addresses parts being removed for maintenance purposes and reinstalled on the same product. If the removal is not temporary under paragraph (b), the person who removes the part has several options for disposing of the part, and will decide which option to use based on such factors as whether the part failed, was removed for service, or has reached its life limit.

Comment: One commenter states that some aircraft may use the same part but have different life-limits, or the part may be life-limited in one application and not in another.

FAA Response: The FAA agrees. Manufacturers' instructions for certain parts require that the maintenance records include the type of aircraft on which the parts have been used. One example of this is when a particular helicopter manufacturer produces an identical tail rotor blade used on two different model helicopters. When the blades are used on the model with the lower life-limit, that becomes the retirement limit for the blade. This section requires that such a blade must be controlled under this section, regardless of how it has been used. If a person wishes to reinstall it later, they will need the history in sufficient detail to show that the part is eligible for installation.

Comment: One commenter states that ''[a]lthough the maintenance provider will be required to mark the ''life status,'' there is no corresponding requirement for the owner/operator to provide 'life status'.''

FAA Response: Maintenance providers cannot return an aircraft to service without the appropriate records. Therefore, owner/operators routinely provide the necessary records to the maintenance providers. There is no need to add a rule to require that owner/operators provide the life status to the maintenance provider.

Comment: Some commenters state that the rule should apply to owners/operators and not to removers.

FAA Response: The FAA disagrees. The rule applies to persons removing parts because they are the persons who have the part physically available and have direct access to records that show the life that the part has accumulated. Also, in industry practice, persons who remove the parts generally have control over the disposition of the part, though they may consult with the owner/operator before deciding which method to use to control the part.

Comment: Some commenters state that maintenance providers have ''no legal ownership rights, interest or authority in the life-limited part to take 'possession' of that article.''

FAA Response: The FAA agrees that the maintenance provider may need to consult with the owner/operator before determining which method to use to control the part. Maintenance providers do in fact have possession of the part, while they may not have title to the part. It is current industry practice for maintenance providers to mark, tag, or make record entries regarding the life status of a life-limited part when they remove it.

Comment: Some commenters are concerned that the remover would be liable if the part were ever installed past its life limit.

FAA Response: The FAA does not agree. If the remover controls the part and transfers the records with the part in accordance with this rule, the remover has met his/her responsibilities under this rule. It is incumbent upon any person subsequently installing the part to determine its airworthiness prior to installation. For clarity, the proposed wording ''must prevent the part from being installed after it has reached its life limit'' has been changed to ''must deter the installation of the part after it has reached its life limit.''

Comment: A number of commenters question the use of one disposition method over another in various situations. Some object to the requirement to mutilate or segregate parts; some state that industry practice is to have or use record keeping systems.

FAA Response: The rule does not require any particular method in any particular situation as long as one of the methods is used. Each of these methods in this paragraph are part of current industry practice.

New § 43.10(c) introductory text: Paragraph (c) contains the requirements for controlling life-limited parts that are removed from type certification products. The six methods in the proposal to control the parts have been expanded to seven and subsequent paragraphs were resequenced for clarity.

In accordance with the statute, this rule applies only to life-limited aircraft parts removed after the effective date of this rule. Existing recordkeeping and storage regulations will continue to apply to the control of life-limited parts removed before the effective date of this rule.

This paragraph provides that each person removing a life-limited part from

a type-certificated product must ensure that the part is controlling using one of the methods in this paragraph.

The rule applies at the time of removal because that is when the statue requires the safe disposition to occur. Further, at the time of removal the records for the part's life status in its current installation are most readily available. For instance, the life status may have to be determined by referring to the aircraft records, determining when the part was first installed, and determining how many hours or cycles the aircraft was flown since the part was installed. If the part was stored after removal without its records being immediately updated, there would be more chance of confusion as to its current life status and less chance to determine at a later date what life had accumulated during its prior service. We note that current industry practice is to update the record for the part or to create a new record for the part at the time the part is removed.

The rule applies to persons removing parts because they are the persons who have the part physically available and have direct access to the records that show the life the part has accumulated in its installation. Also, in industry practice the persons who remove parts generally have control over the disposition of the part, thought they may consult with the owner or operator before dispositioning the part.

As discussed under the comments, the FAA considers this to be consistent with current industry practice. Often the owner or operator of an aircraft has no interest in parts that were removed, which the maintenance facility controls as it sees fit. At times, the owner may be given credit for a part that can be repaired, in exchange for a new part that can be installed immediately. The owner also may request that all parts that were removed be returned to the owner. The remover, in any event, is intimately involved in determining the disposition. The remover will determine, for instance, whether the part has useful life remaining, appears to be eligible for reinstallation as is, can be repaired to make it eligible, or is not capable of being repaired. This information is shared with the owner to inform the owner's decision on how to control the part. The new rule will simply take this current relationship to the next logical step of requiring the remover to use one of the disposition methods under this rule.

The definition of ''person'' in part 1 includes both individuals and entities such as corporations. Repair stations and air carriers are ''persons'' under part 1. Both the repair station or the air carrier, and the individual employed by the repair station or air carrier, are considered to be the remover of the part, and both are required to carry out the rule. This is similar to the case when maintenance is performed on aircraft. Both the air carrier and the mechanic working for the air carrier are considered to be conducting the maintenance, and both must comply with the maintenance regulations.

The individual who removes the part need not be the same individual who implements the requirements of paragraphs (c)(1) through (7). For example, an air carrier mechanic removing a part might not personally control the part in accordance with one of the methods described in paragraph (c)(1) through (7), but may give the part to the air carrier's material control department to disposition in accordance with the air carrier's procedures manual. The air carrier's procedures must ensure that the part is controlled using one of the methods in this section. The individual remover has carried out his/her duty under the rule by complying with his/her part of the air carrier's procedures.

The rule applies each time a life-limited part is removed from a type certificated product. This is based on the FAA's interpretation of the statute, as discussed in the General Comments. It is also consistent with the need to maintain accurate records at each step in the part's life so that it can be determined whether a part has reached the end of its life.

Because it is industry practice to maintain accurate records on parts the remover believes may be reinstalled, we expect that the impact of this rule will be mostly as to parts that they do not believe will be reinstalled. The remover may not believe the parts will be reinstalled because they have reached the end of their life limits. Or, the parts may not have technically reached their life limits and have a few hours or cycles left, but are not considered to have enough life left to make it practical to reinstall them. These parts now often are treated as scrap or discarded. The FAA has seen instances in which parts sent for scrap have been reinstalled on aircraft. If the part were returned to service, however, it soon would reach or exceed its life limit.

This rule deters use of such parts beyond their life limits by ensuring that the current life status accompanies the part and informs the next user about the life status of that part.

Note that the FAA did consider the implications of applying the rule only when the part has reached the end of its life limit. This would have excluded from safe disposition under the rule all those parts that are not at the end of their life limit but have so little time left that neither the remover nor the owner intend to reinstall them. The FAA's experience is that most parts are discarded at this stage, not at the exact end of their life limit. Under current regulations, such parts may be sold as scrap or otherwise not controlled. Without this rule the current situation would continue, in which such parts may be in the system without accurate records and subject to reuse.

The FAA also considered the implications of applying the rule only to parts that are not intended for reinstallation. However, it is very difficult, sometimes impossible, to determine intent. Further, the remover's intent not to reinstall the part would not be relevant if the part were sold as scrap without updated records to show its current life status. A subsequent owner could be misled as to the current status of the part. Such a rule would be difficult to enforce and difficult to ensure that its safety benefits are realized.

We note that we have expanded the list of acceptable methods of controlling a part to include recordkeeping systems. Under this rule, all methods that are not used to control life limited parts that are intended for reinstallation also acceptable for compliance with this rule. Therefore, the actual impact of the rule is minimal.

The statute refers to safe disposition when a life-limited part is removed from an aircraft. However, many life-limited parts are not removed directly from the aircraft. Rather, the type certificated product is removed from the aircraft, and the life-limited part is then removed from the product. For instance, an engine may be removed from the aircraft and taken to a repair station for service. The repair station removes life-limited parts form the engine and determines how to control the parts, such as to reinstall them, to repair them, or to discard them. To carry out the full safety benefits of the statute and avoid confusion, the rule applies to parts removed from type certificated products. ''Product'' is defined in § 21.1(b) to mean an aircraft, an aircraft engine, or a propeller.

New § 43.10(c)(1) Record Keeping System

Proposal: This paragraph was not proposed in the NPRM.

Comment: Some commenters state that record keeping systems that currently are used to control life-limited parts should be acceptable for compliance with this section.

FAA Response: The FAA agrees. Such systems are used by repair stations, air carriers, and fixed base operators to maintain accurate records of life-limited parts to ensure the airworthiness of the aircraft on which they are installed. When properly carried out these systems comply with the intent of the statute.

New § 43.10(c)(1): This paragraph expressly permits the use of record keeping systems to control life-limited parts. The record keeping system must substantiate the part number, serial number, and current life status of the part. Each time the part is removed from a type certificated product, the record must be updated with the current life status. Many repair stations, air carriers, and fixed base operators have such systems in place now, and use them to control life-limited parts. Some systems are electronic and others use paper.

Note that the current life status of the part does not necessarily include the entire history of the part. While some record systems do contain the entire history, this rule requires only that the current status be in the record system. This will allow persons to determine what life is remaining on the part.

§ 43.10(c)(2) Tag or Record Attached to Part (Proposed § 43.10(b)(5)

Proposal: This paragraph proposed that if it is impractical to mark the life-limited part, a tag may be attached to the part to record the life status.

Comment: Two commenters request clarification of procedures to be used to issue a replacement tag. First, the commenters ask whether a new tag can be issued if a tag is lost and time in service cannot be determined. Second, the commenters suggest we require the tag have sufficient information to provide traceability back to the part if separated.

FAA Response: In response to the first situation, if current status of the life-limited part cannot be established, the part is unairworthy and cannot be returned to service. In response to the second concern, the final rule specifies that the tag have the part number and serial number, which will allow the tag to be traced to the part. Further, the final rule provides for either updating the tag or making a new tag each time the part is removed. An Advisory Circular will be published when the rule is issued to highlight specific sections from the new rule and explain their intent in greater detail.

Comment: Two commenters state that tagging has been used for years and is a standard industry practice. In addition, they state that the rule should not require that the same tag be updated each time the part is removed, because industry practice is to issue a new tag.

FAA Response: The FAA agrees that the use of tags has been an accepted industry practice for years. The final rule provides that either the tag can be updated or a new tag issued.

New § 43.10(c)(2): This paragraph provides that a tag or other record may be attached to the part when it is removed. While the proposal only referred to a tag, many in the industry attach another record to the part (known by such names as a ''hard card'' or ''historical record''). To avoid confusion the rule refers to a tag or other record attached to the part.

The proposal called for use of a tag only when it is not practical to mark the part. However, after further evaluation the FAA has decided not to include this limitation. Tags and other attached records are widely used and accepted in the industry and provide the required level of safety. This rule will permit the continued use of such systems.

The proposal called for the tag to be updated every time the part is removed. Some commenters point out that many people in industry do not save the tag for reuse, but issue a new tag. Further, such tags get damaged during use and new ones are created. Accordingly, the final rule provides for either updating the tag or creating a new one.

The final rule provides that the current status, as well as the part number and serial number, must be on the tag or record.

§ 43.10(c)(3) Non-Permanent Marking (Proposed § 43.10(b)(4))

Proposal: This paragraph proposed that the part may be marked, if practical, to include the life status. This marking was to be accomplished in accordance with the manufacturer's marking instructions, as required under proposed § 45.14, to maintain the integrity of the part.

Comment: Eight commenters suggest that proposed § 43.10(b)(2) and (b)(4), regarding permanent and non-permanent marking, are similar and should be combined into one paragraph.

FAA Response: The FAA agrees that the proposed paragraphs are similar. The FAA, however, wants to emphasize that the options are different and likely to be used in different situations. Further, the paragraph on non-permanent marking now provides instructions for using another method if the mark is removed.

Comment: Several commenters question where the procedures will be published to comply with proposed § 43.10(b)(2), what tools would be required for marking of the part, and whether the manufacturer could charge for the part marking information.

FAA Response: New § 43.16 requires that the instructions may be provided to the requester or in a readily available document. The manufacturer will determine the type of marking device to be used for marking the part. The FAA has no regulatory authority to control whether a manufacturer chooses to charge for the information.

Comment: One commenter has a concern that many products are no longer supported by the manufacturer and marking information would not be available.

FAA Response: The rule provides alternate methods to be used for controlling a life-limited part. Tagging the part in accordance with new § 34.10(c)(2) or using a record keeping system under new § 43.10(c)(1) are acceptable means of compliance with the rule.

Comment: One commenter states that the proposal contains a loophole in that a scrap dealer could remove a tag or non-permanent mark.

FAA Response: The FAA agrees that if a part is transferred for the purpose of scrap without permanent markings or mutilation, the tag or other record could be removed from the part. The FAA recommends that before parts are transferred for the purpose of scrap, the part be mutilated or permanently marked, to deter subsequent installation.

New § 43.10(c)(3): This paragraph provides for non-permanent marking of the part. The mark must be updated each time the part is removed from service. Further, if the mark is removed, another method may be used to control the part. For instance, the remover could then use a record keeping system to control the part.

§ 43.10(c)(4) Permanent Marking (Proposed § 43.10(b)(2))

Proposal: This paragraph proposed that the part may be permanently and legibly marked, when practical, to indicate its life status.

Comment: Several commenters have concerns that permanent marks could destroy the part's integrity.

FAA Response: The FAA agrees. There are parts that cannot be marked for reasons such as the part's size, type of material, or specific application of the part. The FAA recognized that there are cases when marking is impractical or could destroy the part's integrity. Therefore tagging of the part, as well as other methods such as a record keeping system, is permitted under the rule.

Comment: One commenter states that the proposed rule is not clear when a part should be permanently marked.

FAA Response: The proposed rule did not mandate when a part should be permanently marked, only that parts be controlled in accordance with one of the options in the rule.

Comment: One commenter asks whether a part can be tagged, if it was permanently marked multiple times and no space remains for additional marks? Another commenter has concerns with the proposed rule permitting different methods of marking each time the part was removed.

FAA Response: The rule allows for various methods of permanent and non-permanent controls for life-limited parts. If the control method is changed, there must be a means to clearly identify the current life status of the part.

New § 43.10(c)(4): This paragraph provides for permanently marking the part. The mark must be updated each time the part is removed from service. Unless the part is permanently removed from use on type certificated products, this permanent mark must be accomplished in accordance with the instructions under § 45.16 in order to maintain the integrity of the part.

§ 43.10(c)(5) Segregation (Proposed § 43.10(b)(1))

Proposal: This paragraph proposed that the part may be segregated from serviceable parts under circumstances to preclude its installation on a type certificated product, including maintaining a record of the serial number and current life status of the part.

Comment: Some commenters state that the word ''serviceable'' is not appropriate, in that serviceable has no regulatory meaning.

FAA Response: The FAA agrees. ''Serviceable'' may be used in different ways in the industry. The final rule does not use this term, it uses the term ''eligible for installation'' to avoid confusion.

Comment: A commenter states that the rule should require the record also contain the part number.

FAA Response: The FAA agrees. To fully identify the part, both the part number and the serial number are needed.

New § 43.10(c)(5): This paragraph provides that the part may be segregated using methods that deter its installation on a type-certificated product. These methods must include, at least, maintaining a record of the part number, serial number, and current life status, and ensuring the part is physically stored separately from parts that are currently eligible for installation.

The rule uses the term ''physically stored separately'' instead of ''stored separately'' for clarity. It is common industry practice, for instance, to have a separate bin for parts that have reached their current life limits, but whose life limits may be extended in the future. This may occur with a new design for a blade, for instance. Initially a lower life limit may be assigned, but experience may allow the FAA to approve a higher life limit for the blade. In the meantime, the repair station may segregate a blade that has reached the lower life limit in anticipation that the life limit will be extended. The blade is segregated to prevent it from being confused with another blade and being installed.

§ 43.10(c)(6) Mutilation (Proposed § 43.10(b)(3))

Proposal: This paragraph proposed that the part may be destroyed in any manner that prevents installation in a type-certificated product.

Comment: Some commenters state that the rule does not go far enough and it should be mandatory that parts are mutilated when they reach their life limit. There were also concerns that if the remover was not the owner of the part they could be sued for destroying personal property.

FAA Response: The FAA has no regulatory authority to require a person to destroy their personal property. When Congress passed section 44725, it provided other options for controlling the parts, such as segregation or marking parts. The remover of the part likely will consult the owner of the part to determine whether mutilation of the part is acceptable, or whether another of the acceptable methods should be used.

The FAA considers this to be consistent with current industry practice. Often the owner or operator of an aircraft has no interest in parts that were removed, which the maintenance facility disposes of as it sees fit. Or, the owner may be involved in the decision as to how to control the parts. This rule does not change these scenarios. The person removing the part is responsible for controlling the part under this section, but may consult with the owner regarding which method to use.

Comment: Several commenters express concerns that if parts were mutilated they would be usable for non-aviation purposes such as training aids or other commercial applications.

FAA Response: The rule allows for persons dispositioning the parts to use other acceptable methods such as marking the part using a permanent or non-permanent method or tagging the part.

Comment: Some commenters point out that the term used in the industry is ''mutilate'' rather than ''destroy.'' They indicate that ''mutilate'' implies only rendering not repairable, but ''destroy'' implies a more extensive and expensive effort such as melting down the part.

FAA Response: The FAA agrees, and the final rule uses ''mutilate.''

New § 43.10(c)(6): This paragraph provides that the part may be mutilated to deter its installation in a type certificated product. The rule provides that the mutilation must render the part beyond repair and incapable of being reworked to provide the appearance of being airworthy.

§ 43.10(c)(7) Other Methods (Proposed § 43.10(b)(6))

Proposal: This paragraph provided that any other method approved by the Administrator could be used.

Comment: Two commenters have difficulty determining what other methods would be approved by the Administrator under proposed § 43.10(b)(6).

FAA Response: The final rule includes the additional method of using a record keeping system. The remover may request an alternate method of compliance. This permits the remover to develop another method of compliance not considered in this rulemaking.

New § 43.10(c)(7): This paragraph provides that the part may be controlled using any other method approved or accepted by the Administrator. The FAA cannot anticipate all possible methods of controlling parts, and will consider any methods that provide at least the same level of safety as those in this rule.

§ 43.10(d) Transfer of Life-Limited Parts (Proposed § 43.10(c))

Proposal: This section proposed that each person removing a life-limited part from segregation, other than for immediate installation, had to ensure the part was controlled using one of the methods in paragraph (b).

The NPRM did not expressly state that records must be transferred with the part. However, the disposition methods that were proposed all inherently involved the record remaining with the part (except for destruction, in which case the record is no longer needed). Marking and tagging involves the record being physically attached to the part, which remains with the part. The NPRM permitted the part to be segregated without the record attached to the part, but provided in

proposed § 43.10(c) that when the part is removed from segregation another dispositioning method must be used.

Comment: Two commenters oppose the position that the person removing the part should be responsible even though they may not be the person that controls it, as in the case of a person working for a part 121 or 145 operator.

FAA Response: The FAA recognized in the preamble that the individual removing the part may not necessarily be the individual who controls it. The FAA understands that individuals working for certificated operators have responsibilities for performing specific functions, in which case the individual who removes the part would not necessarily be the individual who controls the part. The repair station or air carrier is also a person under part 1, and under the regulations is also considered the person who removes the part. The repair station or air carrier will have overall responsibility to ensure that the part is controlled properly under the rule. The individual who removes the part will be in compliance with this rule if the individual carries out his/her portion of the procedures of the repair station or air carrier.

New § 43.10(d): Paragraph (d) provides that each person who removes a life-limited part from a type certificated product and later sells or otherwise transfers that part must transfer with the part the mark, tag, or other record used to comply with this section, unless the part is mutilated before it is sold or transferred. This will ensure that the next user has an accurate record on which to base any decision to use the part.

Note that this applies to all transfers, whether by sale or otherwise. thus,. when a repair station returns the part to the owner, the repair station must also transfer the record.

New § 45.16 Marking of Life-Limited Parts (Proposed § 45.14)

Proposal: The NPRM proposed to add to § 43.14, Identification and disposition of critical components, requiring producers of life-limited parts to provide marking instructions upon request.

Comment: One commenter states that the producers of parts should be required to provide marking information, not just on request. Some commenters state that the information should be in the Instructions for Continued Airworthiness.

FAA Response: The FAA partially agrees. The final rule gives the option of making the information available in readily available documents, such as the maintenance manual or the Instructions for Continued Airworthiness. We anticipate that many type certificate holders and design approval holders will find this to be the most efficient way of providing the information.

To require that all design approval holders of all life-limited parts provide marking information for each part without request may be excessive. There may be no interest in the industry to mark certain parts, given the other options for controlling the parts, and given that some parts may be out of production or not widely used. If the design approval holder never receives a request for marking information it need not develop such information.

Comment: Some commenters state that, while the proposal was for the producer of a part to provide marking instructions, the producer may not be the person responsible for the design or production of the part. The manufacturer may have no ability to provide information on marking the parts.

FAA Response: The FAA agrees. The final rule provides that the holder of a type certificate or design approval must provide the marking instructions. Such persons have responsibility for the design and are in a position to determine whether and how a part can be marked without compromising its integrity.

Comment: Some commenters state that the rule should make clear that marking a part is maintenance and must be done in accordance with part 43.

FAA Response: It does not appear that marking a part its maintenance within the definition in part 1. However, depending on the techniques used, marking may be an alteration of the part. If so, it must be conducted in accordance with part 43.

Comment: Some commenters state that the mix of ''critical component'' in the title to § 45.14 and ''life-limited part'' in the rule could cause confusion.

FAA Response: The FAA agrees. The final rule adds § 45.16 to cover marking instructions for life-limited parts rather than amending § 45.14.

Comment: Several commenters point out technical problems with safely marking certain kinds of parts, such as certain metal parts or composite parts.

FAA Response: The FAA agrees that not all parts can be marked without compromising the part's integrity. In that case the type certificate holder or design approval holder should state that the part should not be marked. The remover must then use another method to control the part.

New § 45.16: The FAA determined that the subject matter of § 43.14 was sufficiently different than the current rule to warrant adding a new section.

New § 45.16 provides that when requested by a person required to comply with § 43.10 of this chapter, each holder of a type certificate and each holder of a design approval for a life-limited part must provide marking instructions, or must state that the part cannot be practicably marked without compromising its integrity. This information may be provided by providing marking instructions in readily available documents, such as the maintenance manual or the Instructions for Continued Airworthiness.

While the proposed rule directed the producer of the part to provide the instructions, the final rule states that the holder of the type certificate or design approval must provide the instructions. Often the producer is the same person as the holder of the type certificate or the design approval. However, it is the holder of the type certificate or design approval that has the most direct knowledge of the engineering considerations involved in whether, and how, a part can be marked without compromising its integrity. Marking instructions will include such things as where on the part to locate the mark and what materials or methods to use.

A type certificate under part 21 is a design approval. There are other design approvals issued by FAA, such as a Parts Manufacturing Approval (PMA) under § 21.303 and a Technical Standard Order Authorization (TSOA) under part 21, subpart O. New § 45.16 refers to both type certificate holders and design approval holders for emphasis.

Comments With Economic Implications

Comment: One commenter extrapolated an industry-wide cost estimate of this rule based on its experience with its own numerous repair stations. As did a number of other commenters, this commenter interpreted the language of the NPRM to incorporate temporary removal of life-limited parts, which would require much more frequent application of the rule than the agency intended.

FAA Response: The FAA asked this commenter to clarify his comment because it included an industry-wide cost estimate that used the same methodological approach the agency used, but which resulted in a much larger estimate. The commenter explained that his estimate was based on each removal of each life-limited part done in his repair stations, including temporary removals followed by reinstallation. Because removals to this extent were not intended by the agency,

the commenter was asked to revisit his estimate and to exclude temporary removals. When the commenter based his estimate on this clarification, he reduced his original estimate greatly, such that it approximated the FAA's NPRM estimate. The FAA clarified its NPRM language by adding a new § 43.10(b) that excludes application of the rule from temporary removals of parts from type certificated products. The FAA believes that if its clarified language had been available to the commenter for his NPRM estimate, that estimate would have approximated the agency's NPRM estimate.

Comment: One commenter suggested that 15 minutes, rather than the five minutes the FAA estimated, better approximates the actual average time required to comply with the new rule.

FAA Response: While the agency cannot reject the commenter's estimate of his own average compliance time, the agency cannot agree that the commenter's extrapolation of that estimate to an industry-wide average better approximates the agency's estimate. The FAA's reasons for disagreeing are as follow:

(a) The agency's industry-wide estimate was approximately replicated as noted in the response to the proceeding comment; and

(b) The agency notes that appropriate use of record keeping systems—cited elsewhere in these comments and responses as enabling compliance and being in wide use—is very likely to result in nearly instantaneous compliance. This observation is particularly apt for automated systems.

Comment: One commenter proposed the FAA's approach to estimation of benefits and costs be based on the total of, and the life statuses of, the life-limited parts in all aircraft affected by this rule.

FAA Response: While the FAA appreciates the suggestion, for the following reasons, the suggested approach will not support useful estimation:

Within the fleet of aircraft affected by this rule are many and various life-limited parts. Within its limited life, each such part will have reached some life status specific to itself. Each such part will have been installed at some time specific to its aircraft's requirements. There is no uniform, benchmark installation date for life-limited parts across the fleet of affected aircraft, and there is no uniform life status across the variety of life-limited parts. No useful estimate could be based on so many different moving targets.

However, there is one characteristic all life-limited parts have in common: Each will be removed in a manner subject to this rule. Thus, FAA bases its analysis on its estimate of the frequency of annual industry-wide removals subject to this rule.

Comment: One commenter addresses three distinct areas, as follows:

(a) He—and other commenters—challenge the FAA's assumption that about 625,000 annual removals subject to this rule are most likely to be performed by about 5,000 certificated repair stations. The commenter asserts that each datum is an underestimate, and the agency's industry-wide cost estimate is thus flawed.

(b) He—and other commenters—challenge the FAA estimate of ''potentially affected parties'' (as required by the Paperwork Reduction Act) and state that it should be raised from about 5,000 repair stations to about 900,000 individuals who have the potential to remove life-limited parts. The commenter's total specifically includes ''about 720,000'' pilots and ''about 150,000'' aviation mechanics.

(c) This commenter also challenges the FAA's characterization of this rule in terms of the Regulatory Flexibility Act; a response to that comment is provided separately below.

FAA Response:

(a) The FAA disagrees with the commenter's statement that 625,000 annual removals are an underestimate that distorts the agency's industry-wide cost estimate. As did other commenters noted above, this commenter read the NPRM to mean that temporary removals are subject to this rule. As noted above, for this final rule, the FAA clarified the NPRM language on which the commenter's statement was based.

(b) The FAA disagrees with the commenter's estimate that 900,000 parties will be ''potentially affected'' by this rule. The FAA understands the term ''potentially'' to have dimensions of duration and likelihood, in contrast to the commenter's apparent application of the term to all time and any likelihood. The FAA agrees with the commenter that entities other than repair stations may remove life-limited parts subject to this rule. However, the agency stands by its NPRM assertion that most removals will be carried out by employees of repair stations. The FAA's reasons for disagreeing with this comment are as follows:

The commenter notes that there are about 150,000 FAA-certified mechanics in the United States. A clearer statement is that up to about as many as 150,000 individuals are actively employed as aviation mechanics.[2] Of these individuals, few (according to the U.S. Department of Labor) are self-employed.[3] Thus, the commenter's estimate of 150,000 individual mechanics subject to this rule reduces to a much smaller number of employers with Paperwork Reduction Act responsibility.

While the FAA stands by its NPRM assertion that most removals will be carried out by repair stations, for this final rule, the agency departs from its NPRM estimate of about 5,000 and adopts its most recent actual count of 4,489 repair stations.[4]

Although some aviation mechanics identify themselves as employees of air carriers or of fixed base operators instead of as employees of the repair stations that these entities operate, the FAA believes that the majority of all aviation mechanics are employed by certificated repair stations.[5] However, the agency agrees with the commenter that entities other than certificated repair stations may perform removals. These other entities include air carriers, fixed base operators, aviation salvagers, and individual pilots. Each entity will be considered in turn below.

Air Carriers: The FAA believes that certificated air carriers either themselves are operators of certificated repair stations or have their removals of life-limited parts performed by certificated repair stations. Thus, the agency believes that the addition of air carriers to its count of repair stations results in no change in its assumption that most removals are performed by certificated repair stations.[6]

Fixed Base Operators: The FAA notes that some fixed base operators also are certificated repair stations. The agency believes that such fixed base operators are those most likely to remove life-limited parts. The agency believes that there may be a small net addition of non-repair station FBO's to the agency's count of repair stations. The agency is not able to estimate the size of this increment.

Aircraft Salvagers: The FAA notes that salvagers remove life-limited parts from aircraft that are sent for salvage.

[2] Interview with the Professional Aviation Maintenance Association, June 2001.

[3] Occupational Outlook Handbook, 2000–2001 Edition, U.S. Department of Labor, Aircraft Mechanics and Service Technicians, at http://stats.bls.gov/oco/ocos179.htm.

[4] Gellman Research Associates, ''Active Part 145 Certificate Holders,'' as of September 2000.

[5] Aviation Maintenance, 1999 and 2000 Annual Salary Surveys, at http://www.aviationtoday.com/reports/amsalary99.htm, and follow-up interviews with Aviation Maintenance management, June 2001.

[6] Ibid.

The FAA believes that, as common business practice, most such salvagers are well aware of the maintenance status of most aircraft they buy to be salvaged. Further, the agency believes that while salvagers generally find it in their economic interest to bear the costs of removing and selling only those life-limited parts that have sufficient life demonstrably remaining to be eligible for immediate installation, salvagers also remove some life-limited parts that are not eligible for immediate installation but are deemed suitable for refurbishing.[7]

While the commenter cites FAA Advisory Circular (AC) 00–56 as his basis for his noting that 2,500 aviation broker/dealers are potentially affected parties, this AC provides for the development and maintenance of a list of that subset of these broker/dealers who agree voluntarily to conform to part 43. This list currently has 205 members. The agency believes that most of the parts removals by aircraft salvagers are most likely to be performed by members of this subset. Thus, the agency's final cost estimate adds this subset of 205 to its count of 4,489 repair stations.

Pilots: The commenter notes the existence of the large general aviation community and cites an estimate of about 720,000 pilots in the United States. The FAA notes that pilots who are not also aviation mechanics are permitted to perform preventive maintenance, but not maintenance. The FAA believes that very few, if any, life-limited parts are likely to be removed for any reason in the course of preventive maintenance. Thus, few pilots who are not also aviation mechanics are likely to perform removals that are subject to this rule.

The FAA agrees with the commenter that pilots who are not also certificated mechanics may remove life-limited parts for subsequent re-installation by an aviation mechanic. However, as noted above, temporary removals are not subject to this rule.

To to commenter's remark about the large size of the general aviation community, the FAA responds that there are about 220,000[8] active general aviation aircraft in the United States. Of these, about 150,000[9] are single engine piston airplanes. The FAA believes that most of these 150,000 airplanes have few life-limited parts. Further, in most cases, those life-limited parts are removed by a certificated mechanic, not the pilot. Thus. the likelihood that each of these 720,000 individual pilots would remove a life-limited part from a general aviation aircraft during any one year is very small.

The FAA stands by its NPRM estimate of 5,000 removers subject to this rule. The FAA is adding the 205 broker/dealers to the agency's most recent count of 4,489 repair stations, as well as adding some FBO's that are not certificated repair stations, and some self-employed certificated mechanics. The estimate of 5,000 stands as a ceiling estimate.

Comment: The above commenter asserts that the FAA may not forbear from performing a Regulatory Flexibility Act analysis on the grounds that the costs are owing to the law that prompts the rulemaking, and not to the rule by which the law is implemented.

FAA Response: The NPRM analysis proposed that the average annual costs of compliance with this rule would be about $1,250 for the 1,500 most involved repair stations and about $200 for the 3,500 least involved. Continuing analysis in support of this final rule, as its requirements have been clarified, suggests these costs are overestimates. For example, of the compliance options available, two are likely to require little or no additional cost. These are: (1) Controlling the part of means of a record keeping system that is updated at each removal and which substantiates the part number, serial number, and current life-status of the part; and (2) physical segregation of removed parts. Further, the option of mutilation may include sale of the mutilated part as scrap metal. Such a sale would offset some or all of any additional cost of this option. The agency has not attempted to rework its NPRM estimate in light of this further analysis and clarification.

As the summary Regulatory Evaluation describes, the practice of most removers already approaches the requirements of this rule through the exercise of good shop practice, good business practice, following the guidance of AC's, and complying with those existing CFR's that indirectly constrain the disposition of life-limited parts. Thus, the FAA believes that no entity of any size subject to this rule will incur a significant cost burden.

Paperwork Reduction Act

As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the FAA has submitted a copy of these sections to the Office of Management and Budget for its review. The collection of information was approved and assigned OMB Control Number 2120–0665. This final rule requires that each person who removes any life-limited aircraft part must safely control that part to deter its installation after it has reached its life limit. This rule also requires that type certificate and design approval holders of life-limited parts provide instructions on how to mark a part indicated its current status, when requested by persons removing such a part.

Comments on the proposal have been addressed previously. In general, comments that dealt with the Paperwork Reduction Act also dealt with estimation of the cost burden.

The likely respondents to this proposed information requirement are persons responsible for removing and dispositioning life-limited parts. The FAA stands by its NPRM estimate of 5,000 total responding entities. However, the agency has revised the composition of this total. In the proposal our estimate included 5,000 certificated repair stations as respondents. For the final rule, the 5,000 responding entities include 4,489 certificated repair stations, 205 salvagers, an indeterminate number of fixed base operators that are not certificated repair stations, and an indeterminate number of self-employed certificated aviation mechanics will carry out the requirements of this rule.

The FAA estimates each of 1,500 of the 5,000 entities noted above will perform 300 such procedures as an annual average. Each of the remaining 3,500 will average 50 procedures annually. Thus, the annual frequency of information requirements is 625,000 procedures.

The FAA refined its NPRM estimate of annual burden, and has determined that there is no more than a minimal paperwork burden on any respondent. Both the proposal and the final rule estimate are based on 625,000 annual removals subject to the rule. In the NPRM each removal was estimated to require record keeping and reporting requirements of five minutes duration, at $50 per hour. Thus for the NPRM, the total annual estimated burden of Public Law 106–181 was about $2,600,000, borne by a total of 5,000 respondents. In the final rule this estimate is decreased by an indeterminate amount because the rule is satisfied by the—

(a) Control for safe-disposition of life limited parts through the appropriate use of record keeping systems that are known in wide use; and

(b) Physical segregation of life-limited parts that have little or no remaining

[7] "Salvaging Jetsam * * *" The Wall Street Journal, September 6, 2000, and interviews with cognizant officers of Air Salvage of Dallas and of The Memphis Group, June 2000.

[8] 2000 GAMA Databook, General Aviation Fleet and Flight Activity. General Aviation Manufacturers' Association, at http://www.generalaviation.org/datasbook/2000/index.html.

[9] ibid.

capacity as airworthy parts. Many certificated operators and air agencies are known to make use of this method of control.

While a respondent may find it useful to satisfy the rule by one or more of the remaining options, the FAA believes that neither case above is likely to result in an additional Paperwork Reduction Act burden.

Further, the option of mutilation is likely to reduce the NPRM estimate. This option may include the sale of the mutilated part as scrap metal. Such a sale would offset some of all of any additional cost of this option.

Because FAA has not attempted to determine the preference ranking by respondents of the options permitted under this rule, it has no basis by which to estimate the amount the choice of these options will decrease the NPRM estimate. Thus, the NPRM estimate should be considered to be a ceiling cost.

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 Office of Management and Budget (OMB) control number.

International Compatibility

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to comply with International Civil Aviation Organization (ICAO) Standards and Recommended Practices to the maximum extent practicable. The FAA determined that there are no ICAO Standards and Recommended Practices that correspond to these regulations.

Regulatory Evaluation Summary

Changes to Federal Regulations must undergo several economic analyses. First, Executive Order 12866 directs that each Federal agency shall propose or adopt a regulation only upon a reasoned determined that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 requires agencies to analyze the economic effect of regulatory changes on small entities. Third, the Trade Agreements Act of 1979 (19 U.S.C. 2531–2533) prohibits agencies from setting standards that create unnecessary obstacles of the foreign commerce of the United States. In developing U.S. standards, this Trade Act requires the consideration of international standards and, where appropriate, that they be the basis of U.S. standards. And fourth, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires Federal agencies to prepare a written assessment of the costs, benefits and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million or more, in any one year (adjusted for inflation).

However, for regulations with an expected minimal impact the above-specified analyses are not required. If it is determined that the expected impact is so minimal that the proposal does not warrant a full evaluation, a statement to that effect and the basis for it is included in the evaluation.

Consistent with Department of Transportation policies and procedures for simplification, analysis, and review of regulations, this rule is deemed to have a minimal impact, and does not warrant a full evaluation. The FAA has reviewed the comments generated by the NPRM regarding this rule, and has refined its NPRM analysis, and finds no justification to change its determination of minimal impact.

Expected Benefits

This rule will increase safety benefits by decreasing the possibility of installation into a type-certificated product of life-limited parts that have reached their life-limits. While no existing FAA rule specifies the safe disposition of a life-limited part that is not intended, permissibly, to be re-installed, in general, current industry shop and business practices already inhibit such installation. These practices generally reflect the direction and guidance of numerous, distinct current FAA regulatory and advisory publications. The agency has not attempted to quantify the incremental safety benefits of this rule.

Expected Costs

It is the FAA's intent that this rulemaking would specify only the requirements necessary to bring industry into compliance with Public Law 106–181. Thus, the FAA expects that additional compliance costs will be attributable to the regulation and not to the rule.

The implementation of the legislation that directs this rule adds to existing requirements, and consequently to costs, by requiring that each person removing a life-limited part from a type-certificated product must control the disposition of that part by record keeping, marking, tagging, segregating, mutilating, or any other approved or accepted method that deters the installation of that life-limited part that has reached its life limit. However, as above, although no existing FAA rule specifies the safe disposition of a life-limited part that is not intended, permissibly, to be re-installed, in general, current industry shop and business practices already inhibit such installation. Also as above, these practices generally reflect the direction and guidance of numerous, distinct current FAA regulatory and advisory publications.

The cost estimate for this final rule refines the NPRM estimate and revises it downward by an indeterminate amount. The NPRM estimate assumed that about 5,000 business entities would perform almost all of the activities subject to this rule. Of these entities, about 1,500 would perform about 300 rule-subject removals annually, while the remaining 3,500 would perform about 50. Each removal was assumed to require an additional 5 minutes at $50 per hour. Thus, each larger remover would incur an additional annual cost of about $1,250. Annual costs for each smaller remover would be about $200. Each amount was given in 2001 dollars.

This final rule estimate departs from those assumptions and estimates for two reasons, as follow:

(a) The rule is satisfied by the safe-disposition of life limited parts through the use of record keeping systems that are known to be in wide use.

(b) The rule is satisfied by the physical segregation of life-limited parts that have little or no remaining capacity as airworthy parts. Many certificated operators and air agencies are known to make use of this method of control.

While a remover may find it useful to satisfy the rule by one or more of its other options, the FAA believes that neither case above is likely to result in additional cost. In fact, a respondent may well have a record keeping system in place and also physically segregate parts as appropriate. Further, the option of mutilation may include the sale of the mutilated part as scrap metal. Such a sale would offset some or all of any additional cost of this option.

Because FAA has not attempted to determine the preference ranking by respondents of the options permitted under this rule, it has no basis by which to estimate the amount the choice of these options will decrease the NPRM estimate. Thus, the NPRM estimate should be considered to be a ceiling cost.

Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 et seq.) establishes ''as a principle of regulatory issuance that agencies shall endeavor, consistent with the objective of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale

of the business, organizations, and governmental jurisdictions subject to regulation.'' To achieve that principle, the Act requires agencies to solicit and consider flexible regulatory proposals and to explain the rationale for their actions. The Act covers a wide-range of small entities, including small businesses, not-for-profit organizations and small governmental jurisdictions.

Agencies must perform a review to determine whether a proposed or final rule will have a significant economic impact on a substantial number of small entities. If the determination is that it will, the agency must prepare a regulatory flexibility analysis as described in the Act.

However, if an agency determines that a proposed or final rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the 1980 Act provides that the head of the agency may so certify and a regulatory flexibility analysis is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

This final rule estimate was refined and reduced from the NPRM estimate. The earlier estimate resulted in 1,500 larger removers each incurring an additional annual cost of about $1,250. Additional annual costs for each of the 3,500 smaller removers were estimated about $200. Each amount was given in 2001 dollars.

As noted previously, these NPRM estimates must be taken as ceiling estimates because of the—

(a) Existing use of compliant record keeping systems,

(b) Existing practice of physically segregating life-limited parts that have little or no remaining capacity as airworthy parts, and

(c) Likelihood that some or all of the costs of the option of mutilation will be offset by the sale of the mutilated part as scrap metal.

As stated previously, the agency has made no attempt to estimate the amount by which these factors reduce the NPRM estimates.

Because this rule imposes no more than minimal economic effects on removers of any size, whether small or large, the FAA certifies that it will not have a significant impact on a substantial number of small entities.

Trade Impact Assessment

The Trade Agreement Act of 1979 prohibits Federal agencies from engaging in any standards or related activities that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as safety, are not considered unnecessary obstacles. The statute also requires consideration of international standards and where appropriate, that they be the basis for U.S. standards. In addition, consistent with the Administration's belief in the general superiority and desirability of free trade, it is the policy of the Administration to remove or diminish to the extent feasible, barriers to international trade, including both barriers affecting the export of American goods and services to foreign countries and barriers affecting the import of foreign goods and services into the United States.

The FAA has determined the potential effect of this rule will be minimal and, in accordance with the above statute and policy, holds that this rule will not result in an impact on international trade by companies doing business in or with the United States.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995, enacted as Public Law 104–4 on March 22, 1995, is intended, among other things, to curb the practice of imposing unfunded Federal mandates on State, local, and tribal governments. Title II of the Act requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in a $100 million or more expenditure (adjusted annually for inflation) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector; such a mandate is deemed to be a ''significant regulatory action.''

This rulemaking does not contain such a mandate. Therefore, the analytical requirements of Title II of the Unfunded Mandates Reform Act of 1995 do not apply.

Regulations Affecting Interstate Aviation in Alaska

Section 1205 of the FAA Reauthorization Act of 1996 (110 Stat. 3213) requires the Administrator, when modifying regulations in title 14 of the CFR in a manner affecting interstate aviation in Alaska, to consider the extent to which Alaska is not served by transportation modes other than aviation, and to establish such regulatory distinctions as he or she considers appropriate. The FAA received no comments on whether there is justification for applying the rule differently in interstate operations in Alaska. Because this rule has a minor impact on current operations, including that it applies only to the subsequent use of these life-limited aircraft parts, it will not affect interstate aviation in Alaska. Accordingly, FAA has determined that there is no need to apply the rule differently in interstate operations in Alaska.

Executive Order 13132, Federalism

The FAA has analyzed this rule under the principles and criteria of Executive Order 13132, Federalism. We determined that this action would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, we determined that this rulemaking would not have federalism implications.

Environmental Analysis

FAA Order 1050.1D defines FAA actions that may be categorically excluded from preparation of a National Environmental Policy Act (NEPA) environmental impact statement. In accordance with FAA Order 1050.1D, appendix 4, paragraph 4(j), this rulemaking action qualifies for a categorical exclusion.

Energy Impact

The energy impact of this rule has been assessed in accordance with the Energy Policy and Conservation Act (EPCA) Public Law 94–163, as amended (42 U.S.C. 6362) and FAA Order 1053.1 It has been determined that the rule is not a major regulatory action under the provisions of the EPCA.

List of Subjects

14 CFR Part 43

Aircraft, Aviation safety, Life-limited parts, Reporting and recordkeeping requirements.

14 CFR Part 45

Aircraft, Exports, Signs and symbols.

The Amendment

In consideration of the foregoing, the Federal Aviation Administration amends Chapter I of Title 14, Code of Federal Regulations, as follows:

PART 43—MAINTENANCE, PREVENTIVE MAINTENANCE, REBUILDING, AND ALTERATION

1. Revise the authority citation for part 43 to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701, 44703, 44705, 44707, 44711, 44713, 44717, 44725.

2. Add § 43.1(c) to read as follows:

§ 43.1 Applicability.

* * * * *

(c) This part applies to all life-limited parts that are removed from a type certificated product, segregated, or controlled as provided in § 43.10.

3. Add § 43.10 to read as follows:

§ 43.10 Disposition of life-limited aircraft parts.

(a) *Definitions used in this section.* For the purposes of this section the following definitions apply.

Life-limited part means any part for which a mandatory replacement limit is specified in the type design, the Instructions for Continued Airworthiness, or the maintenance manual.

Life status means the accumulated cycles, hours, or any other mandatory replacement limit of a life-limited part.

(b) *Temporary removal of parts from type-certificated products.* When a life-limited part is temporarily removed and reinstalled for the purpose of performing maintenance, no disposition under paragraph (c) of this section is required if—

(1) The life status of the part has not changed;

(2) The removal and reinstallation is performed on the same serial numbered product; and

(3) That product does not accumulate time in service while the part is removed.

(c) *Disposition of parts removed from type-certificated products.* Except as provided in paragraph (b) of this section, after April 15, 2002 each person who removes a life-limited part from a type-certificated product must ensure that the part is controlled using one of the methods in this paragraph. The method must deter the installation of the part after it has reached its life limit. Acceptable methods include:

(1) *Record keeping system.* The part may be controlled using a record keeping system that substantiates the part number, serial number, and current life status of the part. Each time the part is removed from a type certificated product, the record must be updated with the current life status. This system may include electronic, paper, or other means of record keeping.

(2) *Tag or record attached to part.* A tag or other record may be attached to the part. The tag or record must include the part number, serial number, and current life status of the part. Each time the part is removed from a type certificated product, either a new tag or record must be created, or the existing tag or record must be updated with the current life status.

(3) *Non-permanent marking.* The part may be legibly marked using a non-permanent method showing its current life status. The life status must be updated each time the part is removed from a type certificated product, or if the mark is removed, another method in this section may be used. The mark must be accomplished in accordance with the instructions under § 45.16 of this chapter in order to maintain the integrity of the part.

(4) *Permanent marking.* The part may be legibly marked using a permanent method showing its current life status. The life status must be updated each time the part is removed from a type certificated product. Unless the part is permanently removed from use on type certificated products, this permanent mark must be accomplished in accordance with the instructions under § 45.16 of this chapter in order to maintain the integrity of the part.

(5) *Segregation.* The part may be segregated using methods that deter its installation on a type-certificated product. These methods must include, at least—

(i) Maintaining a record of the part number, serial number, and current life status, and

(ii) Ensuring the part is physically stored separately from parts that are currently eligible for installation.

(6) *Mutilation.* The part may be mutilated to deter its installation in a type certificated produce. The mutilation must render the part beyond repair and incapable of being reworked to appear to be airworthy.

(7) *Other methods.* Any other method approved or accepted by the FAA.

(d) *Transfer of life-limited parts.* Each person who removes a life-limited part from a type certificated product and later sells or otherwise transfers that part must transfer with the part the mark, tag, or other record used to comply with this section, unless the part is mutilated before it is sold or transferred.

4. The authority citation for part 45 is revised to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 44109, 40113–40114, 44101–44105, 44107–44108, 44110–44111, 44504, 44701, 44708–44709, 44711–44713, 44725, 45302–45303, 46104, 46304, 46306, 47122.

5. Add § 45.16 to read as follows:

§ 45.16 Marking of life-limited parts.

When requested by a person required to comply with § 43.10 of this chapter, the holder of a type certificate or design approval for a life-limited part must provide marking instructions, or must state that the part cannot be practicably marked without compromising its integrity. Compliance with this paragraph may be made by providing marking instructions in readily available documents, such as the maintenance manual or the Instructions for Continued Airworthiness.

Issued in Washington, DC, on January 3, 2002.

Jane F. Garvey,

Administrator.

[FR Doc. 02–492 Filed 1–14–02; 8:45 am]

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Federal Register

Tuesday,
January 15, 2002

Part III

Department of Transportation

Federal Aviation Administration

14 CFR Parts 43 and 45

Safe Disposition of Life-Limited Aircraft Parts; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 43 and 45

[Docket No.: FAA–2000–8017; Amendment No. 43–38 and 45–23]

RIN 2120–AH11

Safe Disposition of Life-Limited Aircraft Parts

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action responds to the Wendell H. Ford Investment and Reform Act for the 21st Century by requiring that all persons who remove any life-limited aircraft part safely control that pat. The disposition must deter the installation of that part after it has reached its life limit. The rule will reduce the risk of life-limited parts being used beyond their life limits. This rule also requires that type certificate and design approval holders of life-limited parts provide instructions on how to mark a part indicating its current status, when requested by persons removing such a part.

EFFECTIVE DATE: Effective April 15, 2002.

FOR FURTHER INFORMATION CONTACT: Al Michaels, Flight Standards Service, AFS–300, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–7501, facsimile (202) 267–5115, or e-mail: *albert.michaels@faa.gov.*

SUPPLEMENTARY INFORMATION:

Availability of Rulemaking Documents

You can get an electronic copy using the Internet by taking the following steps:

(1) Go to the search function of the Department of Transportation's electronic Docket Management System (DMS) web page *(http://dms.dot.gov/search).*

(2) On the search page type in the last four digits of the Docket number shown at the beginning of this notice. Click on ''search.''

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You can also get an electronic copy using the Internet through FAA's web page at *http://www.faa.gov/avr/armhome.htm* or the **Federal Register's** web page at *http://www.access.gpo.gov.su_docs/aces/aces140.html.*

You can also get a copy by submitting a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267–9680. Make sure to identify the amendment number or docket number of this rulemaking.

Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 requires FAA to comply with small entity requests for information or advice about compliance with statutes and regulations within its jurisdiction. Therefore, any small entity that has a question regarding this document may contact their local FAA official, or the person listed under **FOR FURTHER INFORMATION CONTACT**. You can find out more about SBREFA on the Internet at our site, *http://www.faa.gov/avr/arm/sbrefa.htm.* For more information on SBREFA, e-mail us *9–AWA–SBREFA@faa.gov.*

Background

The FAA has found life-limited parts that exceeded their life-limits installed on type-certificated products during accident investigations and in routine surveillance. Although such installation of life-limited parts violates existing FAA regulations, concerns have arisen regarding the disposition of these life-limited parts when they have reached their life limits.

Concerns over the use of life-limited aircraft parts led Congress to pass a law requiring the safe disposition of these parts. The Wendell H. Ford Investment and Reform Act for the 21st Century (Public Law 106–181), added section 44725 to Title 49, United States Code, as follows:

Sec. 44725. Life-limited Aircraft Parts

IN GENERAL—The Administrator of the Federal Aviation Administration shall conduct a rulemaking proceeding to require the safe disposition of life-limited parts removed from an aircraft. The rulemking proceeding shall ensure that the disposition deter installation on an aircraft of a life-limited part that has reached or exceeded its life limits.

(b) SAFE DISPOSITION—For the purposes of this section, safe disposition includes any of the following methods:

(1) The part may be segregated under circumstances that preclude its installation on an aircraft.

(2) The part may be permanently marked to indicate its used life status.

(3) The part may be destroyed in any manner calculated to prevent reinstallation in an aircraft.

(4) The part may be marked, if practicable, to include the recordation of hours, cycles, or other airworthiness information. If the parts are marked with cycles or hours of usage, that information must be updated every time the part is removed from service or when the part is retired from service.

(5) Any other method approved by the Administrator.

(c) * * *

(d) PRIOR-REMOVED LIFE-LIMITED PARTS—No rule issued under subsection (a) shall require the marking of parts removed from aircraft before the effective date of the rules issued under subsection (a), nor shall any such rule forbid the installation of an otherwise airworthy life-limited part.

This rule carries out the requirements of section 44725.

Current Requirements

The type design of an aircraft, aircraft engine, or propeller includes the Instructions for Continued Airworthiness (ICA), which includes the Airworthiness Limitations that describe life limits for parts installed on the product. See, for instance, 14 CFR 21.3(c) and 21.50.

In order for an aviation product to comply with its type design, the life-limited parts installed on it must fall within the acceptable ranges described in the Airworthiness Limitations section of the Instructions for Continued Airworthiness. For this reason, installation of a life-limited part after the mandatory replacement time has been reached would be a violation of the maintenance regulations. Section 43.13(b) requires that maintenance work be completed so that the product worked on ''will be at least equal to its original or properly altered condition.* * *'' The product is not at least equal to its original or properly altered condition if a life-limited part has reached or exceeded its life limit.

Existing regulations require that specific markings be placed on all life-limited parts at the time of manufacture. This includes permanently marking the part with a part number (or equivalent) and a serial number (or equivalent). See 14 CFR 45.14.

Persons who install parts must have adequate information to determine a part's current life status. In particular, documentation problems may mislead an installer concerning the life remaining for a life-limited part. This rule further provides for the data needs of subsequent installers to ensure they know the life remaining on a part and prevent the part being used beyond its life limit.

Existing regulations provide for records on life-limited parts that are installed on aircraft. The regulations require that each owner or operator under § 91.417(a)(2)(ii) and each certificate holder under

§ 121.380(a)(2)(iii) or § 135.439(a)(2)(ii), maintain records showing ''the current status of life-limited parts of each airframe, engine, propeller, rotor, and appliance.'' These regulations do not govern the disposition of the part when it is removed from the aircraft. If the part is intended to be reinstalled, however, a record of the life status of the part will be needed at the time of reinstallation to show that the part is within its life limit and to create the required record under §§ 91.417(a)(2)(ii), 121.380(a)(2)(iii), or 135.439(a)(2)(ii), as applicable. Therefore, when a life-limited part is removed from an aircraft and that part is intended to be reinstalled in an aircraft, industry practice is to make a record of the part's current status at the time of removal. Repair stations, air carriers, and fixed base operators (FBO's) have systems in place to keep accurate records of such parts to ensure that they can reinstall the parts and have the required records to show that the part is airworthy.

If the part is not intended to be reinstalled, however, under existing regulations and practice there is no record required or routinely made when a part is removed from an aircraft. The part may be at the end of its life limit and not eligible for installation. Or, the part may not have reached the end of its life limit, but is so close that reinstallation would not be practicable. In these cases industry practices vary. For instance, the part might be put in a bin and later sold as scrap metal, it might be used as a training aid, or it might be mutilated.

The Notice of Proposed Rulemaking, Notice No. 00–11, proposed procedures for carrying out the statute. 65 FR 58878 (October 2, 2000).

Discussion of Comments and Section by Section Analysis

Thirty-nine commenters provided comments on the proposed rule. The commenters included industry associations, air carriers, manufacturers, repair stations, representatives of employees, a foreign civil air authority, and individuals.

The FAA has made changes to the final rule in response to the comments. The comments are discussed below along with the provisions of the final rule. First we discuss comments not specific to one section, then we discuss more specific comments organized by section. The final rule as adopted is described below.

General Comments

Comment: Some commenters urge that the statute ''requires the safe disposition of life-limited parts *that have reached or exceeded their life limits.*'' Comment 33 at 4,[1] emphasis in original. Some commenters state that the statute was intended to apply only when the part has reached or exceeded its life limit, not each time during the life of the part that it is removed from an aircraft.

FAA Response: The FAA disagrees with the commenters' interpretation of the statute. In paraphrasing the statute the commenters omitted the end of the first sentence and the beginning of the second sentence of section 44725(a). Those portions have meaning, however. Section 44725(a) provides:

> The Administrator of the Federal Aviation Administration shall conduct a rulemaking proceeding to require the safe disposition of life-limited parts removed from an aircraft. The rulemaking proceeding shall ensure that the disposition deter installation on an aircraft of a life-limited part that has reached or exceeded its life limits.

The first sentence does not apply only to parts that have reached or exceeded their life limit. It requires safe disposition of all life-limited parts that are removed from aircraft. Note that one method of safe disposition permitted in section 44725(b)(4) is updating the marking on a part ''every time the part is removed form service or when the part is retired from service.'' This shows that the safe disposition of parts must occur every time the part is removed, not just when the part has reached the end of its life limit or is retired from service.

The second sentence in section 44725(a) requires that the rule deter use of parts beyond their life limits. This does not mean that safe disposition is only required when parts reach their life limits. Indeed, no one can determine whether a part has reached the end of its life unless it has been properly disposed of each time it is removed from an aircraft during its life, ensuring that its current life status is accurately reflected in marking or other records. The NPRM, and the final rule, deter the use of parts beyond their life limits by requiring accurate records each time the part is removed from a type certificated product.

Further, it is FAA's experience that most parts that are retired from service have not reached or exceeded their life limits. They may have a few hours or cycles left, and are not considered to have enough life left to make it practical to reinstall them. These parts now often are treated as scrap or discarded. If the FAA were to agree with the commenters that the statute does not apply to such parts, these parts could continue to be placed in the scrap bin with no accurate life status on their markings or other records. The FAA has seen instances in which parts sent for scrap have been reinstalled on aircraft. However, if the part were returned to service, it soon would reach or exceed its life limit. The rule deters use of such parts beyond their life limits by ensuring that the current life status accompanies the part and informs the next user about the life status of that part.

We note also if FAA were to agree with the commenters that the statute does not apply to parts that are retired from service before they have reached their life limits, the statute would apply to very few parts. The FAA does not believe Congress intended the statute to be almost a nullity.

Comment: One commenter suggested that FAA add to § 43.5, Approval for return to service after maintenance, preventive maintenance, rebuilding, or alteration, a new paragraph (d) stating, ''The records for life-limited parts show that any such part is serviceable and the remaining life is identified.''

FAA Response: The FAA does not concur with this recommendation as this is covered in other portions of the Code of Federal Regulations, which require that records contain ''the current status of life-limited parts of each airframe, engine, propeller, rotor, and applicant.'' See §§ 91.417(a)(2)(ii), 121.380(a)(2)(iii), and 135.439(a)(2)(ii).

Comment: One commenter states that air carriers will have to change their existing record keeping system. Another states that FAA form 8130–3, Airworthiness, Approval Tag, should be used rather than creating a new system.

FAA Response: FAA has added new § 43.10(c)(1) that permits the part to be controlled using any record keeping system that substantiates the part number, serial number, and current status. The FAA recognizes that many current systems already meet the requirements of the rule.

Comment: One commenter states that the rule should apply to ''all life-limited parts at the time of return to service after the effective date.'' Another commenter states that the rule should state clearly that it is the installer's responsibility to ensure the part is serviceable before it is installed.

FAA Response: Section 44725 of the statute specifically requires the safe disposition of life-limited parts at the time of removal. The FAA agrees that it is the installer's responsibility to determine airworthiness before returning a part to service. This rule assists the installer by ensuring that an

[1] The documents in the electronic docket are numbered in the order in which they were posted.

accurate record is made at the time of removal.

Comment: One commenter states that the rule does not define responsible persons as certificated persons. Two commenters expressed concerns that non-certificated persons and owners/operators are subject to the proposed rule.

FAA Response: The rule does not apply only to certificated persons that remove parts; it applies to all persons that remove parts. The same safety considerations apply whether the remover is a certificated person or not.

Section by Section Comments

§ 43.1(c) Applicability

Proposal: We proposed a new paragraph (c) in the applicability section of part 43 to include persons who remove, store, and disposition life-limited parts from a type-certificated product.

Comment: Some commenters state that currently the FAA rules do not consider removal of parts as maintenance. They state that including proposed § 43.10 in part 43 will make these activities maintenance and will require that persons who remove, segregate, and disposition life-limited parts be certificated by the FAA. Another commenter states that removal, segregation, and disposing of parts are already standard maintenance practices. Another commenter feels that § 43.1, Applicability, is not needed because proper management of parts is already a part of maintenance.

FAA Response: The NPRM did not address under what circumstances removal, segregation, and disposition of life-limited parts is part of maintenance. The NPRM did not propose that all removal, segregation, and dispositioning must be done by a certificated person. Indeed, the NPRM proposed to expand the applicability of part 43 to clearly cover these tasks in all cases, by adding § 43.1(c).

We note that removal, segregation, and dispositioning of parts is closely related to maintenance, and often is considered to be maintenance. See *In the Matter of Stambaugh's Air Service, Inc.,* FAA Order No. 2001–7 (2001), in which the removal of an engine from a Boeing 737, not for the purpose of performing other maintenance on the aircraft or engine, was itself considered to be maintenance. Proper removal procedures must be used in order to ensure the continued airworthiness of not only the parts removed but also adjacent parts or assemblies. Maintenance manuals have maintenance instructions for proper disassembly and removal procedures to be used in maintaining the aircraft. To maintain the current status of a life-limited part required by regulation, parts must be controlled from the time they are originally installed new through subsequent installations. These controls include maintaining accurate records, proper storage, and approved procedures used for installation and/or removal of the parts.

In any event, this rulemaking does not address under what circumstances removal of a part is considered to be maintenance and must be done by a certificated person, and when removal is not maintenance. This rulemaking does provide that whenever a life-limited part is removed from a type certificated product, the remover must control the part in accordance with this rule.

New § 43.1(c): We changed the wording to be parallel with other § 43.1 paragraphs.

§ 43.10 Disposition of Life-Limited Aircraft Parts

Proposal: We proposed adding a new section (§ 43.10) to part 43 to incorporate the new legislation.

Comment: No comments were received on creating a new § 43.10.

New § 43.10: This section carries out section 44725.

§ 43.10(a) Definitions Used in This Section

Proposal: Paragraph (a) proposed definitions for ''life-limited part'' and ''life status.''

Comment: Seven commenters either oppose placing the definition of life-limited part in part 43, or suggest it be moved to part 1, Definitions and abbreviations.

FAA Response: The definition was placed in part 43 as part of this rulemaking to better enhance the understanding of the requirements for life-limited parts.

Comment: Two comments state that the rule applies to type certificated products not used in civil aviation and any civil aircraft with an airworthiness certificate.

FAA Response: The FAA has no jurisdiction over products used for non-aviation purposes. If a product is used for a non-aviation purpose, removal of a part from that product is not governed by part 43 regardless of whether the product also is type certificated for aviation purposes.

Comment: One commenter states that the reference to the ''type certificate holder'' in the definition of ''life-limited part'' is not appropriate because some limitations are not included in the type certificate holder's maintenance manual or Instructions for Continued Airworthiness.

FAA Response: Under § 21.31 life limits are considered to be part of the type design; specifically, they are part of the Airworthiness Limitations in the Instructions for Continued Airworthiness in the type design. However, they may actually be published on the type data sheet, in the maintenance manual, or elsewhere, so it might not be obvious that they are part of the ICA. The FAA agrees with the commenter that this could create confusion. The new definition for life-limited part includes the reference to the type design, the Instructions for Continued Airworthiness, and the maintenance manual.

Comment: One commenter asks for an explanation of what could be a mandatory replacement interval other than hours or cycles. Another commenter wants to add such terms as number of landings and flight cycles to the definition of ''life status.''

FAA Response: The ICA may place limits on the part in such terms as calendar time, number of lifts on a heavy-lift helicopter, or number of allowed overhauls.

Comment: One commenter states that the definition of life-limited part includes non-critical parts and asks whether this was intended.

FAA Response: Yes, both the statute and the rule do not differentiate between critical and non-critical life-limited parts.

New § 43.10(a): This paragraph defines ''life-limited part'' to mean any part for which a mandatory replacement limit is specified in the type design, the Instructions for Continued Airworthiness, or the maintenance manual. The ICA contains the airworthiness limitations, including life limits. It is considered to be part of the type design. See § 21.31(c). The ICA may be published as part of the maintenance manual, however, or may appear on the type certificate data sheet or elsewhere. Thus the rule refers to the type design, the Instructions for Continued Airworthiness, and the maintenance manual. The rule also defines ''life status'' to mean the accumulated cycles, hours, or any other mandatory replacement limit of a life-limited part.

New § 43.10(b) Temporary Removal of Parts From Type-Certificated Products

Proposal: This paragraph was not proposed in the NPRM.

Comment: Some commenters appear to believe that the rule would apply when a life-limited part was temporarily

removed and then reinstalled. This would greatly increase the work of mechanics and others while they removed and reinstalled parts during maintenance.

FAA Response: The FAA did not intend the rule to apply during temporary removal. The final rule provides an exception.

New § 43.10(b): This paragraph provides that when a life-limited part is temporarily removed and reinstalled for the purpose of performing maintenance, no disposition under this section is required under specified circumstances. Those circumstances include that the life status of the part has not changed; the removal and reinstallation is performed on the same serial numbered product; and that product does not accumulate time in service while the part is removed.

This situation may occur, for instance, when a life-limited helicopter rotor blade is removed in order to maintain the hub and then reinstalled. The life status of the helicopter and the rotor blade have not changed. There is no purpose served by marking, tagging, or otherwise carrying out paragraph (c) of this section while the rotor blade is temporarily removed.

New § 43.10(c) Disposition of Parts Removed From Type-Certificated Products (Proposed § 43.10(b)) Temporary Text

Proposal: This paragraph proposed requirements for the safe disposition of any life-limited part removed from a type-certificated product and provided methods to control these parts.

Comment: A commenter states that covering both airworthy and unairworthy parts in this rule may restrict the use of airworthy parts. This would be inconsistent with section 44725(d), which provides that the rule may not forbid the installation of an airworthy part. The commenter believes this would be solved by permitting the use of component history cards rather than marking the parts.

FAA Response: The FAA does not agree that the statute requires safe disposition only of unairworthy parts. As previously discussed, the statute applies to all life-limited parts that are removed from aircraft. The FAA agrees that the safety objective can be achieved by use of a record keeping system rather than marking each part, and the final rule provides for use of a record system.

Comment: Two commenters feel that the new rule seems to mix airworthy parts with unairworthy parts. One commenter states § 43.10 is unclear in distinguishing between when a part fails, when it is removed and returned for service, and when it reaches its life limit.

FAA Response: The intent of this rule is to control life-limited parts when removed from a type certificated product. The FAA added a section that specifically addresses parts being removed for maintenance purposes and reinstalled on the same product. If the removal is not temporary under paragraph (b), the person who removes the part has several options for disposing of the part, and will decide which option to use based on such factors as whether the part failed, was removed for service, or has reached its life limit.

Comment: One commenter states that some aircraft may use the same part but have different life-limits, or the part may be life-limited in one application and not in another.

FAA Response: The FAA agrees. Manufacturers' instructions for certain parts require that the maintenance records include the type of aircraft on which the parts have been used. One example of this is when a particular helicopter manufacturer produces an identical tail rotor blade used on two different model helicopters. When the blades are used on the model with the lower life-limit, that becomes the retirement limit for the blade. This section requires that such a blade must be controlled under this section, regardless of how it has been used. If a person wishes to reinstall it later, they will need the history in sufficient detail to show that the part is eligible for installation.

Comment: One commenter states that ''[a]lthough the maintenance provider will be required to mark the ''life status,'' there is no corresponding requirement for the owner/operator to provide 'life status'.''

FAA Response: Maintenance providers cannot return an aircraft to service without the appropriate records. Therefore, owner/operators routinely provide the necessary records to the maintenance providers. There is no need to add a rule to require that owner/operators provide the life status to the maintenance provider.

Comment: Some commenters state that the rule should apply to owners/operators and not to removers.

FAA Response: The FAA disagrees. The rule applies to persons removing parts because they are the persons who have the part physically available and have direct access to records that show the life that the part has accumulated. Also, in industry practice, persons who remove the parts generally have control over the disposition of the part, though they may consult with the owner/operator before deciding which method to use to control the part.

Comment: Some commenters state that maintenance providers have ''no legal ownership rights, interest or authority in the life-limited part to take 'possession' of that article.''

FAA Response: The FAA agrees that the maintenance provider may need to consult with the owner/operator before determining which method to use to control the part. Maintenance providers do in fact have possession of the part, while they may not have title to the part. It is current industry practice for maintenance providers to mark, tag, or make record entries regarding the life status of a life-limited part when they remove it.

Comment: Some commenters are concerned that the remover would be liable if the part were ever installed past its life limit.

FAA Response: The FAA does not agree. If the remover controls the part and transfers the records with the part in accordance with this rule, the remover has met his/her responsibilities under this rule. It is incumbent upon any person subsequently installing the part to determine its airworthiness prior to installation. For clarity, the proposed wording ''must prevent the part from being installed after it has reached its life limit'' has been changed to ''must deter the installation of the part after it has reached its life limit.''

Comment: A number of commenters question the use of one disposition method over another in various situations. Some object to the requirement to mutilate or segregate parts; some state that industry practice is to have or use record keeping systems.

FAA Response: The rule does not require any particular method in any particular situation as long as one of the methods is used. Each of these methods in this paragraph are part of current industry practice.

New § 43.10(c) introductory text: Paragraph (c) contains the requirements for controlling life-limited parts that are removed from type certification products. The six methods in the proposal to control the parts have been expanded to seven and subsequent paragraphs were resequenced for clarity.

In accordance with the statute, this rule applies only to life-limited aircraft parts removed after the effective date of this rule. Existing recordkeeping and storage regulations will continue to apply to the control of life-limited parts removed before the effective date of this rule.

This paragraph provides that each person removing a life-limited part from

a type-certificated product must ensure that the part is controlling using one of the methods in this paragraph.

The rule applies at the time of removal because that is when the statue requires the safe disposition to occur. Further, at the time of removal the records for the part's life status in its current installation are most readily available. For instance, the life status may have to be determined by referring to the aircraft records, determining when the part was first installed, and determining how many hours or cycles the aircraft was flown since the part was installed. If the part was stored after removal without its records being immediately updated, there would be more chance of confusion as to its current life status and less chance to determine at a later date what life had accumulated during its prior service. We note that current industry practice is to update the record for the part or to create a new record for the part at the time the part is removed.

The rule applies to persons removing parts because they are the persons who have the part physically available and have direct access to the records that show the life the part has accumulated in its installation. Also, in industry practice the persons who remove parts generally have control over the disposition of the part, thought they may consult with the owner or operator before dispositioning the part.

As discussed under the comments, the FAA considers this to be consistent with current industry practice. Often the owner or operator of an aircraft has no interest in parts that were removed, which the maintenance facility controls as it sees fit. At times, the owner may be given credit for a part that can be repaired, in exchange for a new part that can be installed immediately. The owner also may request that all parts that were removed be returned to the owner. The remover, in any event, is intimately involved in determining the disposition. The remover will determine, for instance, whether the part has useful life remaining, appears to be eligible for reinstallation as is, can be repaired to make it eligible, or is not capable of being repaired. This information is shared with the owner to inform the owner's decision on how to control the part. The new rule will simply take this current relationship to the next logical step of requiring the remover to use one of the disposition methods under this rule.

The definition of ''person'' in part 1 includes both individuals and entities such as corporations. Repair stations and air carriers are ''persons'' under part 1. Both the repair station or the air carrier, and the individual employed by the repair station or air carrier, are considered to be the remover of the part, and both are required to carry out the rule. This is similar to the case when maintenance is performed on aircraft. Both the air carrier and the mechanic working for the air carrier are considered to be conducting the maintenance, and both must comply with the maintenance regulations.

The individual who removes the part need not be the same individual who implements the requirements of paragraphs (c)(1) through (7). For example, an air carrier mechanic removing a part might not personally control the part in accordance with one of the methods described in paragraph (c)(1) through (7), but may give the part to the air carrier's material control department to disposition in accordance with the air carrier's procedures manual. The air carrier's procedures must ensure that the part is controlled using one of the methods in this section. The individual remover has carried out his/her duty under the rule by complying with his/her part of the air carrier's procedures.

The rule applies each time a life-limited part is removed from a type certificated product. This is based on the FAA's interpretation of the statute, as discussed in the General Comments. It is also consistent with the need to maintain accurate records at each step in the part's life so that it can be determined whether a part has reached the end of its life.

Because it is industry practice to maintain accurate records on parts the remover believes may be reinstalled, we expect that the impact of this rule will be mostly as to parts that they do not believe will be reinstalled. The remover may not believe the parts will be reinstalled because they have reached the end of their life limits. Or, the parts may not have technically reached their life limits and have a few hours or cycles left, but are not considered to have enough life left to make it practical to reinstall them. These parts now often are treated as scrap or discarded. The FAA has seen instances in which parts sent for scrap have been reinstalled on aircraft. If the part were returned to service, however, it soon would reach or exceed its life limit.

This rule deters use of such parts beyond their life limits by ensuring that the current life status accompanies the part and informs the next user about the life status of that part.

Note that the FAA did consider the implications of applying the rule only when the part has reached the end of its life limit. This would have excluded from safe disposition under the rule all those parts that are not at the end of their life limit but have so little time left that neither the remover nor the owner intend to reinstall them. The FAA's experience is that most parts are discarded at this stage, not at the exact end of their life limit. Under current regulations, such parts may be sold as scrap or otherwise not controlled. Without this rule the current situation would continue, in which such parts may be in the system without accurate records and subject to reuse.

The FAA also considered the implications of applying the rule only to parts that are not intended for reinstallation. However, it is very difficult, sometimes impossible, to determine intent. Further, the remover's intent not to reinstall the part would not be relevant if the part were sold as scrap without updated records to show its current life status. A subsequent owner could be misled as to the current status of the part. Such a rule would be difficult to enforce and difficult to ensure that its safety benefits are realized.

We note that we have expanded the list of acceptable methods of controlling a part to include recordkeeping systems. Under this rule, all methods that are not used to control life limited parts that are intended for reinstallation also acceptable for compliance with this rule. Therefore, the actual impact of the rule is minimal.

The statute refers to safe disposition when a life-limited part is removed from an aircraft. However, many life-limited parts are not removed directly from the aircraft. Rather, the type certificated product is removed from the aircraft, and the life-limited part is then removed from the product. For instance, an engine may be removed from the aircraft and taken to a repair station for service. The repair station removes life-limited parts form the engine and determines how to control the parts, such as to reinstall them, to repair them, or to discard them. To carry out the full safety benefits of the statute and avoid confusion, the rule applies to parts removed from type certificated products. ''Product'' is defined in § 21.1(b) to mean an aircraft, an aircraft engine, or a propeller.

New § 43.10(c)(1) Record Keeping System

Proposal: This paragraph was not proposed in the NPRM.

Comment: Some commenters state that record keeping systems that currently are used to control life-limited parts should be acceptable for compliance with this section.

FAA Response: The FAA agrees. Such systems are used by repair stations, air carriers, and fixed base operators to maintain accurate records of life-limited parts to ensure the airworthiness of the aircraft on which they are installed. When properly carried out these systems comply with the intent of the statute.

New § 43.10(c)(1): This paragraph expressly permits the use of record keeping systems to control life-limited parts. The record keeping system must substantiate the part number, serial number, and current life status of the part. Each time the part is removed from a type certificated product, the record must be updated with the current life status. Many repair stations, air carriers, and fixed base operators have such systems in place now, and use them to control life-limited parts. Some systems are electronic and others use paper.

Note that the current life status of the part does not necessarily include the entire history of the part. While some record systems do contain the entire history, this rule requires only that the current status be in the record system. This will allow persons to determine what life is remaining on the part.

§ 43.10(c)(2) Tag or Record Attached to Part (Proposed § 43.10(b)(5)

Proposal: This paragraph proposed that if it is impractical to mark the life-limited part, a tag may be attached to the part to record the life status.

Comment: Two commenters request clarification of procedures to be used to issue a replacement tag. First, the commenters ask whether a new tag can be issued if a tag is lost and time in service cannot be determined. Second, the commenters suggest we require the tag have sufficient information to provide traceability back to the part if separated.

FAA Response: In response to the first situation, if current status of the life-limited part cannot be established, the part is unairworthy and cannot be returned to service. In response to the second concern, the final rule specifies that the tag have the part number and serial number, which will allow the tag to be traced to the part. Further, the final rule provides for either updating the tag or making a new tag each time the part is removed. An Advisory Circular will be published when the rule is issued to highlight specific sections from the new rule and explain their intent in greater detail.

Comment: Two commenters state that tagging has been used for years and is a standard industry practice. In addition, they state that the rule should not require that the same tag be updated each time the part is removed, because industry practice is to issue a new tag.

FAA Response: The FAA agrees that the use of tags has been an accepted industry practice for years. The final rule provides that either the tag can be updated or a new tag issued.

New § 43.10(c)(2): This paragraph provides that a tag or other record may be attached to the part when it is removed. While the proposal only referred to a tag, many in the industry attach another record to the part (known by such names as a ''hard card'' or ''historical record''). To avoid confusion the rule refers to a tag or other record attached to the part.

The proposal called for use of a tag only when it is not practical to mark the part. However, after further evaluation the FAA has decided not to include this limitation. Tags and other attached records are widely used and accepted in the industry and provide the required level of safety. This rule will permit the continued use of such systems.

The proposal called for the tag to be updated every time the part is removed. Some commenters point out that many people in industry do not save the tag for reuse, but issue a new tag. Further, such tags get damaged during use and new ones are created. Accordingly, the final rule provides for either updating the tag or creating a new one.

The final rule provides that the current status, as well as the part number and serial number, must be on the tag or record.

§ 43.10(c)(3) Non-Permanent Marking (Proposed § 43.10(b)(4))

Proposal: This paragraph proposed that the part may be marked, if practical, to include the life status. This marking was to be accomplished in accordance with the manufacturer's marking instructions, as required under proposed § 45.14, to maintain the integrity of the part.

Comment: Eight commenters suggest that proposed § 43.10(b)(2) and (b)(4), regarding permanent and non-permanent marking, are similar and should be combined into one paragraph.

FAA Response: The FAA agrees that the proposed paragraphs are similar. The FAA, however, wants to emphasize that the options are different and likely to be used in different situations. Further, the paragraph on non-permanent marking now provides instructions for using another method if the mark is removed.

Comment: Several commenters question where the procedures will be published to comply with proposed § 43.10(b)(2), what tools would be required for marking of the part, and whether the manufacturer could charge for the part marking information.

FAA Response: New § 43.16 requires that the instructions may be provided to the requester or in a readily available document. The manufacturer will determine the type of marking device to be used for marking the part. The FAA has no regulatory authority to control whether a manufacturer chooses to charge for the information.

Comment: One commenter has a concern that many products are no longer supported by the manufacturer and marking information would not be available.

FAA Response: The rule provides alternate methods to be used for controlling a life-limited part. Tagging the part in accordance with new § 34.10(c)(2) or using a record keeping system under new § 43.10(c)(1) are acceptable means of compliance with the rule.

Comment: One commenter states that the proposal contains a loophole in that a scrap dealer could remove a tag or non-permanent mark.

FAA Response: The FAA agrees that if a part is transferred for the purpose of scrap without permanent markings or mutilation, the tag or other record could be removed from the part. The FAA recommends that before parts are transferred for the purpose of scrap, the part be mutilated or permanently marked, to deter subsequent installation.

New § 43.10(c)(3): This paragraph provides for non-permanent marking of the part. The mark must be updated each time the part is removed from service. Further, if the mark is removed, another method may be used to control the part. For instance, the remover could then use a record keeping system to control the part.

§ 43.10(c)(4) Permanent Marking (Proposed § 43.10(b)(2))

Proposal: This paragraph proposed that the part may be permanently and legibly marked, when practical, to indicate its life status.

Comment: Several commenters have concerns that permanent marks could destroy the part's integrity.

FAA Response: The FAA agrees. There are parts that cannot be marked for reasons such as the part's size, type of material, or specific application of the part. The FAA recognized that there are cases when marking is impractical or could destroy the part's integrity. Therefore tagging of the part, as well as other methods such as a record keeping system, is permitted under the rule.

Comment: One commenter states that the proposed rule is not clear when a part should be permanently marked.

FAA Response: The proposed rule did not mandate when a part should be permanently marked, only that parts be controlled in accordance with one of the options in the rule.

Comment: One commenter asks whether a part can be tagged, if it was permanently marked multiple times and no space remains for additional marks? Another commenter has concerns with the proposed rule permitting different methods of marking each time the part was removed.

FAA Response: The rule allows for various methods of permanent and non-permanent controls for life-limited parts. If the control method is changed, there must be a means to clearly identify the current life status of the part.

New § 43.10(c)(4): This paragraph provides for permanently marking the part. The mark must be updated each time the part is removed from service. Unless the part is permanently removed from use on type certificated products, this permanent mark must be accomplished in accordance with the instructions under § 45.16 in order to maintain the integrity of the part.

§ 43.10(c)(5) Segregation (Proposed § 43.10(b)(1))

Proposal: This paragraph proposed that the part may be segregated from serviceable parts under circumstances to preclude its installation on a type certificated product, including maintaining a record of the serial number and current life status of the part.

Comment: Some commenters state that the word ''serviceable'' is not appropriate, in that serviceable has no regulatory meaning.

FAA Response: The FAA agrees. ''Serviceable'' may be used in different ways in the industry. The final rule does not use this term, it uses the term ''eligible for installation'' to avoid confusion.

Comment: A commenter states that the rule should require the record also contain the part number.

FAA Response: The FAA agrees. To fully identify the part, both the part number and the serial number are needed.

New § 43.10(c)(5): This paragraph provides that the part may be segregated using methods that deter its installation on a type-certificated product. These methods must include, at least, maintaining a record of the part number, serial number, and current life status, and ensuring the part is physically stored separately from parts that are currently eligible for installation.

The rule uses the term ''physically stored separately'' instead of ''stored separately'' for clarity. It is common industry practice, for instance, to have a separate bin for parts that have reached their current life limits, but whose life limits may be extended in the future. This may occur with a new design for a blade, for instance. Initially a lower life limit may be assigned, but experience may allow the FAA to approve a higher life limit for the blade. In the meantime, the repair station may segregate a blade that has reached the lower life limit in anticipation that the life limit will be extended. The blade is segregated to prevent it from being confused with another blade and being installed.

§ 43.10(c)(6) Mutilation (Proposed § 43.10(b)(3))

Proposal: This paragraph proposed that the part may be destroyed in any manner that prevents installation in a type-certificated product.

Comment: Some commenters state that the rule does not go far enough and it should be mandatory that parts are mutilated when they reach their life limit. There were also concerns that if the remover was not the owner of the part they could be sued for destroying personal property.

FAA Response: The FAA has no regulatory authority to require a person to destroy their personal property. When Congress passed section 44725, it provided other options for controlling the parts, such as segregation or marking parts. The remover of the part likely will consult the owner of the part to determine whether mutilation of the part is acceptable, or whether another of the acceptable methods should be used.

The FAA considers this to be consistent with current industry practice. Often the owner or operator of an aircraft has no interest in parts that were removed, which the maintenance facility disposes of as it sees fit. Or, the owner may be involved in the decision as to how to control the parts. This rule does not change these scenarios. The person removing the part is responsible for controlling the part under this section, but may consult with the owner regarding which method to use.

Comment: Several commenters express concerns that if parts were mutilated they would be usable for non-aviation purposes such as training aids or other commercial applications.

FAA Response: The rule allows for persons dispositioning the parts to use other acceptable methods such as marking the part using a permanent or non-permanent method or tagging the part.

Comment: Some commenters point out that the term used in the industry is ''mutilate'' rather than ''destroy.'' They indicate that ''mutilate'' implies only rendering not repairable, but ''destroy'' implies a more extensive and expensive effort such as melting down the part.

FAA Response: The FAA agrees, and the final rule uses ''mutilate.''

New § 43.10(c)(6): This paragraph provides that the part may be mutilated to deter its installation in a type certificated product. The rule provides that the mutilation must render the part beyond repair and incapable of being reworked to provide the appearance of being airworthy.

§ 43.10(c)(7) Other Methods (Proposed § 43.10(b)(6))

Proposal: This paragraph provided that any other method approved by the Administrator could be used.

Comment: Two commenters have difficulty determining what other methods would be approved by the Administrator under proposed § 43.10(b)(6).

FAA Response: The final rule includes the additional method of using a record keeping system. The remover may request an alternate method of compliance. This permits the remover to develop another method of compliance not considered in this rulemaking.

New § 43.10(c)(7): This paragraph provides that the part may be controlled using any other method approved or accepted by the Administrator. The FAA cannot anticipate all possible methods of controlling parts, and will consider any methods that provide at least the same level of safety as those in this rule.

§ 43.10(d) Transfer of Life-Limited Parts (Proposed § 43.10(c))

Proposal: This section proposed that each person removing a life-limited part from segregation, other than for immediate installation, had to ensure the part was controlled using one of the methods in paragraph (b).

The NPRM did not expressly state that records must be transferred with the part. However, the disposition methods that were proposed all inherently involved the record remaining with the part (except for destruction, in which case the record is no longer needed). Marking and tagging involves the record being physically attached to the part, which remains with the part. The NPRM permitted the part to be segregated without the record attached to the part, but provided in

proposed § 43.10(c) that when the part is removed from segregation another dispositioning method must be used.

Comment: Two commenters oppose the position that the person removing the part should be responsible even though they may not be the person that controls it, as in the case of a person working for a part 121 or 145 operator.

FAA Response: The FAA recognized in the preamble that the individual removing the part may not necessarily be the individual who controls it. The FAA understands that individuals working for certificated operators have responsibilities for performing specific functions, in which case the individual who removes the part would not necessarily be the individual who controls the part. The repair station or air carrier is also a person under part 1, and under the regulations is also considered the person who removes the part. The repair station or air carrier will have overall responsibility to ensure that the part is controlled properly under the rule. The individual who removes the part will be in compliance with this rule if the individual carries out his/her portion of the procedures of the repair station or air carrier.

New § 43.10(d): Paragraph (d) provides that each person who removes a life-limited part from a type certificated product and later sells or otherwise transfers that part must transfer with the part the mark, tag, or other record used to comply with this section, unless the part is mutilated before it is sold or transferred. This will ensure that the next user has an accurate record on which to base any decision to use the part.

Note that this applies to all transfers, whether by sale or otherwise. thus,. when a repair station returns the part to the owner, the repair station must also transfer the record.

New § 45.16 Marking of Life-Limited Parts (Proposed § 45.14)

Proposal: The NPRM proposed to add to § 43.14, Identification and disposition of critical components, requiring producers of life-limited parts to provide marking instructions upon request.

Comment: One commenter states that the producers of parts should be required to provide marking information, not just on request. Some commenters state that the information should be in the Instructions for Continued Airworthiness.

FAA Response: The FAA partially agrees. The final rule gives the option of making the information available in readily available documents, such as the maintenance manual or the Instructions for Continued Airworthiness. We anticipate that many type certificate holders and design approval holders will find this to be the most efficient way of providing the information.

To require that all design approval holders of all life-limited parts provide marking information for each part without request may be excessive. There may be no interest in the industry to mark certain parts, given the other options for controlling the parts, and given that some parts may be out of production or not widely used. If the design approval holder never receives a request for marking information it need not develop such information.

Comment: Some commenters state that, while the proposal was for the producer of a part to provide marking instructions, the producer may not be the person responsible for the design or production of the part. The manufacturer may have no ability to provide information on marking the parts.

FAA Response: The FAA agrees. The final rule provides that the holder of a type certificate or design approval must provide the marking instructions. Such persons have responsibility for the design and are in a position to determine whether and how a part can be marked without compromising its integrity.

Comment: Some commenters state that the rule should make clear that marking a part is maintenance and must be done in accordance with part 43.

FAA Response: It does not appear that marking a part its maintenance within the definition in part 1. However, depending on the techniques used, marking may be an alteration of the part. If so, it must be conducted in accordance with part 43.

Comment: Some commenters state that the mix of ''critical component'' in the title to § 45.14 and ''life-limited part'' in the rule could cause confusion.

FAA Response: The FAA agrees. The final rule adds § 45.16 to cover marking instructions for life-limited parts rather than amending § 45.14.

Comment: Several commenters point out technical problems with safely marking certain kinds of parts, such as certain metal parts or composite parts.

FAA Response: The FAA agrees that not all parts can be marked without compromising the part's integrity. In that case the type certificate holder or design approval holder should state that the part should not be marked. The remover must then use another method to control the part.

New § 45.16: The FAA determined that the subject matter of § 43.14 was sufficiently different than the current rule to warrant adding a new section.

New § 45.16 provides that when requested by a person required to comply with § 43.10 of this chapter, each holder of a type certificate and each holder of a design approval for a life-limited part must provide marking instructions, or must state that the part cannot be practicably marked without compromising its integrity. This information may be provided by providing marking instructions in readily available documents, such as the maintenance manual or the Instructions for Continued Airworthiness.

While the proposed rule directed the producer of the part to provide the instructions, the final rule states that the holder of the type certificate or design approval must provide the instructions. Often the producer is the same person as the holder of the type certificate or the design approval. However, it is the holder of the type certificate or design approval that has the most direct knowledge of the engineering considerations involved in whether, and how, a part can be marked without compromising its integrity. Marking instructions will include such things as where on the part to locate the mark and what materials or methods to use.

A type certificate under part 21 is a design approval. There are other design approvals issued by FAA, such as a Parts Manufacturing Approval (PMA) under § 21.303 and a Technical Standard Order Authorization (TSOA) under part 21, subpart O. New § 45.16 refers to both type certificate holders and design approval holders for emphasis.

Comments With Economic Implications

Comment: One commenter extrapolated an industry-wide cost estimate of this rule based on its experience with its own numerous repair stations. As did a number of other commenters, this commenter interpreted the language of the NPRM to incorporate temporary removal of life-limited parts, which would require much more frequent application of the rule than the agency intended.

FAA Response: The FAA asked this commenter to clarify his comment because it included an industry-wide cost estimate that used the same methodological approach the agency used, but which resulted in a much larger estimate. The commenter explained that his estimate was based on each removal of each life-limited part done in his repair stations, including temporary removals followed by reinstallation. Because removals to this extent were not intended by the agency,

the commenter was asked to revisit his estimate and to exclude temporary removals. When the commenter based his estimate on this clarification, he reduced his original estimate greatly, such that it approximated the FAA's NPRM estimate. The FAA clarified its NPRM language by adding a new § 43.10(b) that excludes application of the rule from temporary removals of parts from type certificated products. The FAA believes that if its clarified language had been available to the commenter for his NPRM estimate, that estimate would have approximated the agency's NPRM estimate.

Comment: One commenter suggested that 15 minutes, rather than the five minutes the FAA estimated, better approximates the actual average time required to comply with the new rule.

FAA Response: While the agency cannot reject the commenter's estimate of his own average compliance time, the agency cannot agree that the commenter's extrapolation of that estimate to an industry-wide average better approximates the agency's estimate. The FAA's reasons for disagreeing are as follow:

(a) The agency's industry-wide estimate was approximately replicated as noted in the response to the proceeding comment; and

(b) The agency notes that appropriate use of record keeping systems—cited elsewhere in these comments and responses as enabling compliance and being in wide use—is very likely to result in nearly instantaneous compliance. This observation is particularly apt for automated systems.

Comment: One commenter proposed the FAA's approach to estimation of benefits and costs be based on the total of, and the life statuses of, the life-limited parts in all aircraft affected by this rule.

FAA Response: While the FAA appreciates the suggestion, for the following reasons, the suggested approach will not support useful estimation:

Within the fleet of aircraft affected by this rule are many and various life-limited parts. Within its limited life, each such part will have reached some life status specific to itself. Each such part will have been installed at some time specific to its aircraft's requirements. There is no uniform, benchmark installation date for life-limited parts across the fleet of affected aircraft, and there is no uniform life status across the variety of life-limited parts. No useful estimate could be based on so many different moving targets.

However, there is one characteristic all life-limited parts have in common: Each will be removed in a manner subject to this rule. Thus, FAA bases its analysis on its estimate of the frequency of annual industry-wide removals subject to this rule.

Comment: One commenter addresses three distinct areas, as follows:

(a) He—and other commenters—challenge the FAA's assumption that about 625,000 annual removals subject to this rule are most likely to be performed by about 5,000 certificated repair stations. The commenter asserts that each datum is an underestimate, and the agency's industry-wide cost estimate is thus flawed.

(b) He—and other commenters—challenge the FAA estimate of ''potentially affected parties'' (as required by the Paperwork Reduction Act) and state that it should be raised from about 5,000 repair stations to about 900,000 individuals who have the potential to remove life-limited parts. The commenter's total specifically includes ''about 720,000'' pilots and ''about 150,000'' aviation mechanics.

(c) This commenter also challenges the FAA's characterization of this rule in terms of the Regulatory Flexibility Act; a response to that comment is provided separately below.

FAA Response:

(a) The FAA disagrees with the commenter's statement that 625,000 annual removals are an underestimate that distorts the agency's industry-wide cost estimate. As did other commenters noted above, this commenter read the NPRM to mean that temporary removals are subject to this rule. As noted above, for this final rule, the FAA clarified the NPRM language on which the commenter's statement was based.

(b) The FAA disagrees with the commenter's estimate that 900,000 parties will be ''potentially affected'' by this rule. The FAA understands the term ''potentially'' to have dimensions of duration and likelihood, in contrast to the commenter's apparent application of the term to all time and any likelihood. The FAA agrees with the commenter that entities other than repair stations may remove life-limited parts subject to this rule. However, the agency stands by its NPRM assertion that most removals will be carried out by employees of repair stations. The FAA's reasons for disagreeing with this comment are as follows:

The commenter notes that there are about 150,000 FAA-certified mechanics in the United States. A clearer statement is that up to about as many as 150,000 individuals are actively employed as aviation mechanics.[2] Of these individuals, few (according to the U.S. Department of Labor) are self-employed.[3] Thus, the commenter's estimate of 150,000 individual mechanics subject to this rule reduces to a much smaller number of employers with Paperwork Reduction Act responsibility.

While the FAA stands by its NPRM assertion that most removals will be carried out by repair stations, for this final rule, the agency departs from its NPRM estimate of about 5,000 and adopts its most recent actual count of 4,489 repair stations.[4]

Although some aviation mechanics identify themselves as employees of air carriers or of fixed base operators instead of as employees of the repair stations that these entities operate, the FAA believes that the majority of all aviation mechanics are employed by certificated repair stations.[5] However, the agency agrees with the commenter that entities other than certificated repair stations may perform removals. These other entities include air carriers, fixed base operators, aviation salvagers, and individual pilots. Each entity will be considered in turn below.

Air Carriers: The FAA believes that certificated air carriers either themselves are operators of certificated repair stations or have their removals of life-limited parts performed by certificated repair stations. Thus, the agency believes that the addition of air carriers to its count of repair stations results in no change in its assumption that most removals are performed by certificated repair stations.[6]

Fixed Base Operators: The FAA notes that some fixed base operators also are certificated repair stations. The agency believes that such fixed base operators are those most likely to remove life-limited parts. The agency believes that there may be a small net addition of non-repair station FBO's to the agency's count of repair stations. The agency is not able to estimate the size of this increment.

Aircraft Salvagers: The FAA notes that salvagers remove life-limited parts from aircraft that are sent for salvage.

[2] Interview with the Professional Aviation Maintenance Association, June 2001.

[3] Occupational Outlook Handbook, 2000–2001 Edition, U.S. Department of Labor, Aircraft Mechanics and Service Technicians, at http://stats.bls.gov/oco/ocos179.htm.

[4] Gellman Research Associates, ''Active Part 145 Certificate Holders,'' as of September 2000.

[5] Aviation Maintenance, 1999 and 2000 Annual Salary Surveys, at http://www.aviationtoday.com/reports/amsalary99.htm, and follow-up interviews with Aviation Maintenance management, June 2001.

[6] Ibid.

The FAA believes that, as common business practice, most such salvagers are well aware of the maintenance status of most aircraft they buy to be salvaged. Further, the agency believes that while salvagers generally find it in their economic interest to bear the costs of removing and selling only those life-limited parts that have sufficient life demonstrably remaining to be eligible for immediate installation, salvagers also remove some life-limited parts that are not eligible for immediate installation but are deemed suitable for refurbishing.[7]

While the commenter cites FAA Advisory Circular (AC) 00–56 as his basis for his noting that 2,500 aviation broker/dealers are potentially affected parties, this AC provides for the development and maintenance of a list of that subset of these broker/dealers who agree voluntarily to conform to part 43. This list currently has 205 members. The agency believes that most of the parts removals by aircraft salvagers are most likely to be performed by members of this subset. Thus, the agency's final cost estimate adds this subset of 205 to its count of 4,489 repair stations.

Pilots: The commenter notes the existence of the large general aviation community and cites an estimate of about 720,000 pilots in the United States. The FAA notes that pilots who are not also aviation mechanics are permitted to perform preventive maintenance, but not maintenance. The FAA believes that very few, if any, life-limited parts are likely to be removed for any reason in the course of preventive maintenance. Thus, few pilots who are not also aviation mechanics are likely to perform removals that are subject to this rule.

The FAA agrees with the commenter that pilots who are not also certificated mechanics may remove life-limited parts for subsequent re-installation by an aviation mechanic. However, as noted above, temporary removals are not subject to this rule.

To to commenter's remark about the large size of the general aviation community, the FAA responds that there are about 220,000[8] active general aviation aircraft in the United States. Of these, about 150,000[9] are single engine piston airplanes. The FAA believes that most of these 150,000 airplanes have few life-limited parts. Further, in most cases, those life-limited parts are removed by a certificated mechanic, not the pilot. Thus. the likelihood that each of these 720,000 individual pilots would remove a life-limited part from a general aviation aircraft during any one year is very small.

The FAA stands by its NPRM estimate of 5,000 removers subject to this rule. The FAA is adding the 205 broker/dealers to the agency's most recent count of 4,489 repair stations, as well as adding some FBO's that are not certificated repair stations, and some self-employed certificated mechanics. The estimate of 5,000 stands as a ceiling estimate.

Comment: The above commenter asserts that the FAA may not forbear from performing a Regulatory Flexibility Act analysis on the grounds that the costs are owing to the law that prompts the rulemaking, and not to the rule by which the law is implemented.

FAA Response: The NPRM analysis proposed that the average annual costs of compliance with this rule would be about $1,250 for the 1,500 most involved repair stations and about $200 for the 3,500 least involved. Continuing analysis in support of this final rule, as its requirements have been clarified, suggests these costs are overestimates. For example, of the compliance options available, two are likely to require little or no additional cost. These are: (1) Controlling the part of means of a record keeping system that is updated at each removal and which substantiates the part number, serial number, and current life-status of the part; and (2) physical segregation of removed parts. Further, the option of mutilation may include sale of the mutilated part as scrap metal. Such a sale would offset some or all of any additional cost of this option. The agency has not attempted to rework its NPRM estimate in light of this further analysis and clarification.

As the summary Regulatory Evaluation describes, the practice of most removers already approaches the requirements of this rule through the exercise of good shop practice, good business practice, following the guidance of AC's, and complying with those existing CFR's that indirectly constrain the disposition of life-limited parts. Thus, the FAA believes that no entity of any size subject to this rule will incur a significant cost burden.

Paperwork Reduction Act

As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the FAA has submitted a copy of these sections to the Office of Management and Budget for its review. The collection of information was approved and assigned OMB Control Number 2120–0665. This final rule requires that each person who removes any life-limited aircraft part must safely control that part to deter its installation after it has reached its life limit. This rule also requires that type certificate and design approval holders of life-limited parts provide instructions on how to mark a part indicated its current status, when requested by persons removing such a part.

Comments on the proposal have been addressed previously. In general, comments that dealt with the Paperwork Reduction Act also dealt with estimation of the cost burden.

The likely respondents to this proposed information requirement are persons responsible for removing and dispositioning life-limited parts. The FAA stands by its NPRM estimate of 5,000 total responding entities. However, the agency has revised the composition of this total. In the proposal our estimate included 5,000 certificated repair stations as respondents. For the final rule, the 5,000 responding entities include 4,489 certificated repair stations, 205 salvagers, an indeterminate number of fixed base operators that are not certificated repair stations, and an indeterminate number of self-employed certificated aviation mechanics will carry out the requirements of this rule.

The FAA estimates each of 1,500 of the 5,000 entities noted above will perform 300 such procedures as an annual average. Each of the remaining 3,500 will average 50 procedures annually. Thus, the annual frequency of information requirements is 625,000 procedures.

The FAA refined its NPRM estimate of annual burden, and has determined that there is no more than a minimal paperwork burden on any respondent. Both the proposal and the final rule estimate are based on 625,000 annual removals subject to the rule. In the NPRM each removal was estimated to require record keeping and reporting requirements of five minutes duration, at $50 per hour. Thus for the NPRM, the total annual estimated burden of Public Law 106–181 was about $2,600,000, borne by a total of 5,000 respondents. In the final rule this estimate is decreased by an indeterminate amount because the rule is satisfied by the—

(a) Control for safe-disposition of life limited parts through the appropriate use of record keeping systems that are known in wide use; and

(b) Physical segregation of life-limited parts that have little or no remaining

[7] "Salvaging Jetsam * * *" The Wall Street Journal, September 6, 2000, and interviews with cognizant officers of Air Salvage of Dallas and of The Memphis Group, June 2000.

[8] 2000 GAMA Databook, General Aviation Fleet and Flight Activity. General Aviation Manufacturers' Association, at http://www.generalaviation.org/datasbook/2000/index.html.

[9] ibid.

capacity as airworthy parts. Many certificated operators and air agencies are known to make use of this method of control.

While a respondent may find it useful to satisfy the rule by one or more of the remaining options, the FAA believes that neither case above is likely to result in an additional Paperwork Reduction Act burden.

Further, the option of mutilation is likely to reduce the NPRM estimate. This option may include the sale of the mutilated part as scrap metal. Such a sale would offset some of all of any additional cost of this option.

Because FAA has not attempted to determine the preference ranking by respondents of the options permitted under this rule, it has no basis by which to estimate the amount the choice of these options will decrease the NPRM estimate. Thus, the NPRM estimate should be considered to be a ceiling cost.

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 Office of Management and Budget (OMB) control number.

International Compatibility

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to comply with International Civil Aviation Organization (ICAO) Standards and Recommended Practices to the maximum extent practicable. The FAA determined that there are no ICAO Standards and Recommended Practices that correspond to these regulations.

Regulatory Evaluation Summary

Changes to Federal Regulations must undergo several economic analyses. First, Executive Order 12866 directs that each Federal agency shall propose or adopt a regulation only upon a reasoned determined that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 requires agencies to analyze the economic effect of regulatory changes on small entities. Third, the Trade Agreements Act of 1979 (19 U.S.C. 2531–2533) prohibits agencies from setting standards that create unnecessary obstacles of the foreign commerce of the United States. In developing U.S. standards, this Trade Act requires the consideration of international standards and, where appropriate, that they be the basis of U.S. standards. And fourth, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires Federal agencies to prepare a written assessment of the costs, benefits and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million or more, in any one year (adjusted for inflation).

However, for regulations with an expected minimal impact the above-specified analyses are not required. If it is determined that the expected impact is so minimal that the proposal does not warrant a full evaluation, a statement to that effect and the basis for it is included in the evaluation.

Consistent with Department of Transportation policies and procedures for simplification, analysis, and review of regulations, this rule is deemed to have a minimal impact, and does not warrant a full evaluation. The FAA has reviewed the comments generated by the NPRM regarding this rule, and has refined its NPRM analysis, and finds no justification to change its determination of minimal impact.

Expected Benefits

This rule will increase safety benefits by decreasing the possibility of installation into a type-certificated product of life-limited parts that have reached their life-limits. While no existing FAA rule specifies the safe disposition of a life-limited part that is not intended, permissibly, to be re-installed, in general, current industry shop and business practices already inhibit such installation. These practices generally reflect the direction and guidance of numerous, distinct current FAA regulatory and advisory publications. The agency has not attempted to quantify the incremental safety benefits of this rule.

Expected Costs

It is the FAA's intent that this rulemaking would specify only the requirements necessary to bring industry into compliance with Public Law 106–181. Thus, the FAA expects that additional compliance costs will be attributable to the regulation and not to the rule.

The implementation of the legislation that directs this rule adds to existing requirements, and consequently to costs, by requiring that each person removing a life-limited part from a type-certificated product must control the disposition of that part by record keeping, marking, tagging, segregating, mutilating, or any other approved or accepted method that deters the installation of that life-limited part that has reached its life limit. However, as above, although no existing FAA rule specifies the safe disposition of a life-limited part that is not intended, permissibly, to be re-installed, in general, current industry shop and business practices already inhibit such installation. Also as above, these practices generally reflect the direction and guidance of numerous, distinct current FAA regulatory and advisory publications.

The cost estimate for this final rule refines the NPRM estimate and revises it downward by an indeterminate amount. The NPRM estimate assumed that about 5,000 business entities would perform almost all of the activities subject to this rule. Of these entities, about 1,500 would perform about 300 rule-subject removals annually, while the remaining 3,500 would perform about 50. Each removal was assumed to require an additional 5 minutes at $50 per hour. Thus, each larger remover would incur an additional annual cost of about $1,250. Annual costs for each smaller remover would be about $200. Each amount was given in 2001 dollars.

This final rule estimate departs from those assumptions and estimates for two reasons, as follow:

(a) The rule is satisfied by the safe-disposition of life limited parts through the use of record keeping systems that are known to be in wide use.

(b) The rule is satisfied by the physical segregation of life-limited parts that have little or no remaining capacity as airworthy parts. Many certificated operators and air agencies are known to make use of this method of control.

While a remover may find it useful to satisfy the rule by one or more of its other options, the FAA believes that neither case above is likely to result in additional cost. In fact, a respondent may well have a record keeping system in place and also physically segregate parts as appropriate. Further, the option of mutilation may include the sale of the mutilated part as scrap metal. Such a sale would offset some or all of any additional cost of this option.

Because FAA has not attempted to determine the preference ranking by respondents of the options permitted under this rule, it has no basis by which to estimate the amount the choice of these options will decrease the NPRM estimate. Thus, the NPRM estimate should be considered to be a ceiling cost.

Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 et seq.) establishes ''as a principle of regulatory issuance that agencies shall endeavor, consistent with the objective of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale

of the business, organizations, and governmental jurisdictions subject to regulation.'' To achieve that principle, the Act requires agencies to solicit and consider flexible regulatory proposals and to explain the rationale for their actions. The Act covers a wide-range of small entities, including small businesses, not-for-profit organizations and small governmental jurisdictions.

Agencies must perform a review to determine whether a proposed or final rule will have a significant economic impact on a substantial number of small entities. If the determination is that it will, the agency must prepare a regulatory flexibility analysis as described in the Act.

However, if an agency determines that a proposed or final rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the 1980 Act provides that the head of the agency may so certify and a regulatory flexibility analysis is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

This final rule estimate was refined and reduced from the NPRM estimate. The earlier estimate resulted in 1,500 larger removers each incurring an additional annual cost of about $1,250. Additional annual costs for each of the 3,500 smaller removers were estimated about $200. Each amount was given in 2001 dollars.

As noted previously, these NPRM estimates must be taken as ceiling estimates because of the—

(a) Existing use of compliant record keeping systems,

(b) Existing practice of physically segregating life-limited parts that have little or no remaining capacity as airworthy parts, and

(c) Likelihood that some or all of the costs of the option of mutilation will be offset by the sale of the mutilated part as scrap metal.

As stated previously, the agency has made no attempt to estimate the amount by which these factors reduce the NPRM estimates.

Because this rule imposes no more than minimal economic effects on removers of any size, whether small or large, the FAA certifies that it will not have a significant impact on a substantial number of small entities.

Trade Impact Assessment

The Trade Agreement Act of 1979 prohibits Federal agencies from engaging in any standards or related activities that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as safety, are not considered unnecessary obstacles. The statute also requires consideration of international standards and where appropriate, that they be the basis for U.S. standards. In addition, consistent with the Administration's belief in the general superiority and desirability of free trade, it is the policy of the Administration to remove or diminish to the extent feasible, barriers to international trade, including both barriers affecting the export of American goods and services to foreign countries and barriers affecting the import of foreign goods and services into the United States.

The FAA has determined the potential effect of this rule will be minimal and, in accordance with the above statute and policy, holds that this rule will not result in an impact on international trade by companies doing business in or with the United States.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995, enacted as Public Law 104–4 on March 22, 1995, is intended, among other things, to curb the practice of imposing unfunded Federal mandates on State, local, and tribal governments. Title II of the Act requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in a $100 million or more expenditure (adjusted annually for inflation) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector; such a mandate is deemed to be a ''significant regulatory action.''

This rulemaking does not contain such a mandate. Therefore, the analytical requirements of Title II of the Unfunded Mandates Reform Act of 1995 do not apply.

Regulations Affecting Interstate Aviation in Alaska

Section 1205 of the FAA Reauthorization Act of 1996 (110 Stat. 3213) requires the Administrator, when modifying regulations in title 14 of the CFR in a manner affecting interstate aviation in Alaska, to consider the extent to which Alaska is not served by transportation modes other than aviation, and to establish such regulatory distinctions as he or she considers appropriate. The FAA received no comments on whether there is justification for applying the rule differently in interstate operations in Alaska. Because this rule has a minor impact on current operations, including that it applies only to the subsequent use of these life-limited aircraft parts, it will not affect interstate aviation in Alaska. Accordingly, FAA has determined that there is no need to apply the rule differently in interstate operations in Alaska.

Executive Order 13132, Federalism

The FAA has analyzed this rule under the principles and criteria of Executive Order 13132, Federalism. We determined that this action would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, we determined that this rulemaking would not have federalism implications.

Environmental Analysis

FAA Order 1050.1D defines FAA actions that may be categorically excluded from preparation of a National Environmental Policy Act (NEPA) environmental impact statement. In accordance with FAA Order 1050.1D, appendix 4, paragraph 4(j), this rulemaking action qualifies for a categorical exclusion.

Energy Impact

The energy impact of this rule has been assessed in accordance with the Energy Policy and Conservation Act (EPCA) Public Law 94–163, as amended (42 U.S.C. 6362) and FAA Order 1053.1 It has been determined that the rule is not a major regulatory action under the provisions of the EPCA.

List of Subjects

14 CFR Part 43

Aircraft, Aviation safety, Life-limited parts, Reporting and recordkeeping requirements.

14 CFR Part 45

Aircraft, Exports, Signs and symbols.

The Amendment

In consideration of the foregoing, the Federal Aviation Administration amends Chapter I of Title 14, Code of Federal Regulations, as follows:

PART 43—MAINTENANCE, PREVENTIVE MAINTENANCE, REBUILDING, AND ALTERATION

1. Revise the authority citation for part 43 to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701, 44703, 44705, 44707, 44711, 44713, 44717, 44725.

2. Add § 43.1(c) to read as follows:

§ 43.1 Applicability.

* * * * *

(c) This part applies to all life-limited parts that are removed from a type certificated product, segregated, or controlled as provided in § 43.10.

3. Add § 43.10 to read as follows:

§ 43.10 Disposition of life-limited aircraft parts.

(a) *Definitions used in this section.* For the purposes of this section the following definitions apply.

Life-limited part means any part for which a mandatory replacement limit is specified in the type design, the Instructions for Continued Airworthiness, or the maintenance manual.

Life status means the accumulated cycles, hours, or any other mandatory replacement limit of a life-limited part.

(b) *Temporary removal of parts from type-certificated products.* When a life-limited part is temporarily removed and reinstalled for the purpose of performing maintenance, no disposition under paragraph (c) of this section is required if—

(1) The life status of the part has not changed;

(2) The removal and reinstallation is performed on the same serial numbered product; and

(3) That product does not accumulate time in service while the part is removed.

(c) *Disposition of parts removed from type-certificated products.* Except as provided in paragraph (b) of this section, after April 15, 2002 each person who removes a life-limited part from a type-certificated product must ensure that the part is controlled using one of the methods in this paragraph. The method must deter the installation of the part after it has reached its life limit. Acceptable methods include:

(1) *Record keeping system.* The part may be controlled using a record keeping system that substantiates the part number, serial number, and current life status of the part. Each time the part is removed from a type certificated product, the record must be updated with the current life status. This system may include electronic, paper, or other means of record keeping.

(2) *Tag or record attached to part.* A tag or other record may be attached to the part. The tag or record must include the part number, serial number, and current life status of the part. Each time the part is removed from a type certificated product, either a new tag or record must be created, or the existing tag or record must be updated with the current life status.

(3) *Non-permanent marking.* The part may be legibly marked using a non-permanent method showing its current life status. The life status must be updated each time the part is removed from a type certificated product, or if the mark is removed, another method in this section may be used. The mark must be accomplished in accordance with the instructions under § 45.16 of this chapter in order to maintain the integrity of the part.

(4) *Permanent marking.* The part may be legibly marked using a permanent method showing its current life status. The life status must be updated each time the part is removed from a type certificated product. Unless the part is permanently removed from use on type certificated products, this permanent mark must be accomplished in accordance with the instructions under § 45.16 of this chapter in order to maintain the integrity of the part.

(5) *Segregation.* The part may be segregated using methods that deter its installation on a type-certificated product. These methods must include, at least—

(i) Maintaining a record of the part number, serial number, and current life status, and

(ii) Ensuring the part is physically stored separately from parts that are currently eligible for installation.

(6) *Mutilation.* The part may be mutilated to deter its installation in a type certificated produce. The mutilation must render the part beyond repair and incapable of being reworked to appear to be airworthy.

(7) *Other methods.* Any other method approved or accepted by the FAA.

(d) *Transfer of life-limited parts.* Each person who removes a life-limited part from a type certificated product and later sells or otherwise transfers that part must transfer with the part the mark, tag, or other record used to comply with this section, unless the part is mutilated before it is sold or transferred.

4. The authority citation for part 45 is revised to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 44109, 40113–40114, 44101–44105, 44107–44108, 44110–44111, 44504, 44701, 44708–44709, 44711–44713, 44725, 45302–45303, 46104, 46304, 46306, 47122.

5. Add § 45.16 to read as follows:

§ 45.16 Marking of life-limited parts.

When requested by a person required to comply with § 43.10 of this chapter, the holder of a type certificate or design approval for a life-limited part must provide marking instructions, or must state that the part cannot be practicably marked without compromising its integrity. Compliance with this paragraph may be made by providing marking instructions in readily available documents, such as the maintenance manual or the Instructions for Continued Airworthiness.

Issued in Washington, DC, on January 3, 2002.

Jane F. Garvey,

Administrator.

[FR Doc. 02–492 Filed 1–14–02; 8:45 am]

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Federal Register

Tuesday,
January 15, 2002

Part IV

Department of Transportation

Federal Aviation Administration

14 CFR Part 121

Flightcrew Compartment Access and Door Designs; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 121

[Docket No. FAA–2001–10770; SFAR 92–3]

RIN 2120–AH55

Flightcrew Compartment Access and Door Designs

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action supersedes SFAR 92–2, which was published on November 21, 2001 to allow operators to quickly modify the flightcrew compartment door to delay or deter unauthorized entry to the flightcrew compartment. This action temporarily authorizes variances from existing design standards for the doors and allows for approval for return to service of modified airplanes without prior approved data if the modification constitutes a major alteration. This action also mandates these modifications on aircraft in certain passenger and cargo carrying operations and extends the January 15, 2002, reporting date. This action prohibits the possession of flightdeck compartment door keys by other than the flightcrew during flight, unless the flightdeck door has an internal flightdeck locking device installed, operative, and in use. This action is being taken in the wake of the September 11, 2001, terrorist attacks against four U.S. commercial airplanes.

DATES: This action is effective January 15, 2002 and shall remain in effect until April 9, 2003.

FOR FURTHER INFORMATION CONTACT: Kimberly Smith, Technical Programs Branch, Aircraft Certification Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–7242; e-mail address: *9-awa-avr-design@faa.gov*.

SUPPLEMENTARY INFORMATION:

Availability of This Action

You can get an electronic copy of this document from the Internet by taking the following steps:

(1) Go to the search function of the Department of Transportation's electronic Docket Management System (DMS) web page (*http://dms.dot.gov/search*).

(2) On the search page, type in the last four digits of the docket number shown at the beginning of this document. Click on ''search.''

(3) On the next page, which contains the docket summary information, click on the item you want to see.

You can also get an electronic copy using the Internet through the FAA's web page at *http://www.faa.gov/avr/arm/nprm/nprm.htm* or the Government Printing Office's web page at *http://www.access.gpo.gov/su_docs/aces/aces140.html*.

You can also get a copy by submitting a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Ave., SW., Washington, DC 20591, or by calling (202) 267–9680. Make sure to identify the docket number or notice number of this rulemaking.

Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 requires the FAA to comply with small entity requests for information advice about compliance with statutes and regulations within the FAA's jurisdiction. Therefore, any small entity that has a question regarding this document may contact its local FAA official. Internet users can find additional information on SBREFA on the FAA's web page at *http:www.faa.gov/avr/arm/sbrefa.htm* and send electronic inquiries to the following Internet address: 9-AWA-SBREFA@faa.gov.

Background

The September 11, 2001, hijacking events have demonstrated that some persons are willing to hijack airplanes and use them as weapons against the citizens of the United States. This is a safety and security threat that was not anticipated and, therefore, not considered in the design of transport airplanes. The recent hijackings make it clear that there is a critical need to improve the security of the flightcrew compartment. These improvements should deter terrorist activities and, if they are attempted, delay or deny access to the cockpit.

On November 16, 2001, Congress enacted the Aviation and Transportation Security Act, Public Law 107–71. Section 104(a)(1)(B) of the Act requires the FAA to issue an order requiring the strengthening of the flight deck door and locks on certain passenger carrying aircraft.

Flightcrew Compartment Door Designs

Flightcrew compartment doors on transport category airplanes have been designed principally to ensure privacy, so pilots could focus their entire attention to their normal and emergency flight duties. The doors have not been designed to provide an impenetrable barrier between the cabin and the flightcrew compartment. Doors have not been required to meet any significant security threat, such as small arms fire or shrapnel, or the exercise of brute force to enter the flightcrew compartment.

Besides affording an uninterrupted work environment for the flightcrew, flightcrew compartment doors often must meet other important safety standards. Should there be a sudden decompression of the airplane, separate compartments within the airplane, like the cabin and the crew compartment, must be designed so that the pressure differential that is created does not compromise the basic airplane structure. Certification standards require that airplane designs provide a method to compensate for decompression in a manner that avoids significant damage to the airplane. In many cases, flightcrew compartment doors provide the pressure compensation by being vented or swinging open to equalize the pressure between the cabin and the flightcrew compartment.

In addition, design standards require that the flightcrew have a path to exit the flightcrew compartment in an emergency, if the cockpit window exits are not usable. Flightcrew compartment doors have been designed to provide this escape path. But this escape feature may also enable easier unauthorized entry into the flightcrew compartment from the cabin.

Operating regulations, in particular § 121.379(b) in the case of a major alteration, require the work to be done in accordance with technical data approved by the Administrator. Operating regulations for airlines also require that each crewmember have a key readily available to open doors between passengers and an emergency exit. Some airlines issue flightcrew compartment door keys to all their crewmembers. This allows flight attendants to enter the flightcrew compartment and assist the flightcrew in an emergency, such as incapacitation of a flight crewmember. But it also offers an opportunity for an individual to overpower or coerce a flight attendant, take away the key, and enter the flightcrew compartment.

Rapid Response Team

To evaluate what could be done to improve flightcrew compartment security, the Secretary of Transportation formed a Rapid Response Team for Aircraft Security. The Team included representatives of airplane designers, airline operators, airline pilots, and

flight attendants. There was a clear consensus from this group, and agreement by the FAA, that immediate actions must be taken to strengthen the flightcrew compartment door. The short-term options, though, in one way or another could conflict with regulatory design requirements such as those discussed above.

The Rapid Response Team addressed the design issues and found the relative safety risks to be small in view of the emergent security risk of unauthorized flightcrew compartment entry. The FAA agrees with this conclusion. The Rapid Response Team report also concluded, and the FAA agrees, that all existing design requirements should continue to be applied in the long term. Therefore, this SFAR allows a temporary period during which non-compliance with design requirements will be allowed when improvements to flightcrew compartment security are made.

In addition to waiving specific airworthiness regulations, the FAA is waiving procedural requirements applicable to major alterations (§ 121.379(b)). Besides the information obtained from the Rapid Response Team, the FAA has received technical information from airline operators and manufacturers regarding what modifications are possible and how quickly they can be incorporated. The technical data reviewed by the FAA reflect good design practices, and the FAA is confident that installations can be made without unduly compromising safety.

Given the urgency of the need to take action to reinforce the flightcrew compartment doors, the FAA finds that it is in the public interest to forego the requirement that major alterations to accomplish this task have data previously approved by the Administrator. This portion of the SFAR is limited to 6 months. Major alterations performed after that date must be in accordance with approved data, and whatever the operator installs in the short term must ultimately be brought into full regulatory compliance.

The Original SFAR 92 Provisions

Original SFAR 92 was published on October 9, 2001, and allowed all part 121 passenger carrying operators to install flightcrew compartment door improvements as well as prohibiting possession of flightcrew compartment keys by persons other than flight crewmembers during flight. It was very broad to allow maximum short-term flexibility in crafting enhanced door security measures. It allowed the doors to be modified and airplanes to be operated with modified doors.

The FAA established an 18-month duration for the portions of the SFAR concerning airworthiness requirements. We expected this would give the industry sufficient time to design and install more permanent changes to door security and establish procedures for flightcrew compartment door access that meet regulatory requirements for egress and venting.

The SFAR required operators to submit a report to the FAA that details the specific modifications they make to the flightcrew compartment door. This will allow the FAA to monitor what has been installed and take action if the installation creates an unacceptable safety risk. Further, to monitor progress toward the goal of full compliance, the SFAR required a report by April 22, 2002 that describes how the operator will meet regulatory compliance for egress and venting.

We also expected that airframe manufacturers and modifiers would produce service information to assist operators in developing modifications to improve intrusion resistance to the flightcrew compartment. While service documents would not require separate approval under this SFAR, such modifications may also be installed in production airplanes. The modification authority granted by the SFAR also applied to manufacturers and other persons applying for airworthiness certificates to enable delivery of airplanes to the operators.

In addition, we understood that some operators might rely on suppliers to produce parts to support these modifications to the flightcrew doors. Under normal circumstances, such parts producers would be subject to the requirement to obtain parts manufacturer approvals in accordance with 14 CFR part 21.303. However, to facilitate reinforcement of these doors, the SFAR included a provision overriding the requirement for parts production approval in support of these activities.

Should any of the changes to the door constitute a major alteration, the SFAR temporarily relieved the operator of having to obtain prior approval of the data. This part of the SFAR terminates on April 22, 2002. As soon as the design data is submitted, the FAA will work with the operators to identify a mutually acceptable process and time to get the data approved. In the meantime, the airworthiness certificates on airplanes that have been modified will remain valid. In making returns to service of airplanes modified under the SFAR, documents can reflect compliance with regulatory requirements by citing the SFAR.

In addition to the above changes to harden the flightcrew compartment doors against intruders, the FAA also believed it was prudent to eliminate the ability of intruders to gain access by obtaining a flight attendant's key. For that reason, the SFAR temporarily changed the requirement in § 121.313(g) by stating that only flight crewmembers, and not cabin crewmembers, would have flight crew compartment keys during flight. This would lessen the opportunity for gaining unauthorized access and reduce the likelihood of attacks on cabin crewmembers to obtain keys on airplanes where the flightdeck door does not have an internal locking device.

First Revision to SFAR 92–SFAR 92–1

SFAR 92 has remained substantially as originally written. However, modifications have been issued to change the scope of the rule and to clarify specific provisions. SFAR 92 originally authorized only part 121 passenger carrying operators to make the quick modifications to the flightdeck doors. Because of the risk posed by having other than flightcrew members onboard the aircraft as allowed in § 121.583, FedEx petitioned the FAA to allow it to install additional door security measures in accordance with the provisions of SFAR 92. The FAA determined that the modifications requested by FedEx would apply to similarly situated cargo airplane operators and that the threat is similar to that of passenger airplanes. SFAR 92–1 was published on October 17, 2001, to expand the modification authority to all part 121 operators.

Second Revision to SFAR 92–SFAR 92–2

As originally published, SFAR 92 temporarily changed section 121.313(g) to prohibit the possession of flightdeck keys by non-flightdeck crewmembers. Since initial issuance of the SFAR, internal locking devices that render the key useless for flightdeck access have been installed on many air carrier airplanes. Since the keys have multiple uses in the airplane beyond the flightdeck door, prohibiting possession of the flightdeck door keys by non-flight crewmembers on these airplanes is only an inconvenience to the crew and not a deterrent to terrorist activity.

Allowing non-flight crewmembers access to the keys is acceptable when the internal locking device is in use on the airplane. ''In use'' contemplates that the device is locked from the inside by the flightdeck crew. If a flightdeck crewmember must exit the flightdeck for some reason, either the remaining

flightdeck crewmember, or a cabin crewmember that enters the flightdeck, will immediately lock the internal device behind the exiting flightdeck crewmember. This provision may also reduce the opportunity for coercion, since the flight attendant can safely hand over the key.

As a result, SFAR 92–2 was published on November 21, 2001, to add a phrase to the end of § 121.313(a)(ii) to allow possession of the key under certain circumstances. The limitations on keys do not apply to cargo operators because flight attendants are only required on passenger airplanes nor do they apply to part 129 operators because part 121 regulation do not apply to them. This change to 121.313(g) will expire with this SFAR.

SFAR 92–2 also replaced the 90 day and 180 day reporting and termination time frames with specific dates, January 15, 2002, and April 22, 2002 respectively. Since SFAR 92 was republished more than once, insertion of specific dates will eliminate confusion in calculating these dates.

This Revision to SFAR 92–SFAR 92–3

When SFAR 92 was originally issued, and subsequently revised, it was the expectation of the FAA that flightdeck modifications would be made as soon as possible. While this has been the case for the substantial majority of operators, not all have accomplished the short-term modifications. Because of the FAAs original expectation, SFAR 92 did not contain a provision mandating the internal door modifications. Now, the FAA has determined that a mandate is necessary to assure that all part 121 passenger-carrying aircraft required to have flightdeck doors are modified. The FAA has also considered the issue of airplanes that carry only cargo, but are permitted to also carry certain persons as defined in § 121.583 as discussed in SFAR 92–1. Current provisions of the regulations do not ensure that a person who is intent on using an airplane as a weapon would be unable to board an all-cargo airplane in accordance with § 121.583. Therefore, in cases where these airplanes already have flightdeck doors, the FAA has determined that the door should also be modified to improve security.

Pub. L. 107–71 directs the Administrator of the FAA to issue an order requiring the strengthening of flightdeck doors and locks. Revision 92–3 is being issued to require installation of internal locking devises on flightdeck doors within 45 days of publication of this revision. The aircraft covered by this provision are passenger-carrying aircraft operated under part 121 that are required to have flightdeck doors and all-cargo airplanes that have flightdeck doors installed. Given the large number of modifications already made on a large variety of aircraft within the fleet, the FAA believes that 45 days should provide operators who have not yet made the relevant modifications with sufficient time to do so.

This revision to the SFAR will also expand the modification authority to U.S. registered, transport category aircraft that are operated under part 129, foreign operations. Because these aircraft are U.S. registered, the FAA must issue any authorization to modify the aircraft. The FAA has received several inquires from such operators requesting authorization to make modifications as authorized in SFAR 92. SFAR 92–3 will provide such authorization.

The FAA recognizes that mandating the reinforcing modifications for part 121 operators and authorizing part 129 operators to make modifications may not enable some to make the January 15, 2002, reporting requirements in SFAR 92–2. As a result, this revision extends the reporting date to February 15, 2002. The FAA expects that those who have already made modifications will still meet the January 15, 2002, reporting date.

Other Rulemaking

In parallel with this SFAR 92–3, the FAA is issuing an immediately adopted rule (IAR) which will adopt new design standards for flight deck doors in part 25 of the Federal Aviation Regulations. Generally speaking, these new standards will enhance resistance to blunt force and ballistic intrusion. Also, the IAR will require all aircraft required to have a door under section 121.313(f), as well as all-cargo airplanes that have flightdeck doors installed, to have a door meeting the new design standard. The stronger doors must be installed not later than April 9, 2003, the expiration date of this SFAR. In essence, the doors meeting the new design standards will replace the doors reinforced under this SFAR.

Justification for Immediate Adoption

Because the circumstances described herein warrant immediate action by the FAA, the Administrator finds that notice and public comment under 5 U.S.C. 553(b) are impracticable and contrary to the public interest. Further, the Administrator finds that good cause exists under 5 U.S.C 553(d) for making this rule effective immediately upon publication. This action is necessary to prevent a possible imminent hazard to airplanes and to protect persons and property within the United States.

Additionally, with respect to the provisions requiring modifications to strengthen the flight deck doors and locks, PL 107–71 authorizes the Administrator to issue an order without regard to the provisions of chapter 5 of Title 5 of the United States Code. The modification to section 121.313 contained in this SFAR is within the scope of this authority and is adopted without public notice and a prior opportunity to comment.

International Compatibility

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to comply with International Civil Aviation Organization (ICAO) Standards and Recommended Practices to the maximum extent practicable. The FAA determined that there are no ICAO Standards and Recommended Practices that correspond to this SFAR.

Paperwork Reduction Act

This emergency final SFAR contains information collection activities subject to the Paperwork Reduction Act of 1995 (44 USC 3507(d)). In accordance with section 3507(j)(1)(B) of that statute, the FAA requested the Office of Management and Budget to grant an immediate emergency clearance on the paperwork package. OMB granted an emergency clearance and assigned OMB control number 2120–1674. As protection provided by the Paperwork Reduction Act, 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. Following is a description of the information collection burden associated.

Title: Flightcrew Compartment Access and Door Designs.

Summary/Need: The SFAR requires operators to submit a report to the FAA by February 15, 2002 that details the specific modifications. This will allow the FAA to monitor what has been installed and take action if the installation creates an unwarranted safety risk. Further, to monitor progress toward the goal of full compliance, the SFAR requires a report by April 22, 2002 that describes how the operator will come into full regulatory compliance.

Respondents: The respondents are an estimated 135 airplane operators covered under 14 CFR part 121 and 129.

Burden: The burden associated with this SFAR is 6480 hours.

Regulatory Analyses

This rulemaking action is taken under an emergency situation within the meaning of Section 6(a)(3)(D) of Executive Order 12866, Regulatory Planning and Review. It also is considered an emergency regulation under Paragraph 11g of the Department of Transportation (DOT) Regulatory Policies and Procedures. In addition, it is a significant rule within the meaning of the Executive Order and DOT's policies and procedures. No regulatory analysis or evaluation accompanies the rule. At this time, the FAA is not able to assess whether this rule will have a significant impact on a substantial number of small entities as defined in the Regulatory Flexibility Act of 1980, as amended. However, we will be conducting a regulatory analysis of the cost and benefits of this rulemaking, including any impact on small entities, at a later date.

Executive Order 13132, Federalism

The FAA has analyzed this SFAR under the principles and criteria of Executive Order 13132, Federalism. We have determined that this action will not have a substantial direct effect on the States, or the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, we have determined that this final rule does not have federalism implications.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (the Act), enacted as Pub. L. 104–4 on March 22, 1995, is intended, among other things, to curb the practice of imposing unfunded Federal mandates on State, local, and tribal governments. Title II of the Act requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in a $100 million or more expenditure (adjusted annually for inflation) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector; such a mandate is deemed to be a ''significant regulatory action.'' This SFAR does not contain such a mandate. Therefore, the requirements of Title II of the Unfunded Mandates Reform Act of 1995 do not apply.

Environmental Analysis

FAA Order 1050.1D defines FAA actions that may be categorically excluded from preparation of a National Environmental Policy Act (NEPA) environmental impact statement. In accordance with FAA Order 1050.1D, appendix 4, paragraph 4(j) this rulemaking action qualifies for a categorical exclusion.

Energy Impact

The energy impact of this SFAR has been assessed in accordance with the Energy Policy and Conservation Act (EPCA) Pub. L. 94–163, as amended (42 U.S.C. 6362) and FAA Order 1053.1. It has been determined that this SFAR is not a major regulatory action under the provisions of the EPCA.

List of Subjects in 14 CFR Part 121

Air carriers, Aircraft, Airmen, Aviation safety, Charter flights, Reporting and recordkeeping requirements, Safety, Transportation.

The Amendment

For the reasons set forth above, the Federal Aviation Administration amends 14 CFR part 121 as follows:

PART 121—OPERATING REQUIREMENTS: DOMESTIC, FLAG, AND SUPPLEMENTAL OPERATIONS

1. The authority citation for part 121 continues to read as follows:

Authority: 49 U.S.C. 106(g), 1153, 40113, 40119, 41706, 44101, 44701–44702, 44705, 44709–44711, 44713, 44716–44717, 44722, 44901, 44903–44904, 44912, 46105.

SFAR No. 92–2 [Removed]

2. Remove Special Federal Aviation Regulation No. 92–2.

3. Add Special Federal Aviation Regulation (SFAR) 92–3 to read as follows:

SPECIAL FEDERAL AVIATION REGULATION NO. 92–3—FLIGHTCREW COMPARTMENT ACCESS AND DOOR DESIGNS

1. *Applicability*. This Special Federal Aviation Regulation (SFAR) applies to all operators that hold an air carrier certificate or operating certificate issued under part 119 and that conduct operations under part 121 and to operators of U.S. registered transport category aircraft operated under part 129, except paragraph 4 of this SFAR does not apply to cargo operations and part 129 operations. It applies to the operators specified in this SFAR that modify airplanes to improve the flightcrew compartment door installations to restrict the unwanted entry of persons into the flightcrew compartment. This SFAR also applies to production certificate holders and applicants for airworthiness certificates for airplanes to be operated by operators specified in this SFAR, and producers of parts to be used in such modifications.

2. *Regulatory Relief*. Contrary provisions of part 21, and §§ 121.153(a)(2), 121.379(b), and 129.13 notwithstanding:

(a) An operator may operate airplanes modified to improve the flightcrew compartment door installations to restrict the unauthorized entry of persons into the flightcrew compartment without regard to the applicable airworthiness requirements and may modify those airplanes for that purpose, using technical data not previously approved by the Administrator, subject to the following conditions:

(i) Not later than February 15, 2002, submit to the Director, Aircraft Certification Service, a detailed description of the changes to the airplane that have been accomplished to enhance the intrusion resistance of the flightcrew compartment including identification of what major alterations have been done without previously approved data.

(ii) Not later than April 22, 2002, submit to the Director, Aircraft Certification Service, a schedule for accomplishment of the changes necessary to restore compliance with all applicable airworthiness requirements, as well as a listing of the regulations not currently complied with. The schedule may not extend beyond the termination date of this SFAR.

(iii) If, upon reviewing the data submitted in paragraph 2 (a)(i) of this SFAR, the Administrator determines that a door modification presents an unacceptable safety risk, the FAA may issue an order requiring changes to such modifications.

(b) An applicant for an airworthiness certificate may obtain such a certificate for modified airplanes to be operated by operators described in this SFAR.

(c) A holder of a production certificate may submit for airworthiness certification or approval, modified airplanes to be operated by operators described in this SFAR.

(d) A person may produce parts for installation on airplanes in connection with modifications described in this SFAR, without FAA parts manufacturer approval (PMA).

3. *Return to Service Documentation*. Where operators have modified airplanes as authorized in this SFAR, the affected airplane must be returned to service with a note that it was done under the provisions of this SFAR.

4. *Provision for Flightdeck Door Compartment Key*. Contrary to provisions of § 121.313(g), the following provision applies: A key for each door that separates a passenger compartment from an emergency exit must be identified to passengers in the briefing required by § 121.571(a)(1)(ii). The key required for access to the emergency exit must be readily available for each crewmember. No key to the flightcrew compartment shall be available to any crewmember during flight, except for flight crewmembers, unless an internal flightdeck locking device such as a deadbolt or bar is installed, operative, and in use.

5. *Door Modification Requirement* After [45 days after publication] for each airplane required under paragraph 121.313(f) to have a door between the passenger and pilot compartments, and for transport category all-cargo airplanes that have a door installed between the pilot compartment and any other occupied compartment on [the effective date of this amendment] such door must be equipped with an internal locking device installed, operative, and in use. Such internal locking device has to be designed so that it can only be unlocked from inside the flightdeck.

6. *Termination*. With respect to the ability to approve airplanes for return to service without data previously approved by the Administrator in the case of major alterations, this SFAR terminates on April 22, 2002. All other provisions of this SFAR terminate on April 9, 2003.

Issued in Washington, DC, on January 10, 2002.

Jane F. Garvey,

Administrator.

[FR Doc. 02–967 Filed 1–10–02; 4:15 pm]

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January 15, 2002

Part IV

Department of Transportation

Federal Aviation Administration

14 CFR Part 121

Flightcrew Compartment Access and Door Designs; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 121

[Docket No. FAA–2001–10770; SFAR 92–3]

RIN 2120–AH55

Flightcrew Compartment Access and Door Designs

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action supersedes SFAR 92–2, which was published on November 21, 2001 to allow operators to quickly modify the flightcrew compartment door to delay or deter unauthorized entry to the flightcrew compartment. This action temporarily authorizes variances from existing design standards for the doors and allows for approval for return to service of modified airplanes without prior approved data if the modification constitutes a major alteration. This action also mandates these modifications on aircraft in certain passenger and cargo carrying operations and extends the January 15, 2002, reporting date. This action prohibits the possession of flightdeck compartment door keys by other than the flightcrew during flight, unless the flightdeck door has an internal flightdeck locking device installed, operative, and in use. This action is being taken in the wake of the September 11, 2001, terrorist attacks against four U.S. commercial airplanes.

DATES: This action is effective January 15, 2002 and shall remain in effect until April 9, 2003.

FOR FURTHER INFORMATION CONTACT: Kimberly Smith, Technical Programs Branch, Aircraft Certification Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–7242; e-mail address: *9-awa-avr-design@faa.gov*.

SUPPLEMENTARY INFORMATION:

Availability of This Action

You can get an electronic copy of this document from the Internet by taking the following steps:

(1) Go to the search function of the Department of Transportation's electronic Docket Management System (DMS) web page (*http://dms.dot.gov/search*).

(2) On the search page, type in the last four digits of the docket number shown at the beginning of this document. Click on ''search.''

(3) On the next page, which contains the docket summary information, click on the item you want to see.

You can also get an electronic copy using the Internet through the FAA's web page at *http://www.faa.gov/avr/arm/nprm/nprm.htm* or the Government Printing Office's web page at *http://www.access.gpo.gov/su_docs/aces/aces140.html*.

You can also get a copy by submitting a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Ave., SW., Washington, DC 20591, or by calling (202) 267–9680. Make sure to identify the docket number or notice number of this rulemaking.

Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 requires the FAA to comply with small entity requests for information advice about compliance with statutes and regulations within the FAA's jurisdiction. Therefore, any small entity that has a question regarding this document may contact its local FAA official. Internet users can find additional information on SBREFA on the FAA's web page at *http:www.faa.gov/avr/arm/sbrefa.htm* and send electronic inquiries to the following Internet address: 9-AWA-SBREFA@faa.gov.

Background

The September 11, 2001, hijacking events have demonstrated that some persons are willing to hijack airplanes and use them as weapons against the citizens of the United States. This is a safety and security threat that was not anticipated and, therefore, not considered in the design of transport airplanes. The recent hijackings make it clear that there is a critical need to improve the security of the flightcrew compartment. These improvements should deter terrorist activities and, if they are attempted, delay or deny access to the cockpit.

On November 16, 2001, Congress enacted the Aviation and Transportation Security Act, Public Law 107–71. Section 104(a)(1)(B) of the Act requires the FAA to issue an order requiring the strengthening of the flight deck door and locks on certain passenger carrying aircraft.

Flightcrew Compartment Door Designs

Flightcrew compartment doors on transport category airplanes have been designed principally to ensure privacy, so pilots could focus their entire attention to their normal and emergency flight duties. The doors have not been designed to provide an impenetrable barrier between the cabin and the flightcrew compartment. Doors have not been required to meet any significant security threat, such as small arms fire or shrapnel, or the exercise of brute force to enter the flightcrew compartment.

Besides affording an uninterrupted work environment for the flightcrew, flightcrew compartment doors often must meet other important safety standards. Should there be a sudden decompression of the airplane, separate compartments within the airplane, like the cabin and the crew compartment, must be designed so that the pressure differential that is created does not compromise the basic airplane structure. Certification standards require that airplane designs provide a method to compensate for decompression in a manner that avoids significant damage to the airplane. In many cases, flightcrew compartment doors provide the pressure compensation by being vented or swinging open to equalize the pressure between the cabin and the flightcrew compartment.

In addition, design standards require that the flightcrew have a path to exit the flightcrew compartment in an emergency, if the cockpit window exits are not usable. Flightcrew compartment doors have been designed to provide this escape path. But this escape feature may also enable easier unauthorized entry into the flightcrew compartment from the cabin.

Operating regulations, in particular § 121.379(b) in the case of a major alteration, require the work to be done in accordance with technical data approved by the Administrator. Operating regulations for airlines also require that each crewmember have a key readily available to open doors between passengers and an emergency exit. Some airlines issue flightcrew compartment door keys to all their crewmembers. This allows flight attendants to enter the flightcrew compartment and assist the flightcrew in an emergency, such as incapacitation of a flight crewmember. But it also offers an opportunity for an individual to overpower or coerce a flight attendant, take away the key, and enter the flightcrew compartment.

Rapid Response Team

To evaluate what could be done to improve flightcrew compartment security, the Secretary of Transportation formed a Rapid Response Team for Aircraft Security. The Team included representatives of airplane designers, airline operators, airline pilots, and

flight attendants. There was a clear consensus from this group, and agreement by the FAA, that immediate actions must be taken to strengthen the flightcrew compartment door. The short-term options, though, in one way or another could conflict with regulatory design requirements such as those discussed above.

The Rapid Response Team addressed the design issues and found the relative safety risks to be small in view of the emergent security risk of unauthorized flightcrew compartment entry. The FAA agrees with this conclusion. The Rapid Response Team report also concluded, and the FAA agrees, that all existing design requirements should continue to be applied in the long term. Therefore, this SFAR allows a temporary period during which non-compliance with design requirements will be allowed when improvements to flightcrew compartment security are made.

In addition to waiving specific airworthiness regulations, the FAA is waiving procedural requirements applicable to major alterations (§ 121.379(b)). Besides the information obtained from the Rapid Response Team, the FAA has received technical information from airline operators and manufacturers regarding what modifications are possible and how quickly they can be incorporated. The technical data reviewed by the FAA reflect good design practices, and the FAA is confident that installations can be made without unduly compromising safety.

Given the urgency of the need to take action to reinforce the flightcrew compartment doors, the FAA finds that it is in the public interest to forego the requirement that major alterations to accomplish this task have data previously approved by the Administrator. This portion of the SFAR is limited to 6 months. Major alterations performed after that date must be in accordance with approved data, and whatever the operator installs in the short term must ultimately be brought into full regulatory compliance.

The Original SFAR 92 Provisions

Original SFAR 92 was published on October 9, 2001, and allowed all part 121 passenger carrying operators to install flightcrew compartment door improvements as well as prohibiting possession of flightcrew compartment keys by persons other than flight crewmembers during flight. It was very broad to allow maximum short-term flexibility in crafting enhanced door security measures. It allowed the doors to be modified and airplanes to be operated with modified doors.

The FAA established an 18-month duration for the portions of the SFAR concerning airworthiness requirements. We expected this would give the industry sufficient time to design and install more permanent changes to door security and establish procedures for flightcrew compartment door access that meet regulatory requirements for egress and venting.

The SFAR required operators to submit a report to the FAA that details the specific modifications they make to the flightcrew compartment door. This will allow the FAA to monitor what has been installed and take action if the installation creates an unacceptable safety risk. Further, to monitor progress toward the goal of full compliance, the SFAR required a report by April 22, 2002 that describes how the operator will meet regulatory compliance for egress and venting.

We also expected that airframe manufacturers and modifiers would produce service information to assist operators in developing modifications to improve intrusion resistance to the flightcrew compartment. While service documents would not require separate approval under this SFAR, such modifications may also be installed in production airplanes. The modification authority granted by the SFAR also applied to manufacturers and other persons applying for airworthiness certificates to enable delivery of airplanes to the operators.

In addition, we understood that some operators might rely on suppliers to produce parts to support these modifications to the flightcrew doors. Under normal circumstances, such parts producers would be subject to the requirement to obtain parts manufacturer approvals in accordance with 14 CFR part 21.303. However, to facilitate reinforcement of these doors, the SFAR included a provision overriding the requirement for parts production approval in support of these activities.

Should any of the changes to the door constitute a major alteration, the SFAR temporarily relieved the operator of having to obtain prior approval of the data. This part of the SFAR terminates on April 22, 2002. As soon as the design data is submitted, the FAA will work with the operators to identify a mutually acceptable process and time to get the data approved. In the meantime, the airworthiness certificates on airplanes that have been modified will remain valid. In making returns to service of airplanes modified under the SFAR, documents can reflect compliance with regulatory requirements by citing the SFAR.

In addition to the above changes to harden the flightcrew compartment doors against intruders, the FAA also believed it was prudent to eliminate the ability of intruders to gain access by obtaining a flight attendant's key. For that reason, the SFAR temporarily changed the requirement in § 121.313(g) by stating that only flight crewmembers, and not cabin crewmembers, would have flight crew compartment keys during flight. This would lessen the opportunity for gaining unauthorized access and reduce the likelihood of attacks on cabin crewmembers to obtain keys on airplanes where the flightdeck door does not have an internal locking device.

First Revision to SFAR 92–SFAR 92–1

SFAR 92 has remained substantially as originally written. However, modifications have been issued to change the scope of the rule and to clarify specific provisions. SFAR 92 originally authorized only part 121 passenger carrying operators to make the quick modifications to the flightdeck doors. Because of the risk posed by having other than flightcrew members onboard the aircraft as allowed in § 121.583, FedEx petitioned the FAA to allow it to install additional door security measures in accordance with the provisions of SFAR 92. The FAA determined that the modifications requested by FedEx would apply to similarly situated cargo airplane operators and that the threat is similar to that of passenger airplanes. SFAR 92–1 was published on October 17, 2001, to expand the modification authority to all part 121 operators.

Second Revision to SFAR 92–SFAR 92–2

As originally published, SFAR 92 temporarily changed section 121.313(g) to prohibit the possession of flightdeck keys by non-flightdeck crewmembers. Since initial issuance of the SFAR, internal locking devices that render the key useless for flightdeck access have been installed on many air carrier airplanes. Since the keys have multiple uses in the airplane beyond the flightdeck door, prohibiting possession of the flightdeck door keys by non-flight crewmembers on these airplanes is only an inconvenience to the crew and not a deterrent to terrorist activity.

Allowing non-flight crewmembers access to the keys is acceptable when the internal locking device is in use on the airplane. ''In use'' contemplates that the device is locked from the inside by the flightdeck crew. If a flightdeck crewmember must exit the flightdeck for some reason, either the remaining

flightdeck crewmember, or a cabin crewmember that enters the flightdeck, will immediately lock the internal device behind the exiting flightdeck crewmember. This provision may also reduce the opportunity for coercion, since the flight attendant can safely hand over the key.

As a result, SFAR 92–2 was published on November 21, 2001, to add a phrase to the end of § 121.313(a)(ii) to allow possession of the key under certain circumstances. The limitations on keys do not apply to cargo operators because flight attendants are only required on passenger airplanes nor do they apply to part 129 operators because part 121 regulation do not apply to them. This change to 121.313(g) will expire with this SFAR.

SFAR 92–2 also replaced the 90 day and 180 day reporting and termination time frames with specific dates, January 15, 2002, and April 22, 2002 respectively. Since SFAR 92 was republished more than once, insertion of specific dates will eliminate confusion in calculating these dates.

This Revision to SFAR 92–SFAR 92–3

When SFAR 92 was originally issued, and subsequently revised, it was the expectation of the FAA that flightdeck modifications would be made as soon as possible. While this has been the case for the substantial majority of operators, not all have accomplished the short-term modifications. Because of the FAAs original expectation, SFAR 92 did not contain a provision mandating the internal door modifications. Now, the FAA has determined that a mandate is necessary to assure that all part 121 passenger-carrying aircraft required to have flightdeck doors are modified. The FAA has also considered the issue of airplanes that carry only cargo, but are permitted to also carry certain persons as defined in § 121.583 as discussed in SFAR 92–1. Current provisions of the regulations do not ensure that a person who is intent on using an airplane as a weapon would be unable to board an all-cargo airplane in accordance with § 121.583. Therefore, in cases where these airplanes already have flightdeck doors, the FAA has determined that the door should also be modified to improve security.

Pub. L. 107–71 directs the Administrator of the FAA to issue an order requiring the strengthening of flightdeck doors and locks. Revision 92–3 is being issued to require installation of internal locking devises on flightdeck doors within 45 days of publication of this revision. The aircraft covered by this provision are passenger-carrying aircraft operated under part 121 that are required to have flightdeck doors and all-cargo airplanes that have flightdeck doors installed. Given the large number of modifications already made on a large variety of aircraft within the fleet, the FAA believes that 45 days should provide operators who have not yet made the relevant modifications with sufficient time to do so.

This revision to the SFAR will also expand the modification authority to U.S. registered, transport category aircraft that are operated under part 129, foreign operations. Because these aircraft are U.S. registered, the FAA must issue any authorization to modify the aircraft. The FAA has received several inquires from such operators requesting authorization to make modifications as authorized in SFAR 92. SFAR 92–3 will provide such authorization.

The FAA recognizes that mandating the reinforcing modifications for part 121 operators and authorizing part 129 operators to make modifications may not enable some to make the January 15, 2002, reporting requirements in SFAR 92–2. As a result, this revision extends the reporting date to February 15, 2002. The FAA expects that those who have already made modifications will still meet the January 15, 2002, reporting date.

Other Rulemaking

In parallel with this SFAR 92–3, the FAA is issuing an immediately adopted rule (IAR) which will adopt new design standards for flight deck doors in part 25 of the Federal Aviation Regulations. Generally speaking, these new standards will enhance resistance to blunt force and ballistic intrusion. Also, the IAR will require all aircraft required to have a door under section 121.313(f), as well as all-cargo airplanes that have flightdeck doors installed, to have a door meeting the new design standard. The stronger doors must be installed not later than April 9, 2003, the expiration date of this SFAR. In essence, the doors meeting the new design standards will replace the doors reinforced under this SFAR.

Justification for Immediate Adoption

Because the circumstances described herein warrant immediate action by the FAA, the Administrator finds that notice and public comment under 5 U.S.C. 553(b) are impracticable and contrary to the public interest. Further, the Administrator finds that good cause exists under 5 U.S.C 553(d) for making this rule effective immediately upon publication. This action is necessary to prevent a possible imminent hazard to airplanes and to protect persons and property within the United States.

Additionally, with respect to the provisions requiring modifications to strengthen the flight deck doors and locks, PL 107–71 authorizes the Administrator to issue an order without regard to the provisions of chapter 5 of Title 5 of the United States Code. The modification to section 121.313 contained in this SFAR is within the scope of this authority and is adopted without public notice and a prior opportunity to comment.

International Compatibility

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to comply with International Civil Aviation Organization (ICAO) Standards and Recommended Practices to the maximum extent practicable. The FAA determined that there are no ICAO Standards and Recommended Practices that correspond to this SFAR.

Paperwork Reduction Act

This emergency final SFAR contains information collection activities subject to the Paperwork Reduction Act of 1995 (44 USC 3507(d)). In accordance with section 3507(j)(1)(B) of that statute, the FAA requested the Office of Management and Budget to grant an immediate emergency clearance on the paperwork package. OMB granted an emergency clearance and assigned OMB control number 2120–1674. As protection provided by the Paperwork Reduction Act, 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. Following is a description of the information collection burden associated.

Title: Flightcrew Compartment Access and Door Designs.

Summary/Need: The SFAR requires operators to submit a report to the FAA by February 15, 2002 that details the specific modifications. This will allow the FAA to monitor what has been installed and take action if the installation creates an unwarranted safety risk. Further, to monitor progress toward the goal of full compliance, the SFAR requires a report by April 22, 2002 that describes how the operator will come into full regulatory compliance.

Respondents: The respondents are an estimated 135 airplane operators covered under 14 CFR part 121 and 129.

Burden: The burden associated with this SFAR is 6480 hours.

Regulatory Analyses

This rulemaking action is taken under an emergency situation within the meaning of Section 6(a)(3)(D) of Executive Order 12866, Regulatory Planning and Review. It also is considered an emergency regulation under Paragraph 11g of the Department of Transportation (DOT) Regulatory Policies and Procedures. In addition, it is a significant rule within the meaning of the Executive Order and DOT's policies and procedures. No regulatory analysis or evaluation accompanies the rule. At this time, the FAA is not able to assess whether this rule will have a significant impact on a substantial number of small entities as defined in the Regulatory Flexibility Act of 1980, as amended. However, we will be conducting a regulatory analysis of the cost and benefits of this rulemaking, including any impact on small entities, at a later date.

Executive Order 13132, Federalism

The FAA has analyzed this SFAR under the principles and criteria of Executive Order 13132, Federalism. We have determined that this action will not have a substantial direct effect on the States, or the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, we have determined that this final rule does not have federalism implications.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (the Act), enacted as Pub. L. 104–4 on March 22, 1995, is intended, among other things, to curb the practice of imposing unfunded Federal mandates on State, local, and tribal governments. Title II of the Act requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in a $100 million or more expenditure (adjusted annually for inflation) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector; such a mandate is deemed to be a ''significant regulatory action.'' This SFAR does not contain such a mandate. Therefore, the requirements of Title II of the Unfunded Mandates Reform Act of 1995 do not apply.

Environmental Analysis

FAA Order 1050.1D defines FAA actions that may be categorically excluded from preparation of a National Environmental Policy Act (NEPA) environmental impact statement. In accordance with FAA Order 1050.1D, appendix 4, paragraph 4(j) this rulemaking action qualifies for a categorical exclusion.

Energy Impact

The energy impact of this SFAR has been assessed in accordance with the Energy Policy and Conservation Act (EPCA) Pub. L. 94–163, as amended (42 U.S.C. 6362) and FAA Order 1053.1. It has been determined that this SFAR is not a major regulatory action under the provisions of the EPCA.

List of Subjects in 14 CFR Part 121

Air carriers, Aircraft, Airmen, Aviation safety, Charter flights, Reporting and recordkeeping requirements, Safety, Transportation.

The Amendment

For the reasons set forth above, the Federal Aviation Administration amends 14 CFR part 121 as follows:

PART 121—OPERATING REQUIREMENTS: DOMESTIC, FLAG, AND SUPPLEMENTAL OPERATIONS

1. The authority citation for part 121 continues to read as follows:

Authority: 49 U.S.C. 106(g), 1153, 40113, 40119, 41706, 44101, 44701–44702, 44705, 44709–44711, 44713, 44716–44717, 44722, 44901, 44903–44904, 44912, 46105.

SFAR No. 92–2 [Removed]

2. Remove Special Federal Aviation Regulation No. 92–2.

3. Add Special Federal Aviation Regulation (SFAR) 92–3 to read as follows:

SPECIAL FEDERAL AVIATION REGULATION NO. 92–3—FLIGHTCREW COMPARTMENT ACCESS AND DOOR DESIGNS

1. *Applicability*. This Special Federal Aviation Regulation (SFAR) applies to all operators that hold an air carrier certificate or operating certificate issued under part 119 and that conduct operations under part 121 and to operators of U.S. registered transport category aircraft operated under part 129, except paragraph 4 of this SFAR does not apply to cargo operations and part 129 operations. It applies to the operators specified in this SFAR that modify airplanes to improve the flightcrew compartment door installations to restrict the unwanted entry of persons into the flightcrew compartment. This SFAR also applies to production certificate holders and applicants for airworthiness certificates for airplanes to be operated by operators specified in this SFAR, and producers of parts to be used in such modifications.

2. *Regulatory Relief*. Contrary provisions of part 21, and §§ 121.153(a)(2), 121.379(b), and 129.13 notwithstanding:

(a) An operator may operate airplanes modified to improve the flightcrew compartment door installations to restrict the unauthorized entry of persons into the flightcrew compartment without regard to the applicable airworthiness requirements and may modify those airplanes for that purpose, using technical data not previously approved by the Administrator, subject to the following conditions:

(i) Not later than February 15, 2002, submit to the Director, Aircraft Certification Service, a detailed description of the changes to the airplane that have been accomplished to enhance the intrusion resistance of the flightcrew compartment including identification of what major alterations have been done without previously approved data.

(ii) Not later than April 22, 2002, submit to the Director, Aircraft Certification Service, a schedule for accomplishment of the changes necessary to restore compliance with all applicable airworthiness requirements, as well as a listing of the regulations not currently complied with. The schedule may not extend beyond the termination date of this SFAR.

(iii) If, upon reviewing the data submitted in paragraph 2 (a)(i) of this SFAR, the Administrator determines that a door modification presents an unacceptable safety risk, the FAA may issue an order requiring changes to such modifications.

(b) An applicant for an airworthiness certificate may obtain such a certificate for modified airplanes to be operated by operators described in this SFAR.

(c) A holder of a production certificate may submit for airworthiness certification or approval, modified airplanes to be operated by operators described in this SFAR.

(d) A person may produce parts for installation on airplanes in connection with modifications described in this SFAR, without FAA parts manufacturer approval (PMA).

3. *Return to Service Documentation*. Where operators have modified airplanes as authorized in this SFAR, the affected airplane must be returned to service with a note that it was done under the provisions of this SFAR.

4. *Provision for Flightdeck Door Compartment Key*. Contrary to provisions of § 121.313(g), the following provision applies: A key for each door that separates a passenger compartment from an emergency exit must be identified to passengers in the briefing required by § 121.571(a)(1)(ii). The key required for access to the emergency exit must be readily available for each crewmember. No key to the flightcrew compartment shall be available to any crewmember during flight, except for flight crewmembers, unless an internal flightdeck locking device such as a deadbolt or bar is installed, operative, and in use.

5. *Door Modification Requirement* After [45 days after publication] for each airplane required under paragraph 121.313(f) to have a door between the passenger and pilot compartments, and for transport category all-cargo airplanes that have a door installed between the pilot compartment and any other occupied compartment on [the effective date of this amendment] such door must be equipped with an internal locking device installed, operative, and in use. Such internal locking device has to be designed so that it can only be unlocked from inside the flightdeck.

6. *Termination*. With respect to the ability to approve airplanes for return to service without data previously approved by the Administrator in the case of major alterations, this SFAR terminates on April 22, 2002. All other provisions of this SFAR terminate on April 9, 2003.

Issued in Washington, DC, on January 10, 2002.

Jane F. Garvey,

Administrator.

[FR Doc. 02–967 Filed 1–10–02; 4:15 pm]

BILLING CODE 4910–13–P

Federal Register

Tuesday,
January 15, 2002

Part V

Department of Transportation

Federal Aviation Administration

14 CFR Parts 25 and 121

Security Considerations in the Design of the Flightdeck on Transport Category Airplanes; Final Rule

Advisory Circulars (AC) 25.795–1, Flightdeck Intrusion Resistance, and AC 25.795–2, Flightdeck Penetration Resistance; Notice

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 25 and 121

[Docket No. FAA–2001–11032; Amendment No. 25–106 and 121–288]

RIN 2120–AH56

Security Considerations in the Design of the Flightdeck on Transport Category Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment implements two security design requirements governing transport category airplanes. This amendment requires a means to protect the flightdeck from unauthorized intrusion and small arms fire or fragmentation devices. The FAA is also requiring that certain airplanes operating in part 121 service comply with this amendment to prevent unauthorized access to the flightdeck. These amendments are being adopted to further enhance air carrier security in response to the heightened threat to U.S. civil aviation.

DATES: This amendment is effective January 15, 2002. Comments must be received on or before March 18, 2002.

ADDRESSES: Address your comments to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2001–11032 at the beginning of your comments, and you should submit two copies of your comments. If you wish to receive confirmation that FAA received your comments, include a self-addressed, stamped postcard.

You may also submit comments through the Internet to *http://dms.dot.gov*. You may review the public docket containing comments to this final rule in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Dockets Office is on the plaza level of the NASSIF Building at the Department of Transportation at the above address. Also, you may review public dockets on the Internet at *http://dms.dot.gov*.

Comments that you may consider to be of a sensitive security nature should not be sent to the docket management system. Send those comments to the FAA, Office of Rulemaking, ARM–1, 800 Independence Avenue, SW, Washington DC 20591.

FOR FURTHER INFORMATION CONTACT: Jeff Gardlin, FAA Airframe and Cabin Safety Branch, ANM–115, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington 98055–4056; telephone (425) 227–2136, facsimile (425) 227–1149, e-mail: *jeff.gardlin@faa.gov*.

SUPPLEMENTARY INFORMATION:

Comments Invited

This final rule is being adopted without prior notice and prior public comment. The Regulatory Policies and Procedures of the Department of Transportation (DOT) (44 FR 1134; February 26, 1979), however, provides that, to the maximum extent possible, operating administrations of the DOT should provide an opportunity for public comment on regulations issued without prior notice. Accordingly, interested persons are invited to participate in this rulemaking by submitting such written data, views, or arguments, as they may desire. Comments relating to the environmental, energy, federalism, or international trade impacts that might result from this amendment are also invited. Comments must include the regulatory docket or amendment number and must be submitted in duplicate to the DOT Rules Docket address specified above.

All comments received, as well as a report summarizing each substantive public contact with FAA personnel concerning this final rule; and request for comments, will be filed in the docket. The docket is available for public inspection before and after the comment closing date.

The FAA will consider all comments received on or before the closing date for comments. Late filed comments will be considered to the extent practicable. This final rule may be amended in light of the comments received.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this document must include a pre-addressed, stamped postcard with those comments on which the following statement is made: ''Comments to Docket No. FAA–2001–11032.'' The postcard will be date stamped and mailed to the commenter.

Availability of Rulemaking Documents

You can get an electronic copy using the Internet by taking the following steps:

(1) Go to the search function of the Department of Transportation's electronic Docket Management System (DMS) Web page (*http://dms.dot.gov/search*).

(2) On the search page type in the last four digits of the Docket number shown at the beginning of this amendment. Click on ''search.''

(3) On the next page, which contains the Docket summary information for the Docket you selected, click on the document number of the item you wish to view.

You can also get an electronic copy using the Internet through FAA's Web page at *http://www.faa.gov/avr/arm/nprm/nprm.htm* or the **Federal Register**'s Web page at *http://www.access.gpo.gov/su_docs/aces/aces140.html*.

You can also get a copy by submitting a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267–9680. Make sure to identify the docket number and amendment number of this rulemaking.

Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 requires FAA to comply with small entity requirements for information or advice about compliance with statutes and regulations within its jurisdiction. Therefore, any small entity that has a question regarding this document may contact their local FAA official, or the person listed under **FOR FURTHER INFORMATION CONTACT**. You can find out more about SBREFA on the Internet at our site, *http://www.gov/avr/arm/sbrefa.htm*. For more information on SBREFA, e-mail us at *9-awa-sbrefa@faa.gov*.

Background

On September 11, 2001, the United States experienced terrorist attacks when airplanes were commandeered and used as weapons. These actions demonstrated the need to improve the security of the flightdeck. On November 19, 2001, Congress enacted Public Law 107–71, the Aviation and Transportation Security Act (the Act). Section 104 (a) of the Act, Improved Flight Deck Integrity Measures, states:

(a) IN GENERAL.—As soon as possible after the date of enactment of this Act, the Administrator of the Federal Aviation Administration shall—

(1) Issue an order (without regard to the provisions of chapter 5 of title 5, United States Code)—

(A) Prohibiting access to the flightdeck of aircraft engaged in passenger air transportation or intrastate air transportation that are required to have a door between the passenger and pilot compartments under title 14, Code

of Federal Regulations, except to authorized persons;

(B) Requiring the strengthening of the flightdeck door and locks on any such aircraft operating in air transportation or intrastate air transportation that has a rigid door in a bulkhead between the flightdeck and the passenger area to ensure that the door cannot be forced open from the passenger compartment;

(C) Requiring that such flightdeck doors remain locked while any such aircraft is in flight except when necessary to permit access and egress by authorized persons; and

(D) Prohibiting the possession of a key to any such flightdeck door by any member of the flightcrew who is not assigned to the flightdeck;

(2) Take such other action, including modification of safety and security procedures and flightdeck redesign, as may be necessary to ensure the safety and security of the aircraft.

The Act directs that the FAA issue an order fulfilling the requirements of paragraph (a)(1) of Section 104 as a final rule, without seeking public comment prior to adoption. The Act specifies that improved flightdeck security must be applied to airplanes operating in air transportation that are currently required to have flightdeck doors.

This final rule is intended to implement Section 104(a) of the Act. Thus, as explained more fully below, it prohibits access to the flightdeck, requires strengthening of the flightdeck doors, requires flightdeck doors to remain locked, and prohibits possession of keys to the flightdeck door by those members of the crew not assigned to the flightdeck. While the Act and the deadlines established in the Act provide both the impetus and the authority for issuance of this rule as a final rule without notice and comment, both the FAA and the broader aviation community have for some time been engaged in efforts to address the issue of flightdeck security. In addition, since the events of September 11, the FAA has issued a series of Special Federal Aviation Regulations (SFAR 92, 92–1, and 92–2) which are also pertinent to the issues addressed in this final rule. Before describing the terms of the final rule, therefore, we summarize below for context the various regulatory efforts that have considered flightdeck security and which further support the issuance of this final rule.

FAA/Industry/International Design Efforts

Because of the work on flight deck security that had been initiated by the FAA and the aviation community through the International Civil Aviation Organization (ICAO) and the Aviation Rulemaking Advisory Committee (ARAC), the objectives of this amendment already have broad acceptance. The ICAO is an international body consisting of 187 member countries which has adopted standards under Amendment 97 to ICAO Annex 8 relating to the incorporation of security into the design of airplanes including the following subjects:

(1) Survivability of systems,

(2) Fire suppression,

(3) Smoke and fumes protection (cabin and flightdeck),

(4) Least risk bomb location and design,

(5) Pilot compartment small arms and shrapnel penetration, and

(6) Interior design to deter hiding of dangerous articles and enhance searching.

This rule only addresses ICAO requirements regarding protecting the pilot compartment. The remainder of the ICAO requirements will be addressed in subsequent rulemaking action.

In addition to participating in the development of international standards through the ICAO, the FAA considers maintaining harmonized standards between the United States and Europe to be a high priority. The FAA has found that carrying out this harmonization task is best achieved by a joint activity with its European counterpart, the Joint Aviation Authorities (JAA) and through ARAC, the FAA developed protection for the pilot compartment beyond the ICAO standard.

The ARAC is composed of 76 member organizations with a wide range of interests in the aviation community and provides the FAA with firsthand information and insight regarding proposed new or revised rules. In 1999, ARAC established a Working Group of airplane design specialists and aviation security specialists from the aviation industry and the governments of Europe, the United States, Brazil and Canada. The Working Group was tasked to develop harmonized security related design provisions based on Amendment 97 to Annex 8 of the Convention on International Civil Aviation. One of the requirements covered by the tasking is protection of the flightdeck. The Working Group was also tasked to consider improving the resistance to flightdeck intrusions while still ensuring compliance with the other requirements.

The Working Group developed specific recommendations for implementing security provisions into the design of transport category airplanes. The ARAC has approved those recommendations with respect to protection of the flightdeck and recommended them to the FAA for rulemaking. The FAA has accepted ARAC's recommendations, and the rulemaking contained in this amendment follows from those recommendations and the activity of the Working Group.

The FAA is expediting rulemaking action with regard to protection of the flightdeck based on the events of September 11, 2001, and the requirements of the Act. The remainder of the tasks assigned to the working group will be completed and forwarded to the FAA in the near future. The FAA intends to go forward with additional rulemaking after those recommendations are received.

Other Rulemaking To Protect the Flightdeck

Following the events of September 11, 2001, the FAA issued a series of Special Federal Aviation Regulations (SFAR 92, 92–1 and 92–2) to enable passenger air carriers to make short-term modifications to their flightdeck doors to enhance security. These modifications can be made quickly and will significantly improve the intrusion resistance of the flightdeck, even though they might not meet all regulatory requirements. The SFARs provided temporary regulatory relief from certain airworthiness standards so that security enhancements could be made as quickly as possible. In contrast, this amendment establishes the long-term standards for doors. This amendment will supersede the short-term SFAR requirements before the SFAR expires.

To date the SFAR 92 series rules have authorized, but not required, the short-term modifications. Concurrent with this amendment the FAA is issuing an SFAR 92–3 that will require the short-term modifications. The level of security enhancement mandated by SFAR 92–3 is intended to mirror those changes already made voluntarily by operators.

Discussion of the Final Rule

Part 25 Requirements

Applicability

As directed by Section 104 of the Act, this amendment applies to ''aircraft engaged in passenger air transportation or intrastate air transportation that are required to have a door between the passenger and pilot compartments under title 14, Code of Federal Regulations.''

The only regulation currently addressing this issue is 14 CFR

121.313(f), which, for airplanes operated under that part, requires installation of a ''door between the passenger and pilot compartments, with a locking means to prevent passengers from opening it without the pilot's permission, except that nontransport category airplanes certificated after December 31, 1964, are not required to comply with this paragraph.'' The exception for nontransport category airplanes certificated after December 31, 1964, generally covers smaller commuter category airplanes. This amendment applies to the airplanes subject to the 14 CFR 121.313(f) requirement. In addition, as discussed under the heading ''Operating Requirements,'' we are amending § 121.313 to apply these requirements to transport category all-cargo airplanes that have flightdeck doors installed on the effective date of this amendment. As discussed under the heading, ''Future Rulemaking,'' the FAA may consider imposing similar requirements for other airplanes in the future.

Section 104(a)(1)(B) of the Act provides that this new requirement must apply to affected aircraft that have a ''rigid'' door. Neither the Act nor 14 CFR 121.313(f) distinguishes between rigid doors and non-rigid doors, and the FAA is not aware of a practicable distinction between such doors that could be used in this rulemaking or in the implementation of the new regulation. Therefore, this amendment applies to all affected doors between pilot and passenger compartments, without distinction based on rigidity. To the extent that such application may be seen as exceeding the authority provided by Section 104 of the Act to issue this regulation without notice and comment procedures, we find good cause under 5 U.S.C. 553(b)(3)(B) for not following those procedures. As explained, it is impracticable to define a distinction based on rigidity that would enable the FAA to comply with the Act's requirement to issue this regulation for ''rigid'' doors, while excluding ''non-rigid'' doors. In addition, we find that, even if such a distinction could be drawn, it would be contrary to the intent of the Act, and the purpose of this rulemaking, which is to enhance the security of flightdeck doors for airplanes that are required to have them.

Accordingly, this amendment adds a new § 25.795 addressing the incorporation of security into transport category airplane flightdeck design. This rule applies whenever the airplane is required to have a flightdeck door. Some airplanes are equipped with crew rest areas that have doors that lead from the passenger cabin into the crew rest area, as well as a door from the crew rest area into the flightdeck. For the purposes of compliance with this amendment, the door leading into the crew rest area from the passenger cabin is the affected door.

The FAA invites comments on the applicability of this regulation. Commenters should clearly delineate their rationale for a different applicability in terms of how the security and safety issues are addressed. Because such discussions are also sensitive from a security standpoint, the FAA may screen such comments before placing them in the public docket. Send those comments to the FAA, Office of Rulemaking, ARM–1, 800 Independence Avenue, SW, Washington DC 20591.

Flightdeck Security Intrusion by Persons

Section 25.795(a)(1) requires that the flightdeck door installation be designed to resist intrusion by any person who attempts to enter the flightdeck by physically forcing his or her way through the door. In this context, the door installation includes the door, its means of attachment to the surrounding structure, and the attachment structure on the bulkhead itself. The integrity of the locking/latching/hinge mechanism, as well as the door panel itself, can be improved so that intrusion resistance is significantly enhanced.

There are numerous data concerning the forces a person can exert on a door. *National Institute of Law Enforcement and Criminal Justice (NILECJ) standard 0306.00* released in May 1976, for the Physical Security of Door Assemblies and Components, provides standards and guidance to assess a door's resistance to intrusion. The highest level of intrusion resistance in the NILECJ standard uses impacts of 200 Joules. In conjunction with industry, the FAA determined that a higher standard was necessary and achievable. This final regulation requires that the door resist impacts with energies equal to 300 Joules (221.3 foot-pounds), which is fifty percent higher than the highest level of intrusion resistance in the NILECJ standard. In order to address resistance to pulling on the doorknob or handle, the regulation also includes a requirement for application of a 250 pound tensile load. This value was selected to provide intrusion resistance from pulling comparable to the 300 Joules impact resistance requirement. The requirement is not intended to prevent entry by a person using extraordinary means or with a large amount of time to work on opening the door. It is intended to deter attempts at entry and delay attempts until other actions can be taken to prevent entry.

The FAA has captured applicable reference data and test methods in Advisory Circular (AC) 25.795–1, ''Flightdeck Intrusion Resistance,'' and considers these acceptable for demonstrating compliance. The methods of compliance described in the AC consist of impact tests at critical points on the door, as well as resistance to pulling. Critical locations are expected to be the door latch and hinge, as well as the panel itself, but will depend on the design. The FAA will also consider other valid compliance methods if proposed by an applicant.

An additional aspect of intrusion resistance is the interior configuration in the vicinity of the door. Small changes to the interior can make it difficult for an intruder to have direct access to the door, and therefore difficult to exert much force. Changes to the interior should also be included as part of the design considerations to meet this requirement.

Ballistic Penetration

Section 25.795(a)(2) requires design precautions to be taken to minimize the penetration of shrapnel from a fragmentation device and small arms projectiles (i.e., ballistics) which might be fired through the flightdeck doors from occupied compartments. While not explicitly mentioned in the Act, these protections are key elements of protecting the flightdeck from intrusion as required by § 104(a)(1)(B) of the Act because any compromise to the integrity of the flightdeck door from a ballistic threat could enable an intruder to gain access to the flightdeck. It would be impracticable to protect the door without including a ballistic protection component. To the extent that this may be seen as exceeding the authority provided by Section 104 of the Act to issue this regulation without notice and comment procedures, we find good cause under 5 U.S.C. 553(b)(3)(B) for not following those procedures.

Ballistic resistance will also protect the pilot from trauma from ballistics entering the flightdeck. Further, the potential loss of critical flight instrumentation and control is also acute if ballistics penetrate the flightdeck. The disabling of critical systems from a single ballistic penetration is achievable with the concentration of most systems controls within a small sector of the flightdeck. Electronic displays of basic flight information are similarly unprotected and vulnerable. It is not the intent of this requirement to make the flightdeck

''impenetrable,'' but to provide a high level of protection.

This final rule requires protection for all features of the flightdeck door to the extent necessary to prevent penetration of likely projectiles. We have determined protection equivalent to Level IIIA of the National Institute of Justice Standard (NIJ) standard 0101.04 is sufficient to protect against the most powerful handgun projectiles and grenade shrapnel that could be encountered on civil airplanes, and have adapted the relevant portions of this standard for this application in AC 25.795–2, Flightdeck Penetration Resistance. Protection would be required at all points where penetration of small arms fire could cause a hazard. This would include design details such as hinges, grills, and latches.

The FAA has reviewed several material concepts to address this requirement, including metallic alloys, ceramics, cermets, polymers, strong fibers and composites, and determined that the proposal is both practical and cost-effective. Advisory Circular 25.795–2 includes a detailed discussion of both material types and methods of compliance. A notice of issuance of AC 25.795–1 and AC 25.795–2 is published in this same part of the **Federal Register**. However, it is the FAA's intention to accept certain material types and installation approaches without the need for actual test if it can be shown that the material and its installation would meet the intent of the rule. If an applicant elected to use other means, the AC would also provide for use of alternative materials and installations in compliance with performance standards specified in the rule.

Existing Requirements

The flightdeck door is subject to several requirements that affect its structural integrity. These include protection during decompression where the door may incorporate venting features to prevent a large pressure differential build up; egress considerations to permit the flightcrew to enter the passenger cabin in the event the door becomes jammed during an accident; and provisions to enable rescue personnel to enter the flightdeck in the event members of the flightcrew are unable to exit on their own. The door may also be integral in meeting ventilation requirements. There is, of course, the potential for designs that meet this new rule to conflict with existing requirements, but the FAA has determined that all the requirements can be accommodated by proper design of the door installation.

The balance between providing access to rescue personnel while providing intrusion resistance may be the most difficult element. On some airplanes, there are exits inside the flightdeck that can be opened from the outside and in such cases, there is no requirement for the flightdeck door to have provision for entry by rescue personnel. For future airplanes, this is the most direct way to address the potential conflicts in the requirements. On airplanes where the flightdeck exits cannot be opened from the outside, rescue personnel must gain access to the flightdeck via the flightdeck door. As stated earlier, the objective of this amendment is to either directly prevent the entry of a person or sufficiently delay them until other actions could be taken to prevent them from being able to continue their attempted entry. In that regard, to meet the intent of this amendment, the size and location of any removable panels should be sufficiently awkward to inhibit that person's entry. The FAA expects that rescue personnel would have additional equipment at their disposal to gain access through the flightdeck door and be able to exert more force than would an individual acting in flight. Therefore, there should be no inherent reason that the two requirements cannot both be met.

Inflight Access by Cabin Crew

While not explicitly a current requirement, the FAA has long recognized a need to provide for in-flight flightdeck entry by the cabin crew should a flightcrew member become incapacitated; because the consequences of not providing such access could be catastrophic. Since § 121.313(g) resulted in flight attendants having access to a key to the flightdeck door, this issue has been addressed fairly simply in the past. As required by Section 104(a)(1)(D) of the Act, however this rule will prohibit the possession of flightdeck door keys by the cabin crew during flight, as discussed under ''Operating Requirements.''

The FAA expects that other means to enable a flight attendant to enter the flightdeck, without the use of force, will be available through more sophisticated systems that do not require forcible entry, and that these means will be available only to the cabin crew and only in an emergency situation. Various approaches are possible and do not require detailed discussion here. This capability is considered necessary, however, and it would be impractical to impose the requirement for intrusion resistant flightdeck doors without addressing this issue at the same time. Indeed, Congress recognized in § 104(a)(1)(c) of the Act that there would be times when it would be necessary for authorized persons to enter the flightdeck.

Therefore, § 25.772 is being amended to require that there be a means to allow the flight attendants to enter the flightdeck should the flightcrew become incapacitated. Such means are only intended to be used in an emergency situation, and would require complementary operational procedures to facilitate their use. As discussed below, § 121.313(j) permits a combination of procedures and hardware to provide access by flight attendants in light of this aggressive compliance schedule specified in this amendment.

We have concluded that this requirement is comfortably within the scope of those provisions authorized by Section 104 of the Act as with other provisions discussed previously, however, to the extent that this provision may be seen as exceeding the authority provided by Section 104 to issue this regulation without notice and comment procedures, the FAA finds good cause under 5 U.S.C. 553(b)(3)(B) for not following those procedures on the grounds that strengthening the flightdeck door, as required by the Act, without providing for access to the flightdeck by authorized personnel in case of flightcrew incapacitation, would create a serious safety problem that was not intended by Congress. Therefore, providing notice and prior opportunity to comment on this provision is impracticable and contrary to the public interest.

Operating Requirements

Flightdeck Door Requirements

As required by the Act, the FAA is revising § 121.313 to impose new flightdeck door requirements on existing airplanes that are required to have such doors. The FAA has also considered the issue of airplanes that carry cargo, but are permitted to also carry certain persons as defined in § 121.583 who are not flightcrew members. On many of these airplanes, there is a door between the flightdeck and the occupied compartment. Current regulations do not ensure that a person intent on using an airplane as a weapon would be unable to board all-cargo airplanes. Therefore, in cases where these airplanes already have a flightdeck door, the FAA has determined that the door should meet the new standards adopted here. As already noted for other provisions, this requirement is not specifically addressed in the Act. To the extent that this provision may be seen

as exceeding the authority provided by Section 104 to issue this regulation without notice and comment procedures, the FAA finds good cause under 5 U.S.C. 553(b)(3)(B) for not following those procedures on the grounds that addressing only passenger carrying airplanes with flightdeck doors would omit a significant number of airplanes that are similarly situated.

Section 121.313(f) does not require such all-cargo airplanes to have a door between the flightcrew compartment and other occupied compartments. In order to preclude removal of flightdeck doors as a means to avoid compliance with this requirement, the rule applies to all-cargo airplanes that have flightdeck doors installed on the effective date of this amendment.

In addition, as discussed under the heading ''Future Rulemaking,'' the FAA is considering the need to require a flightdeck door on all-cargo airplanes. Such action will be considered in light of comments received and would be an expansion of the requirements of § 121.313(f).

A new § 121.313(j) is added to reference the new part 25 standard for the door separating the flightdeck from the passenger compartment. With respect to the requirements of § 25.772(c), which would require systems that would permit entry by flight attendants but not permit entry by other persons, these systems must have a high degree of reliability, and the FAA considers that it may not be practical to develop and install such systems within the compliance time of this rule. However, operational procedures coupled with simpler, more robust systems could be readily implemented. Procedures could include having a flight attendant occupy a flightdeck seat whenever one pilot must leave the flightdeck. Any system that must be activated by a flightcrew member (either to permit or deny entry) must be operable from the crewmember's duty station. Therefore, § 121.313(j) will require each operator to establish methods to enable a flight attendant to enter the flightdeck in the event that a flightcrew member becomes incapacitated. As with § 25.772(c), these methods are intended to be used under emergency conditions and not for routine access to the flightdeck.

As noted previously, some airplanes are equipped with a crew rest area that is accessible from both the flightdeck and the passenger compartment. Current practice in the application of section 121.313(f) is that the entry to such areas from the passenger compartment is required to have a locked door. Section 121.313(f) is revised to clarify this requirement, and the new requirement of section 121.313(j) for strengthened doors also applies to these doors.

The rule will require that doors meeting this standard be installed no later than April 9, 2003. The FAA evaluated several factors in establishing this compliance time. Before enactment of the Act, multiple industry groups had developed a proposal for the performance of flightdeck doors that addresses intrusion and ballistic protection. The industry proposal closely parallels the changes to part 25 adopted by this rule. Therefore, the FAA does not anticipate significant problems in complying with this requirement. The FAA is requiring that all airplanes affected by § 121.313(f) incorporate flightdeck doors meeting the requirements of § 25.795 (a)(1) and (2) by April 9, 2003. This date corresponds to the termination date of the previously issued SFAR 92 (and its successors), and is the date by which all airplanes modified under the provisions of the SFAR must be in full compliance with their respective airworthiness requirements. This is an aggressive schedule; given events of September 11, 2001, however, the nature of the issue demands aggressive action.

Flightdeck Access Provisions

This amendment also changes the requirements governing access to the flightdeck in flight. Section 104(a)(1)(D) of the Act requires the Administrator to issue an order prohibiting possession of flightdeck door keys by other than flightdeck crewmembers. The FAA has determined that this limitation is intended to address operations in flight, rather than possession of keys at all times. Section 121.313(g) currently requires that non-flightdeck crewmembers have keys in flight and this rule amends (g) to meet Section 104(a)(1)(D) of the Act. Section 121.313(g) is revised to achieve three important safety goals. In the first sentence, the requirement is to have keys available that will unlock doors that lead from a passenger compartment to an emergency exit. The second regulatory requirement is that each crewmember has a key to doors specified in the first sentence, unless that door is a flightdeck door.

The last regulatory requirement is that before April 9, 2003, other crewmembers, (*e.g.* flight attendants) may have a key but only if the flightdeck door has an internal locking device installed, operative, and in use. This exception is a result of SFAR 92–2. The SFAR authorizes short-term flightdeck door reinforcement efforts, which include internal locks. When those locks are installed and in use, the key to the door will no longer open the door so it is ineffective as a key. As noted in the SFAR, such internal flightdeck locking devices have to be designed so that they can only be unlocked from inside the flightdeck (*e.g.* deadbolt locks or bars). The keys themselves have multiple uses in the passenger cabin such as opening medical supplies, defibrillators and cabin crew rest areas. Denying access to the keys when they will not open the flightdeck door only inconveniences the cabincrew with no benefit of safety. The exception, which expires with the SFAR in April 9, 2003, will satisfy the requirement of the Act to prohibit possession by flight attendants of keys that can be used to gain entry to the flightdeck.

Section 121.547 addresses who may be admitted to the flightdeck and in some cases the conditions for admission to the flightdeck. Section 121.547(a)(1) and (a)(2) remain unchanged and thus crewmembers, FAA inspectors, and NTSB representatives who are performing official duties may be admitted to the flightdeck.

Several changes have been made to § 121.547(a)(3). In the current § 121.547(a)(3), only the pilot in command (PIC) had to give permission for the people listed in paragraph (a)(3) to be admitted to the flightdeck. Because of the demands of aviation safety and security, in the amended section, admission to the flightdeck is also conditioned on the permission of the part 119 certificate holder and the Administrator. To the extent this provision may be seen as exceeding the authority provided by Section 104 of the Act to issue this regulation without notice and comment procedures, we find good cause under 5 U.S.C. 553(b)(3)(B) for not following those procedures. The Act requires limitations on those authorized access to the flightdeck. Inherent in issuing such a rule is a basis for determining authorization and it would be impracticable to issue a rule without such procedures. This amendment is being made pursuant to 5 USC 553(b)(3)(B), 49 USC Section 44701(a)(5), and Section 104(a)(2) of the Act.

In complying with §§ 121.547(a)(3) and 121.547(c)(4), the air carrier must keep security directives in mind when deciding whether to issue authorization to enter the flightdeck for purposes of riding in the jumpseat. The changes to the regulatory text in § 121.547(a)(4) are clarifying in nature and need not undergo normal notice and comment procedures. As the discussion in this

preamble indicates, the discretion the FAA had with the current § 121.547(a)(4) to issue authorization to enter the flightdeck will now be systemically overseen and controlled.

Existing § 121.547(a)(4) is modified slightly in the new rule for clarification purposes only. In the current rule in order for a person to gain entry to the flightdeck that person must have permission of three people including the ''certificate holder.'' In the revised language the agency adds the phrase ''an appropriate management official of part 119'' certificate holder to make clear which certificate holder the agency is referring to. Similar changes have been made to § 121.547(c)(4), (c)(5) and (c)(6). Because these changes are clarifying in nature, notice and comment procedures are not required.

In current § 121.581(c), the regulations allowed on certain aircraft, that did not have an observer seat on the flightdeck, that the cockpit door could remain open when an FAA inspector is conducting an inspection. Under the current rule the FAA inspector would conduct the inspection in a forward passenger seat. The last section of current § 121.581(c) is being deleted because allowing cockpit doors to remain open during flight is inconsistent with Section 104(a)(1)(C) of the Act. This amendment is being adopted without following APA notice and comment procedures pursuant to Section 104(a)(1) of the Act.

Section 121.587 is being revised to require that the flightcrew compartment door be closed and locked at all times when the aircraft is being operated. Previously, the rules only required the door to be closed and locked during flight. With this amendment, the door will also have to be closed and locked during taxi, takeoff, and landing roll. The ''good cause'' justification for not using the normal APA notice and comment procedures is that the recent terrorist attacks make clear that security and safety dictate that—except as provided in § 121.587(b)— the door shall be closed and locked at all times when the aircraft is being operated. As has been discussed regarding other provisions of this amendment, to the extent this provision may be seen as exceeding the authority provided by Section 104 of the Act to issue this regulation without notice and comment procedures, the FAA finds good cause under 5 U.S.C. 553(b)(3)(B) for not following those procedures. Prohibiting access, as required by the Act, without addressing all phases of operation, would leave a potentially serious loophole in the requirement that was not intended by Congress. Therefore, providing notice and prior opportunity to comment on this provision is impracticable and contrary to the public interest.

Current § 121.587(b)(1) allows the flightdeck door to remain opened during takeoff and landing if the crew compartment door is the means of access to a required passenger emergency exit or floor level exit. This section is being deleted for the same reasons that § 121.587(a) is being amended.

Section 121.587(b)(3) currently permits the flightdeck door to be open if the use of the observer seat (jumpseat) will not permit the door to be closed. This section is deleted because Section 104(a)(1)(C) of the Act does not allow for such a provision. Thus, the flightdeck door may not be ajar to accommodate a jumpseat occupant for the duration of the flight. The legislative history for Section 104(a) of the Act indicates that on the rare occasions when a flightdeck door will be opened during flight, Congress expected the opening of that door to be brief and that the door will be closed and locked quickly.

Future Rulemaking

As noted previously, the regulations currently only require the installation of a flightdeck door for passenger-carrying transport category airplanes operating under part 121. In light of the events of September 11, 2001, and in accordance with Sections 104(a)(1)(c) and 104(a)(2) of the Act, the FAA is reviewing the need for flightdeck doors on all air carrier airplanes, including US cargo operations. In addition, as the events of September 11, 2001, make clear, additional security measures will also be required for aircraft operated by foreign operators. The 33rd ICAO Assembly unanimously passed a resolution that calls on all States to implement additional security measures and directs the ICAO Council to strengthen ICAO security standards. The FAA is working with civil aviation authorities and with ICAO to rapidly develop and implement measures that will improve flightdeck security.

The FAA expects that ICAO will adopt requirements for intrusion resistant flightdeck doors to complement the existing Annex 8 requirements, and make those requirements a condition of operation under Annex 6. The FAA is aware of efforts underway in ICAO to do this, and will support those efforts. The FAA also expects that the CAA of those countries overseeing operators with part 129 operations specifications approvals will adopt their own standards for improved flightdeck security, similar to what the FAA is adopting here, and make those requirements applicable to their existing fleets. Given the urgency of the situation, such requirements and modifications necessary to meet those requirements should be established by April 2002, such that airplanes operating in the United States, whether foreign or domestic, will have improved flightdeck security by April 9, 2003.

To facilitate and promote a global effort such as this, the FAA intends to consult and work with other regulatory authorities over the next several months. On the basis of these consultations, the FAA will determine whether specific rulemaking in part 129 is required. Such a rule, if necessary, would likely require compliance with the same standards imposed by this amendment, or with an equivalent standard imposed by the State of Registry or the equivalent ICAO requirement, at the discretion of the Administrator.

As discussed earlier, the FAA issued the SFAR 92 series of rules to authorize, and now mandate, installation of internal locking devices on flight deck doors on part 121 aircraft. These modifications provide immediate flightdeck security improvements until the installation of permanent solutions as outlined in this amendment. The SFAR 92 authority was first issued on October 9, 2001, and operators immediately began modifying doors. The FAA expects part 129 operators to install and use similar locking devices and that their States of Registry would issue waivers similar to SFAR 92 to allow these modifications. The FAA views these modifications as essential to near-term security of aircraft, whether they are operated in part 121, or part 129 operations to and from the US. The FAA has the continued expectation that part 129 operators and their States of Registry will take the necessary actions to install internal locking devices and that those modifications will be made on or before the date set for full part 121 installation in February 2002 by SFAR 92–3. The FAA will closely monitor the activities of part 129 operators to determine if the locking devices are installed and used in the time frame provided by SFAR 92–3 and will initiate rulemaking if they are not.

In addition, Section 104(c) of the Act states the following:

''The Administrator shall investigate means of securing the flightdeck of scheduled passenger aircraft operating in air transportation or intrastate air transportation that do not have a rigid fixed door with a lock between the passenger compartment and the

flightdeck and issue such an order as the Administrator deems appropriate to ensure the inaccessibility, to the greatest extent feasible, of the flightdeck while the aircraft is so operating, taking into consideration such aircraft operating in regions where there is minimal threat to aviation security or national security.'' This section addresses both airplane type and mode of operation.

The FAA will consider whether other types of airplanes should be equipped with flightdeck doors meeting the standards of this amendment, and solicits comments on this issue. Commuter category airplanes will be a focus of the FAA's deliberations on potential future applicability. Other changes, as outlined in Section 104(a)(2) of the Act, may also be proposed.

The FAA solicits comments on the need to expand the requirement for installation of a flightdeck door to other domestic operations. The FAA intends to propose further rulemaking if it determines that the current requirements of § 121.313(f) need to be expanded to other operations. For example, during cargo operations under part 121, operators are allowed to transport certain persons that are identified in § 121.583. The FAA is considering whether it is necessary to require improved flightdeck security on all cargo airplanes. The FAA is also considering whether to require strengthening flightdeck doors on transport category aircraft operated under parts 91, 125 and 135. We solicit comments on this issue.

As noted, this amendment only addresses the flightdeck door, as required by the Act. However, the FAA considers that a comprehensive assessment of flightdeck security must include all barriers between the flightdeck and occupied areas. Therefore, the FAA intends to propose further rulemaking that would apply the requirements adopted here to flightdeck bulkheads, floors and ceilings that separate the pilot and passenger compartments for new type designs under part 25. At that time, the need to consider the ballistic protection capability of the door after it has been tested for intrusion resistance would also become a requirement.

The FAA also expects to further amend new § 25.795 to add the remainder of the ARAC recommendations concerning survivability of systems, cargo fire suppression, smoke and fumes protection (cabin and flightdeck), least risk bomb location and design, and interior design to deter hiding of dangerous articles and enhance searching. Therefore other paragraphs in § 25.795 of this amendment are identified and marked as ''reserved.''

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the FAA has determined that there are no requirements for information collection associated with this rule.

International Compatibility

In keeping with US obligations under the Convention on International Civil Aviation, it is FAA policy to comply with International Civil Aviation Organization (ICAO) Standards and Recommended Practices to the maximum extent practicable. As discussed earlier, this rule is partially responsive to Amendment 97 to ICAO Annex 8, and the FAA plans further action to address the remainder of the Amendment 97 requirements.

Good Cause for Immediate Adoption

As discussed previously, the Act requires that this regulation be issued without prior public notice and opportunity to comment.

For those provisions that are arguably not required to be adopted by the Act, Section 553(b)(3)(B) and 553(d)(3) of the Administrative Procedures Act (APA) (5 U.S.C. §§ 553(b)(3)(B) and 553(d)(3) authorize agencies to dispense with certain notice procedures for rules when they find ''good cause'' to do so. Under § 553(b)(3)(B), the requirements of notice and opportunity for comment do not apply when the agency, for good cause, finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Section 553(d)(3) allows an agency, upon finding good cause, to make a rule effective immediately, thereby avoiding the 30-day delay effective date requirement in § 553.

For the reasons discussed previously, the FAA finds that notice and public comment on this final rule are impracticable, unnecessary, or contrary to the public interest. The provisions of this final rule require implementation of two security design requirements related to protection of the flightdeck. It provides means to protect the flightdeck from small arms fire or fragmentation devices, as well as means to protect against intrusion into the flightdeck by unauthorized persons.

Regulatory Evaluation Summary

Changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 directs each Federal agency proposing or adopting regulation to first make a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. In developing US standards, this act requires agencies to consider international standards, and use them where appropriate as the basis for US standards. Fourth, the Unfunded Mandates Act of 1995 requires agencies to prepare a written assessment of the costs and benefits, and other effects of proposed and final rules. An assessment must be prepared only for rules that impose a Federal mandate on state, local, or tribal governments, or on the private sector, likely to result in a total expenditure of $100 million or more (adjusted for inflation) in any one year.

In conducting these analyses, the FAA determined that this rule has benefits that justify the costs; will not have a significant impact on a substantial number of small entities; has no effect on trade-sensitive activity; and does not impose an unfunded mandate on state, local, or tribal government, or on the private sector.

Benefits and Costs

This rule is the first of a series of FAA rules to improve flightdeck integrity, as directed by the Aviation and Transportation Security Act. This rule establishes the requirements for flightdeck door enhancements. As such, the benefits of this rule are to ensure the safety and security of the flying public. Since this rule is one of several being introduced to avoid a reoccurrence of an event like that of September 11, 2001, the benefits will be shared by the entire set of rules designed to prevent such a reoccurrence.

Once the terrorist attacks of September 11, 2001, demonstrated the potential damage from using an aircraft as a weapon of mass destruction, flightdeck security was catapulted as an issue of very high public interest. Only days after the September 11, 2001, attacks, President Bush identified flightdeck security as an issue requiring immediate action, and improvements to flightdeck security is one of several recommendations set forth by the Secretary of Transportation's Rapid Response Team on Aircraft Security. Congress followed with the introduction of the Aviation and Transportation Security Act, and many carriers have voluntarily retrofitted their fleets with improved flightdeck doors.

The cost of the September 11, 2001, catastrophic terrorist act cannot be measured easily in dollars. While those losses are estimated to be potentially in the tens of billions of dollars, the costs of another incident could possibly be even higher. Based on changes in the aviation security risk, and the Aviation and Transportation Security Act, the FAA believes that the benefit of this regulation is warranted to prevent flightdeck access by unauthorized persons.

Applicants for new, amended, or supplemental type certificates under part 25 will be affected by this rule. These applicants typically include manufacturers and modifiers. The additional cost to an airplane manufacturer is the additional cost of the door, because the flightdeck door installation costs in a new airplane are roughly equal. The increased purchase cost of a $9,000 hardened flightdeck door over that of a $6,000 current door is $3,000. Based on this incremental cost of $3,000, and the expected manufacturing of 360 airplanes under a new type certificate, the cost of this rule to part 25 manufacturers is expected to be $1.1 million ($0.7 million, discounted). Additionally, some certification costs will be incurred to prove compliance of the new door, but these costs are expected to be relatively small, at approximately $0.1 million.

For the analysis affecting part 121 operators, the aviation industry provided estimated purchase and installation costs of future compliant flightdeck doors to range from a base case of $12,000 ($9,000 for the door and $3,000 for installation) to an upper bound of $17,000, which includes the certification costs. Our current information indicates that $12,000 will provide a door that meets the standards set forth in this rule. Alaska Airlines removed and installed doors thought to meet the new specifications for $12,000 per airplane, and jetBlue was able to do so for $10,000 per aircraft. Even though multiple sources have lent support to the base case cost of $12,000, no flightdeck door has been approved to the new specification. Given the uncertainty as to the actual cost of purchasing and installing approved flightdeck doors, the FAA has provided an upper-bound estimate of $17,000. The FAA solicits comments with supporting documentation with respect to projected costs of upgrading flightdeck doors.

The FAA expects that, now that the specifications are published, many carriers will initiate steps toward compliance even before the rule takes effect. Approximately 340 aircraft are expected to already be compliant with this rule. Operators beyond those that are affected by this rule may also choose to voluntarily comply. The FAA estimates that 6,631 transport category airplanes flown in scheduled commercial service will still need to have their flightdeck doors hardened. The base case cost of purchase and installation of these doors results in a $79.6 million expense to the operators with the upper bound costs reaching $112.7 million.

In addition, the FAA estimates that the additional 50 pounds resulting from a heavier door will result in additional fuel requirement costs of $27.5 million ($20.7 million, discounted) over ten years. Without exception, every flightdeck door manufacturer claimed that their version of a secure flightdeck door could be installed by airline technicians overnight, or during an extended overnight. Several carriers have already begun, and in some cases completed, the retrofit. These carriers were able to perform the retrofit during overnight maintenance on 340 aircraft in less than two months. Based on this information, the FAA believes that all carriers will have an opportunity to have the doors installed overnight or during a maintenance check, thereby eliminating the need to take the aircraft out of service for any amount of time.

The total cost of this rule to part 121 operators is, therefore, expected to range from the base case of $107.1 million ($98.5 million, discounted) to $140.2 million ($131.0 million, discounted) over the 10-year period. The FAA requests comments as to how many aircraft are already compliant with the rule, the costs incurred in retrofitting such aircraft (including down-time costs), and how many carriers are expected to be compliant prior to the implementation of the rule. Since the FAA may extend the flightdeck door requirements in the future, the FAA requests similar comments from part 91, 125, and 135 operators.

This rule is part of a series of FAA rules intended to prevent another attack similar to the one of September 11, 2001. The FAA cannot provide a reasonable quantitative estimate of benefits because the extremely high benefits that are involved in avoiding another similar attack, both in terms of averted loss of life and property, and avoided damage to the economy, will most likely be in the tens of billions of dollars, a figure that overshadows any cost associated with this series of rules. The purpose of this particular rule concerning flightdeck security is to expedite an important element of the Aviation Transportation Security Act. Accordingly, the FAA believes that the rule is cost-beneficial and is necessary to ensure a high level of aviation safety by providing compliance specification for hardened flightdeck door standards to the industry.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) establishes ''as a principle of regulatory issuance that agencies shall endeavor, consistent with the objective of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the business, organizations, and governmental jurisdictions subject to regulation.'' To achieve that principle, the RFA requires agencies to solicit and consider flexible regulatory proposals and to explain the rationale for their actions. The RFA covers a wide range of small entities, including small businesses, not-for-profit organizations, and small governmental jurisdictions.

Agencies must perform a review to determine whether a proposed or final rule will have a significant economic impact on a substantial number of small entities. If the determination is that it will, the agency must prepare a regulatory flexibility analysis as described in the RFA.

However, if an agency determines that a proposed or final rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the 1980 act provides that the head of the agency may so certify and a regulatory flexibility analysis is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

In response to the Aviation and Transportation Security Act, this rule requires the strengthening of the flightdeck doors for part 25 manufacturers, and all aircraft with cockpit doors that operate under part 121. A full Regulatory Flexibility Analysis is not necessary for the reasons presented below.

The Small Business Administration classifies aircraft manufacturers with less than 1,500 employees as small entities. All part 25 US transport-aircraft category manufacturers have more than 1,500 employees. The current United States part 25 airplane manufacturers include: Boeing, Cessna Aircraft, Gulfstream Aerospace, Learjet (owned by Bombardier), Lockheed Martin, McDonnell Douglas (a wholly-owned subsidiary of The Boeing Company), Raytheon Aircraft, and Sabreliner Corporation. Thus, no part 25

manufacturer is considered a small entity.

To determine the potential economic impact on small entities conducting business as part 121 operators, the FAA performed the following analysis. First, the FAA estimated the number of small entities affected by this final rule. Next, the FAA estimated the compliance cost, and then the economic impact.

This final rule requires enhanced cockpit doors and other improvements to be made by part 121 operators who operate transport category, passenger and cargo aircraft which have a door between the cockpit and passenger compartments. Using the criterion from the North American Industry Classification System of the SBA, the affected entities that had less than 1,500 employees were estimated. This procedure resulted in a list of 43 US operators with less than 1,500 employees, operating under part 121 that would be affected by this rule.

The estimated compliance cost and economic impact for each small entity involved several analytical steps. First, the fleet of aircraft operated by part 121 small entities was determined. The FAA obtained the small entities' fleets using data from the BACK Associates Fleet Database. The BACK Associates Fleet Database provided US operator and airplane detail by FAR part number and operator. Second, the purchase and installation cost of the hardened flightdeck doors was then estimated for the fleet of each small entity. Third, an annual reoccurring cost was estimated for the additional fuel required as a result of the increased weight of the hardened doors.

The estimated total compliance cost of each small entity equals the sum of the costs of the enhanced cockpit door plus the additional annual cost attributable to the increased fuel consumption. The purchase and installation cost of the enhanced cockpit doors was estimated to be in the range between $12,000 and $17,000 per airplane. Additional fuel cost was calculated using data from the FAA's Economic Values for Evaluation of Federal Aviation Administration Investment and Regulatory Programs, the December 7, 2001 update of Energy Information Administration's Weekly Petroleum Status Report, and the FAA Aerospace Forecasts.

The increase cost in fuel consumption was based on the projected aircraft Utilization and rate of fuel burn increase. This cost was obtained by multiplying the fifty pounds of additional weight times the carrier hours flown times the fuel burn rate in gallons/pound/hour times the cost of fuel per gallon. This calculation was performed for each of the next ten years using the projected cost of fuel discounted to the present value.

The degree to which small entities can ''afford'' the cost of compliance is determined by the availability of financial resources. The initial implementation costs of the final rule may be financed from a variety of sources. As a proxy for the firm's ability to afford the cost of compliance, the FAA calculated the ratio of the total present value cost of the rule as a percentage of annual revenue. (The FAA obtained annual operator revenue from current public filings, the 2000 winter edition of the World Aviation Directory, and US DOT Form 41 schedules). Using this methodology, it was found that of the 43 small entities potentially affected by this final rule, the total present value cost of the rule exceeded 2 percent of only two entities' total revenue.

In the interest of fully assessing the impact of this final rule on small entities, the FAA explored the potential competitive impact. The route structures and specific markets of five firms were examined. The affected firms sometimes compete with large carriers. These large carriers will incur the same fixed and marginal cost per airplane. Many routes served by the five small entities could be considered local monopolies in which the affected carrier is the only provider of service. As a result of operating in these ''niche'' markets, a carrier would be able to pass some of the cost to its passengers. Thus, as a result of this rule there is expected to be little change in competition, and little change in market share within the industry.

The FAA has determined that:

(1) No part 25 manufacturers are small entities.

(2) A substantial number of small operators will not be significantly impacted by this rule.

Accordingly, pursuant to the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Federal Aviation Administration certifies that this final rule will not have a significant impact on a substantial number of small entities.

Trade Impact Assessment

The Trade Agreement Act of 1979 prohibits Federal agencies from engaging in any standards or related activities that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as safety, are not considered unnecessary obstacles. The statute also requires consideration of international standards and, where appropriate, that they be the basis for US standards.

In accordance with the above statute, the FAA has assessed the potential effect of this rule and has determined that the objective of this rule is the safety and security of the United States, and therefore not considered an unnecessary obstacle to international trade.

Unfunded Mandates Act Assessment

Title II of the Unfunded Mandates Reform Act of 1995 (the Act), enacted as Pub. L. 104–4 on March 22, 1995, requires each Federal agency, to the extent permitted by law, to prepare a written assessment of the effects of any Federal mandate in a proposed or final agency rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any one year. Section 204(a) of the Act, 2 U.S.C. 1534(a), requires the Federal agency to develop an effective process to permit timely input by elected officers (or their designees) of state, local, and tribal governments on a proposed ''significant intergovernmental mandate.'' A ''significant intergovernmental mandate'' under the Act is any provision in a Federal agency regulation that will impose an enforceable duty upon state, local, and tribal governments, in the aggregate, of $100 million (adjusted annually for inflation) in any one year. Section 203 of the Act, 2 U.S.C. 1533, which supplements section 204(a), provides that before establishing any regulatory requirements that might significantly or uniquely affect small governments, the agency shall have developed a plan that, among other things, provides for notice to potentially affected small governments, if any, and for a meaningful and timely opportunity to provide input in the development of regulatory proposals or rules.

This final rule does not contain any Federal intergovernmental or private sector mandate because Congress has authorized money for the purpose of implementing aircraft security initiatives, including the fortification of cockpit doors. Therefore, the requirements of Title II of the Unfunded Mandates Reform Act of 1995 do not apply.

Regulations Affecting Interstate Aviation in Alaska

Section 1205 of the FAA Reauthorization Act of 1996 (110 Stat. 3213) requires the Administrator, when modifying regulations in title 14 of the CFR in manner affecting interstate

aviation in Alaska, to consider the extent to which Alaska is not served by transportation modes other than aviation, and to establish such regulatory distinctions as he or she considers appropriate. Because this rule applies to the certification of transport category airplanes and their operation, it could affect interstate aviation in Alaska. The FAA therefore specifically requests comments on whether there is justification for applying the rule differently in interstate operations in Alaska.

Executive Order 13132, Federalism

The FAA has analyzed this rule under the principles and criteria of Executive Order 13132, Federalism. We determined that this action would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, we determined that this rule would not have federalism implications.

Environmental Analysis

FAA Order 1050.1D defines FAA actions that may be categorically excluded from preparation of a National Environmental Policy Act (NEPA) environmental impact statement. In accordance with FAA Order 1050.1D, appendix 4, paragraph 4(j), this rulemaking action qualifies for a categorical exclusion.

Energy Impact

The energy impact of the notice has been assessed in accordance with the Energy Policy and Conservation Act (EPCA) Pub. L. 94–163, as amended (42 U.S.C. 6362) and FAA Order 1053.1. It has been determined that this rulemaking action is not a major regulatory action under the provisions of the EPCA.

List of Subjects

14 CFR Part 25

Aircraft, Aviation safety, Federal Aviation Administration, Reporting and recordkeeping requirements.

14 CFR Part 121

Aircraft, Aviation safety, Reporting and recordkeeping requirements, Safety, Transportation.

The Amendment

In consideration of the foregoing, the Federal Aviation Administration (FAA) amends parts 25 and 121 of Title 14 Code of Federal Regulations as follows:

PART 25—AIRWORTHINESS STANDARDS: TRANSPORT CATEGORY AIRPLANES

1. The authority citation for parts 25 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701, 44702, 4794.

2. Section 25.772 is amended by revising the introductory language and paragraph (a) and by adding a new paragraph (c) to read as follows:

§ 25.772 Pilot compartment doors.

For an airplane that has a lockable door installed between the pilot compartment and the passenger compartment:

(a) For airplanes with a maximum passenger seating configuration of more than 20 seats, the emergency exit configuration must be designed so that neither crewmembers nor passengers require use of the flightdeck door in order to reach the emergency exits provided for them; and

* * * * *

(c) There must be an emergency means to enable a flight attendant to enter the pilot compartment in the event that the flightcrew becomes incapacitated.

3. Part 25 is amended by adding a new § 25.795 to read as follows:

§ 25.795 Security considerations.

(a) *Protection of flightdeck.* If a flightdeck door is required by operating rules, the door installation must be designed to:

(1) Resist forcible intrusion by unauthorized persons and be capable of withstanding impacts of 300 Joules (221.3 foot-pounds) at the critical locations on the door, as well as a 250 pound (1113 Newtons) constant tensile load on the knob or handle, and

(2) Resist penetration by small arms fire and fragmentation devices to a level equivalent to level IIIa of the National Institute of Justice Standard (NIJ) 0101.04.

(b) [Reserved]

PART 121—OPERATING REQUIREMENTS: DOMESTIC, FLAG, AND SUPPLEMENTAL OPERATIONS

4. The authority citation for part 121 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 40119, 44101, 44701–44702, 44705, 44709–44711, 44713, 44716–44717, 44722, 44901, 44903–44904, 44912, 46105.

5. Section 121.313 is amended by revising paragraphs (f) and (g) and adding paragraph (j) to read as follows:

§ 121.313 Miscellaneous equipment.

* * * * *

(f) A door between the passenger and pilot compartments (i.e., flightdeck door), with a locking means to prevent passengers from opening it without the pilot's permission, except that nontransport category airplanes certificated after December 31, 1964, are not required to comply with this paragraph. For airplanes equipped with a crew rest area having separate entries from the flightdeck and the passenger compartment, a door with such a locking means must be provided between the crew rest area and the passenger compartment.

(g) A key for each door that separates a passenger compartment from another compartment that has emergency exit provisions. Except for flightdeck doors, a key must be readily available for each crewmember. Except as provided below, no person other than a person who is assigned to perform duty on the flightdeck may have a key to the flightdeck door. Before April 22, 2003, any crewmember may have a key to the flightdeck door but only if the flightdeck door has an internal flightdeck locking device installed, operative, and in use. Such ''internal flightdeck locking device'' has to be designed so that it can only be unlocked from inside the flightdeck.

* * * * *

(j) After April 9, 2003, for airplanes required by paragraph (f) of this section to have a door between the passenger and pilot or crew rest compartments, and for transport category, all-cargo airplanes that have a door installed between the pilot compartment and any other occupied compartment on January 15, 2002;

(1) Each such door must meet the requirements of §§ 25.795 (a)(1) and (2) in effect on January 15, 2002; and

(2) Each operator must establish methods to enable a flight attendant to enter the pilot compartment in the event that a flightcrew member becomes incapacitated. Any associated signal or confirmation system must be operable by each flightcrew member from that flightcrew member's duty station.

6. Section 121.547 is amended by revising paragraphs (a) (3) and (4) and paragraphs (c)(4) through (6) to read as follow:

§ 121.547 Admission to flight deck.

(a) * * *

(3) Any person who—

(i) Has permission of the pilot in command, an appropriate management official of the part 119 certificate holder, and the Administrator; and

(ii) Is an employee of—

(A) The United States, or

(B) A part 119 certificate holder and whose duties are such that admission to the flightdeck is necessary or advantageous for safe operation; or

(C) An aeronautical enterprise certificated by the Administrator and whose duties are such that admission to the flightdeck is necessary or advantageous for safe operation.

(4) Any person who has the permission of the pilot in command, an appropriate management official of the part 119 certificate holder and the Administrator. Paragraph (a)(2) of this section does not limit the emergency authority of the pilot in command to exclude any person from the flightdeck in the interests of safety.

* * * * *

(c) * * *

(4) A certificated airman employed by another part 119 certificate holder whose duties with that part 119 certificate holder require an airman certificate and who is authorized by the part 119 certificate holder operating the aircraft to make specific trips over a route;

(5) An employee of the part 119 certificate holder operating the aircraft whose duty is directly related to the conduct or planning of flight operations or the in-flight monitoring of aircraft equipment or operating procedures, if his presence on the flightdeck is necessary to perform his duties and he has been authorized in writing by a responsible supervisor, listed in the Operations Manual as having that authority; and

(6) A technical representative of the manufacturer of the aircraft or its components whose duties are directly related to the in-flight monitoring of aircraft equipment or operating procedures, if his presence on the flightdeck is necessary to perform his duties and he has been authorized in writing by the Administrator and by a responsible supervisor of the operations department of the part 119 certificate holder, listed in the Operations Manual as having that authority.

7. Section 121.581 is amended by revising paragraph (c) to read as follows:

§ 121.581 Observer's seat; en route inspections.

* * * * *

(c) For any airplane type certificated before December 20, 1995, for not more than 30 passengers that does not have an observer seat on the flightdeck, the certificate holder must provide a forward passenger seat with headset or speaker for occupancy by the Administrator while conducting en route inspections.

8. Section 121.587 is revised to read as follows:

§ 121.587 Closing and locking of flightcrew compartment door.

(a) Except as provided in paragraph (b) of this section, a pilot in command of an airplane that has a lockable flightcrew compartment door in accordance with § 121.313 and that is carrying passengers shall ensure that the door separating the flightcrew compartment from the passenger compartment is closed and locked at all times when the aircraft is being operated.

(b) The provisions of paragraph (a) of this section do not apply at any time when it is necessary to permit access and egress by persons authorized in accordance with § 121.547 and provided the part 119 operator complies with FAA approved procedures regarding the opening, closing and locking of the flightdeck doors.

Issued in Washington, DC, on January 10, 2002.

Jane F. Garvey,

Administrator.

[FR Doc. 02–965 Filed 1–10–02; 4:15 pm]

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Federal Register

Tuesday,
January 15, 2002

Part V

Department of Transportation

Federal Aviation Administration

14 CFR Parts 25 and 121

Security Considerations in the Design of the Flightdeck on Transport Category Airplanes; Final Rule

Advisory Circulars (AC) 25.795–1, Flightdeck Intrusion Resistance, and AC 25.795–2, Flightdeck Penetration Resistance; Notice

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 25 and 121

[Docket No. FAA–2001–11032; Amendment No. 25–106 and 121–288]

RIN 2120–AH56

Security Considerations in the Design of the Flightdeck on Transport Category Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment implements two security design requirements governing transport category airplanes. This amendment requires a means to protect the flightdeck from unauthorized intrusion and small arms fire or fragmentation devices. The FAA is also requiring that certain airplanes operating in part 121 service comply with this amendment to prevent unauthorized access to the flightdeck. These amendments are being adopted to further enhance air carrier security in response to the heightened threat to U.S. civil aviation.

DATES: This amendment is effective January 15, 2002. Comments must be received on or before March 18, 2002.

ADDRESSES: Address your comments to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2001–11032 at the beginning of your comments, and you should submit two copies of your comments. If you wish to receive confirmation that FAA received your comments, include a self-addressed, stamped postcard.

You may also submit comments through the Internet to *http://dms.dot.gov*. You may review the public docket containing comments to this final rule in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Dockets Office is on the plaza level of the NASSIF Building at the Department of Transportation at the above address. Also, you may review public dockets on the Internet at *http://dms.dot.gov*.

Comments that you may consider to be of a sensitive security nature should not be sent to the docket management system. Send those comments to the FAA, Office of Rulemaking, ARM–1, 800 Independence Avenue, SW, Washington DC 20591.

FOR FURTHER INFORMATION CONTACT: Jeff Gardlin, FAA Airframe and Cabin Safety Branch, ANM–115, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington 98055–4056; telephone (425) 227–2136, facsimile (425) 227–1149, e-mail: *jeff.gardlin@faa.gov*.

SUPPLEMENTARY INFORMATION:

Comments Invited

This final rule is being adopted without prior notice and prior public comment. The Regulatory Policies and Procedures of the Department of Transportation (DOT) (44 FR 1134; February 26, 1979), however, provides that, to the maximum extent possible, operating administrations of the DOT should provide an opportunity for public comment on regulations issued without prior notice. Accordingly, interested persons are invited to participate in this rulemaking by submitting such written data, views, or arguments, as they may desire. Comments relating to the environmental, energy, federalism, or international trade impacts that might result from this amendment are also invited. Comments must include the regulatory docket or amendment number and must be submitted in duplicate to the DOT Rules Docket address specified above.

All comments received, as well as a report summarizing each substantive public contact with FAA personnel concerning this final rule; and request for comments, will be filed in the docket. The docket is available for public inspection before and after the comment closing date.

The FAA will consider all comments received on or before the closing date for comments. Late filed comments will be considered to the extent practicable. This final rule may be amended in light of the comments received.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this document must include a pre-addressed, stamped postcard with those comments on which the following statement is made: ''Comments to Docket No. FAA–2001–11032.'' The postcard will be date stamped and mailed to the commenter.

Availability of Rulemaking Documents

You can get an electronic copy using the Internet by taking the following steps:

(1) Go to the search function of the Department of Transportation's electronic Docket Management System (DMS) Web page (*http://dms.dot.gov/search*).

(2) On the search page type in the last four digits of the Docket number shown at the beginning of this amendment. Click on ''search.''

(3) On the next page, which contains the Docket summary information for the Docket you selected, click on the document number of the item you wish to view.

You can also get an electronic copy using the Internet through FAA's Web page at *http://www.faa.gov/avr/arm/nprm/nprm.htm* or the **Federal Register**'s Web page at *http://www.access.gpo.gov/su_docs/aces/aces140.html*.

You can also get a copy by submitting a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267–9680. Make sure to identify the docket number and amendment number of this rulemaking.

Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 requires FAA to comply with small entity requirements for information or advice about compliance with statutes and regulations within its jurisdiction. Therefore, any small entity that has a question regarding this document may contact their local FAA official, or the person listed under **FOR FURTHER INFORMATION CONTACT**. You can find out more about SBREFA on the Internet at our site, *http://www.gov/avr/arm/sbrefa.htm*. For more information on SBREFA, e-mail us at *9-awa-sbrefa@faa.gov*.

Background

On September 11, 2001, the United States experienced terrorist attacks when airplanes were commandeered and used as weapons. These actions demonstrated the need to improve the security of the flightdeck. On November 19, 2001, Congress enacted Public Law 107–71, the Aviation and Transportation Security Act (the Act). Section 104 (a) of the Act, Improved Flight Deck Integrity Measures, states:

(a) IN GENERAL.—As soon as possible after the date of enactment of this Act, the Administrator of the Federal Aviation Administration shall—

(1) Issue an order (without regard to the provisions of chapter 5 of title 5, United States Code)—

(A) Prohibiting access to the flightdeck of aircraft engaged in passenger air transportation or intrastate air transportation that are required to have a door between the passenger and pilot compartments under title 14, Code

of Federal Regulations, except to authorized persons;

(B) Requiring the strengthening of the flightdeck door and locks on any such aircraft operating in air transportation or intrastate air transportation that has a rigid door in a bulkhead between the flightdeck and the passenger area to ensure that the door cannot be forced open from the passenger compartment;

(C) Requiring that such flightdeck doors remain locked while any such aircraft is in flight except when necessary to permit access and egress by authorized persons; and

(D) Prohibiting the possession of a key to any such flightdeck door by any member of the flightcrew who is not assigned to the flightdeck;

(2) Take such other action, including modification of safety and security procedures and flightdeck redesign, as may be necessary to ensure the safety and security of the aircraft.

The Act directs that the FAA issue an order fulfilling the requirements of paragraph (a)(1) of Section 104 as a final rule, without seeking public comment prior to adoption. The Act specifies that improved flightdeck security must be applied to airplanes operating in air transportation that are currently required to have flightdeck doors.

This final rule is intended to implement Section 104(a) of the Act. Thus, as explained more fully below, it prohibits access to the flightdeck, requires strengthening of the flightdeck doors, requires flightdeck doors to remain locked, and prohibits possession of keys to the flightdeck door by those members of the crew not assigned to the flightdeck. While the Act and the deadlines established in the Act provide both the impetus and the authority for issuance of this rule as a final rule without notice and comment, both the FAA and the broader aviation community have for some time been engaged in efforts to address the issue of flightdeck security. In addition, since the events of September 11, the FAA has issued a series of Special Federal Aviation Regulations (SFAR 92, 92–1, and 92–2) which are also pertinent to the issues addressed in this final rule. Before describing the terms of the final rule, therefore, we summarize below for context the various regulatory efforts that have considered flightdeck security and which further support the issuance of this final rule.

FAA/Industry/International Design Efforts

Because of the work on flight deck security that had been initiated by the FAA and the aviation community through the International Civil Aviation Organization (ICAO) and the Aviation Rulemaking Advisory Committee (ARAC), the objectives of this amendment already have broad acceptance. The ICAO is an international body consisting of 187 member countries which has adopted standards under Amendment 97 to ICAO Annex 8 relating to the incorporation of security into the design of airplanes including the following subjects:

(1) Survivability of systems,

(2) Fire suppression,

(3) Smoke and fumes protection (cabin and flightdeck),

(4) Least risk bomb location and design,

(5) Pilot compartment small arms and shrapnel penetration, and

(6) Interior design to deter hiding of dangerous articles and enhance searching.

This rule only addresses ICAO requirements regarding protecting the pilot compartment. The remainder of the ICAO requirements will be addressed in subsequent rulemaking action.

In addition to participating in the development of international standards through the ICAO, the FAA considers maintaining harmonized standards between the United States and Europe to be a high priority. The FAA has found that carrying out this harmonization task is best achieved by a joint activity with its European counterpart, the Joint Aviation Authorities (JAA) and through ARAC, the FAA developed protection for the pilot compartment beyond the ICAO standard.

The ARAC is composed of 76 member organizations with a wide range of interests in the aviation community and provides the FAA with firsthand information and insight regarding proposed new or revised rules. In 1999, ARAC established a Working Group of airplane design specialists and aviation security specialists from the aviation industry and the governments of Europe, the United States, Brazil and Canada. The Working Group was tasked to develop harmonized security related design provisions based on Amendment 97 to Annex 8 of the Convention on International Civil Aviation. One of the requirements covered by the tasking is protection of the flightdeck. The Working Group was also tasked to consider improving the resistance to flightdeck intrusions while still ensuring compliance with the other requirements.

The Working Group developed specific recommendations for implementing security provisions into the design of transport category airplanes. The ARAC has approved those recommendations with respect to protection of the flightdeck and recommended them to the FAA for rulemaking. The FAA has accepted ARAC's recommendations, and the rulemaking contained in this amendment follows from those recommendations and the activity of the Working Group.

The FAA is expediting rulemaking action with regard to protection of the flightdeck based on the events of September 11, 2001, and the requirements of the Act. The remainder of the tasks assigned to the working group will be completed and forwarded to the FAA in the near future. The FAA intends to go forward with additional rulemaking after those recommendations are received.

Other Rulemaking To Protect the Flightdeck

Following the events of September 11, 2001, the FAA issued a series of Special Federal Aviation Regulations (SFAR 92, 92–1 and 92–2) to enable passenger air carriers to make short-term modifications to their flightdeck doors to enhance security. These modifications can be made quickly and will significantly improve the intrusion resistance of the flightdeck, even though they might not meet all regulatory requirements. The SFARs provided temporary regulatory relief from certain airworthiness standards so that security enhancements could be made as quickly as possible. In contrast, this amendment establishes the long-term standards for doors. This amendment will supersede the short-term SFAR requirements before the SFAR expires.

To date the SFAR 92 series rules have authorized, but not required, the short-term modifications. Concurrent with this amendment the FAA is issuing an SFAR 92–3 that will require the short-term modifications. The level of security enhancement mandated by SFAR 92–3 is intended to mirror those changes already made voluntarily by operators.

Discussion of the Final Rule

Part 25 Requirements

Applicability

As directed by Section 104 of the Act, this amendment applies to ''aircraft engaged in passenger air transportation or intrastate air transportation that are required to have a door between the passenger and pilot compartments under title 14, Code of Federal Regulations.''

The only regulation currently addressing this issue is 14 CFR

121.313(f), which, for airplanes operated under that part, requires installation of a ''door between the passenger and pilot compartments, with a locking means to prevent passengers from opening it without the pilot's permission, except that nontransport category airplanes certificated after December 31, 1964, are not required to comply with this paragraph.'' The exception for nontransport category airplanes certificated after December 31, 1964, generally covers smaller commuter category airplanes. This amendment applies to the airplanes subject to the 14 CFR 121.313(f) requirement. In addition, as discussed under the heading ''Operating Requirements,'' we are amending § 121.313 to apply these requirements to transport category all-cargo airplanes that have flightdeck doors installed on the effective date of this amendment. As discussed under the heading, ''Future Rulemaking,'' the FAA may consider imposing similar requirements for other airplanes in the future.

Section 104(a)(1)(B) of the Act provides that this new requirement must apply to affected aircraft that have a ''rigid'' door. Neither the Act nor 14 CFR 121.313(f) distinguishes between rigid doors and non-rigid doors, and the FAA is not aware of a practicable distinction between such doors that could be used in this rulemaking or in the implementation of the new regulation. Therefore, this amendment applies to all affected doors between pilot and passenger compartments, without distinction based on rigidity. To the extent that such application may be seen as exceeding the authority provided by Section 104 of the Act to issue this regulation without notice and comment procedures, we find good cause under 5 U.S.C. 553(b)(3)(B) for not following those procedures. As explained, it is impracticable to define a distinction based on rigidity that would enable the FAA to comply with the Act's requirement to issue this regulation for ''rigid'' doors, while excluding ''non-rigid'' doors. In addition, we find that, even if such a distinction could be drawn, it would be contrary to the intent of the Act, and the purpose of this rulemaking, which is to enhance the security of flightdeck doors for airplanes that are required to have them.

Accordingly, this amendment adds a new § 25.795 addressing the incorporation of security into transport category airplane flightdeck design. This rule applies whenever the airplane is required to have a flightdeck door. Some airplanes are equipped with crew rest areas that have doors that lead from the passenger cabin into the crew rest area, as well as a door from the crew rest area into the flightdeck. For the purposes of compliance with this amendment, the door leading into the crew rest area from the passenger cabin is the affected door.

The FAA invites comments on the applicability of this regulation. Commenters should clearly delineate their rationale for a different applicability in terms of how the security and safety issues are addressed. Because such discussions are also sensitive from a security standpoint, the FAA may screen such comments before placing them in the public docket. Send those comments to the FAA, Office of Rulemaking, ARM–1, 800 Independence Avenue, SW, Washington DC 20591.

Flightdeck Security Intrusion by Persons

Section 25.795(a)(1) requires that the flightdeck door installation be designed to resist intrusion by any person who attempts to enter the flightdeck by physically forcing his or her way through the door. In this context, the door installation includes the door, its means of attachment to the surrounding structure, and the attachment structure on the bulkhead itself. The integrity of the locking/latching/hinge mechanism, as well as the door panel itself, can be improved so that intrusion resistance is significantly enhanced.

There are numerous data concerning the forces a person can exert on a door. *National Institute of Law Enforcement and Criminal Justice (NILECJ) standard 0306.00* released in May 1976, for the Physical Security of Door Assemblies and Components, provides standards and guidance to assess a door's resistance to intrusion. The highest level of intrusion resistance in the NILECJ standard uses impacts of 200 Joules. In conjunction with industry, the FAA determined that a higher standard was necessary and achievable. This final regulation requires that the door resist impacts with energies equal to 300 Joules (221.3 foot-pounds), which is fifty percent higher than the highest level of intrusion resistance in the NILECJ standard. In order to address resistance to pulling on the doorknob or handle, the regulation also includes a requirement for application of a 250 pound tensile load. This value was selected to provide intrusion resistance from pulling comparable to the 300 Joules impact resistance requirement. The requirement is not intended to prevent entry by a person using extraordinary means or with a large amount of time to work on opening the door. It is intended to deter attempts at entry and delay attempts until other actions can be taken to prevent entry.

The FAA has captured applicable reference data and test methods in Advisory Circular (AC) 25.795–1, ''Flightdeck Intrusion Resistance,'' and considers these acceptable for demonstrating compliance. The methods of compliance described in the AC consist of impact tests at critical points on the door, as well as resistance to pulling. Critical locations are expected to be the door latch and hinge, as well as the panel itself, but will depend on the design. The FAA will also consider other valid compliance methods if proposed by an applicant.

An additional aspect of intrusion resistance is the interior configuration in the vicinity of the door. Small changes to the interior can make it difficult for an intruder to have direct access to the door, and therefore difficult to exert much force. Changes to the interior should also be included as part of the design considerations to meet this requirement.

Ballistic Penetration

Section 25.795(a)(2) requires design precautions to be taken to minimize the penetration of shrapnel from a fragmentation device and small arms projectiles (i.e., ballistics) which might be fired through the flightdeck doors from occupied compartments. While not explicitly mentioned in the Act, these protections are key elements of protecting the flightdeck from intrusion as required by § 104(a)(1)(B) of the Act because any compromise to the integrity of the flightdeck door from a ballistic threat could enable an intruder to gain access to the flightdeck. It would be impracticable to protect the door without including a ballistic protection component. To the extent that this may be seen as exceeding the authority provided by Section 104 of the Act to issue this regulation without notice and comment procedures, we find good cause under 5 U.S.C. 553(b)(3)(B) for not following those procedures.

Ballistic resistance will also protect the pilot from trauma from ballistics entering the flightdeck. Further, the potential loss of critical flight instrumentation and control is also acute if ballistics penetrate the flightdeck. The disabling of critical systems from a single ballistic penetration is achievable with the concentration of most systems controls within a small sector of the flightdeck. Electronic displays of basic flight information are similarly unprotected and vulnerable. It is not the intent of this requirement to make the flightdeck

''impenetrable,'' but to provide a high level of protection.

This final rule requires protection for all features of the flightdeck door to the extent necessary to prevent penetration of likely projectiles. We have determined protection equivalent to Level IIIA of the National Institute of Justice Standard (NIJ) standard 0101.04 is sufficient to protect against the most powerful handgun projectiles and grenade shrapnel that could be encountered on civil airplanes, and have adapted the relevant portions of this standard for this application in AC 25.795–2, Flightdeck Penetration Resistance. Protection would be required at all points where penetration of small arms fire could cause a hazard. This would include design details such as hinges, grills, and latches.

The FAA has reviewed several material concepts to address this requirement, including metallic alloys, ceramics, cermets, polymers, strong fibers and composites, and determined that the proposal is both practical and cost-effective. Advisory Circular 25.795–2 includes a detailed discussion of both material types and methods of compliance. A notice of issuance of AC 25.795–1 and AC 25.795–2 is published in this same part of the **Federal Register**. However, it is the FAA's intention to accept certain material types and installation approaches without the need for actual test if it can be shown that the material and its installation would meet the intent of the rule. If an applicant elected to use other means, the AC would also provide for use of alternative materials and installations in compliance with performance standards specified in the rule.

Existing Requirements

The flightdeck door is subject to several requirements that affect its structural integrity. These include protection during decompression where the door may incorporate venting features to prevent a large pressure differential build up; egress considerations to permit the flightcrew to enter the passenger cabin in the event the door becomes jammed during an accident; and provisions to enable rescue personnel to enter the flightdeck in the event members of the flightcrew are unable to exit on their own. The door may also be integral in meeting ventilation requirements. There is, of course, the potential for designs that meet this new rule to conflict with existing requirements, but the FAA has determined that all the requirements can be accommodated by proper design of the door installation.

The balance between providing access to rescue personnel while providing intrusion resistance may be the most difficult element. On some airplanes, there are exits inside the flightdeck that can be opened from the outside and in such cases, there is no requirement for the flightdeck door to have provision for entry by rescue personnel. For future airplanes, this is the most direct way to address the potential conflicts in the requirements. On airplanes where the flightdeck exits cannot be opened from the outside, rescue personnel must gain access to the flightdeck via the flightdeck door. As stated earlier, the objective of this amendment is to either directly prevent the entry of a person or sufficiently delay them until other actions could be taken to prevent them from being able to continue their attempted entry. In that regard, to meet the intent of this amendment, the size and location of any removable panels should be sufficiently awkward to inhibit that person's entry. The FAA expects that rescue personnel would have additional equipment at their disposal to gain access through the flightdeck door and be able to exert more force than would an individual acting in flight. Therefore, there should be no inherent reason that the two requirements cannot both be met.

Inflight Access by Cabin Crew

While not explicitly a current requirement, the FAA has long recognized a need to provide for in-flight flightdeck entry by the cabin crew should a flightcrew member become incapacitated; because the consequences of not providing such access could be catastrophic. Since § 121.313(g) resulted in flight attendants having access to a key to the flightdeck door, this issue has been addressed fairly simply in the past. As required by Section 104(a)(1)(D) of the Act, however this rule will prohibit the possession of flightdeck door keys by the cabin crew during flight, as discussed under ''Operating Requirements.''

The FAA expects that other means to enable a flight attendant to enter the flightdeck, without the use of force, will be available through more sophisticated systems that do not require forcible entry, and that these means will be available only to the cabin crew and only in an emergency situation. Various approaches are possible and do not require detailed discussion here. This capability is considered necessary, however, and it would be impractical to impose the requirement for intrusion resistant flightdeck doors without addressing this issue at the same time. Indeed, Congress recognized in § 104(a)(1)(c) of the Act that there would be times when it would be necessary for authorized persons to enter the flightdeck.

Therefore, § 25.772 is being amended to require that there be a means to allow the flight attendants to enter the flightdeck should the flightcrew become incapacitated. Such means are only intended to be used in an emergency situation, and would require complementary operational procedures to facilitate their use. As discussed below, § 121.313(j) permits a combination of procedures and hardware to provide access by flight attendants in light of this aggressive compliance schedule specified in this amendment.

We have concluded that this requirement is comfortably within the scope of those provisions authorized by Section 104 of the Act as with other provisions discussed previously, however, to the extent that this provision may be seen as exceeding the authority provided by Section 104 to issue this regulation without notice and comment procedures, the FAA finds good cause under 5 U.S.C. 553(b)(3)(B) for not following those procedures on the grounds that strengthening the flightdeck door, as required by the Act, without providing for access to the flightdeck by authorized personnel in case of flightcrew incapacitation, would create a serious safety problem that was not intended by Congress. Therefore, providing notice and prior opportunity to comment on this provision is impracticable and contrary to the public interest.

Operating Requirements

Flightdeck Door Requirements

As required by the Act, the FAA is revising § 121.313 to impose new flightdeck door requirements on existing airplanes that are required to have such doors. The FAA has also considered the issue of airplanes that carry cargo, but are permitted to also carry certain persons as defined in § 121.583 who are not flightcrew members. On many of these airplanes, there is a door between the flightdeck and the occupied compartment. Current regulations do not ensure that a person intent on using an airplane as a weapon would be unable to board all-cargo airplanes. Therefore, in cases where these airplanes already have a flightdeck door, the FAA has determined that the door should meet the new standards adopted here. As already noted for other provisions, this requirement is not specifically addressed in the Act. To the extent that this provision may be seen

as exceeding the authority provided by Section 104 to issue this regulation without notice and comment procedures, the FAA finds good cause under 5 U.S.C. 553(b)(3)(B) for not following those procedures on the grounds that addressing only passenger carrying airplanes with flightdeck doors would omit a significant number of airplanes that are similarly situated.

Section 121.313(f) does not require such all-cargo airplanes to have a door between the flightcrew compartment and other occupied compartments. In order to preclude removal of flightdeck doors as a means to avoid compliance with this requirement, the rule applies to all-cargo airplanes that have flightdeck doors installed on the effective date of this amendment.

In addition, as discussed under the heading ''Future Rulemaking,'' the FAA is considering the need to require a flightdeck door on all-cargo airplanes. Such action will be considered in light of comments received and would be an expansion of the requirements of § 121.313(f).

A new § 121.313(j) is added to reference the new part 25 standard for the door separating the flightdeck from the passenger compartment. With respect to the requirements of § 25.772(c), which would require systems that would permit entry by flight attendants but not permit entry by other persons, these systems must have a high degree of reliability, and the FAA considers that it may not be practical to develop and install such systems within the compliance time of this rule. However, operational procedures coupled with simpler, more robust systems could be readily implemented. Procedures could include having a flight attendant occupy a flightdeck seat whenever one pilot must leave the flightdeck. Any system that must be activated by a flightcrew member (either to permit or deny entry) must be operable from the crewmember's duty station. Therefore, § 121.313(j) will require each operator to establish methods to enable a flight attendant to enter the flightdeck in the event that a flightcrew member becomes incapacitated. As with § 25.772(c), these methods are intended to be used under emergency conditions and not for routine access to the flightdeck.

As noted previously, some airplanes are equipped with a crew rest area that is accessible from both the flightdeck and the passenger compartment. Current practice in the application of section 121.313(f) is that the entry to such areas from the passenger compartment is required to have a locked door. Section 121.313(f) is revised to clarify this requirement, and the new requirement of section 121.313(j) for strengthened doors also applies to these doors.

The rule will require that doors meeting this standard be installed no later than April 9, 2003. The FAA evaluated several factors in establishing this compliance time. Before enactment of the Act, multiple industry groups had developed a proposal for the performance of flightdeck doors that addresses intrusion and ballistic protection. The industry proposal closely parallels the changes to part 25 adopted by this rule. Therefore, the FAA does not anticipate significant problems in complying with this requirement. The FAA is requiring that all airplanes affected by § 121.313(f) incorporate flightdeck doors meeting the requirements of § 25.795 (a)(1) and (2) by April 9, 2003. This date corresponds to the termination date of the previously issued SFAR 92 (and its successors), and is the date by which all airplanes modified under the provisions of the SFAR must be in full compliance with their respective airworthiness requirements. This is an aggressive schedule; given events of September 11, 2001, however, the nature of the issue demands aggressive action.

Flightdeck Access Provisions

This amendment also changes the requirements governing access to the flightdeck in flight. Section 104(a)(1)(D) of the Act requires the Administrator to issue an order prohibiting possession of flightdeck door keys by other than flightdeck crewmembers. The FAA has determined that this limitation is intended to address operations in flight, rather than possession of keys at all times. Section 121.313(g) currently requires that non-flightdeck crewmembers have keys in flight and this rule amends (g) to meet Section 104(a)(1)(D) of the Act. Section 121.313(g) is revised to achieve three important safety goals. In the first sentence, the requirement is to have keys available that will unlock doors that lead from a passenger compartment to an emergency exit. The second regulatory requirement is that each crewmember has a key to doors specified in the first sentence, unless that door is a flightdeck door.

The last regulatory requirement is that before April 9, 2003, other crewmembers, (*e.g.* flight attendants) may have a key but only if the flightdeck door has an internal locking device installed, operative, and in use. This exception is a result of SFAR 92–2. The SFAR authorizes short-term flightdeck door reinforcement efforts, which include internal locks. When those locks are installed and in use, the key to the door will no longer open the door so it is ineffective as a key. As noted in the SFAR, such internal flightdeck locking devices have to be designed so that they can only be unlocked from inside the flightdeck (*e.g.* deadbolt locks or bars). The keys themselves have multiple uses in the passenger cabin such as opening medical supplies, defibrillators and cabin crew rest areas. Denying access to the keys when they will not open the flightdeck door only inconveniences the cabincrew with no benefit of safety. The exception, which expires with the SFAR in April 9, 2003, will satisfy the requirement of the Act to prohibit possession by flight attendants of keys that can be used to gain entry to the flightdeck.

Section 121.547 addresses who may be admitted to the flightdeck and in some cases the conditions for admission to the flightdeck. Section 121.547(a)(1) and (a)(2) remain unchanged and thus crewmembers, FAA inspectors, and NTSB representatives who are performing official duties may be admitted to the flightdeck.

Several changes have been made to § 121.547(a)(3). In the current § 121.547(a)(3), only the pilot in command (PIC) had to give permission for the people listed in paragraph (a)(3) to be admitted to the flightdeck. Because of the demands of aviation safety and security, in the amended section, admission to the flightdeck is also conditioned on the permission of the part 119 certificate holder and the Administrator. To the extent this provision may be seen as exceeding the authority provided by Section 104 of the Act to issue this regulation without notice and comment procedures, we find good cause under 5 U.S.C. 553(b)(3)(B) for not following those procedures. The Act requires limitations on those authorized access to the flightdeck. Inherent in issuing such a rule is a basis for determining authorization and it would be impracticable to issue a rule without such procedures. This amendment is being made pursuant to 5 USC 553(b)(3)(B), 49 USC Section 44701(a)(5), and Section 104(a)(2) of the Act.

In complying with §§ 121.547(a)(3) and 121.547(c)(4), the air carrier must keep security directives in mind when deciding whether to issue authorization to enter the flightdeck for purposes of riding in the jumpseat. The changes to the regulatory text in § 121.547(a)(4) are clarifying in nature and need not undergo normal notice and comment procedures. As the discussion in this

preamble indicates, the discretion the FAA had with the current § 121.547(a)(4) to issue authorization to enter the flightdeck will now be systemically overseen and controlled.

Existing § 121.547(a)(4) is modified slightly in the new rule for clarification purposes only. In the current rule in order for a person to gain entry to the flightdeck that person must have permission of three people including the ''certificate holder.'' In the revised language the agency adds the phrase ''an appropriate management official of part 119'' certificate holder to make clear which certificate holder the agency is referring to. Similar changes have been made to § 121.547(c)(4), (c)(5) and (c)(6). Because these changes are clarifying in nature, notice and comment procedures are not required.

In current § 121.581(c), the regulations allowed on certain aircraft, that did not have an observer seat on the flightdeck, that the cockpit door could remain open when an FAA inspector is conducting an inspection. Under the current rule the FAA inspector would conduct the inspection in a forward passenger seat. The last section of current § 121.581(c) is being deleted because allowing cockpit doors to remain open during flight is inconsistent with Section 104(a)(1)(C) of the Act. This amendment is being adopted without following APA notice and comment procedures pursuant to Section 104(a)(1) of the Act.

Section 121.587 is being revised to require that the flightcrew compartment door be closed and locked at all times when the aircraft is being operated. Previously, the rules only required the door to be closed and locked during flight. With this amendment, the door will also have to be closed and locked during taxi, takeoff, and landing roll. The ''good cause'' justification for not using the normal APA notice and comment procedures is that the recent terrorist attacks make clear that security and safety dictate that—except as provided in § 121.587(b)— the door shall be closed and locked at all times when the aircraft is being operated. As has been discussed regarding other provisions of this amendment, to the extent this provision may be seen as exceeding the authority provided by Section 104 of the Act to issue this regulation without notice and comment procedures, the FAA finds good cause under 5 U.S.C. 553(b)(3)(B) for not following those procedures. Prohibiting access, as required by the Act, without addressing all phases of operation, would leave a potentially serious loophole in the requirement that was not intended by Congress. Therefore, providing notice and prior opportunity to comment on this provision is impracticable and contrary to the public interest.

Current § 121.587(b)(1) allows the flightdeck door to remain opened during takeoff and landing if the crew compartment door is the means of access to a required passenger emergency exit or floor level exit. This section is being deleted for the same reasons that § 121.587(a) is being amended.

Section 121.587(b)(3) currently permits the flightdeck door to be open if the use of the observer seat (jumpseat) will not permit the door to be closed. This section is deleted because Section 104(a)(1)(C) of the Act does not allow for such a provision. Thus, the flightdeck door may not be ajar to accommodate a jumpseat occupant for the duration of the flight. The legislative history for Section 104(a) of the Act indicates that on the rare occasions when a flightdeck door will be opened during flight, Congress expected the opening of that door to be brief and that the door will be closed and locked quickly.

Future Rulemaking

As noted previously, the regulations currently only require the installation of a flightdeck door for passenger-carrying transport category airplanes operating under part 121. In light of the events of September 11, 2001, and in accordance with Sections 104(a)(1)(c) and 104(a)(2) of the Act, the FAA is reviewing the need for flightdeck doors on all air carrier airplanes, including US cargo operations. In addition, as the events of September 11, 2001, make clear, additional security measures will also be required for aircraft operated by foreign operators. The 33rd ICAO Assembly unanimously passed a resolution that calls on all States to implement additional security measures and directs the ICAO Council to strengthen ICAO security standards. The FAA is working with civil aviation authorities and with ICAO to rapidly develop and implement measures that will improve flightdeck security.

The FAA expects that ICAO will adopt requirements for intrusion resistant flightdeck doors to complement the existing Annex 8 requirements, and make those requirements a condition of operation under Annex 6. The FAA is aware of efforts underway in ICAO to do this, and will support those efforts. The FAA also expects that the CAA of those countries overseeing operators with part 129 operations specifications approvals will adopt their own standards for improved flightdeck security, similar to what the FAA is adopting here, and make those requirements applicable to their existing fleets. Given the urgency of the situation, such requirements and modifications necessary to meet those requirements should be established by April 2002, such that airplanes operating in the United States, whether foreign or domestic, will have improved flightdeck security by April 9, 2003.

To facilitate and promote a global effort such as this, the FAA intends to consult and work with other regulatory authorities over the next several months. On the basis of these consultations, the FAA will determine whether specific rulemaking in part 129 is required. Such a rule, if necessary, would likely require compliance with the same standards imposed by this amendment, or with an equivalent standard imposed by the State of Registry or the equivalent ICAO requirement, at the discretion of the Administrator.

As discussed earlier, the FAA issued the SFAR 92 series of rules to authorize, and now mandate, installation of internal locking devices on flight deck doors on part 121 aircraft. These modifications provide immediate flightdeck security improvements until the installation of permanent solutions as outlined in this amendment. The SFAR 92 authority was first issued on October 9, 2001, and operators immediately began modifying doors. The FAA expects part 129 operators to install and use similar locking devices and that their States of Registry would issue waivers similar to SFAR 92 to allow these modifications. The FAA views these modifications as essential to near-term security of aircraft, whether they are operated in part 121, or part 129 operations to and from the US. The FAA has the continued expectation that part 129 operators and their States of Registry will take the necessary actions to install internal locking devices and that those modifications will be made on or before the date set for full part 121 installation in February 2002 by SFAR 92–3. The FAA will closely monitor the activities of part 129 operators to determine if the locking devices are installed and used in the time frame provided by SFAR 92–3 and will initiate rulemaking if they are not.

In addition, Section 104(c) of the Act states the following:

''The Administrator shall investigate means of securing the flightdeck of scheduled passenger aircraft operating in air transportation or intrastate air transportation that do not have a rigid fixed door with a lock between the passenger compartment and the

flightdeck and issue such an order as the Administrator deems appropriate to ensure the inaccessibility, to the greatest extent feasible, of the flightdeck while the aircraft is so operating, taking into consideration such aircraft operating in regions where there is minimal threat to aviation security or national security.'' This section addresses both airplane type and mode of operation.

The FAA will consider whether other types of airplanes should be equipped with flightdeck doors meeting the standards of this amendment, and solicits comments on this issue. Commuter category airplanes will be a focus of the FAA's deliberations on potential future applicability. Other changes, as outlined in Section 104(a)(2) of the Act, may also be proposed.

The FAA solicits comments on the need to expand the requirement for installation of a flightdeck door to other domestic operations. The FAA intends to propose further rulemaking if it determines that the current requirements of § 121.313(f) need to be expanded to other operations. For example, during cargo operations under part 121, operators are allowed to transport certain persons that are identified in § 121.583. The FAA is considering whether it is necessary to require improved flightdeck security on all cargo airplanes. The FAA is also considering whether to require strengthening flightdeck doors on transport category aircraft operated under parts 91, 125 and 135. We solicit comments on this issue.

As noted, this amendment only addresses the flightdeck door, as required by the Act. However, the FAA considers that a comprehensive assessment of flightdeck security must include all barriers between the flightdeck and occupied areas. Therefore, the FAA intends to propose further rulemaking that would apply the requirements adopted here to flightdeck bulkheads, floors and ceilings that separate the pilot and passenger compartments for new type designs under part 25. At that time, the need to consider the ballistic protection capability of the door after it has been tested for intrusion resistance would also become a requirement.

The FAA also expects to further amend new § 25.795 to add the remainder of the ARAC recommendations concerning survivability of systems, cargo fire suppression, smoke and fumes protection (cabin and flightdeck), least risk bomb location and design, and interior design to deter hiding of dangerous articles and enhance searching. Therefore other paragraphs in § 25.795 of this amendment are identified and marked as ''reserved.''

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the FAA has determined that there are no requirements for information collection associated with this rule.

International Compatibility

In keeping with US obligations under the Convention on International Civil Aviation, it is FAA policy to comply with International Civil Aviation Organization (ICAO) Standards and Recommended Practices to the maximum extent practicable. As discussed earlier, this rule is partially responsive to Amendment 97 to ICAO Annex 8, and the FAA plans further action to address the remainder of the Amendment 97 requirements.

Good Cause for Immediate Adoption

As discussed previously, the Act requires that this regulation be issued without prior public notice and opportunity to comment.

For those provisions that are arguably not required to be adopted by the Act, Section 553(b)(3)(B) and 553(d)(3) of the Administrative Procedures Act (APA) (5 U.S.C. §§ 553(b)(3)(B) and 553(d)(3) authorize agencies to dispense with certain notice procedures for rules when they find ''good cause'' to do so. Under § 553(b)(3)(B), the requirements of notice and opportunity for comment do not apply when the agency, for good cause, finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Section 553(d)(3) allows an agency, upon finding good cause, to make a rule effective immediately, thereby avoiding the 30-day delay effective date requirement in § 553.

For the reasons discussed previously, the FAA finds that notice and public comment on this final rule are impracticable, unnecessary, or contrary to the public interest. The provisions of this final rule require implementation of two security design requirements related to protection of the flightdeck. It provides means to protect the flightdeck from small arms fire or fragmentation devices, as well as means to protect against intrusion into the flightdeck by unauthorized persons.

Regulatory Evaluation Summary

Changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 directs each Federal agency proposing or adopting regulation to first make a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. In developing US standards, this act requires agencies to consider international standards, and use them where appropriate as the basis for US standards. Fourth, the Unfunded Mandates Act of 1995 requires agencies to prepare a written assessment of the costs and benefits, and other effects of proposed and final rules. An assessment must be prepared only for rules that impose a Federal mandate on state, local, or tribal governments, or on the private sector, likely to result in a total expenditure of $100 million or more (adjusted for inflation) in any one year.

In conducting these analyses, the FAA determined that this rule has benefits that justify the costs; will not have a significant impact on a substantial number of small entities; has no effect on trade-sensitive activity; and does not impose an unfunded mandate on state, local, or tribal government, or on the private sector.

Benefits and Costs

This rule is the first of a series of FAA rules to improve flightdeck integrity, as directed by the Aviation and Transportation Security Act. This rule establishes the requirements for flightdeck door enhancements. As such, the benefits of this rule are to ensure the safety and security of the flying public. Since this rule is one of several being introduced to avoid a reoccurrence of an event like that of September 11, 2001, the benefits will be shared by the entire set of rules designed to prevent such a reoccurrence.

Once the terrorist attacks of September 11, 2001, demonstrated the potential damage from using an aircraft as a weapon of mass destruction, flightdeck security was catapulted as an issue of very high public interest. Only days after the September 11, 2001, attacks, President Bush identified flightdeck security as an issue requiring immediate action, and improvements to flightdeck security is one of several recommendations set forth by the Secretary of Transportation's Rapid Response Team on Aircraft Security. Congress followed with the introduction of the Aviation and Transportation Security Act, and many carriers have voluntarily retrofitted their fleets with improved flightdeck doors.

The cost of the September 11, 2001, catastrophic terrorist act cannot be measured easily in dollars. While those losses are estimated to be potentially in the tens of billions of dollars, the costs of another incident could possibly be even higher. Based on changes in the aviation security risk, and the Aviation and Transportation Security Act, the FAA believes that the benefit of this regulation is warranted to prevent flightdeck access by unauthorized persons.

Applicants for new, amended, or supplemental type certificates under part 25 will be affected by this rule. These applicants typically include manufacturers and modifiers. The additional cost to an airplane manufacturer is the additional cost of the door, because the flightdeck door installation costs in a new airplane are roughly equal. The increased purchase cost of a $9,000 hardened flightdeck door over that of a $6,000 current door is $3,000. Based on this incremental cost of $3,000, and the expected manufacturing of 360 airplanes under a new type certificate, the cost of this rule to part 25 manufacturers is expected to be $1.1 million ($0.7 million, discounted). Additionally, some certification costs will be incurred to prove compliance of the new door, but these costs are expected to be relatively small, at approximately $0.1 million.

For the analysis affecting part 121 operators, the aviation industry provided estimated purchase and installation costs of future compliant flightdeck doors to range from a base case of $12,000 ($9,000 for the door and $3,000 for installation) to an upper bound of $17,000, which includes the certification costs. Our current information indicates that $12,000 will provide a door that meets the standards set forth in this rule. Alaska Airlines removed and installed doors thought to meet the new specifications for $12,000 per airplane, and jetBlue was able to do so for $10,000 per aircraft. Even though multiple sources have lent support to the base case cost of $12,000, no flightdeck door has been approved to the new specification. Given the uncertainty as to the actual cost of purchasing and installing approved flightdeck doors, the FAA has provided an upper-bound estimate of $17,000. The FAA solicits comments with supporting documentation with respect to projected costs of upgrading flightdeck doors.

The FAA expects that, now that the specifications are published, many carriers will initiate steps toward compliance even before the rule takes effect. Approximately 340 aircraft are expected to already be compliant with this rule. Operators beyond those that are affected by this rule may also choose to voluntarily comply. The FAA estimates that 6,631 transport category airplanes flown in scheduled commercial service will still need to have their flightdeck doors hardened. The base case cost of purchase and installation of these doors results in a $79.6 million expense to the operators with the upper bound costs reaching $112.7 million.

In addition, the FAA estimates that the additional 50 pounds resulting from a heavier door will result in additional fuel requirement costs of $27.5 million ($20.7 million, discounted) over ten years. Without exception, every flightdeck door manufacturer claimed that their version of a secure flightdeck door could be installed by airline technicians overnight, or during an extended overnight. Several carriers have already begun, and in some cases completed, the retrofit. These carriers were able to perform the retrofit during overnight maintenance on 340 aircraft in less than two months. Based on this information, the FAA believes that all carriers will have an opportunity to have the doors installed overnight or during a maintenance check, thereby eliminating the need to take the aircraft out of service for any amount of time.

The total cost of this rule to part 121 operators is, therefore, expected to range from the base case of $107.1 million ($98.5 million, discounted) to $140.2 million ($131.0 million, discounted) over the 10-year period. The FAA requests comments as to how many aircraft are already compliant with the rule, the costs incurred in retrofitting such aircraft (including down-time costs), and how many carriers are expected to be compliant prior to the implementation of the rule. Since the FAA may extend the flightdeck door requirements in the future, the FAA requests similar comments from part 91, 125, and 135 operators.

This rule is part of a series of FAA rules intended to prevent another attack similar to the one of September 11, 2001. The FAA cannot provide a reasonable quantitative estimate of benefits because the extremely high benefits that are involved in avoiding another similar attack, both in terms of averted loss of life and property, and avoided damage to the economy, will most likely be in the tens of billions of dollars, a figure that overshadows any cost associated with this series of rules. The purpose of this particular rule concerning flightdeck security is to expedite an important element of the Aviation Transportation Security Act. Accordingly, the FAA believes that the rule is cost-beneficial and is necessary to ensure a high level of aviation safety by providing compliance specification for hardened flightdeck door standards to the industry.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) establishes ''as a principle of regulatory issuance that agencies shall endeavor, consistent with the objective of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the business, organizations, and governmental jurisdictions subject to regulation.'' To achieve that principle, the RFA requires agencies to solicit and consider flexible regulatory proposals and to explain the rationale for their actions. The RFA covers a wide range of small entities, including small businesses, not-for-profit organizations, and small governmental jurisdictions.

Agencies must perform a review to determine whether a proposed or final rule will have a significant economic impact on a substantial number of small entities. If the determination is that it will, the agency must prepare a regulatory flexibility analysis as described in the RFA.

However, if an agency determines that a proposed or final rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the 1980 act provides that the head of the agency may so certify and a regulatory flexibility analysis is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

In response to the Aviation and Transportation Security Act, this rule requires the strengthening of the flightdeck doors for part 25 manufacturers, and all aircraft with cockpit doors that operate under part 121. A full Regulatory Flexibility Analysis is not necessary for the reasons presented below.

The Small Business Administration classifies aircraft manufacturers with less than 1,500 employees as small entities. All part 25 US transport-aircraft category manufacturers have more than 1,500 employees. The current United States part 25 airplane manufacturers include: Boeing, Cessna Aircraft, Gulfstream Aerospace, Learjet (owned by Bombardier), Lockheed Martin, McDonnell Douglas (a wholly-owned subsidiary of The Boeing Company), Raytheon Aircraft, and Sabreliner Corporation. Thus, no part 25

manufacturer is considered a small entity.

To determine the potential economic impact on small entities conducting business as part 121 operators, the FAA performed the following analysis. First, the FAA estimated the number of small entities affected by this final rule. Next, the FAA estimated the compliance cost, and then the economic impact.

This final rule requires enhanced cockpit doors and other improvements to be made by part 121 operators who operate transport category, passenger and cargo aircraft which have a door between the cockpit and passenger compartments. Using the criterion from the North American Industry Classification System of the SBA, the affected entities that had less than 1,500 employees were estimated. This procedure resulted in a list of 43 US operators with less than 1,500 employees, operating under part 121 that would be affected by this rule.

The estimated compliance cost and economic impact for each small entity involved several analytical steps. First, the fleet of aircraft operated by part 121 small entities was determined. The FAA obtained the small entities' fleets using data from the BACK Associates Fleet Database. The BACK Associates Fleet Database provided US operator and airplane detail by FAR part number and operator. Second, the purchase and installation cost of the hardened flightdeck doors was then estimated for the fleet of each small entity. Third, an annual reoccurring cost was estimated for the additional fuel required as a result of the increased weight of the hardened doors.

The estimated total compliance cost of each small entity equals the sum of the costs of the enhanced cockpit door plus the additional annual cost attributable to the increased fuel consumption. The purchase and installation cost of the enhanced cockpit doors was estimated to be in the range between $12,000 and $17,000 per airplane. Additional fuel cost was calculated using data from the FAA's Economic Values for Evaluation of Federal Aviation Administration Investment and Regulatory Programs, the December 7, 2001 update of Energy Information Administration's Weekly Petroleum Status Report, and the FAA Aerospace Forecasts.

The increase cost in fuel consumption was based on the projected aircraft Utilization and rate of fuel burn increase. This cost was obtained by multiplying the fifty pounds of additional weight times the carrier hours flown times the fuel burn rate in gallons/pound/hour times the cost of fuel per gallon. This calculation was performed for each of the next ten years using the projected cost of fuel discounted to the present value.

The degree to which small entities can ''afford'' the cost of compliance is determined by the availability of financial resources. The initial implementation costs of the final rule may be financed from a variety of sources. As a proxy for the firm's ability to afford the cost of compliance, the FAA calculated the ratio of the total present value cost of the rule as a percentage of annual revenue. (The FAA obtained annual operator revenue from current public filings, the 2000 winter edition of the World Aviation Directory, and US DOT Form 41 schedules). Using this methodology, it was found that of the 43 small entities potentially affected by this final rule, the total present value cost of the rule exceeded 2 percent of only two entities' total revenue.

In the interest of fully assessing the impact of this final rule on small entities, the FAA explored the potential competitive impact. The route structures and specific markets of five firms were examined. The affected firms sometimes compete with large carriers. These large carriers will incur the same fixed and marginal cost per airplane. Many routes served by the five small entities could be considered local monopolies in which the affected carrier is the only provider of service. As a result of operating in these ''niche'' markets, a carrier would be able to pass some of the cost to its passengers. Thus, as a result of this rule there is expected to be little change in competition, and little change in market share within the industry.

The FAA has determined that:

(1) No part 25 manufacturers are small entities.

(2) A substantial number of small operators will not be significantly impacted by this rule.

Accordingly, pursuant to the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Federal Aviation Administration certifies that this final rule will not have a significant impact on a substantial number of small entities.

Trade Impact Assessment

The Trade Agreement Act of 1979 prohibits Federal agencies from engaging in any standards or related activities that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as safety, are not considered unnecessary obstacles. The statute also requires consideration of international standards and, where appropriate, that they be the basis for US standards.

In accordance with the above statute, the FAA has assessed the potential effect of this rule and has determined that the objective of this rule is the safety and security of the United States, and therefore not considered an unnecessary obstacle to international trade.

Unfunded Mandates Act Assessment

Title II of the Unfunded Mandates Reform Act of 1995 (the Act), enacted as Pub. L. 104–4 on March 22, 1995, requires each Federal agency, to the extent permitted by law, to prepare a written assessment of the effects of any Federal mandate in a proposed or final agency rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any one year. Section 204(a) of the Act, 2 U.S.C. 1534(a), requires the Federal agency to develop an effective process to permit timely input by elected officers (or their designees) of state, local, and tribal governments on a proposed ''significant intergovernmental mandate.'' A ''significant intergovernmental mandate'' under the Act is any provision in a Federal agency regulation that will impose an enforceable duty upon state, local, and tribal governments, in the aggregate, of $100 million (adjusted annually for inflation) in any one year. Section 203 of the Act, 2 U.S.C. 1533, which supplements section 204(a), provides that before establishing any regulatory requirements that might significantly or uniquely affect small governments, the agency shall have developed a plan that, among other things, provides for notice to potentially affected small governments, if any, and for a meaningful and timely opportunity to provide input in the development of regulatory proposals or rules.

This final rule does not contain any Federal intergovernmental or private sector mandate because Congress has authorized money for the purpose of implementing aircraft security initiatives, including the fortification of cockpit doors. Therefore, the requirements of Title II of the Unfunded Mandates Reform Act of 1995 do not apply.

Regulations Affecting Interstate Aviation in Alaska

Section 1205 of the FAA Reauthorization Act of 1996 (110 Stat. 3213) requires the Administrator, when modifying regulations in title 14 of the CFR in manner affecting interstate

aviation in Alaska, to consider the extent to which Alaska is not served by transportation modes other than aviation, and to establish such regulatory distinctions as he or she considers appropriate. Because this rule applies to the certification of transport category airplanes and their operation, it could affect interstate aviation in Alaska. The FAA therefore specifically requests comments on whether there is justification for applying the rule differently in interstate operations in Alaska.

Executive Order 13132, Federalism

The FAA has analyzed this rule under the principles and criteria of Executive Order 13132, Federalism. We determined that this action would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, we determined that this rule would not have federalism implications.

Environmental Analysis

FAA Order 1050.1D defines FAA actions that may be categorically excluded from preparation of a National Environmental Policy Act (NEPA) environmental impact statement. In accordance with FAA Order 1050.1D, appendix 4, paragraph 4(j), this rulemaking action qualifies for a categorical exclusion.

Energy Impact

The energy impact of the notice has been assessed in accordance with the Energy Policy and Conservation Act (EPCA) Pub. L. 94–163, as amended (42 U.S.C. 6362) and FAA Order 1053.1. It has been determined that this rulemaking action is not a major regulatory action under the provisions of the EPCA.

List of Subjects

14 CFR Part 25

Aircraft, Aviation safety, Federal Aviation Administration, Reporting and recordkeeping requirements.

14 CFR Part 121

Aircraft, Aviation safety, Reporting and recordkeeping requirements, Safety, Transportation.

The Amendment

In consideration of the foregoing, the Federal Aviation Administration (FAA) amends parts 25 and 121 of Title 14 Code of Federal Regulations as follows:

PART 25—AIRWORTHINESS STANDARDS: TRANSPORT CATEGORY AIRPLANES

1. The authority citation for parts 25 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701, 44702, 4794.

2. Section 25.772 is amended by revising the introductory language and paragraph (a) and by adding a new paragraph (c) to read as follows:

§ 25.772 Pilot compartment doors.

For an airplane that has a lockable door installed between the pilot compartment and the passenger compartment:

(a) For airplanes with a maximum passenger seating configuration of more than 20 seats, the emergency exit configuration must be designed so that neither crewmembers nor passengers require use of the flightdeck door in order to reach the emergency exits provided for them; and

* * * * *

(c) There must be an emergency means to enable a flight attendant to enter the pilot compartment in the event that the flightcrew becomes incapacitated.

3. Part 25 is amended by adding a new § 25.795 to read as follows:

§ 25.795 Security considerations.

(a) *Protection of flightdeck.* If a flightdeck door is required by operating rules, the door installation must be designed to:

(1) Resist forcible intrusion by unauthorized persons and be capable of withstanding impacts of 300 Joules (221.3 foot-pounds) at the critical locations on the door, as well as a 250 pound (1113 Newtons) constant tensile load on the knob or handle, and

(2) Resist penetration by small arms fire and fragmentation devices to a level equivalent to level IIIa of the National Institute of Justice Standard (NIJ) 0101.04.

(b) [Reserved]

PART 121—OPERATING REQUIREMENTS: DOMESTIC, FLAG, AND SUPPLEMENTAL OPERATIONS

4. The authority citation for part 121 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 40119, 44101, 44701–44702, 44705, 44709–44711, 44713, 44716–44717, 44722, 44901, 44903–44904, 44912, 46105.

5. Section 121.313 is amended by revising paragraphs (f) and (g) and adding paragraph (j) to read as follows:

§ 121.313 Miscellaneous equipment.

* * * * *

(f) A door between the passenger and pilot compartments (i.e., flightdeck door), with a locking means to prevent passengers from opening it without the pilot's permission, except that nontransport category airplanes certificated after December 31, 1964, are not required to comply with this paragraph. For airplanes equipped with a crew rest area having separate entries from the flightdeck and the passenger compartment, a door with such a locking means must be provided between the crew rest area and the passenger compartment.

(g) A key for each door that separates a passenger compartment from another compartment that has emergency exit provisions. Except for flightdeck doors, a key must be readily available for each crewmember. Except as provided below, no person other than a person who is assigned to perform duty on the flightdeck may have a key to the flightdeck door. Before April 22, 2003, any crewmember may have a key to the flightdeck door but only if the flightdeck door has an internal flightdeck locking device installed, operative, and in use. Such ''internal flightdeck locking device'' has to be designed so that it can only be unlocked from inside the flightdeck.

* * * * *

(j) After April 9, 2003, for airplanes required by paragraph (f) of this section to have a door between the passenger and pilot or crew rest compartments, and for transport category, all-cargo airplanes that have a door installed between the pilot compartment and any other occupied compartment on January 15, 2002;

(1) Each such door must meet the requirements of §§ 25.795 (a)(1) and (2) in effect on January 15, 2002; and

(2) Each operator must establish methods to enable a flight attendant to enter the pilot compartment in the event that a flightcrew member becomes incapacitated. Any associated signal or confirmation system must be operable by each flightcrew member from that flightcrew member's duty station.

6. Section 121.547 is amended by revising paragraphs (a) (3) and (4) and paragraphs (c)(4) through (6) to read as follow:

§ 121.547 Admission to flight deck.

(a) * * *

(3) Any person who—

(i) Has permission of the pilot in command, an appropriate management official of the part 119 certificate holder, and the Administrator; and

(ii) Is an employee of—

(A) The United States, or

(B) A part 119 certificate holder and whose duties are such that admission to the flightdeck is necessary or advantageous for safe operation; or

(C) An aeronautical enterprise certificated by the Administrator and whose duties are such that admission to the flightdeck is necessary or advantageous for safe operation.

(4) Any person who has the permission of the pilot in command, an appropriate management official of the part 119 certificate holder and the Administrator. Paragraph (a)(2) of this section does not limit the emergency authority of the pilot in command to exclude any person from the flightdeck in the interests of safety.

* * * * *

(c) * * *

(4) A certificated airman employed by another part 119 certificate holder whose duties with that part 119 certificate holder require an airman certificate and who is authorized by the part 119 certificate holder operating the aircraft to make specific trips over a route;

(5) An employee of the part 119 certificate holder operating the aircraft whose duty is directly related to the conduct or planning of flight operations or the in-flight monitoring of aircraft equipment or operating procedures, if his presence on the flightdeck is necessary to perform his duties and he has been authorized in writing by a responsible supervisor, listed in the Operations Manual as having that authority; and

(6) A technical representative of the manufacturer of the aircraft or its components whose duties are directly related to the in-flight monitoring of aircraft equipment or operating procedures, if his presence on the flightdeck is necessary to perform his duties and he has been authorized in writing by the Administrator and by a responsible supervisor of the operations department of the part 119 certificate holder, listed in the Operations Manual as having that authority.

7. Section 121.581 is amended by revising paragraph (c) to read as follows:

§ 121.581 Observer's seat; en route inspections.

* * * * *

(c) For any airplane type certificated before December 20, 1995, for not more than 30 passengers that does not have an observer seat on the flightdeck, the certificate holder must provide a forward passenger seat with headset or speaker for occupancy by the Administrator while conducting en route inspections.

8. Section 121.587 is revised to read as follows:

§ 121.587 Closing and locking of flightcrew compartment door.

(a) Except as provided in paragraph (b) of this section, a pilot in command of an airplane that has a lockable flightcrew compartment door in accordance with § 121.313 and that is carrying passengers shall ensure that the door separating the flightcrew compartment from the passenger compartment is closed and locked at all times when the aircraft is being operated.

(b) The provisions of paragraph (a) of this section do not apply at any time when it is necessary to permit access and egress by persons authorized in accordance with § 121.547 and provided the part 119 operator complies with FAA approved procedures regarding the opening, closing and locking of the flightdeck doors.

Issued in Washington, DC, on January 10, 2002.

Jane F. Garvey,

Administrator.

[FR Doc. 02–965 Filed 1–10–02; 4:15 pm]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Advisory Circulars (AC) 25.795–1, Flightdeck Intrusion Resistance, and AC 25.795–2, Flightdeck Penetration Resistance

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of issuance of advisory circular.

SUMMARY: The FAA announces the issuance of Advisory Circular (AC) 25.795–1, ''Flightdeck Intrusion Resistance,'' and 25.795–2 ''Flightdeck Penetration Resistance.'' These advisory circulars provide information and guidance for compliance with a recently issued amendment concerning security considerations in the design of the flightdeck on transport category airplanes.

HOW TO OBTAIN COPIES: Copies of both AC's can be found and downloaded from the Internet at *http://www.faa.gov/avr/air/acs/achome.htm,* at the link titled ''Advisory Circulars,'' or at the Regulatory and Guidance Library Web site at *http:www.airweb.faa.gov/rgl,* at the link titled ''Advisory Circulars.'' Paper copies of the AC's will be available in approximately 6–8 weeks from the U.S. Department of Transportation, Subsequent Distribution Office, SVC–121.23, Ardmore East Business Center, 3341 Q 75th Avenue, Landover, MD 20785.

FURTHER INFORMATION CONTACT: Jan Thor, FAA Standardization Branch, ANM–113, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055–4056; telephone (425) 227–2127.

Issued in Renton, Washington, on January 10, 2002.

Vi Lipski,

Manager, Transport Airplane Directorate, Aircraft Certification Service, ANM–100.

[FR Doc. 02–966 Filed 1–10–02; 4:15 pm]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Advisory Circulars (AC) 25.795–1, Flightdeck Intrusion Resistance, and AC 25.795–2, Flightdeck Penetration Resistance

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of issuance of advisory circular.

SUMMARY: The FAA announces the issuance of Advisory Circular (AC) 25.795–1, ''Flightdeck Intrusion Resistance,'' and 25.795–2 ''Flightdeck Penetration Resistance.'' These advisory circulars provide information and guidance for compliance with a recently issued amendment concerning security considerations in the design of the flightdeck on transport category airplanes.

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Issued in Renton, Washington, on January 10, 2002.

Vi Lipski,

Manager, Transport Airplane Directorate, Aircraft Certification Service, ANM–100.

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The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

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LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with ''P L U S'' (Public Laws Update Service) on 202–523–6641. This list is also available online at *http://www.nara.gov/fedreg/plawcurr.html*.

The text of laws is not published in the **Federal Register** but may be ordered in ''slip law'' (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at *http://www.access.gpo.gov/nara/nara005.html*. Some laws may not yet be available.

H.R. 2869/P.L. 107–118

Small Business Liability Relief and Brownfields Revitalization Act (Jan. 11, 2002; 115 Stat. 2356)

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