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- FOR:** Any person who uses the Federal Register and Code of Federal Regulations.
- WHO:** Sponsored by the Office of the Federal Register.
- WHAT:** Free public briefings (approximately 3 hours) to present:
1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
  2. The relationship between the Federal Register and Code of Federal Regulations.
  3. The important elements of typical Federal Register documents.
  4. An introduction to the finding aids of the FR/CFR system.
- WHY:** To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

#### WASHINGTON, DC

- WHEN:** January 28, 1997 at 9:00 am
- WHERE:** Office of the Federal Register  
Conference Room  
800 North Capitol Street, NW  
Washington, DC  
(3 blocks north of Union Station Metro)
- RESERVATIONS:** 202-523-4538



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

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**Electronic Bulletin Board**

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# Rules and Regulations

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## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 71

[Airspace Docket No. 96-ASO-37]

#### Removal of Class E2 Airspace; Winston-Salem, NC

**AGENCY:** Federal Aviation Administration (FAA), DOT.  
**ACTION:** Final rule.

**SUMMARY:** This amendment removes Class E2 airspace at Winston-Salem, NC. Weather observations are no longer taken at the Winston-Salem/Smith Reynolds Airport after the control tower closes each day. Therefore, there is no longer a requirement for Class E2 airspace for the airport.

**EFFECTIVE DATE:** 0901 UTC, January 30, 1997.

**FOR FURTHER INFORMATION CONTACT:** Benny L. McGlamery, Operations Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305-5570.

#### SUPPLEMENTARY INFORMATION:

##### History

Weather observations are no longer taken at the Winston-Salem/Smith Reynolds Airport after the control tower closes each day. Consequently, the airport no longer meets the criteria for Class E2 airspace. This action will eliminate the impact that Class E2 airspace has placed on users of the airspace in the vicinity of the airport. This rule will become effective on the date specified in the DATES section. Since this action removes the Class E2 airspace, which eliminates the impact of Class E2 airspace on users of the airspace in the vicinity of the Winston-Salem/Smith Reynolds Airport, notice and public procedure under 5 U.S.C. 553(b) are unnecessary.

#### The Rule

This amendment to Part 71 of the Federal Aviation Regulations (14 CFR part 71) removes Class E2 airspace at Winston-Salem, NC. Weather observations are no longer taken at the Winston-Salem/Smith Reynolds Airport after the control tower closes each day. Therefore, there is no longer a requirement for Class E2 airspace for the airport.

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

#### List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

#### Adoption of the Amendment

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

#### PART 71—[AMENDED]

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

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; EO 10854, 24 FR 9565, 3 CFR, 1959-1963 Comp., p. 389; 14 CFR 11.69.

##### §71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9D, Airspace Designations and Reporting Points, dated September 4, 1996, and effective September 16, 1996, is amended as follows:

*Paragraph 6002 Class E airspace areas designated as a surface area for an airport.*

\* \* \* \* \*

ASO SC E2 Winston-Salem, NC [Removed]

\* \* \* \* \*

Issued in College Park, Georgia, on December 2, 1996.

Benny L. McGlamery,  
*Acting Manager, Air Traffic Division,  
Southern Region.*

[FR Doc. 96-31871 Filed 12-13-96; 8:45 am]

BILLING CODE 4910-13-M

#### 14 CFR Part 71

[Airspace Docket No. 96-AGL-12]

#### Establishment of Class E Airspace; Gettysburg, SD; Gettysburg Municipal Airport

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This action establishes Class E airspace at Gettysburg, SD. A Global Positioning System (GPS) standard instrument approach procedure (SIAP) to Runway 31 has been developed for Gettysburg Municipal Airport. Controlled airspace extending upward from 700 to 1,200 feet above ground level (AGL) is needed to contain aircraft executing the approach. The intended affect of this action is to provide segregation of aircraft using instrument approach procedures in instrument conditions from other aircraft operating in visual weather conditions.

**EFFECTIVE DATE:** 0901 UTC, March 27, 1997.

**FOR FURTHER INFORMATION CONTACT:** John A. Clayborn, Air Traffic Division, Operations Branch, AGL-530, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294-7568.

#### SUPPLEMENTARY INFORMATION:

##### History

On Thursday, September 12, 1996, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish Class E airspace at Gettysburg, SD (61 FR 48097). The proposal was to add controlled airspace extending upward from 700 to 1,200 feet AGL to contain Instrument Flight Rules (IFR) operations in controlled airspace during portions of the terminal operation and while transiting between the enroute and terminal environments.

Interested parties were invited to participate in this rulemaking

proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Class E airspace designations for areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9D dated September 4, 1996, and effective September 16, 1996, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

#### The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) establishes Class E airspace at Gettysburg, SD to accommodate aircraft executing the GPS Runway 31 SIAP at Gettysburg Municipal Airport. Controlled airspace extending upward from 700 to 1,200 feet AGL is needed to contain aircraft executing the approach. The area will be depicted on appropriate aeronautical charts thereby enabling pilots to circumnavigate the area or otherwise comply with IFR procedures.

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

#### List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

#### Adoption of the Amendment

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

#### **PART 71—[AMENDED]**

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

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 14 CFR 11.69.

#### **§71.1 [Amended]**

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9D, Airspace Designations and Reporting Points, dated September 4, 1996, and effective September 16, 1996, is amended as follows:

*Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.*

\* \* \* \* \*

AGL SD E5 Gettysburg, SD [New]

Gettysburg Municipal Airport, SD  
(Lat. 44°59'15"N, long. 99°57'12"W)  
Pierre VORTAC

(Lat. 44°23'40"W, long. 100°09'46"W)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of the Gettysburg Municipal Airport and within 4 miles each side of the 323 bearing from the airport extending from the 6.4-mile radius to 10 miles southeast and that airspace extending upward from 1,200 feet above the surface bounded on the west by V-71, on the north by V-344, on the east by V-561, and on the south by the 30.5 mile arc of the Pierre VORTAC, and that airspace east of the Gettysburg Municipal Airport bounded on the west by V-561, on the north by latitude 45°00'00"N, on the east by longitude 99°30'00"W, and thence south to V-263, and thence southwest to the 30.5-mile arc of the Pierre VORTAC.

\* \* \* \* \*

Issued in Des Plaines, Illinois on November 26, 1996.

Maureen Woods,

*Manager, Air Traffic Division.*

[FR Doc. 96-31869 Filed 12-13-96; 8:45 am]

**BILLING CODE 4910-13-M**

## **COMMODITY FUTURES TRADING COMMISSION**

### **17 CFR Part 4**

#### **Interpretation Regarding Use of Electronic Media by Commodity Pool Operators and Commodity Trading Advisors**

**AGENCY:** Commodity Futures Trading Commission.

**ACTION:** Delay of effective date of interpretation.

**SUMMARY:** On August 8, 1996, the Commodity Futures Trading Commission (“Commission”) issued an Interpretation Regarding Use of Electronic Media by Commodity Pool Operators and Commodity Trading Advisors, 61 FR 42146 (August 14, 1996). On October 15, 1996, the Commission extended the period for public comment until November 14, 1996, while delaying the effective date until December 16, 1996, 61 FR 54731

(October 22, 1996). The Commission has now determined to delay the effective date indefinitely. The Pilot Program for electronic filing of commodity pool operator and commodity trading advisor disclosure documents, which commenced on October 15, 1996, as originally provided, is not affected.

**DATES:** The effective date of the Interpretative Release referenced herein is delayed indefinitely.

#### **FOR FURTHER INFORMATION CONTACT:**

Susan C. Ervin, Deputy Director/Chief Counsel, or Gary L. Goldsholle, Attorney/Advisor, Division of Trading and Markets, Commodity Futures Trading Commission, 1155 21st Street, NW., Washington, DC 20581. Telephone number: (202) 418-5450. Facsimile number: (202) 418-5536. Electronic mail: tm@cftc.gov.

**SUPPLEMENTARY INFORMATION:** On August 8, 1996, the Commission issued an Interpretation Regarding Use of Electronic Media by Commodity Pool Operators and Commodity Trading Advisors (“Interpretative Release” or “Release”). The Interpretative Release was designed to provide commodity pool operators (“CPOs”), commodity trading advisors (“CTAs”), and associated persons (“AP”) thereof, with guidance concerning the application of the Commodity Exchange Act and regulations thereunder to activities involving electronic media. The Commission sought comment on all issues discussed in the release, and any related issues, and provided that the effective date of the Interpretative Release would be October 15, 1996 and that comments should be received on or before that date. On October 15, 1996, the Commission extended the comment period until November 14, 1996, and delayed the effective date until December 16, 1996.

The Commission has now determined to delay the effective date indefinitely to permit full review and consideration of the comments received and issues presented. As with the prior postponement, the Commission emphasizes that this does not affect the statutory and regulatory requirements applicable to persons acting as CPOs and CTAs by means of electronic media, who “are subject to the same statutory and regulatory requirements under the Commission’s regulatory framework as persons employing other modes of communication.” 61 FR at 42150. The Commission also notes that the Commission staff letters and advisories cited in the Release, as stated therein, “represent interpretations by the Commission’s staff and do not

necessarily represent interpretations by the Commission." 61 FR at 42149 n. 24.

Finally, although the Commission is indefinitely delaying the effective date of the Interpretative Release, CPOs and CTAs may continue to rely on the positions stated therein as "safe harbor" positions to aid CTAs and CPOs making use of electronic media pending further statements of the Commission's views. Additionally, the Pilot Program for electronic filing of CPO and CTA disclosure documents, which commenced on October 15, 1996, as originally proposed, is not affected.

Issued in Washington, DC, on December 11, 1996, by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 96-31928 Filed 12-13-96; 8:45 am]

BILLING CODE 6351-01-M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

#### 21 CFR Part 172

[Docket No. 90F-0195]

#### Food Additives Permitted for Direct Addition to Food for Human Consumption; Curdlan

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

**ACTION:** Final rule.

**SUMMARY:** The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of curdlan as a formulation aid, processing aid, stabilizer and thickener or texturizer in foods. This action is in response to a petition filed by Takeda Chemical Industries, Ltd.

**DATES:** The regulation is effective December 16, 1996. Submit written objections and requests for a hearing by January 15, 1997. The Director of the Office of the Federal Register approves the incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51 of a certain publication in 21 CFR 172.809(b), effective December 16, 1996.

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

**FOR FURTHER INFORMATION CONTACT:** Aydin Örstan, Center for Food Safety and Applied Nutrition (HFS-217), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-418-3076.

**SUPPLEMENTARY INFORMATION:** In a notice published in the Federal Register of July 17, 1990 (55 FR 29106), FDA announced that a food additive petition (FAP 0A4200) had been filed by Takeda Chemical Industries, Ltd., c/o International Research and Development Corp. (now MPI Research), Mattawan, MI 49071, proposing that the food additive regulations be amended to provide for the safe use of  $\beta$ -1,3-glucan derived from *Alcaligenes faecalis* var. *myxogenes*. In the same notice, the agency also announced that the proposed common or usual name of the additive was curdlan.

The agency is accepting curdlan as the common or usual name of the additive. Based on the data in the petition and other relevant material, the agency reached the following conclusions: (1) Curdlan consists of a glucose polymer and a small amount of inorganic salts, mainly sodium chloride, (2) curdlan lacks specific toxicity and the producing organism, *Alcaligenes faecalis* var. *myxogenes*, is nonpathogenic and nontoxicogenic, and (3) there is a history of safe consumption of similar glucose polymers in food. Based on this information, the agency concludes that the proposed food use of curdlan is safe, that the additive will achieve its intended technical effect, and that therefore, the regulations in 21 CFR part 172 should be amended as set forth below.

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

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

Any person who will be adversely affected by this regulation may at any time on or before January 15, 1997 file with the Dockets Management Branch

(address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 172

Food additives, Incorporation by reference, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director of the Center for Food Safety and Applied Nutrition, 21 CFR part 172 is amended as follows:

#### PART 172—FOOD ADDITIVES PERMITTED FOR DIRECT ADDITION TO FOOD FOR HUMAN CONSUMPTION

1. The authority citation for 21 CFR part 172 continues to read as follows:

Authority: Secs. 201, 401, 402, 409, 701, 721 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 341, 342, 348, 371, 379e).

2. New § 172.809 is added to subpart I to read as follows:

##### § 172.809 Curdlan.

Curdlan may be safely used in accordance with the following conditions:

(a) Curdlan is a high molecular weight polymer of glucose ( $\beta$ -1,3-glucan; CAS Reg. No. 54724-00-4) produced by pure culture fermentation from the nonpathogenic and nontoxicogenic bacterium *Alcaligenes faecalis* var. *myxogenes*.

(b) Curdlan meets the following specifications when it is tested according to the methods described or referenced in the document entitled "Analytical Methods for Specification Tests for Curdlan," by Takeda Chemical Industries, Ltd., 12-10 Nihonbashi, 2-Chome, Chuo-ku, Tokyo, 103, Japan, 1996, which is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies are available from the Division of Petition Control (HFS-215), Center for Food Safety and Applied Nutrition, Food and Drug Administration, 200 C St. SW., Washington, DC 20204, or may be examined at the Center for Food Safety and Applied Nutrition's Library, Food and Drug Administration, 200 C St. SW., rm. 3321, Washington, DC, or at the Office of the Federal Register, 800 North Capitol St. NW., suite 700, Washington, DC.

- (1) Positive for curdlan.
- (2) Assay for curdlan (calculated as anhydrous glucose), not less than 80 percent.
- (3) pH of 1 percent aqueous suspension, 6.0-7.5.
- (4) Lead, not more than 0.5 mg/kg.
- (5) Heavy metals (as Pb), not more than 0.002 percent.
- (6) Total nitrogen, not more than 0.2 percent.
- (7) Loss on drying, not more than 10 percent.
- (8) Residue on ignition, not more than 6 percent.
- (9) Gel strength of 2 percent aqueous suspension, not less than  $600 \times 10^3$  dyne per square centimeter.
- (10) Aerobic plate count, not more than  $10^3$  per gram.
- (11) Coliform bacteria, not more than 3 per gram.

(c) Curdlan is used or intended for use in accordance with good manufacturing practice as a formulation aid, processing aid, stabilizer and thickener, and texturizer in foods for which standards of identity established under section 401 of the act do not preclude such use.

Dated: November 27, 1996.

Fred R. Shank,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 96-31809 Filed 12-13-96; 8:45 am]

BILLING CODE 4160-01-F

## 21 CFR Part 178

[Docket No. 96F-0164]

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

AGENCY: Food and Drug Administration, HHS.

**ACTION:** Final rule.

**SUMMARY:** The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the expanded safe use of sodium 2,2'-methylenebis(4,6-di-*tert*-butylphenyl)phosphate as a clarifying agent in high density polyethylene intended for use in contact with food. This action is in response to a petition filed by Asahi Denka Kogyo K.K.

**DATES:** Effective December 16, 1996; written objections and requests for a hearing by January 15, 1997.

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

**FOR FURTHER INFORMATION CONTACT:** Vir D. Anand, Center for Food Safety and Applied Nutrition (HFS-216), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-418-3081.

**SUPPLEMENTARY INFORMATION:** In a notice published in the Federal Register of May 30, 1996 (61 FR 27085), FDA announced that a food additive petition (FAP 6B4504) had been filed by Asahi Denka Kogyo K.K., 2-13 Shirahata 5-Chome, Urawa City, Saitama 336, Japan. The petition proposed to amend the food additive regulations in § 178.3295 *Clarifying agents for polymers* (21 CFR 178.3295) to provide for the additional safe use of sodium 2,2'-methylenebis(4,6-di-*tert*-butylphenyl)phosphate as a clarifying agent in high density polyethylene intended for use in contact with food.

FDA has evaluated data in the petition and other relevant material. Based on this information, the agency concludes that the proposed use of the additive is safe, that the food additive will achieve its intended technical effect, and that therefore, the regulations in § 178.3295 should be amended as set forth below.

FDA's review of this petition indicates that the additive may contain trace amounts of formaldehyde as an impurity. The potential carcinogenicity of formaldehyde was reviewed by the Cancer Assessment Committee (the Committee) of FDA's Center for Food Safety and Applied Nutrition. The Committee noted that for many years, formaldehyde has been known to be a carcinogen by the inhalation route, but it concluded that these inhalation studies are not appropriate for assessing the potential carcinogenicity of formaldehyde in food. The Committee's conclusion was based on the fact that the route of administration (inhalation) is not relevant to the safety of

formaldehyde residues in food and the fact that tumors were observed only locally at the portal of entry (nasal turbinates). In addition, the agency has received literature reports of two drinking water studies on formaldehyde: (1) A preliminary report of carcinogenicity study purported to be positive by Soffritti et al. (1989), conducted in Bologna, Italy (Ref. 1); and (2) a negative study by Til et al. (1989), conducted in the Netherlands (Ref. 2). The Committee reviewed both studies and concluded, concerning the Soffritti study, "\* \* \* that data, reported were unreliable and could not be used in the assessment of the oral carcinogenicity of formaldehyde" (Ref. 3). This conclusion is based on a lack of critical details in the study, questionable histopathological conclusions, and the use of unusual nomenclature to describe the tumors. Based on the Committee's evaluation, the agency has determined that there is no basis to conclude that formaldehyde is a carcinogen when ingested.

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

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

Any person who will be adversely affected by this regulation may at any time on or before January 15, 1997 file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a

waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

**References**

The following references have been placed on display in the Dockets

Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Soffritti, M., C. Maltoni, F. Maffei, and R. Biagi, "Formaldehyde: An Experimental Multipotential Carcinogen," *Toxicology and Industrial Health*, vol. 5, No. 5:699-730, 1989.

2. Til, H. P., R. A. Woutersen, V. J. Feron, V. H. M. Hollanders, H. E. Falke, and J. J. Clary, "Two-Year Drinking Water Study of Formaldehyde in Rats," *Food Chemical Toxicology*, vol. 27, No. 2, pp. 77-87, 1989.

3. Memorandum of Conference concerning "Formaldehyde;" Meeting of the Cancer Assessment Committee, FDA, April 24, 1991, and March 4, 1993.

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

Food additives, Food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner

of Food and Drugs, 21 CFR part 178 is amended as follows:

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

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

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

2. Section 178.3295 is amended in the table in the entry for "Sodium 2,2'-methylenebis(4,6-di-*tert*-butylphenyl)phosphate" by adding a new entry "3." under the heading "Limitations" to read as follows:

**§ 178.3295 Clarifying agents for polymers.**  
\* \* \* \* \*

Substances	Limitations
* * *	* * *
Sodium 2,2'-methylenebis(4,6-di- <i>tert</i> -butylphenyl)phosphate (CAS Reg. No. 85209-91-2).	<p>For use only: * * * * *</p> <p>3. As a clarifying agent in olefin polymers complying with § 177.1520(c) of this chapter, item 2.2, where the finished polymer contacts foods only of types I, II, IV-B, VI-A, VI-B, and VII-B as identified in Table 1 of § 176.170(c) of this chapter and limited to conditions of use B through H described in Table 2 of § 176.170(c) of this chapter, or foods of types III, IV-A, V, VI-C, and VII-A as identified in Table 1 of § 176.170(c) of this chapter and limited to conditions of use C through G described in Table 2 of § 176.170(c) of this chapter.</p>

Dated: November 27, 1996.  
William K. Hubbard,  
*Associate Commissioner for Policy Coordination.*  
[FR Doc. 96-31808 Filed 12-13-96; 8:45 am]  
BILLING CODE 4160-01-F

**21 CFR Part 178**

[Docket No. 93F-0318]

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

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

**ACTION:** Final rule.

**SUMMARY:** The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of 2-[[2,4,8,10-tetrakis(1,1-dimethylethyl)dibenzo[d,f][1,3,2]-dioxaphosphepin-6-yl]oxy]-*N,N*-bis[2-[[2,4,8,10-tetrakis(1,1-dimethylethyl)dibenzo[d,f][1,3,2]dioxaphosphepin-6-

yl]oxy]ethyl]ethanamine as a process stabilizer in high density polyethylene and polypropylene polymers intended for use in contact with food. This action is in response to a petition filed by Ciba-Geigy Corp.

**DATES:** Effective December 16, 1996; written objections and requests for a hearing by January 15, 1997.

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

**FOR FURTHER INFORMATION CONTACT:** Vir D. Anand, Center for Food Safety and Applied Nutrition (HFS-216), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-418-3081.

**SUPPLEMENTARY INFORMATION:** In a notice published in the Federal Register of October 4, 1993 (58 FR 51631), FDA announced that a food additive petition (FAP 3B4398) had been filed by Ciba-Geigy Corp., Seven Skyline Dr., Hawthorne, NY 10532. The petition

proposed to amend the food additive regulations in § 178.2010 *Antioxidants and/or stabilizers for polymers* (21 CFR 178.2010) to provide for the safe use of 2-[[2,4,8,10-tetrakis(1,1-dimethylethyl)dibenzo[d,f][1,3,2]dioxaphosphepin-6-yl]oxy]-*N,N*-bis[2-[[2,4,8,10-tetrakis(1,1-dimethylethyl)dibenzo[d,f][1,3,2]dioxaphosphepin-6-yl]oxy]ethyl]ethanamine as a process stabilizer in high density polyethylene and polypropylene polymers complying with 21 CFR 177.1520 intended for use in contact with food.

FDA has evaluated data in the petition and other relevant material. The agency concludes that the proposed use of the additive is safe, that the additive will achieve its intended technical effect, and that the regulations in § 178.2010 should be amended as set forth below.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to

approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition by appointment with the information contact person listed above. As provided in § 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

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

Any person who will be adversely affected by this regulation may at any time on or before January 15, 1997 file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with

particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 178

Food additives, Food packaging, Therefore, under the Federal Food, Drug, and Cosmetic Act and under

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

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

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

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

2. Section 178.2010 is amended in the table in paragraph (b) by revising the entry for "2-[[2,4,8,10-tetrakis(1,1-dimethylethyl)dibenzo[d,f][1,3,2]dioxaphosphopin-6-yl]oxy]-N,N-bis[2-[[2,4,8,10-tetrakis(1,1-dimethylethyl)dibenzo[d,f][1,3,2]dioxaphosphopin-6-yl]oxy]ethyl]ethanamine" under the heading "Limitations" to read as follows:

**§ 178.2010 Antioxidants and/or stabilizers for polymers.**

\* \* \* \* \*  
(b) \* \* \*

Substances	Limitations
<p>* * *</p> <p>2-[[2,4,8,10-Tetrakis(1,1-dimethylethyl)dibenzo[d,f][1,3,2]-dioxaphosphopin-6-yl]oxy]-N,N-bis[2-[[2,4,8,10-tetrakis(1,1-dimethylethyl)dibenzo[d,f][1,3,2]dioxaphosphopin-6-yl]oxy]ethyl]ethanamine (CAS Reg. No. 80410-33-9).</p> <p>* * *</p>	<p>* * * * *</p> <p>For use only at levels not to exceed 0.075 percent by weight of olefin copolymers complying with § 177.1520(c) of this chapter, items 1.1, 1.2, 1.3, 2.1, 2.2, or 2.3: <i>Provided</i>, That the density of the olefin polymers complying with items 2.1, 2.2, or 2.3 is not less than 0.94 gram per cubic centimeter: <i>And further provided</i>, That the finished polymers contact food only of Types I, II, IV-B, VI-A, VI-B, VII-B, and VIII described in Table 1, of § 176.170(c) of this chapter, under conditions of use B through H described in Table 2 of § 176.170(c) of this chapter and food only of Types III, IV-A, V, VI-C, VII-A, and IX described in Table 1 of § 176.170(c) of this chapter, under conditions of use C through G described in Table 2 of § 176.170(c) of this chapter.</p> <p>* * * * *</p>

Dated: November 27, 1996.  
Fred R. Shank,  
Director, Center for Food Safety and Applied Nutrition.  
[FR Doc. 96-31860 Filed 12-13-96; 8:45 am]  
BILLING CODE 4160-01-F

**21 CFR Part 355**  
**[Docket No. 80N-0042]**  
**RIN 0910-AA01**  
**Anticaries Drug Products for Over-the-Counter Human Use; Partial Stay of Final Rule; Enforcement Policy**  
**AGENCY:** Food and Drug Administration, HHS.  
**ACTION:** Final rule; partial stay of regulation; enforcement policy.  
**SUMMARY:** The Food and Drug Administration (FDA) is staying part of

a final rule that established conditions under which over-the-counter (OTC) anticaries drug products (products that aid in the prevention of dental cavities) are generally recognized as safe and effective and not misbranded (60 FR 52474, October 6, 1995). This final rule stays the testing procedures for fluoride dentifrice drug products to provide manufacturers an additional 12 months to comply with these testing requirements. This action is being taken in response to a citizen petition requesting this stay and is part of the

ongoing review of OTC drug products conducted by FDA.

**DATES:** This partial stay for § 355.70 (21 CFR 355.70), added by 60 FR 52474 at 52510, is effective September 23, 1996, and stays § 355.70(a) until October 7, 1997.

**FOR FURTHER INFORMATION CONTACT:** William E. Gilbertson, Center for Drug Evaluation and Research (HFD-105), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-827-2304.

**SUPPLEMENTARY INFORMATION:**

I. Background

In the Federal Register of October 6, 1995 (60 FR 52474), FDA issued a final monograph for OTC anticaries drug products (21 CFR part 355) establishing conditions under which the drug products that are subject to that monograph will be generally recognized as safe and effective and not misbranded. The final monograph established in § 355.70 testing procedures for fluoride dentifrice drug products. The testing procedures require the product to meet the biological test requirements for animal caries reduction and one of the following tests: Enamel solubility reduction or fluoride enamel uptake. The effective date of the monograph was October 7, 1996.

On April 17, 1996, the Joint Oral Task Group of the Nonprescription Drug Manufacturers Association (NDMA) and the Cosmetic, Toiletry and Fragrance Association (CTFA) (the Task Group) submitted a citizen petition (Ref. 1) requesting that the agency stay the effective date for the biological testing requirements for OTC fluoride dentifrice drug products from October 7, 1996, to October 7, 1997. The petition contended that manufacturers needed additional time to comply with the required biological testing requirements and to further implement the Industry/U.S. Pharmacopeia (USP) Reference Standard Program.

The petition stated that at least 34 fluoride-containing dentifrice products would not be in compliance with the biological testing requirements of the final monograph by the effective date of October 7, 1996. The petition explained that there are only four testing laboratories considered fully experienced to perform the required biological testing and that these laboratories can only conduct a total of 32 tests per year. The petition estimated that it would take about 8 months to validate additional laboratories to do the animal caries reduction test. The petition argued that additional time was needed because the animal caries

reduction test was an optional test in the tentative final monograph but a required test in the final monograph, and industry did not become aware of this change until the final monograph was published and was not prepared to meet this requirement at that time. The petition contended that, because at least 67 products must be tested, there is insufficient time to complete the needed testing by October 7, 1996, and that a 12-month extension until October 7, 1997, would allow manufacturers sufficient time to perform the required tests.

The petition noted two other problems that precluded compliance with the October 7, 1996, effective date: (1) Several current USP reference standards have not been retested to confirm their quality standards, and (2) a lack or limited number of available USP reference standards to fulfill the unanticipated requirements in the final monograph for animal caries reduction testing.

Following a meeting (Ref. 2) and correspondence (Ref. 3) from FDA, the Task Group provided the agency industry's formalized procedures for handling USP dentifrice reference standards (Ref. 4), entitled "Protocol for Submission & Maintenance of USP Fluoride Dentifrice Reference Standards." The Task Group indicated that resupply and retesting of currently available USP fluoride dentifrice reference standards would be completed by July 1996, and that the two new USP fluoride dentifrice reference standards (i.e., 1,500 parts per million sodium monofluorophosphate dentifrice and sodium fluoride dentifrice in a powdered dosage form) would be available by the beginning of June 1996. The agency has verified that this retesting has been completed and that the new reference standards are currently available (Ref. 5).

On September 5, 1996 (Ref. 6), the Task Group provided the results of a biological testing implementation survey in support of its request for a 1-year stay of the effective date of this part of the final monograph. The Task Group pointed out that 37 dentifrice products remain to be tested and it usually takes 3 to 4 months to complete the test and receive a final report. The Task Group stated that all testing was currently projected to begin by February 1997 but that less than a 1-year delay would not allow for unforeseen circumstances during testing and during the administration of the Industry/USP Reference Standard Program to supply the testing standards.

II. The Agency's Response to the Petition

The agency acknowledges that requiring the animal caries reduction test was a new requirement of the final monograph. In a letter to NDMA dated September 23, 1996 (Ref. 7), FDA agreed to stay the effective date of the testing procedures for fluoride dentifrice drug products for 12 months. FDA reviewed the biological testing implementation survey (Ref. 6), which indicated that approximately 92 percent of the dentifrice products that require testing should be tested by March 30, 1997, and that testing of the remaining products should be completed by June 30, 1997. The agency believes that it would be reasonable to provide an additional 3 months to allow for unforeseen circumstances during the conduct of this testing. Therefore, based on the survey data, the agency is staying the testing procedures for fluoride dentifrice drug products in § 355.70(a) of the final monograph for OTC anticaries drug products for 12 months until October 7, 1997. However, based on the survey and the petitioner's assurances, the agency does not anticipate granting any additional time beyond October 7, 1997, for manufacturers to complete the required biological testing for existing OTC anticaries drug products.

Publication of this document constitutes final action on this change under the Administrative Procedure Act (5 U.S.C. 553). This final rule institutes a change that is nonsubstantive in nature. FDA finds that notice and comment procedures are unnecessary and not in the public interest (5 U.S.C. 553(b) and (d)). The agency believes that staying § 355.70(a) for 12 months will provide sufficient time for industry to comply with the testing procedures for fluoride dentifrice drug products included in the final monograph.

III. References

The following references are on display in the Dockets Management Branch (HFA-305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1-23, Rockville, MD 20857, and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

- (1) Comment No. CP6, Docket No. 80N-0042, Dockets Management Branch.
- (2) Comment No. MM7, Docket No. 80N-0042, Dockets Management Branch.
- (3) Comment No. LET29, Docket No. 80N-0042, Dockets Management Branch.
- (4) Comment No. PR1, Docket No. 80N-0042, Dockets Management Branch.
- (5) Comment No. C104, Docket No. 80N-0042, Dockets Management Branch.
- (6) Comment No. EXT9, Docket No. 80N-0042, Dockets Management Branch.

(7) Comment No. LET36, Docket No. 80N-0042, Dockets Management Branch.

#### IV. Analysis of Impacts

FDA has examined the impacts of the final rule under Executive Order 12866 and the Regulatory Flexibility Act (5 U.S.C. 601-612). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The agency believes that this final rule is consistent with the regulatory philosophy and principles identified in the Executive Order. In addition, the final rule is not a significant regulatory action as defined by the Executive Order and so is not subject to review under the Executive Order.

Under the Regulatory Flexibility Act, if a rule has a significant impact on a substantial number of small entities, an agency must analyze regulatory options that would minimize any significant impact of a rule on small entities. This final rule stays the effective date of testing requirements that became effective on October 7, 1996, but which will not be required now until October 7, 1997. Thus, this final rule will not impose a significant economic burden on affected entities. Therefore, under the Regulatory Flexibility Act (5 U.S.C. 605(b)), the Commissioner of Food and Drugs certifies that this final rule will not have a significant economic impact on a substantial number of small entities. No further analysis is required.

#### V. Environmental Impact

The agency has determined under 21 CFR 25.24(c)(6) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

#### List of Subjects in 21 CFR Part 355

Labeling, Over-the-counter drugs. Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 355 is amended as follows:

#### **PART 355—ANTICARIES DRUG PRODUCTS FOR OVER-THE-COUNTER HUMAN USE**

1. The authority citation for 21 CFR part 355 continues to read as follows:

Authority: Secs. 201, 501, 502, 503, 505, 510, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 351, 352, 353, 355, 360, 371).

#### **§ 355.70 [Partial stay]**

2. In § 355.70 *Testing procedures for fluoride dentifrice drug products*, paragraph (a) is stayed until October 7, 1997.

Dated: December 5, 1996.  
William K. Hubbard,  
*Associate Commissioner for Policy Coordination.*  
[FR Doc. 96-31575 Filed 12-13-96; 8:45 am]  
BILLING CODE 4160-01-F

#### **AGENCY FOR INTERNATIONAL DEVELOPMENT**

#### **22 CFR Part 210**

#### **Donation of Dairy Products To Assist Needy Persons Overseas (Section 416 Foreign Donation Program)**

**AGENCY:** Agency for International Development, IDCA.  
**ACTION:** Final rule.

**SUMMARY:** The authority for donations of dairy products to assist the needy overseas has been removed from the Agency for International Development, thereby making these regulations obsolete. These donation regulations are being removed.

**EFFECTIVE DATE:** December 16, 1996.

**FOR FURTHER INFORMATION CONTACT:** James Dempsey, Director, Office of Planning and Program Evaluation (AID/BHR/PPE), Bureau for Humanitarian Response, USAID, (703) 351-0102.

**SUPPLEMENTARY INFORMATION:** 22 CFR part 210 is obsolete. New regulations are being issued by the U.S. Department of Agriculture. The 22 CFR, part 210 rule is not a major rule for purposes of Executive Order 12291 of February 17, 1991. As required by the Regulatory Flexibility Act, it is hereby certified that this rule will not have a significant impact on small business entities.

#### List of Subjects in 22 CFR Part 210

Agricultural commodities, Foreign assistance.

#### **PART 210—[REMOVED]**

For the reasons set forth above, 22 CFR part 210 is removed.

Authority: 22 U.S.C. 2381(a).  
Dated: November 22, 1996.  
James Dempsey,  
*Director, AID/BHR/PPE.*  
[FR Doc. 96-30990 Filed 12-13-96; 8:45 am]  
BILLING CODE 6116-01-M

#### **DEPARTMENT OF THE TREASURY**

#### **Internal Revenue Service**

#### **26 CFR Parts 1 and 602**

[TD 8690]

RIN-1545-AS94

#### **Deductibility, Substantiation, and Disclosure of Certain Charitable Contributions**

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

**ACTION:** Final regulations.

**SUMMARY:** This document contains final regulations that provide guidance regarding the allowance of certain charitable contribution deductions, the substantiation requirements for charitable contributions of \$250 or more, and the disclosure requirements for quid pro quo contributions in excess of \$75. The regulations will affect organizations described in section 170(c) and individuals and entities that make payments to these organizations.

**EFFECTIVE DATE:** These regulations are effective December 16, 1996.

**FOR FURTHER INFORMATION CONTACT:** Jefferson K. Fox of the Office of Assistant Chief Counsel (Income Tax and Accounting) at 202-622-4930 (not a toll-free call).

#### **SUPPLEMENTARY INFORMATION:**

Paperwork Reduction Act

The collection of information contained in these final regulations has been reviewed and approved by the Office of Management and Budget in accordance with the requirements of the Paperwork Reduction Act (44 U.S.C. 3507) under control number 1545-1464. Responses to this collection of information are required for charitable contribution deductions under section 170.

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 control number.

The estimated annual burden per recordkeeper varies from three minutes to one hour, depending on individual circumstances, with an estimated average of six minutes.

Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be sent to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, PC:FP, Washington, DC 20224, and to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and

Regulatory Affairs, Washington, DC 20503.

Books or records relating to this collection of information must be retained as long as their contents may be 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.

#### Background

This document contains amendments to the Income Tax Regulations (26 CFR part 1) that provide guidance relating to (1) the substantiation rules for charitable contributions under section 170(f)(8) of the Internal Revenue Code of 1986 (Code), and (2) the disclosure requirements for quid pro quo contributions under section 6115. Sections 170(f)(8) and 6115 were added to the Code by sections 13172 and 13173 of the Omnibus Budget Reconciliation Act of 1993, Pub. L. 103-66, 107 Stat. 455, 1993-3 C.B. 43.

Temporary regulations (TD 8544) and a notice of proposed rulemaking cross-referencing the temporary regulations were published in the Federal Register for May 27, 1994 (59 FR 27458, 27515). Those regulations primarily addressed substantiation of charitable contributions made by payroll deduction and substantiation of payments to a charitable organization in exchange for goods or services of insubstantial value. The notice of proposed rulemaking indicated that comments would be considered both on the issues addressed in the temporary regulations, and on other issues arising under section 170(f)(8).

A notice of proposed rulemaking (IA-44-94) addressing substantiation issues under section 170(f)(8) other than contributions made by payroll deduction was published in the Federal Register for August 4, 1995 (60 FR 39896). Included in these proposed regulations were the provisions that had originally appeared in the temporary regulations published on May 27, 1994, relating to the substantiation of payments to charitable organizations in exchange for goods or services of insubstantial value. In drafting these proposed regulations, the IRS had the benefit of the comments received in response to the notice of proposed rulemaking published in the Federal Register for May 27, 1994. Many of the suggestions offered in the comments were incorporated into the proposed regulations.

Final regulations (TD 8623) relating to the substantiation of charitable contributions made by payroll deduction were published in the

Federal Register for October 12, 1995 (60 FR 53126). These final regulations did not include the provisions relating to the substantiation of payments to charitable organizations in exchange for goods or services with insubstantial value that had appeared in the temporary regulations published on May 27, 1994 and were also included in the proposed regulations published on August 4, 1995. The temporary regulations published in the Federal Register for May 27, 1994, were removed. For the convenience of taxpayers, the final regulations relating to the substantiation of charitable contributions made by payroll deduction (§ 1.170A-13(f)(11) and (12)) that were published in the Federal Register for May 27, 1994, have been reprinted with the final regulations adopted by this Treasury Decision.

Comments were received in response to the notice of proposed rulemaking published on August 4, 1995, and a public hearing was held on November 1, 1995. After consideration of those comments, together with the relevant comments received in response to the notice of proposed rulemaking published on May 27, 1994, the proposed regulations under sections 170(f)(8) and 6115 are adopted as revised by this Treasury Decision.

#### Public Comments

##### *Intent To Make a Charitable Contribution*

Section 1.170A-1(h) of the final regulations incorporates the two-part test adopted by the Supreme Court in *United States v. American Bar Endowment*, 477 U.S. 105 (1986), for determining deductibility under section 170(a) of a payment that is partly in consideration for goods or services. A deduction is not allowed for a payment to charity in consideration for goods or services except to the extent the amount of the payment exceeds the fair market value of the goods or services. In addition, a deduction is not allowed unless the taxpayer intends to make a payment in excess of the fair market value of the goods or services.

Section 1.170A-13(f)(6) provides that a charitable organization provides goods or services "in consideration for" a taxpayer's payment if, at the time of payment, the taxpayer receives or "expects to receive" goods or services in exchange. One commenter stated that a charitable organization has no way of knowing what a taxpayer expects to receive, and that the regulation requires the charity to determine its donors' states of mind. The commenter suggested that a payment be treated as

made in consideration for goods or services "if the donee organization expects to provide and does provide services of which the donor has been informed." Another commenter questioned whether donor appreciation events, such as banquets honoring contributors, are held "in consideration for" charitable contributions. The commenter also asked whether invitations to occasional events not disclosed to prospective donors until after they make their contributions are "in exchange for" the contributions.

The regulations follow *American Bar Endowment* by incorporating a standard that is based on the facts and circumstances of each charitable contribution. When a donor's contribution is made in response to an express promise of a benefit, the donor generally will have an expectation of a quid pro quo. A donor may also have an expectation of a quid pro quo when the donor makes a contribution with knowledge that the charitable donee has conferred a benefit on other donors making comparable contributions. For example, if a charity has a history of sponsoring a dinner-dance for donors making substantial contributions, a donor making a substantial contribution may have an expectation of receiving an invitation to such an event. The expectation of a quid pro quo may exist even though the donor is not aware of the exact nature of the quid pro quo (e.g., a donation to a charity that sponsors a donor appreciation event of a different type every year). This standard for determining a donor's expectation of a quid pro quo disallows deductions in situations where facts and circumstances indicate that the donor expected, at the time of his or her payment to charity, that there would be a quid pro quo, even though there was no explicit promise of one.

A commenter requested guidance on the proper treatment of a payment in consideration for a quid pro quo received in a year after the year of payment. Under section 1.170A-13(f)(6), goods or services provided by donee organizations in consideration for a donor's payment include goods or services provided in a year other than the year of payment. Accordingly, if a donor makes a payment to a charitable organization in exchange for goods or services, the donor's deductible charitable contribution for the year of payment is limited to the amount, if any, by which the payment exceeds the value of those goods or services, even if they are not available to the donor until a subsequent year.

### Refusal of Benefits

Commenters asked for guidance on the proper manner of substantiating a contribution by a donor who refuses benefits offered by a charitable organization. One commenter suggested that the regulations indicate that when a taxpayer receives a right to quid pro quo benefits but does not use them, the taxpayer is not necessarily allowed a charitable contribution deduction in the full amount of the quid pro quo payment. Another suggested that a taxpayer wishing to deduct the full amount of a quid pro quo payment could check a box on a document to be sent to the charity at the time of contribution to show refusal of the benefit.

These comments are consistent with IRS views. Rev. Rul. 67-246, 1967-2 C.B. 104, provides guidance relating to the refusal of benefits offered by a charitable organization. The revenue ruling holds that a taxpayer choosing not to use tickets that were made available to him is not entitled to a greater contribution than would otherwise be allowed; i.e., the deduction is limited to the amount paid in excess of the value of the tickets received in exchange. 1967-2 C.B. 106. A deduction in the full amount of a taxpayer's payment may be allowed, however, if the taxpayer properly rejects the right to the tickets. Rev. Rul. 67-246 contains two examples (Examples 3 and 7) illustrating ways that donors can effectively reject benefits offered by charitable organizations. Example 7 illustrates that a check-off box on a form provided by the charity can be used to reject a ticket at the time of contribution. A taxpayer who has properly rejected a benefit offered by a charitable organization may claim a deduction in the full amount of the payment to the charitable organization, and the contemporaneous written acknowledgment need not reflect the value of the rejected benefit.

### Certain Goods or Services Disregarded Goods or Services With Insubstantial Value

Under guidelines set forth in Rev. Proc. 90-12, 1990-1 C.B. 471, and Rev. Proc. 92-49, 1992-1 C.B. 987, certain goods or services received in exchange for a payment to a charity are treated as having insubstantial value and can therefore be disregarded for the purpose of determining the amount of a taxpayer's payment that is deductible as a charitable contribution. Under these guidelines, if a taxpayer makes a payment to a charitable organization in the context of a fundraising campaign,

and receives benefits with a fair market value of not more than two percent of the amount of the payment (up to a maximum of \$67, for 1996), the benefits received are considered to have insubstantial value for purposes of determining the amount of the taxpayer's contribution. (The \$67 benefit limitation is adjusted annually for inflation.)

Further, if a taxpayer makes a payment of \$33.50 or more to a charity and receives only token items in return, the items are considered to have insubstantial value if they (1) bear the charity's name or logo, and (2) have an aggregate cost to the charity of \$6.70 or less. (The \$33.50 and \$6.70 amounts apply to payments made in 1996; these amounts are adjusted annually for inflation.) In addition, newsletters not of commercial quality and low-cost items provided for free without an advance order are considered to have insubstantial value.

Under section 1.170A-13(f)(8)(i)(A) of the regulations, the same types of goods and services disregarded under the guidelines of Rev. Procs. 90-12 and 92-49 can be disregarded for purposes of substantiation under section 170(f)(8). One commenter asked whether the contemporaneous written acknowledgment provided to a donor receiving goods or services of insubstantial value should indicate that no goods or services were received. When a donee organization provides a donor only with goods or services having insubstantial value under Rev. Procs. 90-12 and 92-49, the contemporaneous written acknowledgment may indicate that no goods or services were provided in exchange for the donor's payment. See Example 2, § 1.170A-13(f)(8)(ii).

Another commenter stated that the rules in Rev. Procs. 90-12 and 92-49 for goods or services of insubstantial value are unduly restrictive and prevent charitable organizations from recognizing longstanding, generous contributors with suitable gifts of appreciation. Another argued that the costs of token items received by a taxpayer during the year from a charity should not be aggregated. Sections 1.170A-13(f)(8)(B) and 1.170A-13(f)(9)(i) provide that certain membership benefits provided in exchange for a payment of \$75 or less may be disregarded for purposes of determining whether any quids pro quo were provided to the donor. For purposes of sections 170(f)(8) and 6115, these provisions supplement the categories of goods or services treated as having insubstantial value under the guidelines of Rev. Procs. 90-12 and 92-

49. The IRS and Treasury believe that application of the guidelines of Rev. Procs. 90-12 and 92-49, together with the membership benefit provisions in the final regulations, strikes an appropriate balance between administrative and compliance concerns under sections 170(f)(8) and 6115. Accordingly, the guidelines of Rev. Procs. 90-12 and 92-49 have not been modified.

### Membership Benefits

The regulations provide limited relief with respect to certain types of benefits customarily provided to donors in exchange for membership payments. Two types of membership benefits offered in exchange for a payment of \$75 or less may be disregarded: (1) Free admission to members-only events with a per-person cost to the charity that is no higher than the standard for low-cost articles under section 513(h)(2)(C) (\$6.70 for 1996); and (2) rights or privileges that can be exercised frequently during the membership period (other than rights or privileges described in section 170(l), governing rights to purchase tickets for college athletic events).

Some commenters said that the term *frequently*, when read in conjunction with the examples, provided sufficient clarity and appropriate flexibility. Other commenters expressed concern about use of the term *frequently*, stating that it was vague and imprecise. For smaller organizations, they argued, in determining whether a right of free admission to a series of events can be frequently exercised, consideration should be given to the number of events held by the organization each year. The IRS and Treasury believe that a charity can make a determination that a right or privilege is frequently exercisable by reference to the examples that were in the proposed regulations and are adopted in the final regulations.

A commenter suggested that the \$75 payment amount in the special rules for membership benefits should be indexed for inflation. The IRS and Treasury believe that it is important for the membership payment amount to be a number that can be easily remembered by charities and donors. For this reason, annual inflation adjustments are not advisable. However, the IRS and Treasury will consider increases to this \$75 figure in the future.

A commenter asked whether the rule that allows taxpayers to disregard certain membership benefits applies to discounts offered by a donee organization for purchases from retailers working with the charity to provide discounts to members. These discounts

are to be treated like any other rights or privileges and, therefore, may be disregarded for purposes of section 170(f)(8) if they can be exercised frequently during the membership period.

#### Goods or Services Provided to a Donor's Employees

Prior to publication of the proposed regulations, several commenters asked for guidance on the proper method of valuation of goods or services provided by charitable organizations to employees of donors. The final regulations follow the proposed regulations and provide that goods or services provided to a donor's employees can be disregarded if they consist of the types of benefits that could be disregarded when provided directly to a donor (i.e., goods or services with insubstantial value and certain annual membership benefits). For any other types of goods or services provided to employees of a donor making a contribution of \$250 or more, the contemporaneous written acknowledgment must describe the goods or services, but need not include the donee organization's good faith estimate of their fair market value.

A commenter stated that the special rule for goods or services provided to employees of a donor should also be available for partners in a partnership. In the final regulations, the exception for goods or services provided to a donor's employees has been modified to include partners in a donor-partnership.

A commenter was concerned about charities that receive funds from a private foundation established by a business entity. The commenter suggested that such charities should be permitted to provide benefits to employees of the business entity without any tax consequences. Because this suggestion raises issues beyond the scope of this regulation (including issues relating to the self-dealing rules under section 4941), this suggestion was not adopted.

A commenter stated that when employees receive benefits as a result of an employer's charitable contribution, it would be easier for the charity (rather than the employer) to estimate the fair market value of the benefits. Another commenter stated that when employees receive benefits that cannot be disregarded under section 170, the employer/donor is likely to deduct the value of those benefits as a business expense under section 162. Because employers may claim the full amount of their payments to charity—including the value of the benefits—as a deduction, the commenter suggested

that employers should be relieved of the burden of valuing such benefits, and that the full amount of such payments should be deductible under section 170.

The IRS and Treasury recognize that in cases where employee benefits cannot be disregarded for purposes of section 170, employers may nevertheless seek to deduct their costs pursuant to section 162. For deductions under section 170, however, *United States v. American Bar Endowment*, supra, limits the allowable deduction to the amount of the employer's payment in excess of the value of employee benefits. Accordingly, if the employee benefits cannot be disregarded, their value must be subtracted from the amount of the employer's payment to determine the correct amount of the charitable contribution deduction. Although valuation may be difficult, the IRS and Treasury continue to believe that the employer is in a better position than the charity to be responsible for valuation of benefits provided to employees.

#### Payments for the Right To Purchase Tickets to College Athletic Events

A commenter asked for clarification regarding the applicability of the substantiation requirements to payments for the right to purchase tickets to college athletic events. Section 170(l) provides that payments to colleges or universities for the right to purchase tickets to athletic events are partially (eighty percent) deductible as charitable contributions. The final regulations have been modified to clarify how sections 170(f)(8) and 6115 apply to payments described in section 170(l).

For purposes of section 170(f)(8), twenty percent of the amount paid for the right to purchase tickets for seating at college or university athletic events is treated as the fair market value of such right. When the total payment for the right to purchase tickets to college athletic events is \$312.50 or more, the portion of the payment treated as a charitable contribution will be \$250 or more, and substantiation will be required under section 170(f)(8). For purposes of section 6115, twenty percent of the amount paid for the right to purchase tickets for seating at college or university athletic events is treated as a good faith estimate of the fair market value of this right.

#### Rules Applicable to Corporations

Several commenters suggested that subchapter C corporations (C corporations) should be relieved of the substantiation requirements. Some indicated that C corporations should be

exempt; others argued for a de minimis exception for C corporations making substantial contributions. Under a de minimis exception, deductions for all of a C corporation's charitable contributions would be allowed if the corporation had contemporaneous written acknowledgments substantiating most, or substantially all, of its contributions. These commenters stated that the substantiation requirements were enacted to deter individuals—not businesses—that had claimed charitable contribution deductions for the full amounts of their payments to charitable organizations, even though they had received quids pro quo in exchange. They suggested that the IRS exercise the authority provided in section 170(f)(8)(E) and make the substantiation requirements inapplicable to C corporations. The final regulations do not adopt these suggestions. The IRS and Treasury believe that exempting C corporations from the substantiation requirements could, in fact, encourage abuses and would therefore conflict with the purpose of section 170(f)(8).

#### Meaning of Contemporaneous

A commenter asked whether a taxpayer may file an amended income tax return to claim a charitable contribution deduction if the taxpayer obtained the contemporaneous written acknowledgment for the contribution after timely filing the original return. Section 170(f)(8)(C) provides that a written acknowledgment is contemporaneous if obtained on or before the earlier of (1) the date that the taxpayer files the return for the year in which the contribution was made, or (2) the due date (including extensions) for filing the return for that taxable year. A written acknowledgment obtained after a taxpayer files the original return for the year of the contribution is not *contemporaneous* within the meaning of the statute.

#### Substantiation of Multiple Contributions

Several commenters asked whether the substantiation requirements apply to multiple contributions totaling \$250 or more made to a single charity during a single year, when each contribution is less than \$250. The conference report accompanying the Omnibus Budget Reconciliation Act of 1993 indicates that separate payments will be treated as separate contributions and will not be aggregated for purposes of applying the \$250 threshold. H.R. Conf. Rep. No. 213, 103d Cong., 1st Sess. 565, n. 29 (1993). If there is no separate payment of \$250 or more, substantiation under section 170(f)(8) is not required, even if the sum of the separate payments is \$250 or

more. Section 1.170A-13(f)(1) has been modified to clarify this. A commenter asked whether there must be a separate contemporaneous written acknowledgment for each contribution of \$250 or more. Section 1.170A-13(f)(1) has been modified to clarify that for multiple contributions of \$250 or more to one charity, one acknowledgment that reflects the total amount of the taxpayer's contributions to the charity for the year is sufficient.

#### *Form of Substantiation*

Commenters asked whether a contemporaneous written acknowledgment must be in any particular format. As long as it is in writing and contains the information required by law, a contemporaneous written acknowledgment may be in any format. One commenter suggested that the regulations should allow charities to report charitable contributions directly to the IRS on Form 990 or 990-PF. Section 170(f)(8) authorizes the Secretary to prescribe regulations allowing donee organizations to satisfy the requirements of section 170(f)(8) by filing a return that includes the information described in section 170(f)(8)(B). The IRS and Treasury have decided not to implement this suggestion at this time. However, in an effort to reduce paperwork and taxpayer burdens, the IRS will examine whether any existing IRS forms can be modified to assist in their use in substantiating charitable contributions.

A commenter asked for guidance on the proper method of substantiating payments by corporations that agree to match employee contributions to charity. When an employee makes a charitable contribution that is eligible for a corporate matching payment, some charities routinely send the participating corporation a letter, notifying the corporation of the employee's gift and thanking it in advance for the matching payment the charity expects to receive. Commenters suggested that this letter be treated as meeting the corporation's requirements under section 170(f)(8). This suggestion has not been adopted, because letters sent in advance of a contribution do not substantiate the contribution. The acknowledgment under section 170(f)(8) must include information about what has been "contributed." The acknowledgment cannot be completed until after the charitable contribution has been made. (See section 1.170A-1(b), which states that ordinarily a contribution is made at the time delivery is effected.)

#### *Out-of-Pocket Expenses*

The proposed regulations allowed volunteers who incurred unreimbursed out-of-pocket expenses while performing services for a charity to substantiate their contributions with a statement that described the services and the date they were performed. The acknowledgment was not required to list the amount of the unreimbursed expense. Several commenters suggested an exemption from the substantiation requirements for unreimbursed out-of-pocket expenses incurred incident to the rendition of services to a donee organization. Exemption is appropriate, they argued, because the requirements are burdensome, particularly since a donee organization is often unaware of the amount and nature of expenses incurred by volunteers performing services on behalf of the charity, or the exact dates on which the volunteer services were performed. The final regulations eliminate the requirement that the contemporaneous written acknowledgment include the date on which services were performed for the charity. However, to carry out the purposes of the statute, volunteers claiming a charitable contribution deduction for an unreimbursed expense of \$250 or more are still required to obtain substantiation confirming the type of services they performed for the charity.

#### *Good Faith Estimate*

Section 170(f)(8) requires a written acknowledgment furnished by a charity to a donor to include a good faith estimate of the value of any goods or services provided to the donor. Section 6115(a)(2) similarly requires a written disclosure statement provided to a donor making a quid pro quo contribution of more than \$75 to include a good faith estimate of the value of goods or services provided to the donor. The regulations define a good faith estimate as an estimate of the fair market value of the goods or services. A taxpayer can generally rely on the good faith estimate provided by a charity.

A commenter stated that the regulations should contain an example illustrating how charities can compute the fair market value of goods or services. We have not adopted this suggestion. There is no single correct way to determine fair market value; a charitable organization may use any reasonable methodology (e.g., comparison with comparable retail prices, markup from wholesale cost) to determine the fair market value. Examples 1 and 2 of section 1.6115-1(a)(3) illustrate this rule.

A commenter recommended that the regulations state that a donor does not have to use the good faith estimate provided by a charitable organization if the donor believes another estimate is more accurate. The regulations do not mandate that a donor use the estimate provided by a donee organization in calculating the deductible amount. Indeed, when a taxpayer knows or has reason to know that an estimate is inaccurate, the taxpayer may not treat the donee organization's estimate as the fair market value.

A commenter suggested that the regulations indicate that recognition items, such as plaques or trophies with an honoree's name inscribed, should be considered to have little, if any, fair market value. This suggestion has not been adopted. Inscribed plaques and trophies may have some value, even though the value may be less than cost. In addition, see § 1.170A-13(f)(8)(i)(A) regarding goods or services with insubstantial value.

Another commenter asked whether the listing of a donor's name in a program at a charity-sponsored event has a substantial value. An acknowledgment in such a program, which identifies—rather than promotes—a donor, is an inconsequential benefit with no significant value. See Rev. Rul. 68-432, 1968-2 C.B. 104, 105, holding that "[s]uch privileges as being associated with or being known as a benefactor of the [charitable] organization are not significant return benefits that have monetary value."

#### *Contributions to a Split-Interest Trust*

Section 1.170A-13(f)(13) of the proposed regulations provides that section 170(f)(8) does not apply to a transfer of property to a charitable remainder unitrust (as defined in section 664(d)(2)). A commenter observed that there are two other types of unitrusts in addition to the type described in section 664(d)(2), and that these unitrusts should be treated similarly. The final regulations have been modified to provide that the substantiation requirements of section 170(f)(8) do not apply to transfers to unitrusts described in section 664(d)(3) or section 1.664-3(a)(1)(i)(b), as well as to unitrusts described in section 664(d)(2).

Section 1.170A-13(f)(13) of the proposed regulations provides that section 170(f)(8) applies to a transfer to a pooled income fund. Commenters requested further guidance on the proper way to substantiate contributions to pooled income funds. The final regulations have been modified to

require, in the case of a transfer of cash or other property to a pooled income fund, that the written acknowledgment of the charitable organization maintaining the fund include a statement that the cash or other property was transferred to the organization's pooled income fund and state whether any goods or services, in addition to the income interest in the fund, were provided to the transferor. The contemporaneous written acknowledgment need not include an estimate of the value of the income interest in the pooled income fund. The final regulations also provide guidance on the proper method of substantiating a deduction claimed by a taxpayer who has purchased an annuity from a charitable organization.

#### Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a costbenefit analysis is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because the notice of proposed rulemaking preceding the regulations was issued prior to March 29, 1996, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. See 5 U.S.C. section 601, Pub. L. 104-121 section 245. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking preceding these regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on the impact of the proposed regulations on small businesses.

#### Drafting Information

The principal author of these regulations is Jefferson K. Fox, Office of the Assistant Chief Counsel (Income Tax and Accounting), Internal Revenue Service. However, other personnel from the IRS and the Treasury Department participated in their development.

#### List of Subjects

##### 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

##### 26 CFR Part 602

Reporting and recordkeeping requirements.

#### Adoption of Amendments to the Regulations

Accordingly, 26 CFR parts 1 and 602 are amended as follows:

### PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by adding a new entry in numerical order for Section 1.170A-1 and revising the entry for Section 1.170A-13 to read as follows:

Authority: 26 U.S.C. 7805.

Section 1.170A-1 also issued under 26 U.S.C. 170(a).

Section 1.170A-13 also issued under 26 U.S.C. 170(f)(8). \* \* \*

Par. 2. Section 1.170A-1 is amended as follows:

1. Paragraph (h) is redesignated as paragraph (j).
  2. Paragraph (i) is redesignated as paragraph (k) and is revised.
  3. Paragraph (h) is added.
  4. Paragraph (i) is added and reserved.
- The additions and revisions read as follows:

#### § 1.170A-1 Charitable, etc., contributions and gifts; allowance of deduction.

\* \* \* \* \*

(h) *Payment in exchange for consideration*—(1) *Burden on taxpayer to show that all or part of payment is a charitable contribution or gift.* No part of a payment that a taxpayer makes to or for the use of an organization described in section 170(c) that is in consideration for (as defined in § 1.170A-13(f)(6)) goods or services (as defined in § 1.170A-13(f)(5)) is a contribution or gift within the meaning of section 170(c) unless the taxpayer—

- (i) Intends to make a payment in an amount that exceeds the fair market value of the goods or services; and
- (ii) Makes a payment in an amount that exceeds the fair market value of the goods or services.

(2) *Limitation on amount deductible*—

(i) *In general.* The charitable contribution deduction under section 170(a) for a payment a taxpayer makes partly in consideration for goods or services may not exceed the excess of—

(A) The amount of any cash paid and the fair market value of any property (other than cash) transferred by the taxpayer to an organization described in section 170(c); over

(B) The fair market value of the goods or services the organization provides in return.

(ii) *Special rules.* For special limits on the deduction for charitable contributions of ordinary income and capital gain property, see section 170(e) and §§ 1.170A-4 and 1.170A-4A.

(3) *Certain goods or services disregarded.* For purposes of section 170(a) and paragraphs (h)(1) and (h)(2) of this section, goods or services described in § 1.170A-13(f)(8)(i) or § 1.170A-13(f)(9)(i) are disregarded.

(4) *Donee estimates of the value of goods or services may be treated as fair market value*—(i) *In general.* For purposes of section 170(a), a taxpayer may rely on either a contemporaneous written acknowledgment provided under section 170(f)(8) and § 1.170A-13(f) or a written disclosure statement provided under section 6115 for the fair market value of any goods or services provided to the taxpayer by the donee organization.

(ii) *Exception.* A taxpayer may not treat an estimate of the value of goods or services as their fair market value if the taxpayer knows, or has reason to know, that such treatment is unreasonable. For example, if a taxpayer knows, or has reason to know, that there is an error in an estimate provided by an organization described in section 170(c) pertaining to goods or services that have a readily ascertainable value, it is unreasonable for the taxpayer to treat the estimate as the fair market value of the goods or services. Similarly, if a taxpayer is a dealer in the type of goods or services provided in consideration for the taxpayer's payment and knows, or has reason to know, that the estimate is in error, it is unreasonable for the taxpayer to treat the estimate as the fair market value of the goods or services.

(5) *Examples.* The following examples illustrate the rules of this paragraph (h).

*Example 1. Certain goods or services disregarded.* Taxpayer makes a \$50 payment to Charity B, an organization described in section 170(c), in exchange for a family membership. The family membership entitles Taxpayer and members of Taxpayer's family to certain benefits. These benefits include free admission to weekly poetry readings, discounts on merchandise sold by B in its gift shop or by mail order, and invitations to special events for members only, such as lectures or informal receptions. When B first offers its membership package for the year, B reasonably projects that each special event for members will have a cost to B, excluding any allocable overhead, of \$5 or less per person attending the event. Because the family membership benefits are disregarded pursuant to § 1.170A-13(f)(8)(i), Taxpayer may treat the \$50 payment as a contribution or gift within the meaning of section 170(c), regardless of Taxpayer's intent and whether or not the payment exceeds the fair market value of the goods or services. Furthermore, any charitable contribution deduction available to Taxpayer may be calculated without regard to the membership benefits.

*Example 2. Treatment of good faith estimate at auction as the fair market value.* Taxpayer attends an auction held by Charity C, an organization described in section 170(c). Prior to the auction, C publishes a catalog that meets the requirements for a written disclosure statement under section 6115(a) (including C's good faith estimate of the value of items that will be available for

bidding). A representative of *C* gives a copy of the catalog to each individual (including Taxpayer) who attends the auction. Taxpayer notes that in the catalog *C*'s estimate of the value of a vase is \$100. Taxpayer has no reason to doubt the accuracy of this estimate. Taxpayer successfully bids and pays \$500 for the vase. Because Taxpayer knew, prior to making her payment, that the estimate in the catalog was less than the amount of her payment, Taxpayer satisfies the requirement of paragraph (h)(1)(i) of this section. Because Taxpayer makes a payment in an amount that exceeds that estimate, Taxpayer satisfies the requirements of paragraph (h)(1)(ii) of this section. Taxpayer may treat *C*'s estimate of the value of the vase as its fair market value in determining the amount of her charitable contribution deduction.

**Example 3. Good faith estimate not in error.** Taxpayer makes a \$200 payment to Charity *D*, an organization described in section 170(c). In return for Taxpayer's payment, *D* gives Taxpayer a book that Taxpayer could buy at retail prices typically ranging from \$18 to \$25. *D* provides Taxpayer with a good faith estimate, in a written disclosure statement under section 6115(a), of \$20 for the value of the book. Because the estimate is within the range of typical retail prices for the book, the estimate contained in the written disclosure statement is not in error. Although Taxpayer knows that the book is sold for as much as \$25, Taxpayer may treat the estimate of \$20 as the fair market value of the book in determining the amount of his charitable contribution deduction.

(i) [Reserved]

\* \* \* \* \*

(k) **Effective date.** In general this section applies to contributions made in taxable years beginning after December 31, 1969. Paragraph (j)(11) of this section, however, applies only to out-of-pocket expenditures made in taxable years beginning after December 31, 1976. In addition, paragraph (h) of this section applies only to payments made on or after December 16, 1996. However, taxpayers may rely on the rules of paragraph (h) of this section for payments made on or after January 1, 1994.

Par. 3. Section 1.170A-13 is amended by revising paragraph (f) to read as follows:

**§ 1.170A-13 Recordkeeping and return requirements for deductions for charitable contributions.**

\* \* \* \* \*

(f) **Substantiation of charitable contributions of \$250 or more—(1) In general.** No deduction is allowed under section 170(a) for all or part of any contribution of \$250 or more unless the taxpayer substantiates the contribution with a contemporaneous written acknowledgment from the donee organization. A taxpayer who makes more than one contribution of \$250 or

more to a donee organization in a taxable year may substantiate the contributions with one or more contemporaneous written acknowledgments. Section 170(f)(8) does not apply to a payment of \$250 or more if the amount contributed (as determined under § 1.170A-1(h)) is less than \$250. Separate contributions of less than \$250 are not subject to the requirements of section 170(f)(8), regardless of whether the sum of the contributions made by a taxpayer to a donee organization during a taxable year equals \$250 or more.

(2) **Written acknowledgment.** Except as otherwise provided in paragraphs (f)(8) through (f)(11) and (f)(13) of this section, a written acknowledgment from a donee organization must provide the following information—

(i) The amount of any cash the taxpayer paid and a description (but not necessarily the value) of any property other than cash the taxpayer transferred to the donee organization;

(ii) A statement of whether or not the donee organization provides any goods or services in consideration, in whole or in part, for any of the cash or other property transferred to the donee organization;

(iii) If the donee organization provides any goods or services other than intangible religious benefits (as described in section 170(f)(8)), a description and good faith estimate of the value of those goods or services; and

(iv) If the donee organization provides any intangible religious benefits, a statement to that effect.

(3) **Contemporaneous.** A written acknowledgment is contemporaneous if it is obtained by the taxpayer on or before the earlier of—

(i) The date the taxpayer files the original return for the taxable year in which the contribution was made; or

(ii) The due date (including extensions) for filing the taxpayer's original return for that year.

(4) **Donee organization.** For purposes of this paragraph (f), a donee organization is an organization described in section 170(c).

(5) **Goods or services.** Goods or services means cash, property, services, benefits, and privileges.

(6) **In consideration for.** A donee organization provides goods or services in consideration for a taxpayer's payment if, at the time the taxpayer makes the payment to the donee organization, the taxpayer receives or expects to receive goods or services in exchange for that payment. Goods or services a donee organization provides in consideration for a payment by a taxpayer include goods or services

provided in a year other than the year in which the taxpayer makes the payment to the donee organization.

(7) **Good faith estimate.** For purposes of this section, good faith estimate means a donee organization's estimate of the fair market value of any goods or services, without regard to the manner in which the organization in fact made that estimate. See § 1.170A-1(h)(4) for rules regarding when a taxpayer may treat a donee organization's estimate of the value of goods or services as the fair market value.

(8) **Certain goods or services disregarded—(i) In general.** For purposes of section 170(f)(8), the following goods or services are disregarded—

(A) Goods or services that have insubstantial value under the guidelines provided in Revenue Procedures 90-12, 1990-1 C.B. 471, 92-49, 1992-1 C.B. 987, and any successor documents. (See § 601.601(d)(2)(ii) of the Statement of Procedural Rules, 26 CFR part 601.); and

(B) Annual membership benefits offered to a taxpayer in exchange for a payment of \$75 or less per year that consist of—

(1) Any rights or privileges, other than those described in section 170(l), that the taxpayer can exercise frequently during the membership period. Examples of such rights and privileges may include, but are not limited to, free or discounted admission to the organization's facilities or events, free or discounted parking, preferred access to goods or services, and discounts on the purchase of goods or services; and

(2) Admission to events during the membership period that are open only to members of a donee organization and for which the donee organization reasonably projects that the cost per person (excluding any allocable overhead) attending each such event is within the limits established for "low cost articles" under section 513(h)(2). The projected cost to the donee organization is determined at the time the organization first offers its membership package for the year (using section 3.07 of Revenue Procedure 90-12, or any successor documents, to determine the cost of any items or services that are donated).

(ii) **Examples.** The following examples illustrate the rules of this paragraph (f)(8).

**Example 1. Membership benefits disregarded.** Performing Arts Center *E* is an organization described in section 170(c). In return for a payment of \$75, *E* offers a package of basic membership benefits that includes the right to purchase tickets to performances one week before they go on sale to the general public, free parking in *E*'s

garage during evening and weekend performances, and a 10% discount on merchandise sold in *E*'s gift shop. In return for a payment of \$150, *E* offers a package of preferred membership benefits that includes all of the benefits in the \$75 package as well as a poster that is sold in *E*'s gift shop for \$20. The basic membership and the preferred membership are each valid for twelve months, and there are approximately 50 performances of various productions at *E* during a twelve-month period. *E*'s gift shop is open for several hours each week and at performance times. *F*, a patron of the arts, is solicited by *E* to make a contribution. *E* offers *F* the preferred membership benefits in return for a payment of \$150 or more. *F* makes a payment of \$300 to *E*. *F* can satisfy the substantiation requirement of section 170(f)(8) by obtaining a contemporaneous written acknowledgment from *E* that includes a description of the poster and a good faith estimate of its fair market value (\$20) and disregards the remaining membership benefits.

*Example 2. Contemporaneous written acknowledgment need not mention rights or privileges that can be disregarded.* The facts are the same as in Example 1, except that *F* made a payment of \$300 and received only a basic membership. *F* can satisfy the section 170(f)(8) substantiation requirement with a contemporaneous written acknowledgment stating that no goods or services were provided.

*Example 3. Rights or privileges that cannot be exercised frequently.* Community Theater Group *G* is an organization described in section 170(c). Every summer, *G* performs four different plays. Each play is performed two times. In return for a membership fee of \$60, *G* offers its members free admission to any of its performances. Non-members may purchase tickets on a performance by performance basis for \$15 a ticket. *H*, an individual who is a sponsor of the theater, is solicited by *G* to make a contribution. *G* tells *H* that the membership benefit will be provided in return for any payment of \$60 or more. *H* chooses to make a payment of \$350 to *G* and receives in return the membership benefit. *G*'s membership benefit of free admission is not described in paragraph (f)(8)(i)(B) of this section because it is not a privilege that can be exercised frequently (due to the limited number of performances offered by *G*). Therefore, to meet the requirements of section 170(f)(8), a contemporaneous written acknowledgment of *H*'s \$350 payment must include a description of the free admission benefit and a good faith estimate of its value.

*Example 4. Multiple memberships.* In December of each year, *K*, an individual, gives each of her six grandchildren a junior membership in Dinosaur Museum, an organization described in section 170(c). Each junior membership costs \$50, and *K* makes a single payment of \$300 for all six memberships. A junior member is entitled to free admission to the museum and to weekly films, slide shows, and lectures about dinosaurs. In addition, each junior member receives a bi-monthly, non-commercial quality newsletter with information about dinosaurs and upcoming events. *K*'s

contemporaneous written acknowledgment from Dinosaur Museum may state that no goods or services were provided in exchange for *K*'s payment.

(9) *Goods or services provided to employees or partners of donors—(i) Certain goods or services disregarded.* For purposes of section 170(f)(8), goods or services provided by a donee organization to employees of a donor, or to partners of a partnership that is a donor, in return for a payment to the organization may be disregarded to the extent that the goods or services provided to each employee or partner are the same as those described in paragraph (f)(8)(i) of this section.

(ii) *No good faith estimate required for other goods or services.* If a taxpayer makes a contribution of \$250 or more to a donee organization and, in return, the donee organization offers the taxpayer's employees or partners goods or services other than those described in paragraph (f)(9)(i) of this section, the contemporaneous written acknowledgment of the taxpayer's contribution is not required to include a good faith estimate of the value of such goods or services but must include a description of those goods or services.

(iii) *Example.* The following example illustrates the rules of this paragraph (f)(9).

*Example.* Museum *J* is an organization described in section 170(c). For a payment of \$40, *J* offers a package of basic membership benefits that includes free admission and a 10% discount on merchandise sold in *J*'s gift shop. *J*'s other membership categories are for supporters who contribute \$100 or more. Corporation *K* makes a payment of \$50,000 to *J* and, in return, *J* offers *K*'s employees free admission for one year, a tee-shirt with *J*'s logo that costs *J* \$4.50, and a gift shop discount of 25% for one year. The free admission for *K*'s employees is the same as the benefit made available to holders of the \$40 membership and is otherwise described in paragraph (f)(8)(i)(B) of this section. The tee-shirt given to each of *K*'s employees is described in paragraph (f)(8)(i)(A) of this section. Therefore, the contemporaneous written acknowledgment of *K*'s payment is not required to include a description or good faith estimate of the value of the free admission or the tee-shirts. However, because the gift shop discount offered to *K*'s employees is different than that offered to those who purchase the \$40 membership, the discount is not described in paragraph (f)(8)(i) of this section. Therefore, the contemporaneous written acknowledgment of *K*'s payment is required to include a description of the 25% discount offered to *K*'s employees.

(10) *Substantiation of out-of-pocket expenses.* A taxpayer who incurs unreimbursed expenditures incident to the rendition of services, within the meaning of § 1.170A-1(g), is treated as

having obtained a contemporaneous written acknowledgment of those expenditures if the taxpayer—

(i) Has adequate records under paragraph (a) of this section to substantiate the amount of the expenditures; and

(ii) Obtains by the date prescribed in paragraph (f)(3) of this section a statement prepared by the donee organization containing—

(A) A description of the services provided by the taxpayer;

(B) A statement of whether or not the donee organization provides any goods or services in consideration, in whole or in part, for the unreimbursed expenditures; and

(C) The information required by paragraphs (f)(2) (iii) and (iv) of this section.

(11) *Contributions made by payroll deduction—(i) Form of substantiation.*

A contribution made by means of withholding from a taxpayer's wages and payment by the taxpayer's employer to a donee organization may be substantiated, for purposes of section 170(f)(8), by both—

(A) A pay stub, Form W-2, or other document furnished by the employer that sets forth the amount withheld by the employer for the purpose of payment to a donee organization; and

(B) A pledge card or other document prepared by or at the direction of the donee organization that includes a statement to the effect that the organization does not provide goods or services in whole or partial consideration for any contributions made to the organization by payroll deduction.

(ii) *Application of \$250 threshold.* For the purpose of applying the \$250 threshold provided in section 170(f)(8)(A) to contributions made by the means described in paragraph (f)(11)(i) of this section, the amount withheld from each payment of wages to a taxpayer is treated as a separate contribution.

(12) *Distributing organizations as donees.* An organization described in section 170(c), or an organization described in 5 CFR 950.105 (a Principal Combined Fund Organization for purposes of the Combined Federal Campaign) and acting in that capacity, that receives a payment made as a contribution is treated as a donee organization solely for purposes of section 170(f)(8), even if the organization (pursuant to the donor's instructions or otherwise) distributes the amount received to one or more organizations described in section 170(c). This paragraph (f)(12) does not apply, however, to a case in which the

distributee organization provides goods or services as part of a transaction structured with a view to avoid taking the goods or services into account in determining the amount of the deduction to which the donor is entitled under section 170.

(13) *Transfers to certain trusts.* Section 170(f)(8) does not apply to a transfer of property to a trust described in section 170(f)(2)(B), a charitable remainder annuity trust (as defined in section 664(d)(1)), or a charitable remainder unitrust (as defined in section 664(d)(2) or (d)(3) or § 1.664(3)(a)(1)(i)(b)). Section 170(f)(8) does apply, however, to a transfer to a pooled income fund (as defined in section 642(c)(5)); for such a transfer, the contemporaneous written acknowledgment must state that the contribution was transferred to the donee organization's pooled income fund and indicate whether any goods or services (in addition to an income interest in the fund) were provided in exchange for the transfer. The contemporaneous written acknowledgment is not required to include a good faith estimate of the income interest.

(14) *Substantiation of payments to a college or university for the right to purchase tickets to athletic events.* For purposes of paragraph (f)(2)(iii) of this section, the right to purchase tickets for seating at an athletic event in exchange for a payment described in section 170(l) is treated as having a value equal to twenty percent of such payment. For example, when a taxpayer makes a payment of \$312.50 for the right to purchase tickets for seating at an athletic event, the right to purchase tickets is treated as having a value of \$62.50. The remaining \$250 is treated as a charitable contribution, which the taxpayer must substantiate in accordance with the requirements of this section.

(15) *Substantiation of charitable contributions made by a partnership or an S corporation.* If a partnership or an S corporation makes a charitable contribution of \$250 or more, the partnership or S corporation will be treated as the taxpayer for purposes of section 170(f)(8). Therefore, the partnership or S corporation must substantiate the contribution with a contemporaneous written acknowledgment from the donee organization before reporting the contribution on its income tax return for the year in which the contribution was made and must maintain the contemporaneous written acknowledgment in its records. A partner of a partnership or a shareholder

of an S corporation is not required to obtain any additional substantiation for his or her share of the partnership's or S corporation's charitable contribution.

(16) *Purchase of an annuity.* If a taxpayer purchases an annuity from a charitable organization and claims a charitable contribution deduction of \$250 or more for the excess of the amount paid over the value of the annuity, the contemporaneous written acknowledgment must state whether any goods or services in addition to the annuity were provided to the taxpayer. The contemporaneous written acknowledgment is not required to include a good faith estimate of the value of the annuity. See § 1.170A-1(d)(2) for guidance in determining the value of the annuity.

(17) *Substantiation of matched payments—(i) In general.* For purposes of section 170, if a taxpayer's payment to a donee organization is matched, in whole or in part, by another payor, and the taxpayer receives goods or services in consideration for its payment and some or all of the matching payment, those goods or services will be treated as provided in consideration for the taxpayer's payment and not in consideration for the matching payment.

(ii) *Example.* The following example illustrates the rules of this paragraph (f)(17).

*Example.* Taxpayer makes a \$400 payment to Charity L, a donee organization. Pursuant to a matching payment plan, Taxpayer's employer matches Taxpayer's \$400 payment with an additional payment of \$400. In consideration for the combined payments of \$800, L gives Taxpayer an item that it estimates has a fair market value of \$100. L does not give the employer any goods or services in consideration for its contribution. The contemporaneous written acknowledgment provided to the employer must include a statement that no goods or services were provided in consideration for the employer's \$400 payment. The contemporaneous written acknowledgment provided to Taxpayer must include a statement of the amount of Taxpayer's payment, a description of the item received by Taxpayer, and a statement that L's good faith estimate of the value of the item received by Taxpayer is \$100.

(18) *Effective date.* This paragraph (f) applies to contributions made on or after December 16, 1996. However, taxpayers may rely on the rules of this paragraph (f) for contributions made on or after January 1, 1994.

Par. 4. Section 1.6115-1 is added under the undesignated centerheading *Miscellaneous Provisions* to read as follows:

**§ 1.6115-1 Disclosure requirements for quid pro quo contributions.**

(a) *Good faith estimate defined—(1) In general.* A good faith estimate of the value of goods or services provided by an organization described in section 170(c) in consideration for a taxpayer's payment to that organization is an estimate of the fair market value, within the meaning of § 1.170A-1(c)(2), of the goods or services. The organization may use any reasonable methodology in making a good faith estimate, provided it applies the methodology in good faith. If the organization fails to apply the methodology in good faith, the organization will be treated as not having met the requirements of section 6115. See section 6714 for the penalties that apply for failure to meet the requirements of section 6115.

(2) *Good faith estimate for goods or services that are not commercially available.* A good faith estimate of the value of goods or services that are not generally available in a commercial transaction may be determined by reference to the fair market value of similar or comparable goods or services. Goods or services may be similar or comparable even though they do not have the unique qualities of the goods or services that are being valued.

(3) *Examples.* The following examples illustrate the rules of this paragraph (a).

*Example 1. Facility not available on a commercial basis.* Museum M, an organization described in section 170(c), is located in Community N. In return for a payment of \$50,000 or more, M allows a donor to hold a private event in a room located in M. Private events other than those held by such donors are not permitted to be held in M. In Community N, there are four hotels, O, P, Q, and R, that have ballrooms with the same capacity as the room in M. Of these hotels, only O and P have ballrooms that offer amenities and atmosphere that are similar to the amenities and atmosphere of the room in M (although O and P lack the unique collection of art that is displayed in the room in M). Because the capacity, amenities, and atmosphere of ballrooms in O and P are comparable to the capacity, amenities, and atmosphere of the room in M, a good faith estimate of the benefits received from M may be determined by reference to the cost of renting either the ballroom in O or the ballroom in P. The cost of renting the ballroom in O is \$2500 and, therefore, a good faith estimate of the fair market value of the right to host a private event in the room at M is \$2500. In this example, the ballrooms in O and P are considered similar and comparable facilities to the room in M for valuation purposes, notwithstanding the fact that the room in M displays a unique collection of art.

*Example 2. Services available on a commercial basis.* Charity S is an organization described in section 170(c). S offers to provide a one-hour tennis lesson

with Tennis Professional *T* in return for the first payment of \$500 or more that it receives. *T* provides one-hour tennis lessons on a commercial basis for \$100. Taxpayer pays \$500 to *S* and in return receives the tennis lesson with *T*. A good faith estimate of the fair market value of the lesson provided in exchange for Taxpayer's payment is \$100.

**Example 3. Celebrity presence.** Charity *U* is an organization described in section 170(c). In return for the first payment of \$1000 or more that it receives, *U* will provide a dinner for two followed by an evening tour of Museum *V* conducted by Artist *W*, whose most recent works are on display at *V*. *W* does not provide tours of *V* on a commercial basis. Typically, tours of *V* are free to the public. Taxpayer pays \$1000 to *U* and in return receives a dinner valued at \$100 and an evening tour of *V* conducted by *W*. Because tours of *V* are typically free to the public, a good faith estimate of the value of the evening tour conducted by *W* is \$0. In this example, the fact that Taxpayer's tour of *V* is conducted by *W* rather than *V*'s regular tour guides does not render the tours dissimilar or incomparable for valuation purposes.

(b) **Certain goods or services disregarded.** For purposes of section 6115, an organization described in section 170(c) may disregard goods or services described in § 1.170A-13(f)(8)(i).

(c) **Value of the right to purchase tickets to college or university athletic events.** For purposes of section 6115, the right to purchase tickets for seating at an athletic event in exchange for a payment described in section 170(l) is treated as having a value equal to twenty percent of such payment.

(d) **Goods or services provided to employees or partners of donors—(1) Certain goods or services disregarded.** For purposes of section 6115, goods or services provided by an organization described in section 170(c) to employees of a donor or to partners of a partnership that is a donor in return for a payment to the donee organization may be disregarded to the extent that the goods or services provided to each employee or partner are the same as those described in § 1.170A-13(f)(8)(i).

(2) **Description permitted in lieu of good faith estimate for other goods or services.** The written disclosure statement required by section 6115 may include a description of goods or services, in lieu of a good faith estimate of their value, if the donor is—

(i) An employer and, in return for the donor's quid pro quo contribution, an organization described in section 170(c) provides the donor's employees with goods or services other than those described in paragraph (d)(1) of this section; or

(ii) A partnership and, in return for its quid pro quo contribution, the

organization provides partners in the partnership with goods or services other than those described in paragraph (d)(1) of this section.

(e) **Effective date.** This section applies to contributions made on or after December 16, 1996. However, taxpayers may rely on the rules of this section for contributions made on or after January 1, 1994.

**PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT**

Par. 5. The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

Par. 6. Section 602.101(c) is amended by adding the following entries in numerical order to the table:

**§ 602.101 OMB Control numbers.**

CFR part or section where identified and described	Current OMB control No.
* * * * *	* * * * *
Section 1.170A-13(f) .....	1545-1464
* * * * *	* * * * *
Section 1.6115-1 .....	1545-1464
* * * * *	* * * * *

Margaret Milner Richardson,  
*Commissioner of Internal Revenue.*

Approved: November 27, 1996.  
Donald C. Lubick,  
*Acting Assistant Secretary of the Treasury.*  
[FR Doc. 96-31719 Filed 12-13-96; 8:45 am]  
BILLING CODE 4830-01-U

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

[FL-067-1-9635a; FRL-5640-4]

**Approval and Promulgation of Implementation Plans Florida: Approval of Revisions to Florida Regulations**

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

**ACTION:** Direct final rule.

**SUMMARY:** EPA is approving revisions to the Florida State Implementation Plan (SIP) for ozone. These revisions were submitted to EPA through the Florida

Department of Environmental Regulation (FDER) on April 8, 1996, and revise regulations for Stage II vapor recovery (Stage II) in Florida's SIP. These revisions meet all of EPA's requirements for Stage II programs and do not adversely affect the ability of the State to maintain the ozone standard. Therefore EPA is approving the SIP, revisions.

**DATES:** This action is effective February 14, 1997 unless adverse or critical comments are received by January 15, 1997. If the effective date is delayed, timely notice will be published in the Federal Register.

**ADDRESSES:** Written comments on this action should be addressed to Alan Powell at the Environmental Protection Agency, Region 4 Air Programs Branch, 100 Alabama Street, SW., Atlanta, Georgia 30303. Copies of documents relative to this action are available for public inspection during normal business hours at the following locations. The interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day. Reference file FL-067. The Region 4 office may have additional background documents not available at the other locations.

Environmental Protection Agency, Region 4 Air Programs Branch, 100 Alabama Street, SW., Atlanta, Georgia 30303, Alan Powell, 404/562-9045.

Florida Department of Environmental Protection, Twin Towers Office Building, 2600 Blair Stone Road, Tallahassee, Florida 32399-2400.

**FOR FURTHER INFORMATION CONTACT:** Alan W. Powell of the EPA Region 4 Air Programs Branch at (404) 562-9045.

**SUPPLEMENTARY INFORMATION:** On November 15, 1990, the President signed into law the Clean Air Act Amendments of 1990. The Clean Air Act (CAA) as amended in 1990 includes new requirements for the improvement of air quality in ozone nonattainment areas. Under section 181(a) of the CAA, nonattainment areas were categorized by the severity of the area's ozone problem, and progressively more stringent control measures were required for each category of higher ozone concentrations. The basis for classifying an area in a specific category was the ambient air quality data obtained in the three year period 1987-1989. The CAA delineates in section 182 the SIP requirements for ozone nonattainment areas based on their classifications. Specifically, section 182(b)(3) requires areas classified as moderate to implement Stage II controls unless and until EPA promulgates On

Board Vapor Recovery (OBVR) regulations pursuant to section 202(a)(6) of the CAA. Based on consultation with the National Highway Transportation Safety Board, EPA determined that OBVR systems were unsafe and therefore moderate areas must implement a Stage II program. On January 22, 1993, the United States Court of Appeals for the District of Columbia ruled that EPA's previous decision not to require OBVR controls be set aside and that OBVR regulations be promulgated pursuant to section 202(a)(6) of the CAA. Subsequently, EPA reached a settlement with the plaintiffs which required EPA to promulgate final regulations by January 22, 1994. The EPA Administrator signed the OBVR final rule on January 24, 1994, and moderate areas are not required to implement Stage II regulations. However, Florida implemented a Stage II program in the three county South Florida area on January 8, 1993, which was approved by EPA on March 24, 1994 (59 FR 13883). Florida intends to continue Stage II as part of its long term maintenance plan. Based on issues identified during the implementation phase of the regulation, Florida issued variances to nine sources in the Everglades in West Palm Beach County. The variance request to the Stage II rule is discussed below.

#### Rule 62-252. Gasoline Vapor Recovery STAGE II

Under section 182(b)(3) of the CAA, Florida submitted Stage II vapor recovery rules for this area, and EPA approved the regulation. During the implementation phase, FDEP received request from nine facilities located in the Westernmost areas of Palm Beach County. These facilities requested variances from the time schedule set forth in the regulation, because they would suffer economic hardship by installing Stage II now instead of in conjunction with a state funded underground storage tank replacement program. FDEP determined that the emissions from these sources would not affect the maintenance plan of the area and granted the variances on February 28, 1996. Eight facilities will install Stage II vapor recovery in conjunction with scheduled tank replacement in 2009. The other facility will comply in 2005. EPA's review of the request confirmed that despite the delay in emissions reductions, the projected emissions in the area continue to be consistent with the maintenance plan.

#### Final Action

The Agency has reviewed this request for revision of the federally-approved

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

The EPA is publishing this rule without a prior proposal for approval because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document in this Federal Register publication, the EPA is proposing to approve the SIP revision should adverse or critical comments be filed. This action will be effective February 14, 1997 unless, by January 15, 1997, adverse or critical comments are received.

If the EPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on the separate proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective February 14, 1997.

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

This action has been classified as a Table 3 action for signature by the Regional Administrator under the procedures published in the Federal Register on January 19, 1939 (54 FR 2214-2225), as revised by a July 10, 1995 memorandum from Mary Nichols, Assistant Administrator for Air and Radiation. The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866 review.

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

with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, part D of the CAA do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-state relationship under the CAA, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co. v. USEPA*, 427 U.S. 246, 256-66 (S.Ct. 1976); 42 U.S.C. 7410(a)(2) and 7410(k)(3).

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must undertake various actions in association with proposed or final rules that include a Federal mandate that may result in estimated costs of \$100 million or more to the private sector, or to State, local, or tribal governments in the aggregate.

Through submission of this state implementation plan or plan revision, the State and any affected local or tribal governments have elected to adopt the program provided for under Section (insert) of the CAA. These rules may bind State, local and tribal governments to perform certain actions and also require the private sector to perform certain duties. EPA has examined whether the rules being approved by this action will impose any new requirements. Since such sources are already subject to these regulations under State law, no new requirements are imposed by this approval. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action, and therefore there will be no significant impact on a substantial number of small entities.

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

Under section 307(b)(1) of the Clean Air Act (CAA), 42 U.S.C. 7607(b)(1), petitions for judicial review of this

action must be filed in the United States Court of Appeals for the appropriate circuit by February 14, 1997. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2) of the CAA, 42 U.S.C. 7607(b)(2).)

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

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

Dated: September 5, 1996.

A. Stanley Meiburg,  
*Acting Regional Administrator.*

Part 52 of chapter I, title 40, Code of Federal Regulations, is amended as follows:

#### PART 52—[AMENDED]

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

Authority: 42 U.S.C. 7401-7671q.

#### Subpart K—Florida

2. Section 52.520 is amended by adding paragraph (c)(96) to read as follows:

##### § 52.520 Identification of plan.

\* \* \* \* \*

(c) \* \* \*

(96) Nine variances to F.A.C. Chapter 62-252 were submitted by the Florida Department of Environmental Protection on April 8, 1996. The submittal granted variances from the regulations for vapor recovery for nine facilities.

(i) Incorporation by reference.

(A) Florida Department of Environmental Protection Order Granting Variance effective February 28, 1996 for: FAC #508514770; FAC #508944721; FAC #508630588; FAC #50863023; FAC #508514723; FAC #508514722; FAC #508514484; FAC #508513991; FAC #508841861.

(ii) Other material. None.

[FR Doc. 96-31592 Filed 12-13-96; 8:45 am]

BILLING CODE 6560-50-F

#### 40 CFR Part 300

[FRL-5665-4]

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

**AGENCY:** Environmental Protection Agency.

**ACTION:** Notice of Deletion of the Twin Cities Air Force Reserve Base, Small Arms Range Landfill, Minneapolis-St. Paul International Airport Superfund Site, Minneapolis, Minnesota, from the National Priorities List (NPL).

**SUMMARY:** The Environmental Protection Agency (EPA) announces the deletion of the Twin Cities Air Force Reserve Base, Small Arms Range Landfill, Minneapolis-St. Paul International Airport Superfund Site, Minneapolis, Minnesota, from the National Priorities List (NPL). The NPL is Appendix B of 40 CFR Part 300 which is the National Oil and Hazardous Substances Contingency Plan (NCP), which EPA promulgated pursuant to Section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended. This action is being taken by EPA and the State of Minnesota, because it has been determined that the Responsible Parties have implemented all appropriate response actions required. Moreover, EPA and the State of Minnesota have determined that remedial actions conducted at the site to date remain protective of public health, welfare, and the environment.

**EFFECTIVE DATE:** December 16, 1996.

**FOR FURTHER INFORMATION CONTACT:** Thomas Bloom at (312) 886-1967 (SR-6J), Remedial Project Manager, Superfund Division, U.S. EPA—Region V, 77 West Jackson Blvd., Chicago, IL 60604. Information on the site is available at the local information repository located at: the Southdale Public Library, 7001 York Avenue South, Edina, MN 55435 and the 934th Air Wing/Public Affairs Office, 760 Military Highway, Minneapolis-St. Paul IAP Reserve Station, MN 55450-2000. Requests for comprehensive copies of documents should be directed formally to the Regional Docket Office. The contact for the Regional Docket Office is Jan Pfundheller (H-7J), U.S. EPA, Region V, 77 W. Jackson Blvd., Chicago, IL 60604, (312) 353-5821.

**SUPPLEMENTARY INFORMATION:** The site to be deleted from the NPL is: Twin Cities Air Force Reserve Base, Small Arms Range Landfill, Minneapolis-St. Paul International Airport Superfund Site

located at the Minneapolis-St. Paul International Airport in Minnesota. A Notice of Intent to Delete for this site was published September 16, 1996 (16 FR 48657). The closing date for comments on the Notice of Intent to Delete was October 16, 1996. EPA received no comments and therefore no Responsiveness Summary was prepared.

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

#### List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous substances, Hazardous waste, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

40 CFR Part 300 is amended as follows:

#### PART 300—[AMENDED]

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

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

#### Appendix B—[Amended]

2. Table 2 of Appendix B to part 300 is amended by removing the "Twin Cities Air Force Base, (SAR) Landfill, Superfund Site, Minneapolis, Minnesota."

Dated: November 7, 1996.

Valdas V. Adamkus,

*Regional Administrator, U.S. EPA, Region V.*  
[FR Doc. 96-31709 Filed 12-13-96; 8:45 am]

BILLING CODE 6560-50-P

**DEPARTMENT OF TRANSPORTATION****Research and Special Programs Administration****49 CFR Part 171**

[Docket No. HM-215B; Amdt No. 171-149]

RIN 2137-AC82

**Harmonization With the United Nations Recommendations, International Maritime Dangerous Goods Code, and International Civil Aviation Organization's Technical Instructions**

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Final rule.

**SUMMARY:** This final rule updates references in the Hazardous Materials Regulations to include the most recent amendments to international standards. Because of recent changes to the International Maritime Dangerous Goods Code (IMDG Code) and the International Civil Aviation Organization's Technical Instructions for the Safe Transport of Dangerous Goods by Air (ICAO Technical Instructions), these amendments are necessary to facilitate the continued transport of hazardous materials in international commerce by vessel and aircraft when these international regulations become effective.

**DATES:** *Effective date:* The effective date of these amendments is June 1, 1997.

*Compliance date:* Because of international standards which become effective on January 1, 1997, RSPA is authorizing immediate voluntary compliance. However, persons voluntarily complying with these regulations should be aware that petitions for reconsideration may be received and, as a result of RSPA's evaluation of those petitions, the amendments adopted in this final rule could be subject to further revision.

*Incorporation by reference.* The incorporation by reference of certain publications listed in these amendments has been approved by the Director of the Federal Register as of June 1, 1997.

**FOR FURTHER INFORMATION CONTACT:** Bob Richard, Assistant International Standards Coordinator, telephone (202) 366-0656, or Beth Romo, Office of Hazardous Materials Standards, telephone (202) 366-8553, Research and Special Programs Administration, U.S. Department of Transportation, 400 Seventh Street, S.W., Washington, D.C. 20590-0001.

**SUPPLEMENTARY INFORMATION:****I. Background**

The UN Recommendations are recommendations issued by the UN Committee of Experts on the Transport of Dangerous Goods. These recommendations are amended and updated biennially by the Committee of Experts and are distributed to nations throughout the world. They serve as the basis for national, regional, and international modal regulations (specifically the IMDG Code, issued by the International Maritime Organization (IMO), and the International Civil Aviation Organization (ICAO) Technical Instructions, issued by the ICAO Dangerous Goods Panel).

On October 25, 1996, RSPA published a notice of proposed rulemaking under Docket HM-215B [61 FR 55364] to amend the HMR to incorporate provisions adopted in the ninth revised edition of the UN Recommendations, the 1997-98 ICAO Technical Instructions, and Amendment 28 to the IMDG Code. The notice contained proposals which would more fully align the HMR with international air and sea transport requirements which become effective on January 1, 1997. Other proposed changes in the NPRM were based on feedback from the regulated industry and RSPA initiatives. RSPA limited the comment period to 30 days and stated its intent to develop and issue a final rule to coincide with the January 1, 1997 effective date for international air and sea transport requirements. Commenters to the NPRM were very supportive of RSPA's efforts to align the HMR with international standards and urged RSPA to adopt regulations to incorporate the most recent editions of the ICAO Technical Instructions and IMDG Code by January 1, 1997. However, due to an unanticipated delay in publication of the NPRM and a variety of complex issues raised by commenters, RSPA recognizes the impossibility of issuing one final rule by January 1, 1997, that adequately addresses all concerns expressed by commenters. Therefore, RSPA is issuing this final rule to incorporate the latest versions of the ICAO Technical Instructions and IMDG Code to allow voluntary compliance with international standards on January 1, 1997. All other changes to the HMR proposed in the NPRM will be addressed in a subsequent final rule under HM-215B.

In this final rule, RSPA is amending § 171.7 to recognize Amendment 28 to the IMDG Code, which has recently been published by the International Maritime Organization (IMO). This

amendment promulgates numerous miscellaneous changes to the IMDG Code and addresses such matters as classification, labeling, packaging, and documentation. IMO has established January 1, 1997, as the implementation date for these amendments. In § 171.12, the HMR authorize shipments prepared in accordance with the IMDG Code if all or part of the transportation is by vessel, subject to certain conditions and limitations.

This rule also incorporates by reference the 1997-1998 edition of the ICAO Technical Instructions, which becomes effective on January 1, 1997, pursuant to decisions taken by the ICAO Council regarding implementation of Annex 18 to the Convention on International Civil Aviation. The offering, acceptance and transportation of hazardous materials by aircraft, and by motor vehicle either before or after being transported by aircraft, is authorized in § 171.11 as fully equivalent to the HMR (with certain exceptions) if in conformance with the ICAO Technical Instructions.

This final rule serves as a competent authority approval by authorizing a six-month period for use of either Amendment 27 or Amendment 28 of the IMDG Code and either the 1995-96 or 1997-98 ICAO Technical Instructions. Voluntary compliance with new IMDG Code and ICAO requirements is authorized as of January 1, 1997, but regulated entities may comply with the old requirements until June 1, 1997.

**II. Rulemaking Analyses and Notices****A. Executive Order 12866 and DOT Regulatory Policies and Procedures**

This final rule is not considered a significant regulatory action under section 3(f) of Executive Order 12866 and, therefore, was not reviewed by the Office of Management and Budget. The rule is not considered a significant rule under the Regulatory Policies and Procedures of the Department of Transportation (44 FR 11034).

The economic impact of this final rule is expected to result in only minimal costs to certain persons subject to the HMR and may result in modest cost savings to a small number of persons subject to the HMR and to the agency. Because of the minimal economic impact of this rule, preparation of a regulatory impact analysis or a regulatory evaluation is not warranted.

**B. Executive Order 12612**

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 12612 ("Federalism"). Federal

hazardous materials transportation law, 49 U.S.C. 5701–5127, contains an express preemption provision (49 U.S.C. 5125(b)) that preempts State, local, and Indian tribe requirements on certain covered subjects. Covered subjects are:

- (1) The designation, description, and classification of hazardous material;
- (2) The packing, repacking, handling, labeling, marking, and placarding of hazardous material;
- (3) The preparation, execution, and use of shipping documents related to hazardous material and requirements related to the number, contents, and placement of those documents;
- (4) The written notification, recording, and reporting of the unintentional release in transportation of hazardous material; or
- (5) The design, manufacturing, fabricating, marking, maintenance, reconditioning, repairing, or testing of a packaging or container represented, marked, certified, or sold as qualified for use in transporting hazardous material.

This final rule addresses covered subjects under items (1), (2), (3), and (5) above and, if adopted as final, would preempt State, local, or Indian tribe requirements not meeting the “substantively the same” standard. Federal hazardous materials transportation law provides at § 5125(b)(2) that if DOT issues a regulation concerning any of the covered subjects DOT must determine and publish in the Federal Register the effective date of Federal preemption. The effective date may not be earlier than the 90th day following the date of issuance of the final rule and not later than two years after the date of issuance. RSPA has determined that the effective date of Federal preemption for these requirements will be June 16, 1997 under this docket. Thus, RSPA lacks discretion in this area, and preparation of a federalism assessment is not warranted.

### C. Regulatory Flexibility Act

This final rule incorporates by reference the 1997–98 ICAO Technical Instructions and Amendment 28 to the IMDG Code. It applies to offerors and carriers of hazardous materials and facilitates the transportation of hazardous materials in international commerce by providing consistency with international requirements. U.S. companies, including numerous small entities competing in foreign markets, will not be at an economic disadvantage by being forced to comply with a dual system of regulation. Therefore, I certify that this final rule will not have a

significant economic impact on a substantial number of small entities.

### D. Paperwork Reduction Act

The requirements for information collection have been approved by the Office of Management and Budget (OMB) under OMB control numbers 2137–0034 for shipping papers and 2137–0557 for approvals. Under the Paperwork Reduction Act of 1995, no person is required to respond to a collection of information unless it displays a valid OMB control number.

### E. Regulation Identifier Number (RIN)

A regulation identifier number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

### List of Subjects in 49 CFR Part 171

Exports, Hazardous materials transportation, Hazardous waste, Imports, Incorporation by reference, Reporting and recordkeeping requirements.

In consideration of the foregoing, 49 CFR Chapter I is amended as follows:

## PART 171—GENERAL INFORMATION, REGULATIONS, AND DEFINITIONS

1. The authority citation for part 171 continues to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

### § 171.7 [Amended]

2. In § 171.7, in the table in paragraph (a)(3), the following changes are made:

a. Under International Civil Aviation Organization (ICAO), for the entry Technical Instructions for the Safe Transport of Dangerous Goods by Air, the date “1995–1996” is revised to read “1997–1998”.

b. Under International Maritime Organization (IMO), the entry “International Maritime Dangerous Goods (IMDG) Code” is amended by removing the wording “1990 Consolidated Edition, as amended by Amendment 27 (1994)” and adding in its place “1994 Consolidated Edition, as amended by Amendment 28 (1996)”.

Issued in Washington, DC on December 9, 1996, under authority delegated in 49 CFR part 1.

Kelley S. Coyner,

Deputy Administrator.

[FR Doc. 96–31649 Filed 12–13–96; 8:45 am]

BILLING CODE 4910–60–P

## Federal Railroad Administration

### 49 CFR 214

[FRA Docket No. RSOR 13, Notice No. 9]

RIN 2130–AA86

### Roadway Worker Protection

**AGENCY:** Federal Railroad Administration (FRA), Department of Transportation (DOT).

**ACTION:** Final rule.

**SUMMARY:** FRA is issuing rules for the protection of railroad employees working on or near railroad tracks. This regulation requires that each railroad devise and adopt a program of on-track safety to provide employees working along the railroad with protection from the hazards of being struck by a train or other on-track equipment. Elements of this on-track safety program include an on-track safety manual; a clear delineation of employers' responsibilities for providing on track safety, as well as employees' rights and responsibilities related thereto; well defined procedures for communication and protection; and annual on-track safety training. The program adopted by each railroad would be subject to review and approval by FRA.

**DATES: Effective Dates:** This rule is effective January 15, 1997.

**Compliance Dates:** Each railroad must notify the FRA not less than 30 days before their respective date for compliance. Each railroad must be in compliance with this rule no later than the date specified in the following schedule: For each Class I railroad (including National Railroad Passenger Corporation) and each railroad providing commuter service in a metropolitan or suburban area, March 15, 1997; For each Class II railroad, April 15, 1997; For each Class III railroad, switching and terminal railroad, and any railroad not otherwise classified, May 15, 1997; For each railroad commencing operations after the pertinent date specified in this paragraph, the date on which operations commence.

### FOR FURTHER INFORMATION CONTACT:

Gordon A. Davids, P.E., Bridge Engineer, Office of Safety, FRA, 400 Seventh Street SW., Washington, DC 20590 (telephone: 202–632–3340); Phil Olekszyk, Deputy Associate Administrator for Safety Compliance and Program Implementation, FRA, 400 Seventh Street SW., Washington, DC 20590 (telephone: 202–632–3307); or Cynthia Walters, Trial Attorney, Office of Chief Counsel, FRA, 400 Seventh

Street SW., Washington, DC 20590  
(telephone: 202-632-3188).

**SUPPLEMENTARY INFORMATION:**

Introduction

*Background*

Concern regarding hazards faced by roadway workers has existed for many years. The FRA received a petition to amend its track safety standards from the Brotherhood of Maintenance of Way Employees (BMWE) in 1990, which included issues pertaining to the hazards faced by roadway workers. This proceeding, however, formally originated with the Rail Safety Enforcement and Review Act, Public Law No. 102-365, 106 Stat. 972, enacted September 3, 1992, which required FRA to review its track safety standards and revise them based on information derived from that review. FRA issued an Advanced Notice of Proposed Rulemaking (ANPRM) on November 16, 1992 (57 FR 54038) announcing the opening of a proceeding to amend the Federal Track Safety Standards.

Workshops were held in conjunction with this effort, to solicit the views of the railroad industry and representatives of railroad employees on the need for substantive change in the track regulations. A workshop held on March 31, 1993 in Washington, D.C., specifically addressed the protection of employees from the hazards of moving trains and equipment. The subject of injury and death to roadway workers was of such great concern that FRA received petitions for emergency orders and requests for rulemaking from both the Brotherhood of Maintenance-of-Way Employees and the Brotherhood of Railroad Signalmen. FRA did not grant the petitions for emergency orders, but instead initiated a separate proceeding to consider regulations to eliminate hazards faced by these employees. FRA removed this issue from the track standards docket, FRA Docket No. RST-90-1 and established a new docket, FRA Docket No. RSOR 13, specifically to address hazards to roadway workers to expedite the effective resolution of this issue.

FRA also determined that standards addressing this issue would be more closely related to workplace safety than to standards addressing the condition of railroad track. Since Railroad Workplace Safety is addressed in 49 CFR Part 214, standards issued for the protection of roadway workers would be better categorized in this section, than Part 213, Track Safety Standards. Accordingly, the minimum standards proposed in this notice would amend Part 214 of Title 49, Code of Federal

Regulations by adding a new subpart, Subpart C, addressing hazards to roadway workers.

FRA convened a Safety Summit Meeting on June 3, 1994 with affected railroad industry, contractor, and labor representatives. This meeting considered certain aspects of FRA accident data involving roadway workers. The meeting also facilitated a discussion of various short-term and long-term actions that could be taken by FRA and the industry to prevent injuries and deaths among roadway workers. One long-range alternative suggested by FRA was to use the negotiated rulemaking process to allow input from both railroad management and labor to develop standards addressing this risk. The agency determined that this was an appropriate subject for a negotiated rulemaking, and initiated this process.

FRA published its notice of intent to establish a Federal Advisory Committee for regulatory negotiation on August 17, 1994 (59 FR 42200). This notice stated the purpose for the Advisory Committee, solicited requests for representation on the Advisory Committee, and listed the key issues for negotiation. Additionally, the notice summarized the concept of negotiated rulemaking including an explanation of consensus decision making. The Advisory Committee would be responsible for submitting a report, including an NPRM, containing the Committee's consensus decisions. If consensus was not reached on certain issues, the report would identify those issues and explain the basic disagreement. Pursuant to negotiated rulemaking, FRA committed the agency to issue a proposed rule as recommended by the committee unless it was inconsistent with statutory authority, agency or legal requirements, or if in the agency's view the proposal did not adequately address the subject matter. FRA agreed to explain any deviations from the committee's recommendations in the NPRM.

FRA established an Advisory Committee in accordance with the Federal Advisory Committee Act, 5 U.S.C. 581, based on the response to its notice. On December 27, 1994, the Office of Management and Budget approved the Charter to establish a Roadway Worker Safety Advisory Committee, enabling the committee to begin negotiations. FRA announced the establishment of this Advisory Committee, with the first negotiating session to be held on January 23-25, 1995 (60 FR 1761). FRA chose the Federal Mediation and Conciliation Service to mediate these sessions, and administrative support was acquired to

carry out organizational and record keeping functions.

The twenty-five member Advisory Committee was comprised of representatives from the following organizations:

- American Public Transit Association (APTA)
- The American Short Line Railroad Association (ASLRA)
- Association of American Railroads (AAR)
- Brotherhood of Locomotive Engineers (BLE)
- Brotherhood of Locomotive Engineers, American Train Dispatchers Department (ATDD)
- Brotherhood of Maintenance of Way Employees (BMWE)
- Brotherhood of Railroad Signalmen (BRS)
- Burlington Northern Railroad (BN)
- Consolidated Rail Corporation (Conrail)
- CSX Transportation, Inc. (CSX)
- Florida East Coast Railway Company (FEC)
- Federal Railroad Administration (FRA)
- Northeast Illinois Regional Railroad Corporation (METRA)
- National Railroad Passenger Corporation (AMTRAK)
- Norfolk Southern Corporation (NS)
- Regional Railroads of America (RRA)
- Transport Workers Union of America (TWU)
- Union Pacific Railroad Company (UP)
- United Transportation Union (UTU)

The Advisory Committee held 7 multiple-day negotiating sessions that were open to the public, as prescribed by the Federal Advisory Committee Act, 5 U.S.C. 581. In an effort to assist this proceeding, information was presented at the first Advisory Committee meeting by committee members who had participated earlier in an independent task force. This task force, comprised of representatives of several railroads and labor organizations, had met during the preceding year to independently analyze the issue of on-track safety. The findings and recommendations of the task force were considered along with information presented by other Advisory Committee members.

The Advisory Committee reached consensus on 11 specific recommendations and 9 general recommendations to serve as the basis for a regulation. These recommendations were incorporated into a report that was submitted to the Secretary of Transportation and the Federal Railroad Administrator on May 17, 1995. This report did not include an NPRM, as originally conceived, but established the basis for the proposed rule.

The Advisory Committee held one additional two-day session, and reached consensus on a proposed rule that conformed to the recommendations submitted in its report. The Committee recommended that FRA publish that document as a proposed Federal regulation and continue the rulemaking

procedures necessary to adopt its principles in a final rule. FRA published a notice of proposed rulemaking on March 14, 1996 (61 FR 10528). In that notice, FRA specifically solicited comment from contractors and tourist railroads, since these two groups were not represented on the Advisory Committee. (61 FR 10531, 10532) FRA received 15 comments, including a comment from the National Railroad Construction and Maintenance Association (NRC), representing railroad contractors. FRA also received a request for a public hearing in response to the NPRM. A public hearing was held July 11, 1996 where various parties made oral presentations. A final Advisory Committee meeting was held on July 12, 1996 where committee members considered comments submitted to the docket. An NRC representative was present and participated in the discussion.

#### Comments and Responses

##### *Effective Dates*

Several commenters expressed concern that the effective dates listed in the NPRM were not feasible for adoption and implementation of the necessary on-track safety programs, in order to be in compliance with the expected Federal standards. The NPRM provided for staggered effective dates of June 1st, September 1st, and December 1st of 1996. These dates were published as part of the Advisory Committee's recommended language and were appropriate at the time the committee reached its consensus recommendation. The time required to complete this rulemaking necessitates an extended implementation schedule. The final dates included in this publication reflect the date on which FRA expects full compliance. Each railroad must notify FRA of their on-track safety program at least 30 days prior to their respective compliance date. Contractors to railroads are expected to be in compliance with this rule, at the same time that their host railroads are to comply. A reference to section § 214.305 Compliance Dates establishes the final dates for compliance.

##### *Scope of the Rule*

Comments were submitted suggesting that FRA expand the scope of the rulemaking in several ways. One commenter expressed the need to include protection against the hazards of vehicular traffic at highway-rail grade crossings. Another commenter suggested that FRA include contractors who are granted access to a railroad's right of way for work not associated

with the railroad, including duties such as fiber-optic installation and utility installation. The same commenter also suggested that locomotive engineers and conductors be considered roadway workers in order to afford them an opportunity to challenge on-track safety procedures.

FRA identified major issues for negotiation and solicited comments regarding additional issues that would be appropriate for consideration regarding the potential scope of this rule, as early as August of 1994, when it issued its Notice of Proposal to Form a Negotiated Rulemaking Advisory Committee and Request for Representation (59 FR 42200). FRA received comments to this notice devoted solely to membership on the committee. No comments were submitted addressing the potential scope of this rule. Once negotiations began, the Advisory Committee deliberated at length regarding the appropriate scope of this rule, as well (61 FR at 10531). The Advisory Committee purposely chose not to address all conceivable hazards, but studied the available data regarding safety issues and selected those circumstances presenting the greatest risk to roadway workers. The issues presented by these commenters may be valid, but extend beyond the scope of the issues highlighted by the data reviewed.

Neither FRA nor the Advisory Committee discussed or intended to address the hazards that vehicular traffic at grade crossings pose for roadway workers. The accident data studied does not provide information regarding this type of hazard. FRA's accident expertise has led it to believe that roadway workers are, rarely, if ever, struck by vehicular traffic at grade crossings. In addition, consultation with persons currently working in the roadway work environment has not focused FRA's attention on the hazards of vehicular traffic as a significant issue. Although some risk may exist, FRA believes that the risk is not significant and that adequate voluntary measures are being taken to protect roadway workers at highway rail grade crossings.

The issue of protecting contractors who are working on the right of way, but not conducting work associated with the railroad was at least contemplated by FRA. However, in most instances these contractors are instructed by each host railroad not to foul the track. In many instances, railroads provide watchmen to ensure that these workers adhere to this instruction. Additionally, if the work to be performed, potentially causes these

workers to foul the track, railroads will often provide protection to make sure that these contractors are safe, while in foul of the track. Perhaps most important is the fact that these contractors are rarely out on the right of way, limiting the risk to which they subject themselves. This situation is clearly distinguishable from that of a roadway worker whose daily work environment requires him or her to perform duties on the right of way, under traffic, virtually the duration of the working day. FRA believes that the current situation, where contractors who are not conducting work associated with railroad operations, coordinate with railroads for safety procedures while working on the right of way is preferable to Federal mandate at this time.

Finally, engineers and conductors are currently covered by this regulation and afforded the right to challenge on-track safety procedures when performing as roadway workers. In instances where engineers and conductors are not functioning as roadway workers, but functioning as train and engine crew members, the rationale for affording them the right to challenge on-track safety procedures that do not affect them is unclear. In addition, all railroad workers when confronted by hazardous conditions related to the performance of their duties are protected by Federal statute wholly independent of this regulation.

##### *Jurisdiction*

Two comments were submitted essentially requesting clarification regarding FRA jurisdiction. Specifically, clarification was sought regarding whether these rules apply on track that is not subject to FRA jurisdiction and not on the general system of railroad transportation. As noted in § 214.3, Application, FRA is concerned with track that is part of the general system of railroad transportation. For further information regarding FRA's exercise of jurisdiction, one should consult 49 CFR Part 209, Appendix A. This Federal regulation, as all other rules issued under FRA authority will only apply in instances where FRA exercises jurisdiction, on track that is part of the general system.

##### *On Track Safety Programs*

One commenter inquired whether contractors would be in compliance with the rules by adopting the on-track safety programs of the host railroad. The committee understood the circumstances under which most contractors conduct their work and in an effort to promote uniformity and

safety, as well as minimize the burden on contractors to railroads, the committee concluded that contractors should not devise their own complete programs in most instances, but would be expected to comply with programs established by the railroads on which they are working (61 FR 10531). Contractors would be responsible for ensuring that their employees received the appropriate training and that their employees complied with the appropriate railroad's program, but would not necessarily need their own FRA approved program.

#### *Definition of Roadway Worker*

Several commenters suggested the definition of roadway worker be reworded to refer to a worker "whose duties include and who is engaged in" to clarify that the rule applies to workers performing their roadway worker tasks. This suggestion essentially adds the qualifier "who is engaged in" to the definition that appeared in the NPRM. FRA believes that this qualifier would severely limit application of the rule due to the difficulty in determining when a worker becomes engaged in a task. In addition, the Advisory Committee determined that the term roadway worker was intended to describe employees who are covered and not to describe when this coverage begins and ends. Other provisions of the regulation enumerate the instances in which a worker must have some form of on-track safety and which methods are permissible. Neither the committee nor FRA was persuaded that this addition to the definition would be useful.

#### *Restricted Speed and Lone Workers*

Two commenters expressed their view that restricted speed should be considered a form of on-track safety protection. These commenters also expressed their intention to apply for waivers to the lone worker provisions and utilize restricted speed as an alternative method of protection. The committee determined after much deliberation that a blanket provision allowing restricted speed as an on-track safety measure for the protection of roadway workers would be ineffective (61 FR 10537). The NPRM also noted that unusual circumstances at certain locations where this measure might be considered sufficient would have to be addressed by the waiver process. Nothing in the comments provides a basis for changing that initial assessment. Beyond acknowledging the waiver process as the appropriate avenue for such concerns, FRA cannot speculate regarding the outcome of waiver petitions the agency may receive

at some future date. If such petitions arrive, FRA will, as with any other waiver petition, evaluate the operational facts presented by the petitioner and determine whether granting a waiver is appropriate.

Two additional comments were made regarding the lone worker provisions. These commenters stated that the prohibition on using individual train detection within manual interlockings, controlled points, or remotely controlled hump yards is unduly restrictive. They said that roadway workers should be allowed to use individual train detection for inspection purposes at any location where sight distance, background noise, and adjacent track constraints are not present. These commenters expressed concern that this extreme limitation on the use of individual train detection may have a negative impact on safety. The commenters believe that when lone workers are required to seek methods other than individual train detection for on-track safety and are unable to obtain them, they will not inspect. Essentially, these commenters fear that a tendency to inspect these locations less frequently will emerge, if lone workers are forced to seek other methods of on-track safety. They also stated that the relevant accident data are not compelling since, they do not show even one death involving a lone worker inspecting at a controlled point, manual interlocking and/or remotely controlled hump yard. Most important, the rule itself gives lone workers using individual train detection the right to secure more restrictive on-track safety protection, whenever they deem it necessary. The commenter also stressed that a railroad that considers it appropriate can restrict the use of individual train detection at certain locations in its On-Track Safety Programs. Lastly, a suggestion was made during the final Advisory Committee meeting to at least allow the use of individual train detection for inspections at single siding, single track controlled points (usually a simple junction where there is only one switch, and three signals). Consensus was not reached to change the original recommendation.

The Advisory Committee recommended that the NPRM restrict the use of individual train detection in interlockings and controlled points. This recommendation was adopted and incorporated into the proposed rule. The Advisory Committee reached a consensus on this issue after much debate. By reaching consensus, the Advisory Committee acknowledged the safety benefits of this provision.

FRA is not persuaded that allowing the use of individual train detection at these locations would enhance safety, and in fact, believes that it would compromise safety. The use of individual train detection does not reduce or lower the risk of being struck by a train, since workers are not assured that a train will not operate over track on which they are working. This method of on-track safety should therefore be limited to locations where the risks associated with the roadway work environment are fairly minimal. FRA has provided statistical data indicating that controlled points, manual interlockings and remotely controlled hump yards are not areas of low roadway risk.

The Advisory Committee was not willing to disturb its previous consensus to limit the use of individual train detection. FRA is of the independent belief that restricting individual train detection is based on sound safety principles and is not persuaded to change this provision. First, the appropriate safety data, indicates that several employees (admittedly not lone workers) who were working in interlockings and controlled points, and had relied on their ability to see and hear an approaching train in time to retreat from the track (essentially individual train detection) were killed. In many cases, these employees had the right to establish more restrictive protective measures, but failed to exercise that right. Although the comments accurately state that there is no record of fatalities to lone workers using individual train detection while working in controlled points in the accident data reviewed by the committee, this assertion is misleading. Eleven (11) fatalities occurred within interlockings or controlled points where workers were being afforded no more protection than that of a lone worker using individual train detection. The fact that these people were not lone workers is irrelevant. The important fact is that they were relying for safety solely on their own ability to see and hear an approaching train.

Finally, FRA is not persuaded that inspections should be allowed using individual train detection at single siding, single track controlled points. The distinction between inspections and other work in the rail industry is imprecise. The term entails both the examination of systems and apparatus and the performance of minor repairs and adjustments to ensure conformance with prescribed standards. For example, a track worker performing a track inspection may examine track structure, take measurements, install bolts and

replace broken angle bars. A signal worker performing a switch inspection may measure tolerances, make adjustments to the switch machine and replace worn lock rods. In addition, this type of controlled point accounts for a significant portion of the affected locations in the U.S. FRA has decided that the reasoning for restricting the use of this on-track safety method was sound and does not merit modification.

#### *Preemption*

Comments were submitted addressing the potential preemptive effect of this rule. One commenter wanted FRA to expressly state that the provision requiring an audible warning from trains preempts state and local whistle ban laws. FRA believes there is no need to include rule language indicating that state and local whistle bans are preempted. FRA could potentially include language in all provisions of this rule, and all others, stating that any state and local rules covering the same subject matter as the identified Federal regulatory provision are preempted. Instead, FRA has issued a general statement regarding the preemptive effect of all the provisions of the rule in § 214.4. In addition, the section-by-section analysis corresponding to § 214.339, Audible Warning from trains, expressly states FRA's intention to preempt state and local whistle ban ordinances. Although preemption decisions in any particular factual context are a matter for courts to resolve, courts generally afford great deference to the subject matter the appropriate regulatory agency intended to cover. In this instance, the rulemaking record establishes FRA's intent to cover the same subject matter as state and local whistle bans in the section-by-section analysis and the Federalism Assessment which acknowledges potential Federalism implications that was prepared for the docket at the NPRM stage of this rulemaking. (61 FR at 10542). FRA notes that no comments were submitted to the docket substantively in opposition to this provision requiring audible warnings. States and local governments did not respond to the NPRM with concerns regarding this provision potentially in conflict with their whistle ban orders.

Additional comments regarding preemption focused on this regulation's impact on state clearance requirements. The NPRM uses the term *fouling a track* to essentially specify the proximity to railroad track at which an individual or equipment could be struck by a moving train or on-track equipment. Conversely, state clearance requirements establish

specifications to govern the minimum distance between track and fixed structures. Although the two concepts, proximity of humans and equipment to track and proximity of fixed structures to track, are distinguishable, the potential for misinterpretation of the Advisory Committee's intent persuaded the agency to address this issue. To clarify the situation, FRA wants to explicitly state that FRA and the Advisory Committee did not intend to affect state clearance requirements.

#### *Use of Universal Marker for Exclusive Track Occupancy*

One commenter suggested that FRA establish a universal marker to denote exclusive track occupancy zones. Although this suggestion may promote industry-wide uniformity which has some measure of appeal, individual railroads are in the best position to assess the appropriate symbol to incorporate into their existing operating rules and new on-track safety program. While analyzing this suggestion, FRA realized that the additional burden on the railroads of designing and securing uniform symbols or markers would render no substantial benefit above those symbols currently used by each railroad. FRA made a conscious decision to allow railroads to utilize the flags or signals that are prescribed in their current operating rules.

#### *Inaccessible Track*

One commenter suggested changing the language of the provision regarding inaccessible track to read, "Inaccessible track shall be defined by one or more of the following physical features." \* \* \* This commenter was attempting to clarify that establishment of inaccessible track does not require use of the same physical feature at each entry point. The Advisory Committee reached consensus on this suggestion and recommended incorporation of this concept into the final rule. The suggested language is not adopted precisely as presented. Instead, FRA drafted language clarifying that inaccessible track can be established by using any of the features listed in the provision at any possible point of entry. Essentially, a flagman could be used at one entry point, while a secured switch could be used at another entry point.

FRA has independently added another method to restrict entry to inaccessible track, in § 214.327(a)(4). That method recognizes that where a roadway worker has established working limits on controlled track, the existence of those working limits can be used to restrict entry of trains or equipment onto non-controlled track

that connects to the controlled track that is within the working limits. At its simplest, this provision would permit a roadway worker who has established exclusive track occupancy on a main track to occupy side tracks and yard tracks that connect exclusively with the main track, provided that no operable locomotives or other equipment are located on those non-controlled tracks. Without this provision, the roadway worker would most likely have been required to spike and tag all switches leading to the non-controlled tracks, even though assurance had been obtained that no trains would arrive at those two switches.

Another legitimate use for this provision would exist in a remotely controlled hump facility, where switches at the hump end of the classification tracks can be remotely lined and secured away from the working limits, but the manual switches at the other end would have to be spiked and tagged. If a form of controlled track were established at the far end, requiring the authority of a control operator to enter a classification track, the requirements of this section could be met.

#### *Flag protection*

FRA has independently revised the provisions for exclusive track occupancy to accommodate circumstances in which a roadway worker may use this method to establish working limits when unable to communicate with the train dispatcher or control operator. The provisions for use in these circumstances incorporate either flag protection, or the control of signals by the roadway worker.

FRA understands that the Advisory Committee intended to permit the use of flag protection for immediate protection of unsafe track conditions and the roadway workers who are correcting those conditions. Flag protection has been used by railroads for many years to protect trains from other trains or unusual conditions, and is often the first means available to quickly establish protection. The operating rules under which this method is used are well established, and FRA has no evidence that they are not effective for this purpose, regardless of whether the train dispatcher or control operator is notified beforehand.

In some locations, such as some automatic interlockings and moveable bridges, railroad employees are able to control the signals governing train movements and cause them to display an aspect that indicates "Stop." For instance, a roadway worker who performs an inspection at an automatic

interlocking might be able to open a control that prevents any signals at that location from clearing for a train, and would thereby receive protection within the limits of the interlocking. This protection would not depend upon the authority of a train dispatcher or control operator, but would be obtained directly by the roadway worker through the signal system. In the same manner, a bridge tender on a moveable bridge might be able to obtain protection within the interlocking limits on the bridge by withdrawing the bridge locks, causing the signals to assume their most restrictive indication. In either case, the rules and instructions of the railroad might or might not require permission from the train dispatcher or control operator, but such permission would not be a regulatory requirement for the establishment of working limits through exclusive track occupancy under these circumstances.

It must be carefully noted that the term, "aspect that indicates 'Stop'" does not include aspects that permit a train to proceed at restricted speed, or to pass the signal under any other circumstances without flag protection. Railroad programs must provide adequate protection for roadway workers who have operated signals directly, without the knowledge of the train dispatcher or control operator. Particular concern arises in a case where a train dispatcher or control operator may authorize a train to pass a signal at restricted speed while a roadway worker is protected by that signal. FRA would consider that a rule which requires a member of the train crew to precede the train through the limits of the interlocking would adequately address that concern.

#### *Training*

A comment was submitted suggesting that each roadway worker receive cross-training for all roadway work positions. The commenter envisioned potential misuse of the training and qualification provisions to circumvent collectively bargained seniority rights. It would be inappropriate for FRA to mandate training for potential promotions. FRA can and does require that employees have the requisite training and qualification for the duties of their current positions. During discussions involving this concern, the Advisory Committee agreed that railroads should employ as universal an approach to training as possible. However, it might be inefficient and costly to train roadway workers for duties which they never perform, in anticipation of a potential promotion at some future date. FRA also believes that the suggested

cross-training would restrict a railroad's employment of new workers, especially entry-level employees. New employees would have to be trained and qualified for all functions, including the most complex and demanding, before performing any work near the track. FRA did not intend to require such a restriction.

#### *Emergency Procedures/Train Coordination*

Commenters suggested that a provision be added to the rule permitting roadway workers to perform their duties on the track, in an emergency, without establishing one of the prescribed forms of on-track safety. For example, if an ice storm has caused trees to fall across the track and into the signal and communication wires, roadway workers would accompany trains to remove the trees and reestablish communications. Under the proposed rule, the roadway workers would be unable to establish working limits because of the presence of the train and the inability to immediately communicate with the dispatcher. The Advisory Committee discussed this question at the July 12 meeting. Various members clearly stated their need for such a provision, as well as their concerns regarding potential problems associated with it. The Advisory Committee did not reach consensus on the question.

However, FRA has considered the concerns expressed by the Advisory Committee. FRA believes that a form of on-track safety can be arranged whereby a roadway worker or a roadway work group would be protected by the movement authority of a train. The method prescribed by FRA, termed Train Coordination, incorporates all the safeguards necessary to protect the roadway workers from train movements, and addresses the concerns of the commenters as well. FRA independently expanded the concept discussed in the comments and by the Advisory Committee. FRA believes that, rather than restricting this provision to emergency situations, it should be crafted for use in any situation, including cleaning snow out of switches for a specific train, handling materials with a work train, or repairing track at a derailment site. The underlying principle is that a roadway worker should be assured that a train will not arrive unexpectedly at a work location. The provision for Train coordination provides that assurance.

#### *Regulatory Impact*

FRA received written and oral comments focusing on economic aspects

of the NPRM and the regulatory impact analysis. All commenters were supportive of the safety initiatives required by the proposed regulation and acknowledge the requisite safety benefits derived from this rule. However, commenters were doubtful that an estimated \$174 million benefit derived from the estimated worker productivity increases would occur. In fact, some commenters felt that no productivity increase would result from the proposed rule. In addition, some commenters questioned the underlying assumptions and methodologies used to compile the regulatory impact analysis. One commenter suggested that FRA independently address the costs and benefits of this regulation for the commuter rail segment of the industry. In contrast to the skepticism communicated, one public hearing participant found the economic analysis to be valid.

FRA appreciates the responses about the potential economic impact of the rule. FRA continues to believe that its underlying methodology and assumptions are valid. These methods are consistently used by the agency and provide the foundation for virtually all regulatory impact analyses. One commenter disagreed with FRA's expectation that only two (2) minutes will be added to job briefings and further contended that costs for the job briefing will be more than two times the amount calculated by FRA. FRA continues to support its estimate of two minutes because it is based on sound economic reasoning. Many railroads currently conduct job briefings and as noted in the NPRM, the requirements of this regulation will structure time that is presently already allotted for job briefings. Small railroads with simpler operations will not require significant time to provide the method of on-track safety, provide instructions to be followed and receive acknowledgment and understanding. FRA was not persuaded to change its estimate regarding the additional time necessary to conduct the required job briefing, based on the comments submitted.

FRA did not find the concerns regarding potential productivity increases compelling. In particular, the argument that absolutely no productivity increases will occur was not extremely persuasive. However, FRA acknowledges the difficulty in quantifying these potential increases in productivity and believes that these benefits are more appropriately considered qualitative (non-quantified) benefits. FRA has modified the regulatory impact analysis so that the

analysis does not factor an estimate of the value of productivity increases into the total benefits numerical calculation. FRA remains confident that productivity increases will result from this rulemaking, but strongly believes in conjunction with labor and management that this rule is justified on the basis of safety benefits alone. Further detailed discussion of the Regulatory Impact Analysis can be found in the analysis itself and the Regulatory Impact section of the preamble.

#### *Penalty Schedule and Enforcement*

Although notice and comment is not required for statements of policy, FRA invited submission of views on the revision of Appendix A to Part 214.—Schedule of Civil Penalties to include penalties for violations of Supart C (61 FR 10541). No comments were submitted on the subject of enforcement in general or appropriate penalty amounts. FRA established a penalty schedule for issuance with this final rule without specific public input. Since no comments were submitted on the subject of enforcement generally, FRA believes that regulated public understand and expect that this rule will be enforced upon contractors and contractor employees, as well as railroads and railroad employees, in accordance with its normal exercise of enforcement authority detailed in Appendix A, 49 CFR Part 209.

In the interest of preserving the rationale for this rule in general, and the integrity of the negotiated rulemaking process in particular, FRA refers interested parties to the preamble of the NPRM for a complete understanding of the events resulting in this rule (61 FR 10528). The relevant safety issues, statistical data, and a synopsis of the Advisory Committee's report, recommended NPRM and FRA's deviations from that recommendation are set forth in great detail in the NPRM. The Advisory Committee indicated that the preamble of the NPRM accurately represented their intent and provided a succinct document detailing the important issues related to this rulemaking from the inception of this proceeding to the publication of the NPRM.

The final rule that follows reflects the culmination of FRA's first Negotiated Rulemaking. The rule incorporates the collective wisdom of various segments of the railroad industry, labor, including support and input from the NRC, FRA, State governmental entities, and the public. FRA received no overall opposition by any railroad or labor organization to the issuance of Roadway Worker protection rules. FRA has

asserted its independent judgement to adopt the proposal recommended by the Advisory Committee where sufficient and as noted earlier, in a limited number of instances enhance certain provisions where necessary. FRA believes that the positive input received from the contractors organization completes the process and the final rule issued below represents the consensus of the entire railroad industry.

#### *Section Analysis*

FRA amends Part 214 of Title 49, Code of Federal Regulations by adding a new subpart specifically devoted to the protection of employees from the hazards associated with working near moving trains and equipment.

##### *1. Application: § 214.3*

This subpart will apply to all railroads and contractors to railroads in the general system of railroad transportation, including commuter rail operations. Accordingly, existing section 214.3 will not change. This means that tourist and excursion railroads that are not part of the general system of railroad transportation will not be subject to these rules. The data illustrating the serious nature of the hazards addressed in this subpart did not include tourist and excursion railroads. FRA has not otherwise been notified that these hazards causing death and injury to roadway workers are a serious problem for tourist and excursion railroads or any other railroads not operating over the general system of railroad transportation. FRA extended an invitation for comments to the NPRM to tourist railroads, but received no comments to the docket. FRA therefore concludes that inclusion of tourist and excursion railroads that do not operate on the general system of railroad transportation is inappropriate at this time.

##### *2. Preemptive Effect: § 214.4*

Consistent with the mandate of 49 U.S.C. 20106 (formerly section 205 of the Federal Railroad Safety Act of 1970), Section 214.4 is added to this rule to indicate that states cannot adopt or continue in force laws related to the subject matter covered in this rule except where there is a local safety hazard consistent with this part involved, and where no undue burden on interstate commerce is imposed. FRA realizes that preemption determinations regarding any particular factual context are a matter for courts to resolve, but also believes that inclusion of this section provides a statement of agency intent and promotes national uniformity

of regulation in accordance with the statute.

##### *3. Definitions: § 214.7*

Section 214.7 will be amended to add new definitions. Several definitions are particularly important to the understanding of the rule, and are explained here. However, many other terms are defined and explained with the analysis of the rule text to which they apply.

*Effective securing device* is defined in this part as one means of preventing a manually operated switch or derail from being operated so as to present a hazard to roadway workers present on certain non-controlled tracks. This definition is specifically intended to include the use of special locks on switch and derail stands that will accommodate them, and switch point clamps that are properly secured. It also includes the use of a spike driven into the switch tie against the switch point firmly enough that it cannot be removed without proper tools, provided that the rules of the railroad prohibit the removal of the spike by employees not authorized to do so. Every effective securing device must be tagged. FRA will examine each railroad's on-track safety program to determine that the rules governing the securement of switches will provide the necessary level of protection.

*Lone workers* are defined in this part as roadway workers who are not being afforded on-track safety by another roadway worker, are not members of a roadway work group, and are not engaged in a common task with another roadway worker. Generally, a common task is one in which two or more roadway workers must coordinate and cooperate in order to accomplish the objective. Other considerations are whether the roadway workers are under one supervisor at the worksite; or whether the work of each roadway worker contributes to a single objective or result.

For instance, a foreman and five trackmen engaged in replacing a turnout would be engaged in a common task. A signal maintainer assigned to adjust the switch and replace wire connections in the same turnout at the same time as the track workers would be considered a member of the work group for the purposes of on-track safety. On the other hand, a bridge inspector working on the deck of a bridge while a signal maintainer happens to be replacing a signal lens on a nearby signal would not constitute a roadway work group just by virtue of their proximity. FRA does not intend that a common task may be subdivided into individual tasks to avoid the use of on-track safety

procedures required for roadway work groups.

*On-track safety* is defined as the state of freedom from the danger of being struck by a moving railroad train or other railroad equipment, provided by operating and safety rules that govern track occupancy by personnel, trains and on-track equipment. This term states the ultimate goal of this regulation, which is for workers to be safe from the hazards related to moving trains and equipment while working on or in close proximity to the track. The rule will require railroads to adopt comprehensive programs and rules to accomplish this objective. This rule, and required programs, will together produce a heightened awareness among railroad employees of these hazards and the methods necessary to reduce the related risks.

*Qualified* as used in the rule with regard to roadway workers implies no provision or requirement for Federal certification of persons who perform those functions.

*Roadway worker* is defined as any employee of a railroad, or of a contractor to a railroad, whose duties include inspection, construction, maintenance or repair of railroad track, bridges, roadway, signal and communication systems, electric traction systems, roadway facilities or roadway maintenance machinery on or near track or with the potential of fouling a track, and flagmen and watchmen/lookouts as defined in this rule.

Some railroad employees whose primary function is transportation, that is, the movement and protection of trains, will be directly involved with on-track safety as well. These employees would not necessarily be considered roadway workers in the rule. They must, of course, be capable of performing their functions correctly and safely.

The rule requires that the training and qualification for their primary function, under the railroad's program related to that function, will also include the means by which they will fulfill their responsibilities to roadway workers for on-track safety. For instance, a train dispatcher would not be considered a roadway worker, but would have to be capable of applying the railroad's operating rules to the establishment of working limits for roadway workers. Likewise, a conductor who protects a roadway maintenance machine, or who protects a contractor working on railroad property, would not be considered a roadway worker, but would receive training on functions related to on-track safety as part of the training and qualification of a conductor.

Employees of contractors to railroads are included in the definition if they perform duties on or near the track. They should be protected as well as employees of the railroad. The responsibility for on-track safety of employees will follow the employment relationship. Contractors are responsible for the on-track safety of their employees and any required training for their employees. FRA expects that railroads will require their contractors to adopt the on-track safety rules of the railroad upon which the contractor is working. Where contractors require specialized on-track safety rules for particular types of work, those rules must, of course, be compatible with the rules of the railroad upon which the work is being performed.

The rule does not include employers, or their employees, if they are not engaged by or under contract to a railroad. Personnel who might work near railroad tracks on projects for others, such as cable installation for a telephone company or bridge construction for a highway agency, come under the jurisdiction of other Federal agencies with regard to occupational safety.

The terms explained here are not exhaustive of the new definitions that will be added to Section 214.7. This introduction merely provides a sampling of the most important concepts of this proposed regulation. A number of defined terms are explained in the section by section analysis when analyzing the actual rule text to which they apply.

#### 4. Purpose and Scope: § 214.301

Section 214.301 states the purpose for the minimum standards required under this subpart to protect roadway workers. Railroads can adopt more stringent standards as long as they are consistent with this subpart.

#### 5. Information Collection Requirements: § 214.302

Section 214.302 details the information collection requirements of the rule and their OMB approval number.

#### 6. Railroad On-Track Safety Programs, Generally: § 214.303

Section 214.303 contains the general requirement that railroads shall adopt and implement their own program for on-track safety, which meets Federal minimum standards. Rather than implement a command and control rule, FRA decided to establish the parameters for such a program and defer to the expertise of each individual railroad to adopt a suitable on-track safety program

for their railroad, in accordance with these parameters. FRA felt that establishing an internal monitoring process to determine compliance and effectiveness would be a necessary component of any On-Track Safety Program. Consequently, each railroad must incorporate an internal monitoring process as a component of its individual program. It should be noted that this internal monitoring will not replace FRA's inspection and monitoring efforts for compliance with this subpart.

#### 7. Compliance Dates: § 214.305

Section 214.305 establishes the schedule for compliance with this rule. The dates vary by class of railroad. FRA believes that staggering effective dates allows the largest number of workers who are exposed to the highest level of risk to benefit from the On-Track Safety Program first. FRA hopes to be able to expedite the review process, as the smallest number of individual programs will be put in place by the major carriers. After this initial phase of reviews for Class I railroads, FRA will have established review policies and resolved many recurrent issues, making the larger number of reviews for smaller railroads more efficient. The experience gained through the initial phase of the review process will contribute to the next and larger phase of reviews. Although the rule formally establishes a later compliance date for smaller railroads, this would not prevent smaller railroads from implementing their programs sooner.

#### 8. Review and Approval of Individual On-Track Safety Programs by FRA: § 214.307

Section 214.307 specifies the process for review and approval of each railroad's on-track safety program by FRA. The intent of the review and approval is to be constructive rather than restrictive. FRA prefers that a review of each program take place at the railroad because an open discussion of the program would be beneficial to all concerned. The effective date of a railroad's program will not be delayed by FRA's scheduling of a review, or granting approval. The railroad will be responsible for compliance with this rule regardless of the status of FRA review or approval of its program.

Likewise, a railroad may amend its program following FRA's initial approval without prior approval of the amendment from FRA. Of course, should FRA later disapprove the amendment, the program would have to be changed to FRA's satisfaction. The railroad will still be responsible for compliance with this rule, and subject

to compliance monitoring and enforcement by FRA. FRA will make every effort, when requested, to provide a timely review of a program or amendment before its effective date, and to assist in any manner possible to enhance the on-track safety afforded to roadway workers.

Contractors will be required to conform to the on-track safety programs on the railroads upon which they are working. Contractors whose employees are working under a railroad's approved on-track safety program need not submit a separate on-track safety program to FRA for review and approval.

Some contractors operate highly specialized equipment on various railroads on a regular basis. That equipment might require special methods to provide on-track safety for railroad and contractor employees. Such a special method will require a clear and reasonable way to mesh with the on-track safety programs of the railroads upon which the equipment is operated.

The rule does not specifically call for the involvement of employees or their representatives in the program design or review process, because the responsibility for the program's compliance with this rule lies with the employer. However, it should be noted that this rule itself is the product of a successful proceeding in which management, employee representatives and the Federal government were fully involved from the beginning. That fact should be an encouragement to all concerned to realize that the success of an on-track safety program will require the willing cooperation of all persons whose duties or personal safety are affected by the program.

#### *9. On-Track Safety Program Documents: § 214.309*

Section 214.309 specifies the type of on-track safety manual each railroad must have. Essentially, the railroad must have all on-track safety rules in one place, easily accessible to roadway workers. This provision is intended to provide the roadway worker with a single resource to consult for on-track safety, to avoid fragmentation of the rules and the ultimate dilution of their vital message.

All on-track safety rules could be placed together as an on-track safety section of an already existent manual. FRA is aware that many railroads use a binder system for railroad manuals. Adding a section to such a binder might be less burdensome than creating a separate manual, and would clearly comply with this provision.

An employer, such as a contractor, whose roadway workers work on

another employer's railroad, will usually adopt and issue the on-track safety manual of that railroad for use by their employees. It will be the employer's responsibility to provide the manual to its employees who are required to have it and to know that each of its employees is knowledgeable about its contents.

This section also sets forth the responsibility of the employer to provide this manual to all employees who are responsible for the on-track safety of others, and those who are responsible for their own on-track safety as lone workers. Workers who are responsible for the protection of others must have the manual at the work site for easy reference. Lone workers must also have this manual easily available to them. FRA does not intend that the individual must necessarily have this manual on his or her person while performing work, but to have it available and readily accessible at the work site.

FRA also does not intend that all related operating rules, timetables or special instructions must be reproduced in this manual. Any related publications or documents should be cross-referenced in the On-Track Safety Manual and provided to employees whose duties require them.

Lastly, the manual must be at the work site available for reference by all roadway workers. Many roadway workers will not be responsible for providing protection for themselves or others, but still must comply with the rules. All employees have a responsibility to remain at a safe distance from the track unless they are assured that adequate protection is provided. Although not responsible for providing protection for others, they must be familiar with the rules to determine whether adequate protection is provided and have the rules readily available if it is necessary to consult them.

#### *10. Responsibility of Employers: § 214.311*

Section 214.311 addresses the employer's responsibility in this rule. This section applies to all employers of roadway workers. Employers may be railroads, contractors to railroads, or railroads whose employees are working on other railroads. Although most on-track safety programs will be implemented by railroads rather than contractors, both are employers and as such each is responsible to its employees to provide them with the means of achieving on-track safety.

Railroads are specifically required by § 214.303 to implement their own on-

track safety programs. Section 214.311 however, places responsibility with all employers (whether they are railroads or contractors) to see that employees are trained and supervised to work with the on-track safety rules in effect at the work site. The actual training and supervision of contractor employees might be undertaken by the operating railroad, but the responsibility to see that it is done rests with the employer.

The guarantee required in paragraph (b) of an employee's absolute right to challenge on-track safety rules compliance will be a required part of each railroad's on-track safety program, as will be the process for resolution of such challenges. On-track safety depends upon the faithful and intelligent discharge of duty by all persons who protect or are protected by it. Any roadway worker who is in doubt concerning the on-track safety provisions being applied at the job location should resolve that uncertainty immediately.

The term *at the job location* is not meant to restrict who can raise an issue or where an issue can be raised. Rather, the challenge must address the on-track safety procedures being applied at a particular job location.

A fundamental principle of on-track safety is that a roadway worker who is not entirely certain that it is safe to be on the track should not be there. A discrepancy might be critical to the safety of others, and the first roadway worker who detects it should take the necessary action to provide for the safety of all.

The Advisory Committee used the term *No-Fault Right* in its report to describe the absolute right of each employee to challenge, without censure, punishment, harm or loss, the on-track safety compliance expressed in paragraph (b) of this section. A challenge must be made in good faith in order to fall within the purview of this rule. A good faith challenge would trigger the resolution process called for in paragraph (c).

The written process to resolve challenges found in paragraph (c) is intended to provide a prompt and equitable resolution of these concerns. This is necessary in order that any problems that arise regarding on-track safety should be resolved and that any possible lapses in safety be quickly corrected.

The resolution process should include provisions to permit determination by all parties as to the safe, effective application of the on-track safety rule(s) being challenged at the lowest level possible, and for successive levels of review in the event of inability to

resolve a concern at lower levels. FRA believes it best for employers, consulting with employees and their representatives where applicable, to write effective processes to accomplish these objectives.

A railroad's on-track safety program will be reviewed and approved in accordance with section 214.307(b). FRA will consider this written process during its review and approval of the overall on-track safety submission. FRA will consider whether the written processes afford a prompt and equitable resolution to concerns asserted in good faith and their effectiveness in promoting the intelligent, reasoned application of the on-track safety principles.

#### *11. Responsibility of Individual Roadway Workers: § 214.313*

Section 214.313 addresses the individual responsibility of each roadway worker. Each roadway worker has a responsibility to comply with this subpart which is enforceable under the provisions of individual liability. FRA has a statement of Enforcement Policy set forth in Appendix A to Part 209 that explains the way in which FRA employs its enforcement powers. FRA's concerns regarding individual liability are willful violations, which are intentional actions, or grossly negligent behavior. Paragraph (a) requires that each roadway worker follow the railroad's on-track safety rules. Paragraph (b) prohibits roadway workers from fouling a track unnecessarily. It is FRA's opinion, as well as that of the Advisory Committee, that roadway workers should under no circumstances foul a track unless it is necessary to accomplish their duties.

A reference to the definition of fouling a track is useful to understand when protection is required. Fouling a track describes the circumstance in which a person is in danger of being struck by a moving train. Under paragraphs (c) and (d), each roadway worker has the responsibility to know that on-track safety is being provided before actually fouling a track, and to remain clear of the track and inform the employer when the required level of protection is not provided. If a roadway worker is not sure that sufficient on-track safety is being provided, he or she can satisfy paragraph (c) by simply not fouling the track.

It is a roadway worker's responsibility to advise the employer of exceptions taken to the application of a railroad's rules, or provisions of this subpart, in accordance with paragraph (d). Employees must approach this responsibility in good faith. Essentially

an employee must have honest concerns whether the on-track safety procedures being used provide the necessary level of safety in accordance with the rules of the operating railroad. Furthermore, employees must be able to articulate those concerns in order to invoke the resolution process of the railroad. Initiating an action under the resolution process, absent a good faith concern regarding the on-track safety procedures being applied, would not be in compliance with this subpart.

#### *12. Supervision and Communication: § 214.315*

Section 214.315 details supervision and communication of on-track safety methods prior to working. Employees must be notified and acknowledge understanding of the on-track safety methods they are to use, prior to commencing duties on or near the track. Paragraphs (a) and (b) establish the duty of notification by the employer and the reciprocal duty of communicating acknowledgment by the employee. These sections essentially require a job briefing to inform all concerned of on-track safety methods at the beginning of each work period. The acknowledgment is an indication by the employee of understanding, or the opportunity to request explanation of any issues that are not understood.

Paragraph (c) requires that an employer designate at least one roadway worker to provide on-track safety while a group is working together. This designation can either be for a specific job or for a particular work situation. This section is vital to the success of any on-track safety program because the mere presence of two or more persons together can be distracting for all persons involved. FRA believes that awareness will be enhanced and confusion limited by requiring railroads to formally designate a responsible person. This designation must be clearly understood by all group members in order to be effective. An individual, such as a foreman, may generally be designated to be responsible for his or her group, but if two groups are working together or roadway workers of different crafts are assisting one another, it is imperative that this formal designation be communicated to and understood by all affected employees.

Paragraph (d) explains the duties of the roadway worker designated to provide on-track safety for the work group. Before roadway workers foul a track, the designated person must inform each roadway worker in the group of the on-track safety methods to be used at that time and location, including all necessary details

associated with the specific form of on-track safety that will be used. Essentially, the designated person must conduct an on-track safety briefing prior to the beginning of work on or near the track. This briefing might also fulfill the requirements of paragraph (a) of this section.

Before changing on-track safety methods during a work period, the designated roadway worker must again inform the group of the new methods to be used for their safety. If, for example, roadway workers are working on a track within working limits when the on-track safety method changes to train approach warning, all roadway workers fouling the track must first be informed that trains might approach on that track, and that they will be warned of the approaching train by watchmen/lookouts. They must also know that they can no longer depend on that track as a place of safety when a train approaches.

This provision also establishes methods to be used in the face of unforeseen circumstances. In these emergency situations, where notification of a change in methods cannot be accomplished, an immediate warning to leave the fouling space and not return until on-track safety is reestablished is required.

Paragraph (e) addresses the lone worker. The lone worker must also have a job briefing before fouling the track. This briefing will be slightly different, since the lone worker is not working under direct supervision. At the beginning of the duty period, and prior to fouling the track, the lone worker must communicate with a supervisor or another designated employee to advise of his itinerary and the means by which he or she plans to protect himself. This briefing should include his geographical location, approximate period of time he or she is expected to be in this general locality, different locations planned for the day, and the planned method of protection. This paragraph assumes that in accordance with other sections, the lone worker is capable of determining the proper means to achieve his or her own on-track safety.

This paragraph also provides for emergencies in which the channels of communication are disabled. In those cases, the briefing must be conducted as soon as possible after communication is restored. An interruption in communication does not prevent the lone worker from commencing work. However, since the lone worker will not have described his or her itinerary and the on-track safety methods to be used in this location to another qualified employee, he or she must do all that is

necessary to maintain the requisite awareness of his surroundings.

**13. On-track Safety Procedures, Generally: § 214.317**

Section 214.317 refers to the following sections 214.319 through 214.337 that prescribe several different types of procedures that may be used to achieve on-track safety. It requires employers to adopt one or more of these types of procedures whenever employees foul a track.

The definition of fouling a track includes a minimum distance limit of four feet from the field, or outer, side of the running rail nearest to the roadway worker. A person could be outside that distance and still be fouling the track under this rule if the person's expected or potential activities or surroundings could cause movement into the space that would be occupied by a train, or if components of a moving train could extend outside the four-foot zone.

Railroad equipment is commonly 10 feet 8 inches wide. Standard track gauge is 4 feet 8½ inches but when adding the nominal width of the rail, the rail spacing can be taken as 5 feet 0 inches for the purposes of this rule. The fouling space would therefore be 13 feet wide (5+4+4 feet).

One exception to the four-foot minimum distance is found in paragraph § 214.339(c) (Roadway maintenance machines) and is discussed in the analysis of that section.

The report of the Advisory Committee includes the statement that "The provisions of restricted speed do not solely provide protection for track equipment, or roadway workers, performing maintenance." The rule does not recognize restricted speed as a sole means of providing on-track safety.

The Advisory Committee also found, and FRA agrees, that although the definitions of "restricted speed" found in this rule and in use throughout the railroad industry provide adequate separation between trains and on-track machines in a traveling mode, a blanket provision that would rely upon restricted speed to protect persons working while fouling the track would not be effective. Individual locations at which unusual circumstances could result in sufficient protection for roadway workers from trains moving at restricted speed would be addressed by FRA through the waiver process.

**14. Working Limits, Generally: § 214.319**

Section 214.319 prescribes the general requirements for the establishment of working limits. A reference to the definition of Working Limits is helpful to the understanding of this section.

*Working limits* is an on-track safety measure which when established eliminates the risk of being struck by trains. Several methods of establishing working limits are found in this subpart. Those methods are distinguished by the method by which trains are authorized to move on a track segment, the physical characteristics of the track, and the operating rules of the railroad.

Paragraphs (a) and (b) specifically refer to the roadway worker who is given control over working limits. These requirements assure that the roadway worker has the requisite knowledge and training, and prevent confusion by giving control to only one qualified roadway worker.

Paragraph (c) addresses the procedure when working limits are released. It requires that all affected roadway workers be notified before trains will begin moving over the affected track. They must be either away from the track, or provided with another form of on-track safety.

An example is a work group using a crane to replace rail. Rails are removed from the track, the crane is on the track, and on-track safety is provided by the establishment of working limits. When the rails have been replaced, the crane moves out of the working limits onto another track, the roadway worker in charge stations watchmen/lookouts to provide train approach warning and notifies all the roadway workers at the work site that train approach warning is now in effect and the working limits are to be released. The roadway worker in charge then releases the working limits to the train dispatcher to permit the movement of trains. The roadway workers at the work site continue to work with hand tools while on-track safety is provided by the watchmen/lookouts.

**15. Exclusive Track Occupancy: § 214.321**

Section 214.321 prescribes working limits on controlled track as one form of on-track safety allowed in accordance with the provisions of this subpart. Reference to the definitions of Controlled Track and Exclusive Track Occupancy are helpful to the understanding of this section.

*Controlled track* is track on which trains may not move without authorization from a train dispatcher or a control operator. On most railroads, trains move on main tracks outside of yard limits, and through interlockings, only when specifically authorized by a train dispatcher or control operator. This authorization might take the form of an indication conveyed by a fixed signal, or a movement authority

transmitted in writing, orally, or by digital means. Such track would conform to the definition of controlled track.

Some railroads extend the control of a train dispatcher to main tracks within yard limits. This control is exercised by requiring the crew of every train and engine to obtain a track warrant specifying the limits of the territory in which the crew may operate. The track warrant lists all restrictions that are in effect within the limits specified, including any working limits established to protect roadway workers or train movements. The working limits are delineated by flags as specified in section 214.321(c)(5). Track from which trains can be effectively withheld by such a procedure would conform to the definition of controlled track.

*Exclusive track occupancy* is the means prescribed in this section to establish working limits on controlled track. The procedures associated in this section with exclusive track occupancy are intended to assure that unauthorized train movements will not occur within working limits established by exclusive track occupancy.

This section addresses controlled track, as it is the type of track upon which exclusive track occupancy can be established by the dispatcher or control operator. By virtue of their authority to control train movements on a segment of controlled track, a dispatcher or control operator can also hold trains clear of that segment by withholding movement authority from all trains. The procedure depends upon communication of precise information between the train dispatcher or control operator, the roadway worker in charge of the working limits, and the crews of affected trains. This section is intended to prescribe that level of precision.

Paragraph (a) requires that authority for exclusive track occupancy may only be granted by the train dispatcher or control operator who has control of that track to a roadway worker who has been trained and designated to hold such an authority. No other person may be in control of the same track at the same time.

Paragraph (b) and corresponding subparagraphs prescribe the methods for transferring the authority for exclusive track occupancy to the roadway worker with the requisite level of accuracy.

Paragraphs (c) and corresponding subparagraphs prescribe physical markers or features that may be used to indicate the extent of working limits established under this paragraph with the requisite level of precision. Flagmen are included as a valid means of establishing exclusive track occupancy

because they are effective, and they might be the only means available on short notice or at certain locations.

**16. Foul Time: § 214.323**

Section 214.323 prescribes another form of on-track safety involving the establishment of working limits through exclusive track occupancy. This method of protection is called foul time and is only authorized for use on controlled track. The definition of foul time should be referenced for a complete understanding of this concept. Foul time requires oral or written notification by the train dispatcher or control operator to the responsible roadway worker that no trains will be operating within a specific segment of track during a specific time period. The steps to obtain foul time are detailed in this section. Once foul time is given, a dispatcher or control operator may not permit the movement of trains onto the protected track segment until the responsible roadway worker reports clear.

**17. Train Coordination: § 214.325**

This section provides procedures for establishing working limits using the train itself and the exclusive authority the train holds on a segment of track as a method of on-track safety. This method could be used during an unforeseen circumstance or at any other time the railroad deems appropriate and authorizes its use in their respective program.

**18. Inaccessible Track: § 214.327**

Section 214.327 requires that working limits on non-controlled track be established by rendering the track physically inaccessible to trains and equipment. A reference to the definitions of non-controlled track and inaccessible track is useful to the understanding of this section. Trains and equipment can operate on non-controlled track without having first received specific authority to do so. Trains and equipment cannot be held clear of non-controlled track by simply withholding their movement authority. The roadway worker in charge of the working limits must therefore render non-controlled track within working limits physically inaccessible to trains and equipment, other than those operating under the authority of that roadway worker, by using one or more of the provisions of this section.

Typical examples of non-controlled track to which this section would apply include main tracks within yard limits where trains are authorized by an operating rule to move without further specific authority, yard tracks, and

industrial side tracks. Paragraph (a) and corresponding subparagraphs detail the physical features that may be used to block access to non-controlled track within working limits.

Paragraph (b) provides the restrictions under which trains and roadway maintenance machines will be allowed to operate within working limits. The intent is that the roadway worker in charge will be able to communicate with a train while it is within the working limits, and to control its movement to prevent conflicts between trains, machines and roadway workers.

The requirement that trains move at restricted speed in working limits unless otherwise authorized by the roadway worker in charge is intended as a fail-safe provision to afford the highest level of safety in the absence of authority for higher speed. FRA does not contemplate, nor would it condone, a situation in which a roadway worker could authorize a higher speed for a train than would be otherwise permitted by the operating rules and instructions of the railroad. Paragraph (c) merely prohibits other locomotives from being within these established working limits.

**19. Train Approach Warning Provided by Watchmen/lookouts: § 214.329**

Section 214.329 establishes the procedures for on track safety of groups that utilize train approach warning. A reference to the definition of train approach warning would be useful to the understanding of this section. Section 214.329 specifies the circumstances and the manner in which roadway work groups may use this method of on-track safety. Prescribed here is the minimum amount of time for roadway workers to retreat to a previously arranged place of safety (usually designated during job briefing), the duties of the watchman/lookout and the fundamental characteristics of train approach warning communication.

This section further imposes a duty upon the employer to provide the watchman/lookout employee with the requisite equipment necessary to carry out his on-track safety duties. It is intended that a railroad's on-track safety program would specify the means to be used by watchmen/lookouts to communicate a warning, and that they be equipped according to that provision.

The rule does not include a provision for train approach warning by any means other than the use of watchmen/lookouts. FRA is not aware of any other means of effectively performing this function with the requisite reliability, and will not place requirements for an untried system in this rule. However, the Advisory Committee report states

that "FRA will incorporate a near-term time-specific requirement to utilize on-track personal warning systems for roadway workers working alone under any conditions not requiring positive protection." FRA realizes that the technological advancements incorporated in ATCS, PTC or PTS might in the future provide another method of establishing on-track safety in compliance with this subpart. Although such technology is not specifically provided for in the current rule, opportunities to employ advancements in this area will be handled pursuant to the waiver process. FRA will therefore be most interested in knowing when such systems are developed, tested, and proven reliable.

**20. Definite Train Location: § 214.331**

Section 214.331 describes a system of on-track safety which provides roadway workers with information as to the earliest times at which trains may leave certain stations, having been restricted at those stations by the train dispatcher or control operator. This form of on-track safety is called *Definite Train Location*. A reference to its definition is helpful to distinguish it from an *informational lineup of trains*, which is addressed in § 214.333.

Paragraph (a) limits the use of definite train location for on-track safety by Class I railroads and Commuter railroads to track where such a system was already in use on the effective date of this rule.

Paragraph (b) requires that a Class I railroad or commuter railroad using definite train location system must phase its use out according to a schedule submitted to FRA with that railroad's on-track safety program.

Paragraph (c) establishes that definite train location can be used on certain subdivisions owned by railroads other than Class I and Commuter railroads under certain specified conditions. These conditions include whether the system was in use before the effective date of this rule, or whether the subdivision has railroad traffic density below certain levels specified in that section during periods when roadway workers are normally on and about the track. Advisory Committee members felt that the amount and frequency of the traffic on a particular track dictated whether this form of on-track safety was feasible. FRA therefore proposes to incorporate this factor into the rule to allow some short lines and regional railroads to utilize this system.

Paragraph (d) and corresponding subparagraphs (1) through (7) set forth the requirements for a definite train location system and the qualifications

that a roadway worker must have before using this system as a form of on-track safety.

**21. Informational Line-ups of Trains: § 214.333**

Section 214.333 specifies conditions for the use of *informational line-ups of trains*. Some railroads have used a form of informational line-ups to provide on-track safety for roadway workers for many years. Such a procedure requires the roadway worker to have a full understanding of the particular procedure in use, and the physical characteristics of the territory in which they are working. The Advisory Committee addressed this issue with the following specific recommendation:

The Committee realizes that line-ups are being used less as a form of protection in the industry and recommends that line-up use be further reduced, eventually discontinued and replaced with Positive Protection as quickly as feasible, grandfathering line-up systems presently in use. \* \* \*

Line-ups as used in this section differ from lists of trains in § 214.331 in that line-ups need not include definite restriction as to the earliest times at which trains may depart stations. FRA therefore follows the Advisory Committee recommendation by allowing railroads presently using line-ups to continue doing so under conditions presently in effect, provided that their on-track safety programs that are reviewed and approved by FRA contain adequate provisions for safety, and a definite date for completion of phase-out.

**22. On-track Safety Procedures for Roadway Work Groups: § 214.335**

Section 214.335 specifies requirements for on-track safety to be provided for roadway work groups. Other sections of the regulation discuss matters affecting the group such as the different types of on-track safety protection available to a group and the job briefing necessary for a group, but this section prescribes what procedures are required to fully comply with this subpart. The definition of roadway work group enables the distinction between general methods of providing on-track safety for groups and for individuals working alone. Examples of roadway work groups are a large or small track gang, a pair of signal maintainers, a welder and welder helper, and a survey party.

Paragraph (a) indicates that employers shall not require or permit roadway work groups to foul a track unless they have established on-track safety through working limits, train approach warning, or definite train location.

The reciprocal responsibility for the roadway worker is expressed in Paragraph (b). He or she should not foul a track without having been informed by the roadway worker in charge that on-track safety is being provided.

The concept of protecting roadway workers from the hazards of trains and other on-track equipment on adjacent tracks is also important in this rule. A reference to the definition of adjacent tracks will clarify the meaning of paragraph (c) which details the conditions under which train approach warning must be used on adjacent tracks that are not within working limits. These are conditions in which the risk of distraction is significant, and which require measures to provide on-track safety on adjacent tracks.

The principle behind the reference to large scale maintenance or construction is the potential for distraction, or the possibility that a roadway worker or roadway maintenance machine might foul the adjacent track and be struck by an approaching or passing train. This issue was addressed in the report of the Advisory Committee with the recommendation:

Before performing any work that requires Fouling the track or Adjacent Track(s) Positive Protection must be obtained and verified to be in effect by the roadway worker assigned responsibility for the work. Large scale track maintenance and/or renovations, such as but not limited to, rail and tie gangs, production in-track welding, ballast distribution, and undercutting, must have Positive Protection on Adjacent Tracks as well.

FRA will consider the provisions made for this situation when reviewing each railroad's on-track safety program.

The spacing of less than 25 feet between track centers, which defines *adjacent tracks* for the purpose of this rule, represents a consensus decision of the Advisory Committee. Several railroads have recently extended their lateral track spacing to 25 feet. Tracks spaced at that distance may not cause a hazard to employees in one track from trains and equipment moving on the other track. FRA believes that no purpose would be served by requiring these tracks to be again spaced at a slightly greater distance. Therefore, tracks spaced at 25 feet are not defined as adjacent tracks, but tracks spaced at a lesser distance will be so defined. Tracks that converge or cross will be considered as adjacent tracks in the zone through which their centers are less than 25 feet apart.

As a practical matter, FRA will apply a rule of reason to the precision used in measuring track centers, so that minor alignment deviations within the limits

of the Federal Track Safety Standards (49 CFR 213) would not themselves place such short segments of track within the definition of adjacent tracks.

**23. On-track Safety Procedures for Lone Workers: § 214.337**

Section 214.337 establishes specific on-track safety procedures for the lone worker. Paragraph (a) sets forth the general requirement that restricts the use of individual train detection to circumstances prescribed in this section and the corresponding on-track safety program of the railroad.

Paragraph (b) represents the clear consensus of the Advisory Committee that a decision to not use individual train detection should rest solely with the lone worker, and may not be reversed by any other person. On the other hand, improper use of individual train detection where this rule or the on-track safety program of the railroad prohibit it would be subject to review. This provision was stated by the Advisory Committee as part of its Specific Recommendation 3, which part reads, "All roadway workers have the absolute right to obtain positive protection at any time and under any circumstances if they deem it necessary, or to be clear of the track if adequate protection is not provided."

Paragraph (c) establishes a method of on-track safety for the lone worker, in which the roadway worker is capable of visually detecting the approach of a train and moving to a previously determined location of safety at least 15 seconds before the train arrives. A reference to the definition of individual train detection is useful to understand this concept.

It is important to note that the Advisory Committee decided that the use of individual train detection is appropriate only in limited circumstances. FRA has therefore drafted this section to prescribe strictly limited circumstances in which an individual may foul a track outside of working limits while definitely able to detect the approach of a train or other on-track equipment in ample time to move to a place of safety. This safety method requires the lone worker to be in a state of heightened awareness, since no other protection system will be in place to prevent one from being struck by a train or other on-track equipment. The corresponding subparagraphs to paragraph (c) provide detailed requirements for the use of this form of on-track safety.

Paragraph (f) prescribes the concept of a written Statement of On-track safety, prepared by the lone roadway worker. The reasoning behind this requirement

is to assist the roadway worker in focusing on the nature of the task, the risks associated with the task, and the form of on-track safety necessary to safely carry out assigned duties.

*24. Audible Warning from Trains:  
§ 214.339*

Section 214.339 requires audible warning from locomotives before trains approach roadway workers. The implementation of this requirement will necessitate railroad rules regarding notification to trains that roadway workers are on or about the track. This notification could take the form of portable whistle posts, train movement authorities, or highly visible clothing to identify roadway workers and increase their visibility. This section is not optional for a railroad, and FRA intends that this provision covers the same subject matter as that of any state or local restrictions on the sounding of locomotive whistles.

*25. Roadway Maintenance Machines:  
§ 214.341*

Section 214.341 addresses specific issues concerning roadway maintenance machines that need to be included in individual railroad program submissions. FRA decided to address the hazards associated with these machines separately from those associated with trains, as the nature of the hazard is different. Referencing the definition of this term is a good place to start to understand this section. Roadway maintenance machines are devices, the characteristics or use of which are unique to the railroad environment. The term includes both on-track and off-track machines. A roadway maintenance machine need not have a position for the operator on the machine nor need it have an operator at all; it could operate automatically, or semi-automatically.

This provision excludes hand-powered devices in order to distinguish between hand tools which are essentially portable, and devices which either are larger, move faster, or produce more noise than hand tools. Hand-held power tools are not included in the definition, but because of the noise they produce, and because of the attention that must be paid to their safe operation they are addressed specifically in § 214.337, On-track safety for lone workers.

Examples of devices covered by this section include, but are not limited to, crawler and wheel tractors operated near railroad tracks, track motor cars, ballast regulators, self-propelled tampers, hand-carried tampers with remote power units, powered cranes of

all types, highway-rail cars and trucks while on or near tracks, snow plows-self propelled and pushed by locomotives, spreader-ditcher cars, locomotive cranes, electric welders, electric generators, air compressors—on-track and off-track.

Roadway maintenance machines have a wide variety of configurations and characteristics, and new types are being developed regularly. Each type presents unique hazards and necessitates unique accident prevention measures. Despite the wide diversity of the subject matter, FRA attempted to provide some guidance for the establishment of on-track safety when using roadway maintenance machines.

FRA believes that it is most effective to promulgate a general requirement for on-track safety around roadway maintenance machines, and require that the details be provided by railroad management, conferring with their employees, and industry suppliers. Several railroads have adopted comprehensive rules that accommodate present and future machine types, as well as their own operating requirements. FRA has seen the text of such rules, as well as witnessed their application and believes that they can set examples for other railroads. The requirement for issuance of on-track safety procedures for various types of roadway maintenance machines may be met by general procedures that apply to a group of various machines, supplemented wherever necessary by any specific requirements associated with particular types or models of machines.

*26. Training and Qualification, General:  
§ 214.343*

Section 214.343 requires that each roadway worker be given on-track safety training once every calendar year. Adequate training is integral to any safety program. Hazards exist along a railroad, not all of which are obvious through the application of common sense without experience or training. An employee who has not been trained to protect against those hazards presents a significant risk to both himself or herself and others.

Roadway workers can be qualified to perform various duties, based on their training and demonstrated knowledge. Training will vary depending on the designation of a roadway worker. Furthermore, roadway workers should generally know the designations of others in their group, so that proper on-track safety protection arrangements can be made. Written or electronic records must be kept of these qualifications,

available for inspection and photocopying by the Administrator.

The term "demonstrated proficiency" is used in this and other sections relative to employee qualification in a broad sense to mean that the employee being qualified would show to the employer sufficient understanding of the subject that the employee can perform the duties for which qualification is conferred in a safe manner. Proficiency may be demonstrated by successful completion of a written or oral examination, an interactive training program using a computer, a practical demonstration of understanding and ability, or an appropriate combination of these in accordance with the requirements of this subpart.

*27. Training for All Roadway Workers:  
§ 214.345*

Section 214.345 represents the basic level of training required of all roadway workers who work around moving railroad trains and on-track equipment. All persons subject to this rule must have this training. This basic level of training is required in addition to any specialized training required for particular functions called for in §§ 214.347 through 214.355. Any testing required to demonstrate qualification need not be written, because the requirements can be fulfilled by a practical demonstration of ability and understanding.

*28. Training and Qualification for Lone Workers: § 214.347*

Section 214.347 requires a higher degree of qualification, as the lone worker is fully responsible for his or her own protection.

*29. Training and Qualification of Watchmen/Lookouts: § 214.349*

Section 214.349 details the standards for qualification of a lookout, who by definition is responsible for the protection of others. The definition of watchman/lookout is useful to understand the functions of roadway workers discussed in this section. Watchmen/lookouts must be able to perform the proper actions in the most timely manner without any chance of error in order to provide proper protection for those who are placed in their care.

*30. Training and Qualification of Flagmen: § 214.351*

Section 214.351 requires that flagmen be qualified on the operating rules of the railroad on which they are working. Referencing the definition of flagman would be useful to identify the class of

roadway workers discussed in this section. Generally, flagmen are already required to be qualified on the operating rules that apply to their work. Flagging is an exacting procedure, and a flagman must be ready to act properly at all times in order to provide proper protection for those under his care. The distinction between flagmen and watchmen/lookouts should be noted, in that flagmen function to restrict or stop the movement of trains, while watchmen/lookouts detect the approach of trains and provide warning thereof to other roadway workers.

*31. Training and Qualification of Roadway Workers Who Provide On-Track Safety for Roadway Work Groups: § 214.353*

Section 214.353 details training standards applicable to the roadway worker who is qualified to provide on-track safety for roadway work groups. This roadway worker has the most critical responsibilities under this subpart. This individual must be able to apply the proper on-track safety rules and procedures in various circumstances, to communicate with other railroad employees regarding on-track safety procedures, and to supervise other roadway workers in the performance of their on-track safety responsibilities.

This section is unique in this subpart in requiring a recorded examination as part of the qualification process. This requirement reflects the additional responsibility of this position. The recorded examination might be written, or it might be, for example, a computer file with the results of an interactive training course.

*32. Training and Qualification in On-Track Safety for Operators of Roadway Maintenance Machines: § 214.355*

Section 214.355 requires training for those roadway workers operating roadway maintenance machines. As noted earlier, there is a wide variety of equipment requiring specific knowledge. However, FRA determined that establishing minimum qualifications closely associated with the type of machine to be operated, and the circumstances and conditions under which it is to be operated, was necessary.

*33. Appendix A: Penalty Schedule*

The revision to Appendix A includes a penalty schedule which establishes civil penalty amounts that for assessment when specific provisions of this subpart are violated. This penalty schedule constitutes a statement of FRA enforcement policy.

**Environmental Impact**

FRA has evaluated these regulations in accordance with its procedures for ensuring full consideration of the potential environmental impacts of FRA actions, as required by the National Environmental Policy Act (42 U.S.C. 4321 et seq.) and related directives. These regulations meet the criteria that establish this as a non-major action for environmental purposes.

**Regulatory Impact**

*Executive Order 12866 and DOT Regulatory Policies and Procedures*

This rule has been evaluated in accordance with existing policies and procedures. It is considered to be significant under both Executive Order 12866 and DOT policies and procedures (44 FR 11034; February 26, 1979). FRA has prepared and placed in the docket a regulatory analysis addressing the economic impact of the rule. Document inspection and copying facilities are available at 1120 Vermont Avenue, 7th Floor, Washington, D.C. Photocopies may also be obtained by submitting a written request to the FRA Docket Clerk at Office of Chief Counsel, Federal Railroad Administration, 400 Seventh Street, S.W., Room 8201, Washington, D.C. 20590.

Consistent with the mandate of Executive Order 12866 for regulatory reform, FRA conducted a Negotiated Rulemaking which provided the basis for the proposed and final rules. This collaborative effort included representatives from the railroad industry and railroad labor, along with an agency representative as members on a Federal Advisory Committee. This Advisory Committee held several negotiation sessions throughout the past year to reach consensus on the concepts that this proposed rule would embody. As envisioned by regulatory reform, public participation was encouraged by holding open Advisory Committee meetings. This negotiated Rulemaking's success has clearly met many of the objectives highlighted in this Executive Order.

As part of the regulatory impact analysis the FRA has assessed quantitative measurements of costs and benefits expected from the adoption of the final rule. Over a ten year period, the NPV of the estimated quantifiable societal benefits is \$88.1 million, and the NPV of the estimated societal quantified costs is \$228.63 million.

The NPV of major benefits anticipated from adopting the final rule include:

- \$11.9 million from averted roadway worker injuries; and

- \$62 million from averted roadway workers fatalities (a statistical estimation of 32.6 lives saved).

The NPV of major costs (including estimated paperwork burdens) over the ten year period expected to accrue from adopting the final rule include:

- \$26 million for additional dispatching resources;
- \$47 million for watchmen/lookouts;
- \$22 million for other forms of positive protection;
- \$63 million for job briefings; and
- \$53 million for the various types of roadway training.

Additionally, FRA anticipates other qualitative benefits accruing from the final rule which are not factored into the quantified cost analysis that could be significant. These non-quantified benefits include potential worker productivity increases, a possible increase in the capacity or volume of some rail lines, and an improved employee morale.

FRA's quantified cost estimate includes time allotted for daily job briefings. Many railroads currently conduct job briefings and others have allotted the time for such briefings. FRA contends that the rule will structure time already allotted or spent in job briefings. Although FRA considered this 2 minute briefing a cost and included it within the quantified cost calculations, it is conceivable that structuring the existing job briefing time actually imposes very little additional cost. The job briefing requirement essentially mandates the specific information to be communicated during briefings that would be held, even in the absence of this rule.

FRA's regulatory impact analysis finds the final rule to be cost justified based on the values associated with the safety benefits, and the additional qualitative benefits identified. The recommendation of the Roadway Worker Federal Advisory Committee that FRA adopt this rule reflects the consensus of the rail labor and management representatives on the committee that the final rule is beneficial.

**Federalism Implications**

This rule has been analyzed in accordance with the principles of Executive Order 12612 ("Federalism"). As noted previously, there are potential preemption issues resulting from a provision of this rule, requiring audible warning before entering work sites. Various States and local authorities have "whistle bans" preventing railroads from sounding whistles or ringing locomotive bells while operating through those communities. FRA

acknowledges an impact on scattered States and localities throughout the country, depending on the time of day and the frequency with which track maintenance occurs. However, these measures are necessary to protect roadway workers from possible death and injury. Sufficient Federalism implications have been identified to warrant the preparation of a Federalism Assessment and it has been placed in the docket. Document inspection and copying facilities are located at 1120 Vermont Avenue, 7th Floor, Washington, D.C. Photocopies may also be obtained by submitting written requests to the FRA Docket Clerk at Office of Chief Counsel, Federal Railroad Administration, 400 Seventh Street, S.W., Room 8201, Washington, D.C. 20590.

**Regulatory Flexibility Act**

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 et seq.) requires a review of final rules to assess their impact on small entities. FRA's assessment on small entities can be found in Appendix B of the final rule's Regulatory Impact Analysis, located in the docket. After consultation with the Office of Advocacy, Small Business Administration (SBA), FRA made the determination to use the Surface Transportation Board's (STB) classification of Class III railroads as representing small entities. This is a revenue based classification where Class III railroads earn less than \$40 million per annum. Both FRA and the industry routinely use the STB classifications for data collection and regulation. By using the Class III classification, FRA is capturing most railroads that would be defined by the SBA as small businesses.

FRA certifies this rule is not expected to have a significant economic impact on a substantial number of small entities. There are no small government jurisdictions affected by this regulation. Approximately 455 small entities will be impacted. However, the actual burden on most of these railroads is

limited because of the slower and simpler operation of Class III railroads.

Entities that are not subject to this rule include railroads that do not operate on the general system of railroad transportation, due to FRA's current exercise of its jurisdiction. 49 CFR Part 209, Appendix A. FRA's jurisdictional approach, greatly reduces the number of tourist, scenic, historic, and excursion railroads that are subject to this rule and its associated burdens. FRA estimates that approximately 180 small entities will be exempted from this regulation, since they do not operate on the general system.

In general, the requirements for this rule can be met with minimal effort by most small railroads. The requirements and burdens for this rule are focused around the performance of work on or near tracks that are live or adjacent to live tracks. The ability to perform track related maintenance on track(s) that are taken out of service is inversely related to the railroad's (or the line's) volume. Most small railroads have a traffic volume low enough to avoid the burdens that have higher costs.

A majority of the burdens from this regulation occur only when roadway risks are present. For many of the small railroads this type of work is performed on track that has been rendered out of use, or during time periods where there is no traffic flow. Therefore, a small railroad that does not perform track related maintenance or inspections on tracks that are under traffic or adjacent to tracks under traffic, will have very little burden at all from this rule. Essentially, these railroads perform all or a majority of their track maintenance when the roadway hazards are not present.

FRA has estimated that the average burden of this regulation per roadway worker is \$630 Net Present Value (NPV) per year. However, forty-four percent of the total costs of this regulation are not likely to affect small railroads. In addition, the affected small entities represent less than 3 percent of the

employment in the railroad industry. Therefore, FRA estimates that this regulation will burden a small railroad an average amount of \$350 NPV per roadway worker, per year, almost half the burden estimated for the industry as a whole.

**Small Business Regulatory Enforcement Fairness Act of 1996**

Pursuant to Section 312 of the Small Business Regulatory Enforcement Fairness Act of 1996 (P.L. 104-121), FRA will issue a Small Entity Compliance Guide to summarize the requirements of this rule. The Guide will be made available to all affected small entities to assist them in understanding the actions necessary to comply with the rule. The Guide will in no way alter the requirements of the rule, but will be a tool to assist small entities in the day-to-day application of those requirements.

**Paperwork Reduction Act**

The Federal Railroad Administration may not conduct or sponsor, and the respondent is not required to comply with an information collection requirement that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid Office of Management and Budget (OMB) control number. In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d) et seq.), the information collection requirements in 49 CFR 214, Subpart C established in this publication have been approved by OMB and assigned OMB approval number 2130-0539.

The time needed to complete and file the information collection requirements will vary by size of the railroads involved and the number of accidents experienced by each railroad. The sections that contain the new and/or revised information collection requirements and the estimated average time to fulfill each requirement are as follows:

CFR section	Respondent universe	Total annual responses	Average time per response	Total annual burden hours
Railroad on-track safety programs 214.303-214.309-214.341-214.307-214.311-214.331.	620 RRs .....	65—First Year ..... 1—Subsequent Years .....	2,000 hrs. Class I ..... 1,400 hrs. Class II ..... 250 hrs. Class III ..... 3,500 hrs. Blanket Class II ..... 3,000 hrs. Blanket Class III .....	69,750—First Year 250—Subsequent Years.
Responsibility of individual roadway workers—214.313.	20 RRs .....	4 Challenges year per railroad.	4 hrs. ....	320.
Supervision and communication—Job Briefings—214.315-214.335.	51,500 employees ....	327 job briefings per year per employee.	2 minutes each briefing .....	561,350.
Working limits—214.319-214.325	N/A .....	N/A .....	Usual & customary procedure no new paperwork.	N/A.

CFR section	Respondent universe	Total annual responses	Average time per response	Total annual burden hours
Exclusive track occupancy—working limits—214.321.	8,583 employees .....	700,739 authorities .....	40 seconds per authority .....	7,786.
Foul Time Working Limit Procedures—214.323.	N/A .....	N/A .....	Usual & customary procedure no new paperwork.	N/A.
Inaccessible Track—214.327 .....	620 RRs .....	50,000 occurrences .....	10 minutes per occurrence .....	8,333.
Train approach warning provided by watchman/lookouts—214.329.	620 RRs .....	51,500 occurrences .....	15 seconds per occurrence .....	215.
On-track safety procedures for lone workers—214.337.	10,300 employees per year.	2,142,400 statements .....	30 seconds per statement .....	17,853.
Training requirements—record of Qualification—214.343—214.347—214.349—214.351—214.353—214.355.	51,500 employees .....	51,500 records .....	2 minutes per record .....	1,717.

These estimates include the time for reviewing instructions; searching existing data sources; gathering and maintaining the data needed; and completing and reviewing the collection of information.

List of Subjects in 49 CFR Part 214

Bridges, Occupational safety and health, Penalties, Railroad safety, Reporting and recordkeeping requirements.

The Final Rule

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

**PART 214—[AMENDED]**

1. Revise the authority citation for Part 214 to read as follows:

Authority: 49 U.S.C. Chs. 210–213; 49 CFR 1.49.

2. Add § 214.4 to read as follows:

**§ 214.4 Preemptive effect.**

Under 49 U.S.C. 20106 (formerly section 205 of the Federal Railroad Safety Act of 1970 (45 U.S.C. 434)), issuance of the regulations in this part preempts any State law, rule, regulation, order, or standard covering the same subject matter, except a provision directed at an essentially local safety hazard that is not incompatible with this part and that does not unreasonably burden on interstate commerce.

3. Amend § 214.7 by removing the paragraph designations for each definition, removing the definition for *Railroad employee or employee*, and adding new definitions in alphabetical order to read as follows:

**§ 214.7 Definitions.**

*Adjacent tracks* mean two or more tracks with track centers spaced less than 25 feet apart.

*Class I, Class II, and Class III* have the meaning assigned by, Title 49 Code of

Federal Regulations part 1201, General Instructions 1–1.

*Control operator* means the railroad employee in charge of a remotely controlled switch or derail, an interlocking, or a controlled point, or a segment of controlled track.

*Controlled track* means track upon which the railroad's operating rules require that all movements of trains must be authorized by a train dispatcher or a control operator.

*Definite train location* means a system for establishing on-track safety by providing roadway workers with information about the earliest possible time that approaching trains may pass specific locations as prescribed in § 214.331 of this part.

*Effective securing device* when used in relation to a manually operated switch or derail means one which is:

- (a) Vandal resistant;
- (b) Tamper resistant; and
- (c) Designed to be applied, secured, uniquely tagged and removed only by the class, craft or group of employees for whom the protection is being provided.

*Employee* means an individual who is engaged or compensated by a railroad or by a contractor to a railroad to perform any of the duties defined in this part.

*Employer* means a railroad, or a contractor to a railroad, that directly engages or compensates individuals to perform any of the duties defined in this part.

*Exclusive track occupancy* means a method of establishing working limits on controlled track in which movement authority of trains and other equipment is withheld by the train dispatcher or control operator, or restricted by flagmen, as prescribed in § 214.321 of this part.

*Flagman* when used in relation to roadway worker safety means an employee designated by the railroad to direct or restrict the movement of trains past a point on a track to provide on-track safety for roadway workers, while

engaged solely in performing that function.

*Foul time* is a method of establishing working limits on controlled track in which a roadway worker is notified by the train dispatcher or control operator that no trains will operate within a specific segment of controlled track until the roadway worker reports clear of the track, as prescribed in § 214.323 of this part.

*Fouling a track* means the placement of an individual or an item of equipment in such proximity to a track that the individual or equipment could be struck by a moving train or on-track equipment, or in any case is within four feet of the field side of the near running rail.

*Inaccessible track* means a method of establishing working limits on non-controlled track by physically preventing entry and movement of trains and equipment.

*Individual train detection* means a procedure by which a lone worker acquires on-track safety by seeing approaching trains and leaving the track before they arrive and which may be used only under circumstances strictly defined in this part.

*Informational line-up of trains* means information provided in a prescribed format to a roadway worker by the train dispatcher regarding movements of trains authorized or expected on a specific segment of track during a specific period of time.

*Lone worker* means an individual roadway worker who is not being afforded on-track safety by another roadway worker, who is not a member of a roadway work group, and who is not engaged in a common task with another roadway worker.

*Non-controlled track* means track upon which trains are permitted by railroad rule or special instruction to move without receiving authorization from a train dispatcher or control operator.

*On-track safety* means a state of freedom from the danger of being struck by a moving railroad train or other railroad equipment, provided by operating and safety rules that govern track occupancy by personnel, trains and on-track equipment.

*Qualified* means a status attained by an employee who has successfully completed any required training for, has demonstrated proficiency in, and has been authorized by the employer to perform the duties of a particular position or function.

*Railroad bridge worker or bridge worker* means any employee of, or employee of a contractor of, a railroad owning or responsible for the construction, inspection, testing, or maintenance of a bridge whose assigned duties, if performed on the bridge, include inspection, testing, maintenance, repair, construction, or reconstruction of the track, bridge structural members, operating mechanisms and water traffic control systems, or signal, communication, or train control systems integral to that bridge.

*Restricted speed* means a speed that will permit a train or other equipment to stop within one-half the range of vision of the person operating the train or other equipment, but not exceeding 20 miles per hour, unless further restricted by the operating rules of the railroad.

*Roadway maintenance machine* means a device powered by any means of energy other than hand power which is being used on or near railroad track for maintenance, repair, construction or inspection of track, bridges, roadway, signal, communications, or electric traction systems. Roadway maintenance machines may have road or rail wheels or may be stationary.

*Roadway work group* means two or more roadway workers organized to work together on a common task.

*Roadway worker* means any employee of a railroad, or of a contractor to a railroad, whose duties include inspection, construction, maintenance or repair of railroad track, bridges, roadway, signal and communication systems, electric traction systems, roadway facilities or roadway maintenance machinery on or near track or with the potential of fouling a track, and flagmen and watchmen/lookouts as defined in this section.

*Train approach warning* means a method of establishing on-track safety by warning roadway workers of the approach of trains in ample time for them to move to or remain in a place of safety in accordance with the requirements of this part.

*Train coordination* means a method of establishing working limits on track upon which a train holds exclusive authority to move whereby the crew of that train yields that authority to a roadway worker.

*Train dispatcher* means the railroad employee assigned to control and issue orders governing the movement of trains on a specific segment of railroad track in accordance with the operating rules of the railroad that apply to that segment of track.

*Watchman/lookout* means an employee who has been annually trained and qualified to provide warning to roadway workers of approaching trains or on-track equipment. Watchmen/lookouts shall be properly equipped to provide visual and auditory warning such as whistle, air horn, white disk, red flag, lantern, fusee. A watchman/lookout's sole duty is to look out for approaching trains/on-track equipment and provide at least fifteen seconds advanced warning to employees before arrival of trains/on-track equipment.

*Working limits* means a segment of track with definite boundaries established in accordance with this part upon which trains and engines may move only as authorized by the roadway worker having control over that defined segment of track. Working limits may be established through "exclusive track occupancy," "inaccessible track," "foul time" or "train coordination" as defined herein.

#### 4. Add subpart C to read as follows:

### Subpart C—Roadway Worker Protection

Sec.

- 214.301 Purpose and scope.
- 214.302 Information and collection requirements.
- 214.303 Railroad on-track safety programs, generally.
- 214.305 Compliance dates.
- 214.307 Review and approval of individual on-track safety programs by FRA.
- 214.309 On-track safety program documents.
- 214.311 Responsibility of employers.
- 214.313 Responsibility of individual roadway workers.
- 214.315 Supervision and communication.
- 214.317 On-track safety procedures, generally.
- 214.319 Working limits, generally.
- 214.321 Exclusive track occupancy.
- 214.323 Foul time.
- 214.325 Train coordination.
- 214.327 Inaccessible track.
- 214.329 Train approach warning provided by watchmen/lookouts.
- 214.331 Definite train location.
- 214.333 Information line-ups of trains.
- 214.335 On-track safety procedures for roadway work groups.
- 214.337 On-track safety procedures for lone workers.

- 214.339 Audible warning from trains.
- 214.341 Roadway maintenance machines.
- 214.343 Training and qualification, general.
- 214.345 Training for all roadway workers.
- 214.347 Training and qualification for lone workers.
- 214.349 Training and qualification of watchmen/lookouts.
- 214.351 Training and qualification of flagmen.
- 214.353 Training and qualification of roadway workers who provide on-track safety for roadway work groups.
- 214.355 Training and qualification in on-track safety for operators of roadway maintenance machines.

### Subpart C—Roadway Worker Protection

#### § 214.301 Purpose and scope.

(a) The purpose of this subpart is to prevent accidents and casualties caused by moving railroad cars, locomotives or roadway maintenance machines striking roadway workers or roadway maintenance machines.

(b) This subpart prescribes minimum safety standards for roadway workers. Each railroad and railroad contractor may prescribe additional or more stringent operating rules, safety rules, and other special instructions that are consistent with this subpart.

(c) This subpart prescribes safety standards related to the movement of roadway maintenance machines where such movements affect the safety of roadway workers. This subpart does not otherwise affect movements of roadway maintenance machines that are conducted under the authority of a train dispatcher, a control operator, or the operating rules of the railroad.

#### § 214.302 Information and collection requirements.

(a) The information collection requirements of this part were reviewed by the Office of Management and Budget pursuant to the Paperwork Reduction Act of 1995, Public Law 104-13, § 2, 109 Stat. 163 (1995) (codified as revised at 44 U.S.C. §§ 3501-3520), and are assigned OMB control number 2130-0539. FRA may not conduct or sponsor and a respondent is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

(b) The information collection requirements are found in the following sections: §§ 214.303, 214.307, 214.309, 214.311, 214.313, 214.315, 214.319, 214.321, 214.323, 214.325, 214.327, 214.329, 214.331, 214.335, 214.341.

#### § 214.303 Railroad on-track safety programs, generally.

(a) Each railroad to which this part applies shall adopt and implement a

program that will afford on-track safety to all roadway workers whose duties are performed on that railroad. Each such program shall provide for the levels of protection specified in this subpart.

(b) Each on-track safety program adopted to comply with this part shall include procedures to be used by each railroad for monitoring effectiveness of and compliance with the program.

**§ 214.305 Compliance dates.**

Each program adopted by a railroad shall comply not later than the date specified in the following schedule:

(a) For each Class I railroad (including National Railroad Passenger Corporation) and each railroad providing commuter service in a metropolitan or suburban area, March 15, 1997.

(b) For each Class II railroad, April 15, 1997.

(c) For each Class III railroad, switching and terminal railroad, and any railroad not otherwise classified, May 15, 1997.

(d) For each railroad commencing operations after the pertinent date specified in this section, the date on which operations commence.

**§ 214.307 Review and approval of individual on-track safety programs by FRA.**

(a) Each railroad shall notify, in writing, the Associate Administrator for Safety, Federal Railroad Administration, RRS-15, 400 Seventh Street SW, Washington, DC 20590, not less than one month before its on-track safety program becomes effective. The notification shall include the effective date of the program, the address of the office at which the program documents are available for review and photocopying by representatives of the Federal Railroad Administrator, and the name, title, address and telephone number of the primary person to be contacted with regard to review of the program. This notification procedure shall also apply to subsequent changes to a railroad's on-track safety program.

(b) After receipt of the notification from the railroad, the Federal Railroad Administration will conduct a formal review of the on-track safety program. The Federal Railroad Administration will notify the primary railroad contact person of the results of the review, in writing, whether the on-track safety program or changes to the program have been approved by the Administrator, and if not approved, the specific points in which the program or changes are deficient.

(c) A railroad's on-track safety program will take effect by the established compliance dates in

§ 214.305, without regard to the date of review or approval by the Federal Railroad Administration. Changes to a railroad's program will take effect on dates established by each railroad without regard to the date of review and approval by the Federal Railroad Administration.

**§ 214.309 On-track safety program documents.**

Rules and operating procedures governing track occupancy and protection shall be maintained together in one manual and be readily available to all roadway workers. Each roadway worker responsible for the on-track safety of others, and each lone worker, shall be provided with and shall maintain a copy of the program document.

**§ 214.311 Responsibility of employers.**

(a) Each employer is responsible for the understanding and compliance by its employees with its rules and the requirements of this part.

(b) Each employer shall guarantee each employee the absolute right to challenge in good faith whether the on-track safety procedures to be applied at the job location comply with the rules of the operating railroad, and to remain clear of the track until the challenge is resolved.

(c) Each employer shall have in place a written procedure to achieve prompt and equitable resolution of challenges made in accordance with §§ 214.311(b) and 214.313(d).

**§ 214.313 Responsibility of individual roadway workers.**

(a) Each roadway worker is responsible for following the on-track safety rules of the railroad upon which the roadway worker is located.

(b) A roadway worker shall not foul a track except when necessary for the performance of duty.

(c) Each roadway worker is responsible to ascertain that on-track safety is being provided before fouling a track.

(d) Each roadway worker may refuse any directive to violate an on-track safety rule, and shall inform the employer in accordance with § 214.311 whenever the roadway worker makes a good faith determination that on-track safety provisions to be applied at the job location do not comply with the rules of the operating railroad.

**§ 214.315 Supervision and communication.**

(a) When an employer assigns duties to a roadway worker that call for that employee to foul a track, the employer shall provide the employee with a job

briefing that includes information on the means by which on-track safety is to be provided, and instruction on the on-track safety procedures to be followed.

(b) A job briefing for on-track safety shall be deemed complete only after the roadway worker has acknowledged understanding of the on-track safety procedures and instructions presented.

(c) Every roadway work group whose duties require fouling a track shall have one roadway worker designated by the employer to provide on-track safety for all members of the group. The designated person shall be qualified under the rules of the railroad that conducts train operations on those tracks to provide the protection necessary for on-track safety of each individual in the group. The responsible person may be designated generally, or specifically for a particular work situation.

(d) Before any member of a roadway work group fouls a track, the designated person providing on-track safety for the group under paragraph (c) of this section shall inform each roadway worker of the on-track safety procedures to be used and followed during the performance of the work at that time and location. Each roadway worker shall again be so informed at any time the on-track safety procedures change during the work period. Such information shall be given to all roadway workers affected before the change is effective, except in cases of emergency. Any roadway workers who, because of an emergency, cannot be notified in advance shall be immediately warned to leave the fouling space and shall not return to the fouling space until on-track safety is re-established.

(e) Each lone worker shall communicate at the beginning of each duty period with a supervisor or another designated employee to receive a job briefing and to advise of his or her planned itinerary and the procedures that he or she intends to use for on-track safety. When communication channels are disabled, the job briefing shall be conducted as soon as possible after the beginning of the work period when communications are restored.

**§ 214.317 On-track safety procedures, generally.**

Each employer subject to the provisions of this part shall provide on-track safety for roadway workers by adopting a program that contains specific rules for protecting roadway workers that comply with the provisions of §§ 214.319 through 214.337 of this part.

**§ 214.319 Working limits, generally.**

Working limits established on controlled track shall conform to the provisions of § 214.321 Exclusive track occupancy, or § 214.323 Foul time, or § 214.325 Train coordination. Working limits established on non-controlled track shall conform to the provision of § 214.327 Inaccessible track. Working limits established under any procedure shall, in addition, conform to the following provisions:

(a) Only a roadway worker who is qualified in accordance with § 214.353 of this part shall establish or have control over working limits for the purpose of establishing on-track safety.

(b) Only one roadway worker shall have control over working limits on any one segment of track.

(c) All affected roadway workers shall be notified before working limits are released for the operation of trains. Working limits shall not be released until all affected roadway workers have either left the track or have been afforded on-track safety through train approach warning in accordance with § 214.329 of this subpart.

**§ 214.321 Exclusive track occupancy.**

Working limits established on controlled track through the use of exclusive track occupancy procedures shall comply with the following requirements:

(a) The track within working limits shall be placed under the control of one roadway worker by either:

(1) Authority issued to the roadway worker in charge by the train dispatcher or control operator who controls train movements on that track,

(2) Flagmen stationed at each entrance to the track within working limits and instructed by the roadway worker in charge to permit the movement of trains and equipment into the working limits only as permitted by the roadway worker in charge, or

(3) The roadway worker in charge causing fixed signals at each entrance to the working limits to display an aspect indicating "Stop."

(b) An authority for exclusive track occupancy given to the roadway worker in charge of the working limits shall be transmitted on a written or printed document directly, by relay through a designated employee, in a data transmission, or by oral communication, to the roadway worker by the train dispatcher or control operator in charge of the track.

(1) Where authority for exclusive track occupancy is transmitted orally, the authority shall be written as received by the roadway worker in

charge and repeated to the issuing employee for verification.

(2) The roadway worker in charge of the working limits shall maintain possession of the written or printed authority for exclusive track occupancy while the authority for the working limits is in effect.

(3) The train dispatcher or control operator in charge of the track shall make a written or electronic record of all authorities issued to establish exclusive track occupancy.

(c) The extent of working limits established through exclusive track occupancy shall be defined by one of the following physical features clearly identifiable to a locomotive engineer or other person operating a train or railroad equipment:

(1) A flagman with instructions and capability to hold all trains and equipment clear of the working limits;

(2) A fixed signal that displays an aspect indicating "Stop";

(3) A station shown in the time-table, and identified by name with a sign, beyond which train movement is prohibited by train movement authority or the provisions of a direct train control system.

(4) A clearly identifiable milepost sign beyond which train movement is prohibited by train movement authority or the provisions of a direct train control system; or

(5) A clearly identifiable physical location prescribed by the operating rules of the railroad that trains may not pass without proper authority.

(d) Movements of trains and roadway maintenance machines within working limits established through exclusive track occupancy shall be made only under the direction of the roadway worker having control over the working limits. Such movements shall be restricted speed unless a higher speed has been specifically authorized by the roadway worker in charge of the working limits.

**§ 214.323 Foul time.**

Working limits established on controlled track through the use of foul time procedures shall comply with the following requirements:

(a) Foul time may be given orally or in writing by the train dispatcher or control operator only after that employee has withheld the authority of all trains to move into or within the working limits during the foul time period.

(b) Each roadway worker to whom foul time is transmitted orally shall repeat the track number, track limits and time limits of the foul time to the

issuing employee for verification before the foul time becomes effective.

(c) The train dispatcher or control operator shall not permit the movement of trains or other on-track equipment onto the working limits protected by foul time until the roadway worker who obtained the foul time has reported clear of the track.

**§ 214.325 Train coordination.**

Working limits established by a roadway worker through the use of train coordination shall comply with the following requirements:

(a) Working limits established by train coordination shall be within the segments of track or tracks upon which only one train holds exclusive authority to move.

(b) The roadway worker who establishes working limits by train coordination shall communicate with a member of the crew of the train holding the exclusive authority to move, and shall determine that:

(1) The train is visible to the roadway worker who is establishing the working limits,

(2) The train is stopped,

(3) Further movements of the train will be made only as permitted by the roadway worker in charge of the working limits while the working limits remain in effect, and

(4) The crew of the train will not give up its exclusive authority to move until the working limits have been released to the train crew by the roadway worker in charge of the working limits.

**§ 214.327 Inaccessible track.**

(a) Working limits on non-controlled track shall be established by rendering the track within working limits physically inaccessible to trains at each possible point of entry by one of the following features:

(1) A flagman with instructions and capability to hold all trains and equipment clear of the working limits;

(2) A switch or derail aligned to prevent access to the working limits and secured with an effective securing device by the roadway worker in charge of the working limits;

(3) A discontinuity in the rail that precludes passage of trains or engines into the working limits;

(4) Working limits on controlled track that connects directly with the inaccessible track, established by the roadway worker in charge of the working limits on the inaccessible track; or

(5) A remotely controlled switch aligned to prevent access to the working limits and secured by the control operator of such remotely controlled

switch by application of a locking or blocking device to the control of that switch, when:

(i) The control operator has secured the remotely controlled switch by applying a locking or blocking device to the control of the switch, and

(ii) The control operator has notified the roadway worker who has established the working limits that the requested protection has been provided, and

(iii) The control operator is not permitted to remove the locking or blocking device from the control of the switch until receiving permission to do so from the roadway worker who established the working limits.

(b) Trains and roadway maintenance machines within working limits established by means of inaccessible track shall move only under the direction of the roadway worker in charge of the working limits, and shall move at restricted speed.

(c) No operable locomotives or other items of on-track equipment, except those present or moving under the direction of the roadway worker in charge of the working limits, shall be located within working limits established by means of inaccessible track.

**§ 214.329 Train approach warning provided by watchmen/lookouts.**

Roadway workers in a roadway work group who foul any track outside of working limits shall be given warning of approaching trains by one or more watchmen/lookouts in accordance with the following provisions:

(a) Train approach warning shall be given in sufficient time to enable each roadway worker to move to and occupy a previously arranged place of safety not less than 15 seconds before a train moving at the maximum speed authorized on that track can pass the location of the roadway worker.

(b) Watchmen/lookouts assigned to provide train approach warning shall devote full attention to detecting the approach of trains and communicating a warning thereof, and shall not be assigned any other duties while functioning as watchmen/lookouts.

(c) The means used by a watchman/lookout to communicate a train approach warning shall be distinctive and shall clearly signify to all recipients of the warning that a train or other on-track equipment is approaching.

(d) Every roadway worker who depends upon train approach warning for on-track safety shall maintain a position that will enable him or her to receive a train approach warning communicated by a watchman/lookout

at any time while on-track safety is provided by train approach warning.

(e) Watchmen/lookouts shall communicate train approach warnings by a means that does not require a warned employee to be looking in any particular direction at the time of the warning, and that can be detected by the warned employee regardless of noise or distraction of work.

(f) Every roadway worker who is assigned the duties of a watchman/lookout shall first be trained, qualified and designated in writing by the employer to do so in accordance with the provisions of § 214.349.

(g) Every watchman/lookout shall be provided by the employer with the equipment necessary for compliance with the on-track safety duties which the watchman/lookout will perform.

**§ 214.331 Definite train location.**

A roadway worker may establish on-track safety by using definite train location only where permitted by and in accordance with the following provisions:

(a) A Class I railroad or a commuter railroad may only use definite train location to establish on-track safety at points where such procedures were in use on January 15, 1997.

(b) Each Class I or commuter railroad shall include in its on-track safety program for approval by FRA in accordance with § 214.307 of this part a schedule for phase-out of the use of definite train location to establish on-track safety.

(c) A railroad other than a Class I or commuter railroad may use definite train location to establish on-track safety on subdivisions only where:

(1) Such procedures were in use on January 15, 1997, or

(2) The number of trains operated on the subdivision does not exceed:

(i) Three during any nine-hour period in which roadway workers are on duty, and

(ii) Four during any twelve-hour period in which roadway workers are on duty.

(d) Definite train location shall only be used to establish on-track safety according to the following provisions:

(1) Definite train location information shall be issued only by the one train dispatcher who is designated to authorize train movements over the track for which the information is provided.

(2) A definite train location list shall indicate all trains to be operated on the track for which the list is provided, during the time for which the list is effective.

(3) Trains not shown on the definite train location list shall not be operated

on the track for which the list is provided, during the time for which the list is effective, until each roadway worker to whom the list has been issued has been notified of the train movement, has acknowledged the notification to the train dispatcher, and has canceled the list. A list thus canceled shall then be invalid for on-track safety.

(4) Definite train location shall not be used to establish on-track safety within the limits of a manual interlocking, or on track over which train movements are governed by a Traffic Control System or by a Manual Block System.

(5) Roadway workers using definite train location for on-track safety shall not foul a track within ten minutes before the earliest time that a train is due to depart the last station at which time is shown in approach to the roadway worker's location nor until that train has passed the location of the roadway worker.

(6) A railroad shall not permit a train to depart a location designated in a definite train location list before the time shown therein.

(7) Each roadway worker who uses definite train location to establish on-track safety must be qualified on the relevant physical characteristics of the territory for which the train location information is provided.

**§ 214.333 Informational line-ups of trains.**

(a) A railroad is permitted to include informational line-ups of trains in its on-track safety program for use only on subdivisions of that railroad upon which such procedure was in effect on March 14, 1996.

(b) Each procedure for the use of informational line-ups of trains found in an on-track safety program shall include all provisions necessary to protect roadway workers using the procedure against being struck by trains or other on-track equipment.

(c) Each on-track safety program that provides for the use of informational line-ups shall include a schedule for discontinuance of the procedure by a definite date.

**§ 214.335 On-track safety procedures for roadway work groups.**

(a) No employer subject to the provisions of this part shall require or permit a roadway worker who is a member of a roadway work group to foul a track unless on-track safety is provided by either working limits, train approach warning, or definite train location in accordance with the applicable provisions of §§ 214.319, 214.321, 213.323, 214.325, 214.327, 214.329 and 214.331 of this part.

(b) No roadway worker who is a member of a roadway work group shall

foul a track without having been informed by the roadway worker responsible for the on-track safety of the roadway work group that on-track safety is provided.

(c) Roadway work groups engaged in large-scale maintenance or construction shall be provided with train approach warning in accordance with § 214.327 for movements on adjacent tracks that are not included within working limits.

**§ 214.337 On-track safety procedures for lone workers.**

(a) A lone worker who fouls a track while performing routine inspection or minor correction may use individual train detection to establish on-track safety only where permitted by this section and the on-track safety program of the railroad.

(b) A lone worker retains an absolute right to use on-track safety procedures other than individual train detection if he or she deems it necessary, and to occupy a place of safety until such other form of on-track safety can be established.

(c) Individual train detection may be used to establish on-track safety only:

(1) By a lone worker who has been trained, qualified, and designated to do so by the employer in accordance with § 214.347 of this subpart;

(2) While performing routine inspection and minor correction work;

(3) On track outside the limits of a manual interlocking, a controlled point, or a remotely controlled hump yard facility;

(4) Where the lone worker is able to visually detect the approach of a train moving at the maximum speed authorized on that track, and move to a previously determined place of safety, not less than 15 seconds before the train would arrive at the location of the lone worker;

(5) Where no power-operated tools or roadway maintenance machines are in use within the hearing of the lone worker; and

(6) Where the ability of the lone worker to hear and see approaching trains and other on-track equipment is not impaired by background noise, lights, precipitation, fog, passing trains, or any other physical conditions.

(d) The place of safety to be occupied by a lone worker upon the approach of a train may not be on a track, unless working limits are established on that track.

(e) A lone worker using individual train detection for on-track safety while fouling a track may not occupy a position or engage in any activity that would interfere with that worker's ability to maintain a vigilant lookout for,

and detect the approach of, a train moving in either direction as prescribed in this section.

(f) A lone worker who uses individual train detection to establish on-track safety shall first complete a written Statement of On-track Safety. The Statement shall designate the limits of the track for which it is prepared and the date and time for which it is valid. The statement shall show the maximum authorized speed of trains within the limits for which it is prepared, and the sight distance that provides the required warning of approaching trains. The lone worker using individual train detection to establish on-track safety shall produce the Statement of On-track Safety when requested by a representative of the Federal Railroad Administrator.

**§ 214.339 Audible warning from trains.**

Each railroad shall require that the locomotive whistle be sounded, and the locomotive bell be rung, by trains approaching roadway workers on or about the track. Such audible warning shall not substitute for on-track safety procedures prescribed in this part.

**§ 214.341 Roadway maintenance machines.**

(a) Each employer shall include in its on-track safety program specific provisions for the safety of roadway workers who operate or work near roadway maintenance machines. Those provisions shall address:

(1) Training and qualification of operators of roadway maintenance machines.

(2) Establishment and issuance of safety procedures both for general application and for specific types of machines.

(3) Communication between machine operators and roadway workers assigned to work near or on roadway maintenance machines.

(4) Spacing between machines to prevent collisions.

(5) Space between machines and roadway workers to prevent personal injury.

(6) Maximum working and travel speeds for machines dependent upon weather, visibility, and stopping capabilities.

(b) Instructions for the safe operation of each roadway machine shall be provided and maintained with each machine large enough to carry the instruction document.

(1) No roadway worker shall operate a roadway maintenance machine without having been trained in accordance with § 214.355.

(2) No roadway worker shall operate a roadway maintenance machine

without having complete knowledge of the safety instructions applicable to that machine.

(3) No employer shall assign roadway workers to work near roadway machines unless the roadway worker has been informed of the safety procedures applicable to persons working near the roadway machines and has acknowledged full understanding.

(c) Components of roadway maintenance machines shall be kept clear of trains passing on adjacent tracks. Where operating conditions permit roadway maintenance machines to be less than four feet from the rail of an adjacent track, the on-track safety program of the railroad shall include the procedural instructions necessary to provide adequate clearance between the machine and passing trains.

**§ 214.343 Training and qualification, general.**

(a) No employer shall assign an employee to perform the duties of a roadway worker, and no employee shall accept such assignment, unless that employee has received training in the on-track safety procedures associated with the assignment to be performed, and that employee has demonstrated the ability to fulfill the responsibilities for on-track safety that are required of an individual roadway worker performing that assignment.

(b) Each employer shall provide to all roadway workers in its employ initial or recurrent training once every calendar year on the on-track safety rules and procedures that they are required to follow.

(c) Railroad employees other than roadway workers, who are associated with on-track safety procedures, and whose primary duties are concerned with the movement and protection of trains, shall be trained to perform their functions related to on-track safety through the training and qualification procedures prescribed by the operating railroad for the primary position of the employee, including maintenance of records and frequency of training.

(d) Each employer of roadway workers shall maintain written or electronic records of each roadway worker qualification in effect. Each record shall include the name of the employee, the type of qualification made, and the most recent date of qualification. These records shall be kept available for inspection and photocopying by the Federal Railroad Administrator during regular business hours.

**§ 214.345 Training for all roadway workers.**

The training of all roadway workers shall include, as a minimum, the following:

- (a) Recognition of railroad tracks and understanding of the space around them within which on-track safety is required.
- (b) The functions and responsibilities of various persons involved with on-track safety procedures.
- (c) Proper compliance with on-track safety instructions given by persons performing or responsible for on-track safety functions.
- (d) Signals given by watchmen/lookouts, and the proper procedures upon receiving a train approach warning from a lookout.
- (e) The hazards associated with working on or near railroad tracks, including review of on-track safety rules and procedures.

**§ 214.347 Training and qualification for lone workers.**

Each lone worker shall be trained and qualified by the employer to establish on-track safety in accordance with the requirements of this section, and must be authorized to do so by the railroad that conducts train operations on those tracks.

- (a) The training and qualification for lone workers shall include, as a minimum, consideration of the following factors:
  - (1) Detection of approaching trains and prompt movement to a place of safety upon their approach.
  - (2) Determination of the distance along the track at which trains must be visible in order to provide the prescribed warning time.
  - (3) Rules and procedures prescribed by the railroad for individual train detection, establishment of working limits, and definite train location.
  - (4) On-track safety procedures to be used in the territory on which the

employee is to be qualified and permitted to work alone.

- (b) Initial and periodic qualification of a lone worker shall be evidenced by demonstrated proficiency.

**§ 214.349 Training and qualification of watchmen/lookouts.**

(a) The training and qualification for roadway workers assigned the duties of watchmen/lookouts shall include, as a minimum, consideration of the following factors:

- (1) Detection and recognition of approaching trains.
- (2) Effective warning of roadway workers of the approach of trains.
- (3) Determination of the distance along the track at which trains must be visible in order to provide the prescribed warning time.
- (4) Rules and procedures of the railroad to be used for train approach warning.

- (b) Initial and periodic qualification of a watchman/lookout shall be evidenced by demonstrated proficiency.

**§ 214.351 Training and qualification of flagmen.**

(a) The training and qualification for roadway workers assigned the duties of flagmen shall include, as a minimum, the content and application of the operating rules of the railroad pertaining to giving proper stop signals to trains and holding trains clear of working limits.

- (b) Initial and periodic qualification of a flagman shall be evidenced by demonstrated proficiency.

**§ 214.353 Training and qualification of roadway workers who provide on-track safety for roadway work groups.**

(a) The training and qualification of roadway workers who provide for the on-track safety of groups of roadway workers through establishment of working limits or the assignment and

supervision of watchmen/lookouts or flagmen shall include, as a minimum:

- (1) All the on-track safety training and qualification required of the roadway workers to be supervised and protected.
- (2) The content and application of the operating rules of the railroad pertaining to the establishment of working limits.
- (3) The content and application of the rules of the railroad pertaining to the establishment or train approach warning.
- (4) The relevant physical characteristics of the territory of the railroad upon which the roadway worker is qualified.

- (b) Initial and periodic qualification of a roadway worker to provide on track safety for groups shall be evidenced by a recorded examination.

**§ 214.355 Training and qualification in on-track safety for operators of roadway maintenance machines.**

(a) The training and qualification of roadway workers who operate roadway maintenance machines shall include, as a minimum:

- (1) Procedures to prevent a person from being struck by the machine when the machine is in motion or operation.
- (2) Procedures to prevent any part of the machine from being struck by a train or other equipment on another track.
- (3) Procedures to provide for stopping the machine short of other machines or obstructions on the track.
- (4) Methods to determine safe operating procedures for each machine that the operator is expected to operate.

- (b) Initial and periodic qualification of a roadway worker to operate roadway maintenance machines shall be evidenced by demonstrated proficiency.

Appendix A to Part 214 [Amended]

5. Amend Appendix A to Part 214 by adding the provisions of this subpart C into the table as set forth below.

APPENDIX A TO PART 214—SCHEDULE OF CIVIL PENALTIES

Section	Violation	Willful
<b>Subpart C— Roadway Worker Protection Rule</b>		
214.303 Railroad on-track safety programs, generally:		
(a) Failure of a railroad to implement an On-track Safety Program .....	10,000	20,000
(b) On-track Safety Program of a railroad includes no internal monitoring procedure .....	5,000	10,000
214.305 Compliance Dates:		
Failure of a railroad to comply by the specified dates .....	5,000	10,000
214.307 Review and approval of individual on-track safety programs by FRA:		
(a)(i) Failure to notify FRA of adoption of On-track Safety Program .....	1,000	5,000
(ii) Failure to designate primary person to contact for program review .....	1,000	2,000
214.309 On-track safety program documents:		
(1) On-track Safety Manual not provided to prescribed employees .....	2,000	5,000
(2) On-track Safety Program documents issued in fragments .....	2,000	5,000
214.311 Responsibility of employers:		
(b) Roadway worker required by employer to foul a track during an unresolved challenge .....	5,000	10,000
(c) Roadway workers not provided with written procedure to resolve challenges of on-track safety procedures .....	5,000	10,000

## APPENDIX A TO PART 214—SCHEDULE OF CIVIL PENALTIES—Continued

Section	Violation	Willful
214.313 Responsibility of individual roadway workers:		
(b) Roadway worker fouling a track when not necessary in the performance of duty .....		1,000
(c) Roadway worker fouling a track without ascertaining that provision is made for on-track safety .....		1,500
(d) Roadway worker failing to notify employer of determination of improper on-track safety provisions .....		3,000
214.315 Supervision and communication:		
(a) Failure of employer to provide job briefing .....	2,000	10,000
(b) Incomplete job briefing .....	2,000	5,000
(c)(i) Failure to designate roadway worker in charge of roadway work group .....	2,000	5,000
(c)(ii) Designation of more than one roadway worker in charge of one roadway work group .....	1,000	2,000
(c)(iii) Designation of non-qualified roadway worker in charge of roadway work group .....	3,000	6,000
(d)(i) Failure to notify roadway workers of on-track safety procedures in effect .....	3,000	6,000
(d)(ii) Incorrect information provided to roadway workers regarding on-track safety procedures in effect .....	3,000	6,000
(d)(iii) Failure to notify roadway workers of change in on-track safety procedures .....	3,000	6,000
(e)(i) Failure of lone worker to communicate with designated employee for daily job briefing .....		1,500
(e)(ii) Failure of employer to provide means for lone worker to receive daily job briefing .....	3,000	6,000
214.317 On-track safety procedures, generally:		
On-track safety rules conflict with this part .....	5,000	10,000
214.319 Working limits, generally:		
(a) Non-qualified roadway worker in charge of working limits .....	5,000	10,000
(b) More than one roadway worker in charge of working limits on the same track segment .....	2,000	5,000
(c)(1) Working limits released without notifying all affected roadway workers .....	5,000	10,000
(c)(2) Working limits released before all affected roadway workers are otherwise protected .....	5,000	10,000
214.321 Exclusive track occupancy:		
(b) Improper transmission of authority for exclusive track occupancy .....	2,000	5,000
(b)(1) Failure to repeat authority for exclusive track occupancy to issuing employee .....		1,500
(b)(2) Failure to retain possession of written authority for exclusive track occupancy .....		1,000
(b)(3) Failure to record authority for exclusive track occupancy when issued .....		2,000
(c) Limits of exclusive track occupancy not identified by proper physical features .....	2,000	4,000
(d)(1) Movement authorized into limits of exclusive track occupancy without authority of roadway worker in charge .....	5,000	10,000
(d)(2) Movement authorized within limits of exclusive track occupancy without authority of roadway worker in charge .....	5,000	10,000
(d)(3) Movement within limits of exclusive track occupancy exceeding restricted speed without authority of roadway worker in charge .....	5,000	10,000
214.323 Foul time:		
(a) Foul time authority overlapping movement authority of train or equipment .....	5,000	10,000
(b) Failure to repeat foul time authority to issuing employee .....		1,500
214.325 Train coordination:		
(a) Train coordination limits established where more than one train is authorized to operate .....	1,500	4,000
(b)(1) Train coordination established with train not visible to roadway worker at the time .....		1,500
(b)(2) Train coordination established with moving train .....		1,500
(b)(3) Coordinated train moving without authority of roadway worker in charge .....	2,000	5,000
(b)(4) Coordinated train releasing movement authority while working limits are in effect .....	3,000	6,000
214.327 Inaccessible track:		
(a) Improper control of entry to inaccessible track .....	3,000	6,000
(a)(5) Remotely controlled switch not properly secured by control operator .....	3,000	6,000
(b) Train or equipment moving within inaccessible track limits without permission of roadway worker in charge .....	3,000	6,000
(c) Unauthorized train or equipment located within inaccessible track limits .....	2,000	5,000
214.329 Train approach warning provided by watchmen/lookouts:		
(a) Failure to give timely warning of approaching train .....		5,000
(b)(1) Failure of watchman/lookout to give full attention to detecting approach of train .....		3,000
(b)(2) Assignment of other duties to watchman/lookout .....	3,000	5,000
(c) Failure to provide proper warning signal devices .....	2,000	5,000
(d) Failure to maintain position to receive train approach warning signal .....		2,000
(e) Failure to communicate proper warning signal .....	1,500	3,000
(f)(1) Assignment of non-qualified person as watchman/lookout .....	3,000	5,000
(f)(2) Non-qualified person accepting assignment as watchman/lookout .....		1,500
(g) Failure to properly equip a watchman/lookout .....	2,000	4,000
214.331 Definite train location:		
(a) Definite train location established where prohibited .....	3,000	5,000
(b) Failure to phase out definite train location by required date .....	3,000	5,000
(d)(1) Train location information issued by unauthorized person .....	2,000	5,000
(d)(2) Failure to include all trains operated on train location list .....	3,000	5,000
(d)(5) Failure to clear a by ten minutes at the last station at which time is shown .....		2,000
(d)(6) Train passing station before time shown in train location list .....	3,000	5,000
(d)(7) Non-qualified person using definite train location to establish on-track safety .....	2,000	3,000
214.333 Informational line-ups of trains:		
(a) Informational line-ups of trains used for on-track safety where prohibited .....	3,000	5,000
(b) Informational line-up procedures inadequate to protect roadway workers .....	5,000	10,000
(c) Failure to discontinue informational line-ups by required date .....	5,000	10,000
214.335 On-track safety procedures for roadway work groups :		
(a) Failure to provide on-track safety for a member of a roadway work group .....	3,000	5,000

APPENDIX A TO PART 214—SCHEDULE OF CIVIL PENALTIES—Continued

Section	Violation	Willful
(b) Member of roadway work group fouling a track without authority of employee in charge .....		2,000
(c) Failure to provide train approach warning or working limits on adjacent track where required .....	3,000	5,000
214.337 On-track safety procedures for lone workers:		
(b) Failure by employer to permit individual discretion in use of individual train detection .....	5,000	10,000
(c)(1) Individual train detection used by non-qualified employee .....	2,000	4,000
(c)(2) Use of individual train detection while engaged in heavy or distracting work .....		2,000
(c)(3) Use of individual train detection in controlled point or manual interlocking .....		2,000
(c)(4) Use of individual train detection with insufficient visibility .....		2,000
(c)(5) Use of individual train detection with interfering noise .....		2,000
(c)(6) Use of individual train detection while a train is passing .....		3,000
(d) Failure to maintain access to place of safety clear of live tracks .....		2,000
(e) Lone worker unable to maintain vigilant lookout .....		2,000
(f)(1) Failure to prepare written statement of on-track safety .....		1,500
(f)(2) Incomplete written statement of on-track safety .....		1,000
(f)(3) Failure to produce written statement of on-track safety to FRA .....		1,500
214.339 Audible warning from trains:		
(a) Failure to require audible warning from trains .....	2,000	4,000
(b) Failure of train to give audible warning where required .....	1,000	3,000
214.341 Roadway maintenance machines:		
(a) Failure of on-track safety program to include provisions for safety near roadway maintenance machines ....	3,000	5,000
(b) Failure to provide operating instructions .....	2,000	4,000
(b)(1) Assignment of non-qualified employee to operate machine .....	2,000	5,000
(b)(2) Operator unfamiliar with safety instructions for machine .....	2,000	5,000
(b)(3) Roadway worker working with unfamiliar machine .....	2,000	5,000
(c) Roadway maintenance machine not clear of passing trains .....	3,000	6,000
214.343 Training and qualification, general:		
(a)(1) Failure of railroad program to include training provisions .....	5,000	10,000
(a)(2) Failure to provide initial training .....	3,000	6,000
(b) Failure to provide annual training .....	2,500	5,000
(c) Assignment of non-qualified railroad employees to provide on-track safety .....	4,000	8,000
(d)(1) Failure to maintain records of qualifications .....	2,000	4,000
(d)(2) Incomplete records of qualifications .....	1,000	3,000
(d)(3) Failure to provide records of qualifications to FRA .....	2,000	4,000
214.345 Training for all roadway workers		
214.347 Training and qualification for lone workers		
214.349 Training and qualification of watchmen/lookouts		
214.351 Training and qualification of flagmen		
214.353 Training and qualification of roadway workers who provide on-track safety for roadway work groups		
214.355 Training and qualification in on-track safety for operators of roadway maintenance machines		

Issued this 6th day of December, 1996  
 Jolene M. Molitoris,  
 Administrator, Federal Railroad  
 Administration.  
 [FR Doc. 96-31533 Filed 12-13-96; 8:45 am]  
 BILLING CODE 4910-06-P

**DEPARTMENT OF COMMERCE**  
**National Oceanic and Atmospheric Administration**  
**50 CFR Part 622**  
 [Docket No. 950810206-6288-06; I.D. 070296D]  
**RIN 0648-AG29**  
**Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Fishery of the Gulf of Mexico; Amendment 12**  
**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and

Atmospheric Administration (NOAA), Commerce.  
**ACTION:** Final rule.  
**SUMMARY:** NMFS issues this final rule to implement the approved measures of Amendment 12 to the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico (FMP). These measures reduce the bag limit for greater amberjack to one fish and establish a 20-fish aggregate bag limit for reef fish species for which there are no other bag limits. The intended effects of this rule are to provide additional protection for greater amberjack, conserve reef fish, and enhance enforcement.  
**EFFECTIVE DATE:** January 15, 1997.  
**FOR FURTHER INFORMATION CONTACT:** Robert Sadler, 813-570-5305.  
**SUPPLEMENTARY INFORMATION:** The reef fish fishery of the Gulf of Mexico is managed under the FMP. The FMP was prepared by the Gulf of Mexico Fishery Management Council (Council) and is

implemented through regulations at 50 CFR part 622 under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).  
 Based on a preliminary evaluation of Amendment 12 at the beginning of formal agency review, NMFS disapproved measures in Amendment 12 that would have reduced the minimum size limit for red snapper harvested in the commercial fishery. On August 21, 1996, NMFS published a proposed rule to implement the remaining measures of Amendment 12 (61 FR 43215). The Council's rationale for the remaining measures in Amendment 12, as well as the reasons for NMFS' disapproval of the proposed measures to reduce the minimum size limit for red snapper, are contained in the preamble of the proposed rule and are not repeated here.  
**Comments and Responses**  
 A total of 354 entities, including the Florida Marine Fisheries Commission

(FMFC), submitted comments on Amendment 12 and/or on the proposed rule. Of these commenters, 224 opposed both the proposed 1-fish aggregate bag limit for greater amberjack, banded rudderfish, and lesser amberjack, and the proposed 28-inch (71.1-cm) fork-length recreational size limit for lesser amberjack and banded rudderfish in the Gulf of Mexico. A total of 131 commenters opposed the proposed 20-fish aggregate bag limit. Several of the commenters addressed the proposed measures but also discussed reef fish management issues and alternative management measures beyond the scope of the proposed rule. In addition, the U.S. Fish and Wildlife Service indicated that it reviewed Amendment 12 but had no comments at this time.

#### Banded Rudderfish and Lesser Amberjack Size and Bag Limits

*Comment:* FMFC opposed the proposed 28-inch (71.1-cm) fork-length recreational size limit and 1-fish per person aggregate bag limit for greater amberjack, lesser amberjack, and banded rudderfish. FMFC believes that the expected adverse effects of the measures on recreational fisheries for banded rudderfish and lesser amberjack, particularly for-hire recreational fisheries, would be greater than had been anticipated by the Council. FMFC also is concerned that the proposed minimum size regulation would unfairly shift the banded rudderfish and lesser amberjack resources from a mixed recreational-commercial fishery to a solely commercial fishery.

FMFC indicated that it was only after the Council had adopted the 28-inch (71.1-cm) minimum size limit, and the 1-fish bag limit for the three species combined, that public comment provided evidence of the importance of banded rudderfish and lesser amberjack to the recreational fisheries in Florida. In addition, FMFC stated that these measures would be unfair since the recreational for-hire industry, particularly in the eastern Gulf of Mexico, has been traditionally dependent on the harvest of banded rudderfish and lesser amberjack while the commercial fishery has not. One of the commenters noted that banded rudderfish and lesser amberjack currently harvested in the recreational sector would remain susceptible to commercial harvest without size limits.

FMFC also noted that banded rudderfish and lesser amberjack rarely reach the proposed 28-inch (71.1-cm) recreational minimum size and, thus, would rarely occur in the recreational harvest. FMFC stated that, as a result, significant quantities of banded

rudderfish and lesser amberjack, historically harvested in the recreational fishery, would remain susceptible to unlimited commercial harvest (i.e., without size limits or quotas).

*Response:* NMFS acknowledges that information provided by FMFC and other public comments document a previously unrecognized and economically significant catch of banded rudderfish and lesser amberjack by the recreational for-hire sector. The Council's consideration of the effects of these provisions was limited because, as stated in Amendment 12, the extent of the reduction in harvest was unknown at that time. As a result, the Council may not have been able to adequately judge the magnitude of the impacts of these measures prior to taking final action on Amendment 12. NMFS further acknowledges that the proposed minimum size and bag limit measures for banded rudderfish and lesser amberjack would shift essentially all harvest of those species from the recreational fishery to the commercial fishery. These species rarely reach the proposed recreational size limit and thus would be retained almost exclusively in the commercial fishery where no size or bag limit applies.

Although the Council did not structure or present this aspect of the measure as a deliberate, direct allocation, the allocative effects of the measure of moving fish from one discrete user group to another are as significant as the effects of any direct allocation measure. Information from FMFC and voluminous public comments underscore this point. Therefore, this aspect of the measure operates as the functional equivalent of such a direct allocation, and NMFS considers these allocative effects unfair and inequitable. Accordingly, NMFS disapproved these measures because they are inconsistent with National Standard 4 of the Magnuson-Stevens Act, which requires that allocations of fishing privilege be fair and equitable to all fishermen.

#### Reduction in Greater Amberjack Bag Limit

*Comment:* A total of 224 commenters objected to the reduction in the greater amberjack bag limit from three fish to one fish as inappropriate and burdensome, especially for charter vessels and overnight headboat customers. These commenters indicated that a 1-fish bag limit would adversely affect their for-hire business, as many anglers would not make a trip for one greater amberjack (or two greater amberjack on overnight headboat and charter vessel trips).

*Response:* NMFS approved the reduction in the greater amberjack bag limit based on data that indicate substantial declines in recreational landings and other reports of a significant decline in the status of the resource. NMFS believes that the 1-fish bag limit will provide conservation benefits for the greater amberjack resource. NMFS acknowledges that the for-hire sector may experience a minor decrease in income as a result of the necessary reduction in the greater amberjack bag limit. NMFS observes that the revised bag limit measure does not prevent catch and release of more than one greater amberjack.

Amendment 12 states that greater amberjack are reproductively active starting at 32 inches (81.3 cm) for females and 33 inches (83.8 cm) for males. Some of the greater amberjack that must be released in the recreational fishery under the 28-inch (71.1-cm) minimum size limit and 1-fish bag limit are expected to reproduce before they reach the 36-inch (91.4-cm) minimum size limit for the commercial fishery and are harvested. Further, some fish would survive beyond the 36-inch stage, providing additional benefits for improving the stock condition. NMFS believes that the resulting additional reproductive activity for greater amberjack will provide conservation benefits that outweigh the associated short-term adverse economic impacts.

Also, NMFS acknowledges that the lack of uniform size and bag limits for the morphologically similar banded rudderfish and lesser amberjack may deter enforcement of the greater amberjack bag limit to the extent that the three species are misidentified. However, the reduced bag limit has been approved as a first step towards effective conservation and management of greater amberjack. NMFS anticipates that the Council will propose alternative management measures for banded rudderfish and lesser amberjack in the future that are fair and equitable to all fishermen, should such action prove necessary to conserve greater amberjack.

#### Aggregate Bag Limit for Reef Fish Without Bag Limits

*Comment:* A total of 131 commenters objected to the proposed 20-fish aggregate bag limit. These commenters stated that the measure would cause adverse economic impacts on the recreational fishery and is not needed to protect reef fish species currently not managed under bag limits.

*Response:* The Council, prior to its deliberations on Amendment 12, considered NMFS data that indicated that the adverse economic impacts of

the aggregate bag limit would be insignificant. The public comments provide no substantive information to support their claim of extensive economic impacts. Accordingly, NMFS disagrees with these comments. NMFS has approved the 20-fish aggregate bag limit as a risk-averse measure to prevent an uncontrolled increase in harvest of reef fish species for which no bag limits are in effect.

The measure would prevent unlimited harvest of reef fish by persons not fishing under commercial reef fish vessel permits. Currently, such persons can catch and land an unlimited number of reef fish species not subject to a bag limit; while sale of these species is not legal without a commercial permit, it is difficult to enforce this sale restriction. The aggregate bag limit should enhance enforcement of the prohibition on sale of reef fish by those persons.

The 20-fish aggregate bag limit will include banded rudderfish and lesser amberjack, since NMFS disapproved the bag limit for those two species, and will help restrain recreational harvest. As previously indicated, NMFS anticipates that the Council will initiate additional management measures for banded rudderfish and lesser amberjack which will contribute to the conservation of greater amberjack.

*Comment:* One commenter stated that the measure would encourage culling of the catch at sea (i.e., continual discard of the smaller reef fish to obtain the largest fish under the 20-fish aggregate bag limit) and, therefore, should be disapproved.

*Response:* NMFS acknowledges that persons may continue to harvest and retain the largest reef fish caught under the 20-fish aggregate bag limit. NMFS does not encourage this practice because some of the discarded reef fish may not survive release. The aggregate bag limit, however, will prevent an uncontrolled harvest of reef fish currently without bag limits and, thereby, should provide greater conservation benefits than the status quo.

**Changes from the Proposed Rule**

As discussed above, the minimum size limit for banded rudderfish and lesser amberjack, applicable to persons subject to the bag limit, is removed. Also, banded rudderfish and lesser amberjack are not included in a bag limit with greater amberjack.

**Classification**

The Regional Administrator, Southeast Region, NMFS, with concurrence by the Assistant Administrator for Fisheries, NOAA,

determined that the approved measures of Amendment 12 are necessary for the conservation and management of the reef fish fishery of the Gulf of Mexico and that it is consistent with the Magnuson-Stevens Act and other applicable law, with the exception of those measures that were disapproved.

This action has been determined to be not significant for purposes of E.O. 12866.

Before the proposed rule was published, the Assistant General Counsel for Legislation and Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that the proposed rule, if implemented, would not have a significant economic impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis was not prepared. Specific findings supporting that conclusion were summarized in the proposed rule and are not repeated here. No public comments on the certification were received. The disapproval of the banded rudderfish and lesser amberjack management measures did not alter those findings or conclusions regarding the impacts of the approved measures of Amendment 12 that are implemented by this rule.

**List of Subjects in 50 CFR Part 622**

Fisheries, Fishing, Puerto Rico, Reporting and recordkeeping requirements, Virgin Islands.

Dated: December 10, 1996.

Gary Matlock,  
*Acting Assistant Administrator for Fisheries,  
National Marine Fisheries Service.*

For the reasons set out in the preamble, 50 CFR part 622 is amended as follows:

**PART 622—FISHERIES OF THE CARIBBEAN, GULF, AND SOUTH ATLANTIC**

1. The authority citation for part 622 continues to read as follows:

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

2. In § 622.39, paragraph (b)(1)(i) is revised, and paragraph (b)(1)(v) is added to read as follows:

**§ 622.39 Bag and possession limits.**

\* \* \* \* \*

(b) \* \* \*

(1) \* \* \*

(i) Greater amberjack—1.

\* \* \* \* \*

(v) Gulf reef fish, combined, excluding those specified in paragraphs (b)(1) (i) through (iv) of this section—20.

\* \* \* \* \*

[FR Doc. 96-31766 Filed 12-13-96; 8:45 am]

BILLING CODE 3510-22-W

**50 CFR Part 679**

[Docket No. 9608-30240-6338-02; I.D. 082796A]

RIN 0648-AH28

**Fisheries of the Exclusive Economic Zone Off Alaska; Groundfish of the Bering Sea and Aleutian Islands Area; Trawl Closure to Protect Red King Crab**

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

**ACTION:** Final rule.

**SUMMARY:** NMFS implements Amendment 37 to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP). The implementing regulations for Amendment 37 close portions of Bristol Bay, make adjustments to the prohibited species catch limit for red king crab in Zone 1 of the Bering Sea, and increase observer coverage in specified areas related to the trawl closures. These measures are necessary to protect the red king crab stocks in Bristol Bay, which have declined to a level that presents a serious conservation problem for this stock. They are intended to accomplish the objectives of the FMP.

**EFFECTIVE DATE:** January 1, 1997.

**ADDRESSES:** Copies of the Environmental Assessment/Regulatory Impact Review/Final Regulatory Flexibility Analysis (EA/RIR/FRFA) prepared for this rule may be obtained from the North Pacific Fishery Management Council, 605 West 4th Ave., Suite 306, Anchorage, AK 99501-2252; telephone 907-271-2809.

**FOR FURTHER INFORMATION CONTACT:** Sue Salveson, 907-586-7228.

**SUPPLEMENTARY INFORMATION:**

**Background**

Fishing for groundfish by U.S. vessels in the exclusive economic zone of the Bering Sea and Aleutian Islands Area (BSAI) is managed by NMFS according to the FMP. The FMP was prepared by the Council under the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801, *et seq.*; Magnuson-Stevens Act), and is

implemented by regulations governing the U.S. groundfish fisheries at 50 CFR part 679.

Bering Sea crab stocks are currently at relatively low abundance levels, based on recent NMFS bottom trawl survey data. In 1994 and 1995, the Alaska Department of Fish and Game (ADF&G) closed Bristol Bay to red king crab fishing, because the number of female red king crab had declined below the threshold of 8.4 million crab. The ADF&G has authorized a Bristol Bay red king crab fishery in 1996 but at a significantly reduced guideline harvest level.

At its June 1996 meeting, the Council adopted several management measures to further protect and conserve red king crab in the Bristol Bay area of the Bering Sea in view of the declining abundance of red king crab.

NMFS published a proposed rule in the Federal Register on September 12, 1996 (61 FR 48113). Public comment was invited through October 28, 1996. Eight comments were received and are summarized and responded to below in the Response to Comments section. After considering the public comments received, NMFS is implementing the following management measures, which are unchanged from the proposed rule:

1. Prohibit directed fishing for groundfish by vessels using trawl gear, other than pelagic trawl gear, in the Red King Crab Savings Area (RKCSA), that portion of the Bering Sea that is bounded by a straight line connecting the following coordinates in the order listed:

Latitude	Longitude
56°00' N.;	162°00' W.
56°00' N.;	164°00' W.
57°00' N.;	164°00' W.
57°00' N.;	162°00' W.
56°00' N.;	162°00' W.

A subsection of the above-described area, between 56°00' N. and 56°10' N., will remain open to nonpelagic trawling for groundfish during the years in which a guideline harvest level for Bristol Bay red king crab is established. This subarea has been productive for the rock sole fishery, and an opening in this subarea would allow some of the rock sole to be harvested. A separate red king crab prohibited species catch limit is established for this open area and is calculated as no more than 35 percent of the red king crab PSC limit apportioned to the rock sole fishery.

2. A year-round closure to all trawling in the nearshore waters of Bristol Bay east of 162° W. long., with the exception that a portion of this area, between 159° and 160° W. long. and between 58° and 58°43' N. lat. will be left open to

trawling during the period April 1 to June 15 each year.

3. Increased observer coverage on all vessels, including vessels using pot and longline gear, fishing for groundfish in the RKCSA and on trawl vessels fishing in the seasonal open area of the Bristol Bay nearshore waters closure.

4. Adjustments to the Zone 1 PSC limit for red king crab taken in trawl fisheries. The PSC limits will vary based on the abundance and biomass of Bristol Bay red king crab as follows:

a. When the number of mature female red king crabs is at or below the threshold number of 8.4 million mature crabs or the effective spawning biomass (ESB) is less than or equal to 14.5 million lb (6,577 metric tons (mt)), the Zone 1 PSC limit will be 35,000 red king crabs;

b. When the number of mature female red king crabs is above the threshold of 8.4 million mature crab and the ESB is greater than 14.5 million lb (6,577 mt) but less than 55 million lb (24,948 mt), the Zone 1 PSC limit will be 100,000 red king crabs; and

c. When the number of mature female red king crabs is above the threshold of 8.4 million mature crabs and the ESB is equal to or greater than 55 million lb (24,948 mt), the Zone 1 PSC limit will be 200,000 red king crabs.

NMFS also rescinds regulations that provide the authority to open the Port Moller area of Bering Sea reporting areas 512 and 516 to fishing for Pacific cod with trawl gear.

Details of and justification for these measures can be found in the preamble to the proposed rule.

#### Response to Comments

*Comment 1:* The measures implemented by Amendment 37 are supported, because they will reduce disturbance of invertebrates and reduce catch of forage species. Impacts of trawling in these proposed closure areas likely would affect future crab harvests through reductions in stock. The proposed management measures will provide increased protection of crab habitat.

*Response:* NMFS agrees.

*Comment 2:* Closure of the RKCSA is supported, except that the Council failed to justify the need to close the northwest corner of the RKCSA and failed to consider the implications of a shift in fishing effort out of the northwest corner. Observer data support allowing trawling for yellowfin sole in the northwest corner of the RKCSA.

*Response:* The northwest corner of the RKCSA was not analyzed as a separate alternative in the EA/RIR/IRFA for Amendment 37. However, data from the

analysis show that, in 1992 and 1993, essentially all of the red king crab taken by the yellowfin sole fishery in the RKCSA were taken in the northwestern corner of the RKCSA and virtually no red king crab were taken in the rest of the RKCSA. These data indicate that yellowfin sole vessels, if allowed to operate in the northwestern corner of the RKCSA, could take a significant amount of red king crab. Potential shifts in the take of prohibited species, other than those that the closure is designed to protect, are considered when deciding to close a sensitive area.

*Comment 3:* The requirement for increased observer coverage is supported, but the Council and NMFS should consider increased observer coverage on the Pacific cod pot fleet operating in portions of the RKCSA.

*Response:* The proposed rule already would require all vessels, including vessels using pot, jig, and longline gear, that fish for groundfish in the RKCSA, to carry an observer during 100 percent of their fishing days.

*Comment 4:* No biological basis exists for setting the red king crab bycatch limits as proposed under Amendment 37. The limit of 100,000 animals as the intermediate in the "stair-step" is not enough to be practical or to achieve optimum yield from groundfish when red king crab rebuilding occurs. The proposed red king crab bycatch limit should not be approved. Instead, either a floating limit, a limit indexed to adults, or more levels in the "stair-step" approach should be implemented.

*Response:* The Crab Plan Team recommended a bycatch limit based on an abundance index of female red king crab. However, difficulties exist in establishing a proper index for setting the bycatch limits. A constant limit does not take into account the size differences that occur in the crab bycatch. However, a bycatch limit based on adult equivalents is not possible at this time, given the current methods for inseason data collection on crab bycatch. Neither procedures nor systems currently exist to estimate the number of crabs of a given length on a real-time basis. Observers collect red king crab length information, but this information is not available until the observers are debriefed, some time after the fishery has already occurred. This information may become available in a more timely way as real-time electronic reporting of inseason data is implemented. The Council's Scientific and Statistical Committee commented that continuous and stepwise approaches to bycatch limits both present implementation difficulties. If bycatch limits are indexed to estimated crab population abundance

they would be subject to substantial annual variation. Smoothing algorithms, such as moving averages, may stabilize the index and, consequently, the limit. Step-wise limits can result in large changes at the boundaries between steps. Continuously adjustable limits avoid this problem but may result in excessively low or high limits at the extremes of crab population abundance. The addition of floor and ceiling rates to the floating limits could help resolve this deficiency. After consideration of these comments the Council recommended a "stair-step" approach to setting the bycatch limit.

*Comment 5:* Support exists for the measure to close the area of Northern Bristol Bay east of 162° W. long. to trawling, leaving open the subarea between 58° and 58°43' N. lat., which is a productive yellowfin sole fishing ground.

*Response:* NMFS agrees that this section of Bristol Bay can be left open to allow trawlers access to productive fishing grounds without risking harm to red king crab stocks.

*Comment 6:* No clear evidence exists that trawling is creating or substantially contributing to the "depressed" state of crab stocks or that trawling causes mortality of seabirds and marine mammals. No conclusive evidence exists that crab, seabirds, or marine mammals will benefit from these closures.

*Response:* The direct effects of trawling on crab or other marine species are difficult to quantify. However, the closure areas contain concentrations of reproductive animals and are significant juvenile crab habitat. In light of the decline in the crab stocks and the high bycatch in these areas, the Council and NMFS are acting conservatively to limit the potential for impact on crab or other marine resources by trawling. The bycatch of crab during trawling in sensitive areas likely negatively affects the crab stocks. To the extent that seabirds and marine mammals occur in the proposed closed areas, potential negative interactions with trawl operations would be avoided by restricting trawling activities.

*Comment 7:* The EA/RIR/IRFA estimates a net loss to the Nation and indicates that the management measures may have a negative impact on small entities.

*Response:* As stated in the EA/RIR/IRFA and in the preamble to the proposed rule, estimates of the impact of these measures, based on the Bering Sea simulation model, indicate that these management measures would lead to a decrease in net benefits of 0.4 and 0.5 percent from 1993 and 1994 data,

respectively. Given a certain level of uncertainty inherent in the data and in the model procedures, these predicted changes in net benefits are probably not great enough to indicate an actual change from the status quo.

The analysis indicates that a significant effect on a substantial number of small entities could occur through displacement from the closed areas. However, under the measures implemented by Amendment 37, the portion of the RKCSA between 56° and 56°10' N. lat. would be open when a guideline harvest level of red king crab is established. The Council also retained an open area in northern Bristol Bay. The open areas allow the trawl fleet continued access to some productive fishing grounds while protecting the vulnerable red king crab resource.

*Comment 8:* The U.S. Coast Guard could support and enforce these management measures; however, a closure to all trawling instead of just nonpelagic trawling is easier to enforce and during enforcement is less burdensome to the industry.

*Response:* A closure to all trawling could be easier to enforce. However, by limiting the closure to nonpelagic gear, which is most likely to impact the crab resource, some relief to the trawl fleet could be provided for those vessels that use pelagic gear.

#### Classification

The Administrator, Alaska Region, NMFS, determined that Amendment 37 is necessary for the conservation and management of the BSAI fisheries and that it is consistent with the Magnuson-Stevens Act and other applicable laws.

The Council prepared an FRFA as part of the RIR, which describes the impact this rule would have on small entities. There were 132 trawl catcher vessels that landed groundfish from the BSAI in 1993, which would be considered small entities. Many of these vessels would be effected by the time/area closures and PSC limits implemented under this amendment.

The economic impact of these measures could result in a reduction in annual gross revenues by more than 5 percent. The analysis indicates that a significant effect could occur through displacement of fishing effort from the closed areas to other areas, which could increase the incidental catch of Pacific halibut, a prohibited species. The no action alternative for BSAI red king crab was rejected because of the need to protect the stock due to low abundance of adult crabs and low recruitment. The alternative of red king crab PSC limits based on abundance of red king crab at three levels was preferred because it

accommodated a wide range of possible numbers of crabs while avoiding excessively high or low PSC limits at extremes of crab population abundance. The amendment would allow a portion of the RKCSA to be opened to trawl fishing when increased abundance of red king crabs allows a red king crab directed fishery. Also the measures retain an open area for trawl fishing in northern Bristol Bay. These open areas will minimize the impact of crab protection measures on small entities. No action was taken on Tanner crab and snow crab in this rule as the Council is addressing protection of these crab stocks as future actions.

This rule has been determined to be not significant for purposes of E.O. 12866.

#### List of Subjects in 50 CFR Part 679

Fisheries, Reporting and recordkeeping requirements.

Dated: December 10, 1996.

Gary Matlock,

*Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.*

For the reasons set out in the preamble, 50 CFR part 679 is amended as follows:

#### **PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA**

1. The authority citation for part 679 continues to read as follows:

Authority: 16 U.S.C. 773 *et seq.*, 1801 *et seq.*

2. In § 679.2, definitions of "Nearshore Bristol Bay Trawl Closure Area", "Red King Crab Savings Area", the "Red King Crab Savings Subarea" are added in alphabetical order to read as follows:

#### **§ 679.2 Definitions.**

\* \* \* \* \*

*Nearshore Bristol Bay Trawl Closure Area of the BSAI* (see § 679.22(a)(9))

\* \* \* \* \*

*Red King Crab Savings Area (RKCSA) of the BSAI* (see § 679.22(a)(3))

*Red King Crab Savings Subarea (RKCSS) of the BSAI* (see § 679.21(e)(3)(ii)(B))

\* \* \* \* \*

#### **§ 679.7 [Amended]**

3. In § 679.7, paragraph (c)(1) is removed and paragraphs (c)(2), (c)(3), and (c)(4) are redesignated as paragraphs (c)(1), (c)(2), and (c)(3), respectively.

4. In § 679.21, paragraph (e)(7)(vi)(A) heading, and paragraph (e)(7)(vi)(A)(1) are removed, paragraph (e)(7)(vi)(A)(2)

is redesignated as paragraph (e)(7)(vi)(A), paragraph (e)(3)(ii)(B) is redesignated as paragraph (e)(3)(ii)(C), paragraphs (e)(1)(i), (e)(6), (e)(7)(ii), and (e)(7)(iii) are revised, and a new paragraph (e)(3)(ii)(B) is added to read as follows:

**§ 679.21 Prohibited species bycatch management.**

\* \* \* \* \*

(e) \* \* \*  
(1) \* \* \*

(i) *Red king crab in Zone 1.* The PSC limit of red king crab caught by trawl vessels while engaged in directed fishing for groundfish in Zone 1 during any fishing year will be specified annually by NMFS, after consultation with the Council, based on abundance and spawning biomass of red king crab using the criteria set out under paragraphs (e)(1)(i)(A) through (C) of this section.

(A) When the number of mature female red king crab is at or below the threshold of 8.4 million mature crab or the effective spawning biomass is less than or equal to 14.5 million lb (6,577 mt), the Zone 1 PSC limit will be 35,000 red king crab.

(B) When the number of mature female red king crab is above the threshold of 8.4 million mature crab and the effective spawning biomass is greater than 14.5 but less than 55 million lb (24,948 mt), the Zone 1 PSC limit will be 100,000 red king crab.

(C) When the number of mature female red king crab is above the threshold of 8.4 million mature crab and the effective spawning biomass is equal to or greater than 55 million lb, the Zone 1 PSC limit will be 200,000 red king crab.

\* \* \* \* \*

(3) \* \* \*  
(ii) \* \* \*

(B) *Red King Crab Savings Subarea (RKCSS).* (1) The RKCSS is the portion of the RKCSA between 56°00' and 56°10' N. lat. Notwithstanding other provisions of this part, vessels using non-pelagic trawl gear in the RKCSS may engage in directed fishing for groundfish in a given year, if the ADF&G had established a guideline harvest level the previous year for the red king crab fishery in the Bristol Bay area.

(2) When the RKCSS is open to vessels fishing for groundfish with nonpelagic trawl gear under (e)(3)(ii)(B)(1) of this section, NMFS, after consultation with the Council, will specify an amount of the red king crab bycatch limit annually established under paragraph(e)(1)(i) of this section for the RKCSS. The amount of the red

king crab bycatch limit specified for the RKCSS will not exceed an amount equivalent to 35 percent of the trawl bycatch allowance specified for the rock sole/flathead sole/"other flatfish" fishery category under this paragraph (e)(3) and will be based on the need to optimize the groundfish harvest relative to red king crab bycatch.

\* \* \* \* \*

(6) *Notification*—(i) *General.* NMFS will publish annually in the Federal Register the annual red king crab PSC limit and, if applicable, the amount of this PSC limit specified for the RKCSS, the proposed and final bycatch allowances, seasonal apportionments thereof, and the manner in which seasonal apportionments of nontrawl fishery bycatch allowances will be managed, as required under this paragraph (e).

(ii) *Public comment.* Public comment will be accepted by NMFS on the proposed annual red king crab PSC limit and, if applicable, the amount of this PSC limit specified for the RKCSS, the proposed and final bycatch allowances, seasonal apportionments thereof, and the manner in which seasonal apportionments of nontrawl fishery bycatch allowances will be managed, for a period of 30 days from the date of publication in the Federal Register.

(7) \* \* \*

(ii) *Red king crab or C. bairdi Tanner crab, Zone 1, closure*—(A) *General.* Except as provided in paragraph (e)(7)(i) of this section, if, during the fishing year, the Regional Director determines that U.S. fishing vessels participating in any of the fishery categories listed in paragraphs (e)(3)(iv) (B) through (F) of this section will catch the Zone 1 bycatch allowance, or seasonal apportionment thereof, of red king crab or *C. bairdi* Tanner crab specified for that fishery category under paragraph (e)(3) of this section, NMFS will publish in the Federal Register the closure of Zone 1, including the RKCSS, to directed fishing for each species and/or species group in that fishery category for the remainder of the year or for the remainder of the season.

(B) *RKCSS.* If, during the fishing year the Regional Director determines that the amount of the red king crab PSC limit that is specified for the RKCSS under § 679.21(e)(3)(ii)(B) of this section will be caught, NMFS will publish in the Federal Register the closure of the RKCSS to directed fishing for groundfish with nonpelagic trawl gear for the remainder of the year.

(iii) *C. bairdi Tanner crab, Zone 2, closure.* Except as provided in paragraph (e)(7)(i) of this section, if,

during the fishing year, the Regional Administrator determines that U.S. fishing vessels participating in any of the fishery categories listed in paragraphs (e)(3)(iv)(B) through (F) of this section will catch the Zone 2 bycatch allowance, or seasonal apportionment thereof, of *C. bairdi* Tanner crab specified for that fishery category under paragraph (e)(3) of this section, NMFS will publish in the Federal Register the closure of Zone 2 to directed fishing for each species and/or species group in that fishery category for the remainder of the year or for the remainder of the season.

\* \* \* \* \*

5. In § 679.22, paragraphs (a)(1) through (a)(3) are revised and paragraphs (a)(9) and (a)(10) are added to read as follows:

**§ 679.22 Closures.**

(a) *BSAI*—(1) *Zone 1 (512) closure to trawl gear.* No fishing with trawl gear is allowed at any time in reporting Area 512 of Zone 1 in the Bering Sea subarea.

(2) *Zone 1 (516) closure to trawl gear.* No fishing with trawl gear is allowed at any time in reporting Area 516 of Zone 1 in the Bering Sea Subarea during the period March 15 through June 15.

(3) *Red King Crab Savings Area.* Directed fishing for groundfish by vessels using trawl gear other than pelagic trawl gear is prohibited at all times, except as provided at § 679.21(e)(3)(ii)(B), in that part of the Bering Sea subarea defined by straight lines connecting the following coordinates, in the order listed:

Latitude	Longitude
56°00' N.;	162°00' W.
56°00' N.;	164°00' W.
57°00' N.;	164°00' W.
57°00' N.;	162°00' W.
56°00' N.;	162°00' W.

\* \* \* \* \*

(9) *Nearshore Bristol Bay Trawl Closure.* Directed fishing for groundfish by vessels using trawl gear in Bristol Bay, as described in the current edition of NOAA chart 16006, is closed at all times in the area east of 162°00' W. long., except that the area bounded by a straight line connecting the following coordinates in the order listed below is open to trawling from 1200 hours (A.l.t.) April 1 to 1200 hours (A.l.t.) June 15 of each year:

Latitude	Longitude
58°00' N.;	160°00' W.;
58°43' N.;	160°00' W.;
58°43' N.;	159°00' W.;
58°00' N.;	159°00' W.;
58°00' N.;	160°00' W.

(10) Trawling is prohibited from August 1 through August 31 in the Chum Salmon Savings area defined at § 679.21(e)(7)(vi)(B).

\* \* \* \* \*

6. In § 679.50, paragraphs (c)(1)(viii) and (c)(1)(ix) are added to read as follows:

**§ 679.50 Groundfish Observer Program applicable through December 31, 1997.**

\* \* \* \* \*

(c) \* \* \*

(1) \* \* \*

(viii) *Red King Crab Savings Area.* (A) Any catcher/processor or catcher vessel used to fish for groundfish in the Red King Crab Savings area must carry an observer during 100 percent of its fishing days in which the vessel uses pelagic trawl gear, pot, jig, or longline gear.

(B) Any catcher/processor or catcher vessel used to fish for groundfish in the Red King Crab Savings Subarea and subject to this subarea being open to vessels fishing for groundfish with non-pelagic trawl gear under § 679.21(e)(3)(ii)(B), must carry an observer during 100 percent of its fishing days in which the vessel uses non-pelagic trawl gear.

(ix) *Nearshore Bristol Bay Trawl Closure.* Any catcher/processor or catcher vessel used to fish for groundfish in the Nearshore Bristol Bay Trawl Closure area must carry an observer during 100 percent of its fishing days in which the vessel uses trawl gear.

\* \* \* \* \*

7. In § 679.62, paragraph (d) is revised to read as follows:

**§ 679.62 General limitations.**

\* \* \* \* \*

(d) *Closed areas.* It is unlawful for any person to dredge for scallops in any Federal waters off Alaska that are closed to fishing with trawl gear or non-pelagic trawl gear under § 679.22(a)(1)(i), (a)(2)(i), (a)(3), (a)(4), (a)(6), (a)(7), (a)(9), and (b).

[FR Doc. 96-31850 Filed 12-13-96; 8:45 am]

BILLING CODE 3510-22-W

**50 CFR Part 679**

[Docket No. 900833-1095; I.D. 112596D]

**Fisheries of the Exclusive Economic Zone Off Alaska; Bycatch Rate Standards for the First Half of 1997**

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

**ACTION:** Pacific halibut and red king crab bycatch rate standards; request for comments.

**SUMMARY:** NMFS announces Pacific halibut and red king crab bycatch rate standards for the first half of 1997. Publication of these bycatch rate standards is necessary under regulations implementing the vessel incentive program. This action is necessary to implement the bycatch rate standards for trawl vessel operators who participate in the Alaska groundfish trawl fisheries. The intent of this action is to reduce prohibited species bycatch rates and promote conservation of groundfish and other fishery resources.

**DATES:** Effective 1201 hours, Alaska local time (A.l.t.), January 20, 1997, through 2400 hours, A.l.t., June 30, 1997. Comments on this action must be received at the following address no later than 4:30 p.m., A.l.t., January 15, 1997.

**ADDRESSES:** Comments should be mailed to Ronald J. Berg, Chief, Fisheries Management Division, NMFS, P.O. Box 21668, Juneau, AK 99802-1668, Attn: Lori Gravel; or be delivered to 709 West 9th Street, Federal Building, Room 401, Juneau, AK.

**FOR FURTHER INFORMATION CONTACT:** Susan J. Salvesson, 907-586-7228.

**SUPPLEMENTARY INFORMATION:** The domestic groundfish fisheries in the exclusive economic zone of the Bering Sea and Aleutian Islands management area (BSAI) and Gulf of Alaska (GOA) are managed by NMFS according to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area and the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMPs). The FMPs were prepared by the North Pacific Fishery Management Council (Council) under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) and are implemented by regulations governing the U.S. groundfish fisheries at 50 CFR part 679.

Regulations at § 679.21(f) implement a vessel incentive program to reduce halibut and red king crab bycatch rates in the groundfish trawl fisheries. Under the incentive program, operators of trawl vessels may not exceed Pacific halibut bycatch rate standards specified for the BSAI and GOA midwater pollock and "other trawl" fisheries, and the BSAI yellowfin sole and "bottom pollock" fisheries. Vessel operators also may not exceed red king crab bycatch standards specified for the BSAI yellowfin sole and "other trawl"

fisheries in Bycatch Limitation Zone 1 (defined in § 679.2). The fisheries included under the incentive program are defined in regulations at § 679.21(f)(2).

Regulations at § 679.21(f)(3) require that halibut and red king crab bycatch rate standards for each fishery included under the incentive program be published in the Federal Register. The standards are in effect for specified seasons within the 6-month periods of January 1 through June 30, and July 1 through December 31. Given that the GOA and BSAI groundfish fisheries are closed to trawling from January 1 to January 20 of each year (§ 679.23(c)), the Administrator, Alaska Region, NMFS (Regional Administrator) is promulgating bycatch rate standards for the first half of 1997 effective from January 20, 1997, through June 30, 1997.

At its September 1996 meeting, the Council reviewed halibut and red king crab bycatch rates experienced by vessels participating in the fisheries under the incentive program during 1993-1996. Based on this and other information presented below, the Council recommended halibut and red king crab bycatch rate standards for the first half of 1997. These standards are unchanged from those specified for the first half of 1994, 1995, and 1996. The Council's recommended bycatch rate standards are listed in Table 1.

TABLE 1.—BYCATCH RATE STANDARDS, BY FISHERY AND QUARTER, FOR THE FIRST HALF OF 1997 FOR PURPOSES OF THE VESSEL INCENTIVE PROGRAM IN THE BSAI AND GOA

Fishery and quarter	1997 bycatch rate standard
Halibut bycatch rate standards (kilogram (kg) of halibut/metric ton (mt) of groundfish catch)	
BSAI Midwater pollock:	
Qt 1 .....	1.0
Qt 2 .....	1.0
BSAI Bottom pollock:	
Qt 1 .....	7.5
Qt 2 .....	5.0
BSAI Yellowfin sole:	
Qt 1 .....	5.0
Qt 2 .....	5.0
BSAI Other trawl:	
Qt 1 .....	30.0
Qt 2 .....	30.0
GOA Midwater pollock:	
Qt 1 .....	1.0
Qt 2 .....	1.0
GOA Other trawl:	
Qt 1 .....	40.0
Qt 2 .....	40.0

TABLE 1.—BYCATCH RATE STANDARDS, BY FISHERY AND QUARTER, FOR THE FIRST HALF OF 1997 FOR PURPOSES OF THE VESSEL INCENTIVE PROGRAM IN THE BSAI AND GOA—Continued

Fishery and quarter	1997 bycatch rate standard
Zone 1 red king crab bycatch rate standards (number of crab/mt of groundfish catch)	
BSAI yellowfin sole:	
Qt 1 .....	2.5
Qt 2 .....	2.5
BSAI Other trawl:	
Qt 1 .....	2.5
Qt 2 .....	2.5

As required by § 679.21(f)(4), the Council's recommended bycatch rate standards for January through June are based on the following information:

(A) Previous years' average observed bycatch rates;

(B) Immediately preceding season's average observed bycatch rates;

(C) The bycatch allowances and associated fishery closures specified under §§ 679.21 (d) and (e);

(D) Anticipated groundfish harvests;

(E) Anticipated seasonal distribution of fishing effort for groundfish; and

(F) Other information and criteria deemed relevant by the Regional Administrator.

The recommended 1997 standards are based largely on anticipated seasonal fishing effort for groundfish species and 1993–96 halibut and red king crab bycatch rates observed in the trawl fisheries included under the incentive program. The Council anticipates that the 1997 prohibited species bycatch allowances, groundfish harvests, and seasonal distribution of fishing effort will be similar to 1996.

**Bycatch Rate Standards for Pacific Halibut**

As in past years, the halibut bycatch rate standard recommended for the BSAI and GOA midwater pollock fisheries (1 kg halibut/mt of groundfish) is higher than the bycatch rates normally experienced by vessels participating in these fisheries. The recommended standard is intended to encourage vessel operators to maintain off-bottom trawl operations and limit further bycatch of halibut in the pollock fishery when halibut bycatch restrictions at § 679.21 prohibit directed fishing for pollock by vessels using nonpelagic trawl gear.

The recommended halibut bycatch rate standards for the BSAI "bottom pollock" fishery continue to approximate the average annual rates

observed on trawl vessels participating in this fishery during the past 5 years. During the first quarter of 1996, the average halibut bycatch rate in this fishery was 2.18 kg halibut/mt groundfish. Directed fishing for pollock by the offshore and inshore component pollock fisheries in the Bering Sea subarea during the 1996 pollock roe season closed February 26 and March 2, respectively, and in the Aleutian Islands subarea for the offshore component on March 2. Directed fishing for pollock by these components did not reopen until September 1, the start of the pollock nonroe season. Directed fishing for pollock in the Aleutian Islands subarea by the inshore component closed March 10, reopened for a 24-hour period from March 15 until March 16, 1996, and did not reopen until September 1. As in past years, the directed fishing allowances specified for the 1997 pollock roe season likely will be reached before the end of the roe season on April 15. Directed fishing for pollock is prohibited from the end of the pollock roe season (April 15) until the beginning of the pollock nonroe season (September 1), except by vessels fishing under the Community Development Quota program (50 CFR part 679, subpart C).

Data available on halibut bycatch rates in the yellowfin sole fishery during the first and second quarters of 1996 showed an average bycatch rate of about 2.89 and 4.19 kg halibut/mt of groundfish, respectively. As in past years, the Council has presumed that a bycatch rate standard of 5.0 kg halibut/mt of groundfish for the yellowfin sole fishery will continue to encourage vessel operators to take action to avoid excessively high bycatch rates of halibut.

A 30 kg halibut/mt of groundfish bycatch rate standard was recommended for the BSAI "other trawl" fishery. This standard is unchanged since 1992. The Council recommended a 40 kg halibut/mt of groundfish bycatch rate standard for the GOA "other trawl" fishery, which is unchanged from 1994. Observer data collected from the 1996 BSAI "other trawl" fishery show first and second quarter halibut bycatch rates of 11 and 13 kg halibut/mt of groundfish, respectively. Observer data collected from the 1996 GOA "other trawl" fishery show first and second quarter halibut bycatch rates of 15 and 49 kg halibut/mt of groundfish, respectively.

With the exception of the GOA second quarter "other trawl" fishery, the average bycatch rates experienced by vessels participating in the GOA and BSAI "other trawl" fisheries generally have been lower than the Council's

recommended bycatch rate standards for these fisheries. The Council determined that its recommended halibut bycatch rate standards for the "other trawl" fisheries, including the second quarter GOA fishery, would continue to provide an incentive to vessel operators to avoid unusually high halibut bycatch rates while participating in these fisheries and contribute towards an overall reduction in halibut bycatch rates experienced in the Alaska trawl fisheries. Furthermore, these standards would provide some leniency to those vessel operators that choose to use large mesh trawl gear as a means to reduce groundfish discard amounts. The bycatch rates of halibut and crab could increase for those vessels using this gear type, but observer data do not exist on which to base a revised bycatch rate standard for these operations. The Council recommended maintaining the current bycatch rate standards for the "other trawl" fisheries until observer data becomes available that would provide a basis for bycatch rate standards for vessels using large mesh trawl gear.

**Bycatch Rate Standards for Red King Crab**

The Council's recommended red king crab bycatch rate standard for the BSAI yellowfin sole and "other trawl" fisheries in Zone 1 of the Bering Sea subarea is 2.5 crab/mt of groundfish during the first half of 1997. This standard is unchanged since 1992. The red king crab bycatch rates experienced by the yellowfin sole and the "other trawl" fisheries in Zone 1 during the first quarter of 1996 were reduced significantly from past years and averaged 0.00 and 0.14 crab/mt of groundfish, respectively. The average bycatch rates of red king crab experienced in these two fisheries during the second quarter of 1995 were 0.01 and 0.00 crab/mt groundfish, respectively. The low 1996 red king crab bycatch rates primarily were due to interim trawl closures in Zone 1 that were implemented in 1995 and 1996 to reduce red king crab bycatch rates. The low bycatch rates experienced by the 1996 fisheries also were a result, in part, to the closure of Zone 1 to the yellowfin sole fishery on March 20, 1996, due to the attainment of the fishery's Zone 1 C. *bairdi* Tanner crab bycatch allowance. The BSAI rock sole/flathead sole/other flatfish fisheries were closed from February 26 until April 1; April 13 until June 3; June 8 until July 1; and July 31 until the end of the year due to the attainment of seasonal halibut bycatch allowances.

The total bycatch of red king crab by vessels participating in the 1996 yellowfin sole and "other trawl" fisheries is estimated at about 16,800 crab, or about 8 percent of the 200,000 red king crab bycatch limit established for the trawl fisheries in Zone 1. The 1996 bycatch amounts of red king crab are reduced substantially from those experienced in 1994 and 1995 (244,634 and 32,600 crab, respectively). As mentioned above, this reduction primarily is due to interim trawl closures in Zone 1 implemented to reduce red king crab bycatch rates (60 FR 4866, January 25, 1995; 60 FR 63451, December 11, 1995). On November 26, 1996, NMFS approved an amendment to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area that would implement a similar trawl closure on a permanent basis, as well as additional seasonal closures in near shore areas to protect sensitive crab habitat. Therefore, NMFS expects that the 1997 red king crab bycatch rates in Zone 1 will be similar to those experienced in 1996. In spite of anticipated 1997 red king crab bycatch rates significantly lower than 2.5 red king crab/mt of groundfish, the

Council recommended the red king crab bycatch rate standards be maintained at this level to avoid unusually high crab bycatch rates while providing some leniency to those vessel operators that choose to use large mesh trawl gear as a means to reduce groundfish discard amounts.

The Regional Administrator has determined that Council recommendations for bycatch rate standards are appropriately based on the information and considerations necessary for such determinations under § 679.21(f). Therefore, the Regional Administrator concurs in the Council's determinations and recommendations for halibut and red king crab bycatch rate standards for the first half of 1997 as set forth in Table 1. These bycatch rate standards may be revised and published in the Federal Register when deemed appropriate by the Regional Administrator pending his consideration of the information set forth at § 679.21(f)(4).

As required in regulations at §§ 679.2 and 679.21(f)(5), the 1997 fishing months are specified as the following periods for purposes of calculating vessel bycatch rates under the incentive program:

Month 1: January 1 through February 1;  
Month 2: February 2 through March 1;  
Month 3: March 2 through March 29;  
Month 4: March 30 through May 3;  
Month 5: May 4 through May 31;  
Month 6: June 1 through June 28;  
Month 7: June 29 through August 2;  
Month 8: August 3 through August 30;  
Month 9: August 31 through September 27;  
Month 10: September 28 through November 1;  
Month 11: November 2 through November 29; and  
Month 12: November 30 through December 31.

#### Classification

This action is taken under 50 CFR 679.21(f) and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 773 *et seq.*, 1801 *et seq.*

Dated: December 11, 1996.

Gary C. Matlock,

*Director, Office of Sustainable Fisheries,  
National Marine Fisheries Service.*

[FR Doc. 96-31849 Filed 12-13-96; 8:45 am]

BILLING CODE 3510-22-W

# Proposed Rules

Federal Register

Vol. 61, No. 242

Monday, December 16, 1996

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.

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## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 71

[Airspace Docket No. 96-AWP-27]

#### Proposed Amendment of Class E Airspace; San Jose, CA

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking; correction.

**SUMMARY:** This action corrects an error in time period allocated for comments in the Notice of proposed rulemaking that was published in the Federal Register on November 4, 1996 (61 FR 56644), Airspace Docket No. 96-AWP-27 on Class E airspace in San Jose, CA.

**DATES:** Comments must be received on or about January 27, 1997.

**FOR FURTHER INFORMATION CONTACT:** William Buck, Airspace Specialist, Operations Branch, AWP-530, Air Traffic Division, Western-Pacific Region, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California 90261, telephone (310) 725-6556.

#### SUPPLEMENTARY INFORMATION:

##### History

Federal Register Document 96-28282, Airspace Docket No. 96-AWP-27, published on November 4, 1996 (61 FR 56644), revised the description of the Class E airspace area at San Jose, CA. An error was discovered in the time period allotted for comments for the San Jose, CA, Class E airspace area. This action corrects that error.

##### Correction to Notice of Proposed Rulemaking

Accordingly, pursuant to the authority delegated to me, the date that comments must be received for the Class E airspace area at San Jose, CA, as published in the Federal Register on November 4, 1996 (61 FR 56644), FR Doc. 96-28281, page 56644, column 3,

is corrected by removing in **DATES:** "Comments must be received on or before November 8, 1996" and substituting "Comments must be received on or before January 27, 1997."

Issued in Los Angeles, California, on November 22, 1996.

Sabra W. Kaulia,

*Assistant Manager, Air Traffic Division, Western-Pacific Region.*

[FR Doc. 96-31578 Filed 12-13-96; 8:45 am]

**BILLING CODE 4910-13-M**

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#### 14 CFR Part 71

[Airspace Docket No. 96-AGL-24]

#### Establishment of Class E Airspace; Ephraim, WI, Ephraim-Fish Creek Airport

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This notice proposes to establish Class E airspace at Ephraim, WI. A Global Positioning System (GPS) standard instrument approach procedure (SIAP) to Runway 32 has been developed for Ephraim-Fish Creek Airport. Controlled airspace extending upward from 700 to 1200 feet above ground level (AGL) is needed to contain aircraft executing the approach. The intended affect of this proposal is to provide segregation of aircraft using instrument approach procedures in instrument conditions from other aircraft operating in visual weather conditions.

**DATES:** Comments must be received on or before January 28, 1997.

**ADDRESSES:** Send comments on the proposal in triplicate to: Federal Aviation Administration, Office of the Assistant Chief Counsel, AGL-7, Rules Docket No. 96-AGL-24, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

The official docket may be examined in the Office of the Assistant Chief Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois. An informal docket may also be examined during normal business hours at the Air Traffic Division, Operations Branch, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

**FOR FURTHER INFORMATION CONTACT:** John A. Clayborn, Air Traffic Division, Operations Branch, AGL-530, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294-7568.

#### SUPPLEMENTARY INFORMATION:

##### Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made:

"Comments to Airspace Docket No. 96-AGL-24." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket, FAA, Great Lakes Region, Office of the Assistant Chief Counsel, 2300 East Devon Avenue, Des Plaines, Illinois, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

##### Availability of NPRM's

Any person may obtain a copy of the Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA-230, 800 Independence Avenue, S.W., Washington, DC 20591, or by calling (202) 267-3484. Communications must identify the

notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2A, which describes the application procedure.

#### The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish Class E airspace at Ephraim, WI; this proposal would provide adequate Class E airspace for operators executing the GPS Runway 32 SIAP at Ephraim-Fish Creek Airport. Controlled airspace extending upward from 700 to 1200 feet AGL is needed to contain aircraft executing the approach. The intended effect of this action is to provide segregation of aircraft using instrument approach procedures in instrument conditions from other aircraft operating in visual weather conditions. The area would be depicted on appropriate aeronautical charts thereby enabling pilots to circumnavigate the area or otherwise comply with IFR procedures. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9D dated September 4, 1996, and effective September 16, 1996, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

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

#### List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

#### The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal

Aviation Administration proposes to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) as follows:

#### PART 71—[AMENDED]

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

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959-1963 Comp., p. 389; 14 CFR 11.69.

#### § 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9D, Airspace Designations and Reporting Points, dated September 4, 1996, and effective September 16, 1996, is amended as follows:

*Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.*

\* \* \* \* \*

AGL WI E5 Ephraim, WI [New]

Ephraim-Fish Creek Airport, WI  
(Lat. 45°08'07" N, long. 87°11'09" W)

That airspace extending upward from 700 feet above the surface within a 6.3-mile radius of the Ephraim-Fish Creek Airport.

\* \* \* \* \*

Issued in Des Plaines, Illinois on December 4, 1996.

Maureen Woods,

Manager, Air Traffic Division.

[FR Doc. 96-31868 Filed 12-13-96; 8:45 am]

BILLING CODE 4910-13-M

#### 14 CFR Part 71

[Airspace Docket No. 96-AGL-23]

#### Establishment of Class E Airspace; Rolla, ND, Rolla Municipal Airport

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This notice proposes to establish Class E airspace at Rolla, ND. A Global Positioning System (GPS) standard instrument approach procedure (SIAP) to Runway 32 has been developed for Rolla Municipal Airport. Controlled airspace extending upward from 700 to 1200 feet above ground level (AGL) is needed to contain aircraft executing the approach. The intended effect of this proposal is to provide segregation of aircraft using instrument approach procedures in instrument conditions from other aircraft operating in visual weather conditions.

**DATES:** Comments must be received on or before January 28, 1997.

**ADDRESSES:** Send comments on the proposal in triplicate to: Federal

Aviation Administration, Office of the Assistant Chief Counsel, AGL-7, Rules Docket No. 96-AGL-23, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

The official docket may be examined in the Office of the Assistant Chief Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois. An informal docket may also be examined during normal business hours at the Air Traffic Division, Operations Branch, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

**FOR FURTHER INFORMATION CONTACT:** John A. Clayborn, Air Traffic Division, Operations Branch, AGL-530, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois, telephone (847) 294-7568.

#### SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made:

"Comments to Airspace Docket No. 96-AGL-23." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket, FAA, Great Lakes Region, Office of the Assistant Chief Counsel, 2300 East Devon Avenue, Des Plaines, Illinois, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

**Availability of NPRM's**

Any person may obtain a copy of the Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA-230, 800 Independence Avenue, S.W., Washington, DC 20591, or by calling (202) 267-3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2A, which describes the application procedure.

**The Proposal**

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish Class E airspace at Rolla, ND; this proposal would provide adequate Class E airspace for operators executing the GPS Runway 32 SIAP at Rolla Municipal Airport. Controlled airspace extending upward from 700 to 1200 feet AGL is needed to contain aircraft executing the approach. The intended effect of this action is to provide segregation of aircraft using instrument approach procedures in instrument conditions from other aircraft operating in visual weather conditions. The area would be depicted on appropriate aeronautical charts thereby enabling pilots to circumnavigate the area or otherwise comply with IFR procedures. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9D dated September 4, 1996, and effective September 16, 1996, which is incorporated by references in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

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

on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

**List of Subjects in 14 CFR Part 71**

Airspace, Incorporation by reference, Navigation (air).

**The Proposed Amendment**

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) as follows:

**PART 71—[AMENDED]**

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

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959-1963 Comp., p. 389; 14 CFR 11.69.

**§ 71.1 [Amended]**

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9D, Airspace Designations and Reporting Points, dated September 4, 1996, and effective September 16, 1996, is amended as follows:

*Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.*

\* \* \* \* \*

AGL ND E5 Rolla, ND [New]

Rolla Municipal Airport, ND  
(Lat. 48°52'59" N, long. 99°37'09" W)  
Devils Lake VOR/DME  
(Lat. 48°06'47" N, long. 98°54'29" W)

That airspace extending upward from 700 feet above the surface within a 7.3-mile radius of the Rolla Municipal Airport excluding that airspace north of lat. 49°00'00" N, and that airspace extending upward from 1,200 feet above the surface within an area bounded on the north by lat. 49°00'00" N on the east by long. 99°00'00" W, on the southeast by the 22-mile arc of the Devils Lake VOR/DME, on the south by V-430, on the southwest by the Rugby Class E airspace, and on the west by long. 99°49'00" W.

\* \* \* \* \*

Issued in Des Plaines, Illinois on December 4, 1996.

Maureen Woods,  
*Manager, Air Traffic Division.*  
[FR Doc. 96-31867 Filed 12-13-96; 8:45 am]

**BILLING CODE 4910-13-M**

**14 CFR Part 71**

[Airspace Docket No. 96-AGL-26]

**Modification of Class E Airspace; Pinckneyville, IL, Pinckneyville-DuQuoin Airport**

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This notice proposes to modify Class E airspace at Pinckneyville, IL. A Global Positioning System (GPS) standard instrument approach procedure (SIAP) to Runway 18 and a GPS SIAP to Runway 36 have been developed for Pinckneyville-DuQuoin Airport. Controlled airspace extending upward from 700 to 1200 feet above ground level (AGL) is needed to contain aircraft executing the approach. The intended affect of this proposal is to provide segregation of aircraft using instrument approach procedures in instrument conditions from other aircraft operating in visual weather conditions.

**DATES:** Comments must be received on or before January 28, 1997.

**ADDRESSES:** Send comments on the proposal in triplicate to: Federal Aviation Administration, Office of the Assistant Chief Counsel, AGL-7, Rules Docket No. 96-AGL-26, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

The official docket may be examined in the Office of the Assistant Chief Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois. An informal docket may also be examined during normal business hours at the Air Traffic Division, Operations Branch, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

**FOR FURTHER INFORMATION CONTACT:** John A. Clayborn, Air Traffic Division, Operations Branch, AGL-530, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294-7568.

**SUPPLEMENTARY INFORMATION:**

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic,

environmental, and energy-related aspects of the proposal.

Communications should identify the airspace docket number and be submitted in triplicate to the address listed below. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made:

"Comments to Airspace Docket No. 96-AGL-26." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of the comments received. All comments submitted will be available for examination in the Rules Docket, FAA, Great Lakes Region, Office of the Assistant Chief Counsel, 2300 East Devon Avenue, Des Plaines, Illinois, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

#### Availability of NPRM's

Any person may obtain a copy of the Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA-230, 800 Independence Avenue, S.W., Washington, DC 20591, or by calling (202) 267-3484.

Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2A, which describes the application procedure.

#### The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to modify Class E airspace at Pinckneyville, IL; this proposal would provide adequate Class E airspace for operators executing the GPS Runway 18 SIAP and the GPS Runway 36 SIAP at Pinckneyville-DuQuoin Airport. Controlled airspace extending upward from 700 to 1200 feet AGL is needed to contain aircraft executing the approach. The intended affect of this action is to provide segregation of aircraft using instrument approach procedures in instrument conditions from other aircraft operating in visual weather conditions. The area would be depicted on appropriate aeronautical charts

thereby enabling pilots to circumnavigate the area or otherwise comply with IFR procedures. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9D dated September 4, 1996, and effective September 16, 1996, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

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

#### List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

#### The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) as follows:

#### **PART 71—[AMENDED]**

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

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959-1963 Comp., p. 389; 14 CFR 11.69.

##### **§ 71.1 [Amended]**

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9D, Airspace Designations and Reporting Points, dated September 4, 1996, and effective September 16, 1996, is amended as follows:

*Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.*

\* \* \* \* \*

AGL IL E5 Pinckneyville, IL [Revised]  
Pinckneyville-DuQuoin Airport, IL

(Lat. 37°58'40" N, long. 89°21'38" W)

Pinckneyville NDB

(Lat. 37°58'30" N, long. 89°21'47" W)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of the Pinckneyville-DuQuoin Airport and within 2.6 miles each side of the Pinckneyville NDB 002° bearing extending from the 6.4-mile radius to 7.4 miles north of the airport, excluding that airspace within the Marion/Williamson Regional Airport, IL, Class E airspace area.

\* \* \* \* \*

Issued in Des Plaines, Illinois on December 4, 1996.

Maureen Woods,

*Manager, Air Traffic Division.*

[FR Doc. 96-31866 Filed 12-13-96; 8:45 am]

BILLING CODE 4910-13-M

#### **14 CFR Part 71**

[Airspace Docket No. 96-AGL-25]

#### **Modification of Class E Airspace; Big Rapids, MI, Roben-Hood Airport**

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This notice proposes to modify Class E airspace at Big Rapids, MI. A Global Positioning System (GPS) standard instrument approach procedure (SIAP) to Runway 27 has been developed for Roben-Hood Airport. Controlled airspace extending upward from 700 to 1,200 feet above ground level (AGL) is needed to contain aircraft executing the approach. The intended affect of this proposal is to provide segregation of aircraft using instrument approach procedures in instrument conditions from other aircraft operating in visual weather conditions.

**DATES:** Comments must be received on or before January 28, 1997.

**ADDRESSES:** Send comments on the proposal in triplicate to: Federal Aviation Administration, Office of the Assistant Chief Counsel, AGL-7, Rules Docket No. 96-AGL-25, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

The official docket may be examined in the Office of the Assistant Chief Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois. An informal docket may also be examined during normal business hours at the Air Traffic Division, Operations Branch, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

**FOR FURTHER INFORMATION CONTACT:**

John A. Clayborn, Air Traffic Division, Operations Branch, AGL-530, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294-7568.

#### SUPPLEMENTARY INFORMATION:

##### Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made:

"Comments to Airspace Docket No. 96-AGL-25." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket, FAA, Great Lakes Region, Office of the Assistant Chief Counsel, 2300 East Devon Avenue, Des Plaines, Illinois, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

##### Availability of NPRM's

Any person may obtain a copy of the Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA-230, 800 Independence Avenue, S.W., Washington, DC 20591, or by calling (202) 267-3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2A, which describes the application procedure.

#### The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to modify Class E airspace at Big Rapids, MI; this proposal would provide adequate Class E airspace for operators executing the GPS Runway 27 SIAP at Roben-Hood Airport. Controlled airspace extending upward from 700 to 1,200 feet AGL is needed to contain aircraft executing the approach. The intended affect of this action is to provide segregation of aircraft using instrument approach procedures in instrument conditions from other aircraft operating in visual weather conditions. The area would be depicted on appropriate aeronautical charts thereby enabling pilots to circumnavigate the area or otherwise comply with IFR procedures. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9D dated September 4, 1996, and effective September 16, 1996, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

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

#### List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

#### The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) as follows:

#### PART 71—[AMENDED]

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

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959-1963 Comp., p. 389; 14 CFR 11.69,

##### § 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9D, Airspace Designations and Reporting Points, dated September 4, 1996, and effective September 16, 1996, is amended as follows:

*Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.*

\* \* \* \* \*

AGL MI E5—Big Rapids, MI [Revised]

Roben-Hood Airport, MI

(Lat. 43°43'21"N, long. 85°30'15"W)

White Cloud VORTAC

(Lat. 43°34'29"N, long. 85°42'58"W)

That airspace extending upward from 700 feet above the surface within a 6.7-mile radius of the Roben-Hood Airport, and within 4.4 miles each side of the White Cloud VOR 048° radial extending from the 6.7-mile radius to the VOR, and within 2.0 miles each side of the 095° bearing from the airport extending from the 6.7-mile radius to 9.4 miles east of the airport.

\* \* \* \* \*

Issued in Des Plaines, Illinois on December 4, 1996.

Maureen Woods,

*Manager, Air Traffic Division.*

[FR Doc. 96-31865 Filed 12-13-96; 8:45 am]

BILLING CODE 4910-13-M

#### CONSUMER PRODUCT SAFETY COMMISSION

##### 16 CFR Parts 1508 and 1509

#### Amendments to Requirements for Full-Size and Non-Full-Size Baby Cribs: Request for Comments and Information

**AGENCY:** Consumer Product Safety Commission.

**ACTION:** Advance notice of proposed rulemaking.

**SUMMARY:** Based on information currently available, the Commission has reason to believe that unreasonable risks of injury and death may be associated with the slats of certain baby cribs.<sup>1</sup>

<sup>1</sup> The Commission voted 2-1 to issue this Advance Notice of Proposed Rulemaking, with Chairman Ann Brown and Commissioner Thomas Moore voting in favor of the notice and Commissioner Mary Gall voting against it. Copies of their statements are available in the Commission's Office of the Secretary.

From 1985 to September 1996, the Commission identified numerous incidents in which crib slats appeared to disengage from the side panels of the crib. When this occurs, children are at risk of becoming entrapped between the remaining slats or falling out of the crib. Twelve incidents resulted in fatalities and five in injuries. Neither existing Commission regulations nor the current voluntary standard adequately addresses these risks of injury and death.

This advance notice of proposed rulemaking ("ANPR") initiates a rulemaking proceeding under the authority of the Federal Hazardous Substances Act ("FHSA"). One result of the proceeding could be the issuance of a rule requiring that crib sides pass a performance standard to assure the structural integrity of crib slats and side panels.

The Commission requests written comments from interested persons concerning the risks of injury and death, the regulatory alternatives discussed in this notice, and other possible means to address these risks. The Commission invites any interested persons to submit an existing standard or a statement of intent to modify the voluntary standard to address the risks of injury described in this notice.

**DATES:** Written comments and submissions in response to this notice must be received by the Commission by February 14, 1997.

**ADDRESSES:** Comments should be mailed, preferably in five (5) copies, to the Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207, or delivered to the Office of the Secretary, Consumer Product Safety Commission, Room 502, 4330 East-West Highway, Bethesda, Maryland 20814-4408, telephone (301)504-0800.

**FOR FURTHER INFORMATION CONTACT:** Deborah K. Tinsworth, Project Manager, Directorate for Epidemiology and Health Sciences, Consumer Product Safety Commission, Washington, D.C. 20207; telephone (301) 504-0470, ext. 1276.

**SUPPLEMENTARY INFORMATION:**

**A. Background**

The Consumer Product Safety Commission ("CPSC" or the "Commission") has become aware that the slats<sup>2</sup> on some cribs may disengage from the cribs' side panels and result in injury or death. As explained in this

<sup>2</sup>The term "slats" as used in this notice means both the flat vertical bars on the side of a crib as well as the rounded bars (which are sometimes called "spindles").

notice, the Commission is beginning a rulemaking proceeding to address this risk.

**1. Summary of Existing Requirements**

The Commission enforces two baby crib regulations, one applies to full-size cribs, 16 CFR part 1508, and the other to non-full-size cribs, 16 CFR part 1509. Both of these regulations contain requirements concerning the spacing of components, such as slats. However, neither regulation includes requirements addressing the structural integrity of slats and side panels. (Other aspects of the existing CPSC crib regulations are discussed in section E of this notice.)

In addition to CPSC's regulations, there is a voluntary standard—ASTM F1169 Standard Consumer Safety Performance Specification for Full-Size Cribs. And, ASTM is currently developing a standard for non-full-size cribs. The Juvenile Product Manufacturers Association ("JPMA") administers a program to certify that cribs meet the ASTM F1169 standard. The ASTM F1169 voluntary standard requires that crib panels withstand 50 drops of a 25 pound weight from a height of 3 inches. As explained below, the Commission does not believe that this test is adequate.

**2. Chronology of Commission Activity**

CPSC staff has been working with industry to address the risk of crib slat disengagement since the staff first became aware of the problem. As discussed below, the staff has been active on several fronts. The Commission's Office of Compliance has worked with industry to recall or otherwise correct specific cribs with disengaging slats. Currently, the Commission's technical staff has been working with ASTM participants to try to address the problem and conducting its own tests to develop an improved standard.

Since 1985, the Commission has received reports of 138 incidents in which crib slats disengaged (i.e., were loose, missing, or broken) thereby presenting a risk of injury or death. In addition, as discussed below, one manufacturer had reports of 230 incidents in which slats loosened and separated from the side rail.

In 1991, the Commission's Office of Compliance worked with one company to recall certain models of its cribs that had loose or missing slats. Early in 1995 the Commission staff became aware that two other companies' cribs had slats that disengaged. The staff worked with these manufacturers to recall the cribs in February and March of 1995. Some of

these cribs had been involved in minor injuries and one was involved in the death of a child in 1993.

On October 20, 1995, the Commission staff sent a letter to the Chairman of ASTM's subcommittee on cribs expressing concern about this problem and requesting that participants at the subcommittee's October 26 meeting discuss crib slat strength and a torque test that is part of a Canadian crib standard. Under this part of the Canadian standard, discussed in greater detail below, slats must withstand twisting when a specified amount of force is applied. Participants at the subcommittee meeting discussed slat disengagement, and CPSC staff requested manufacturers perform the Canadian torque test and discuss results at the next subcommittee meeting.

In December 1995, the Commission's Compliance staff worked with another manufacturer to recall a crib with spindles which could loosen and separate from the side rail. The company was aware of 230 incidents in which this had occurred, sometimes with minor injuries. The Commission staff is still evaluating these reports.

At the January 30, 1996 ASTM crib subcommittee meeting, CPSC staff shared information concerning 62 of the slat separation incidents that had been reported to CPSC. (These 62 incidents had occurred between January 1990 and December 31, 1995, and they did not include incidents involving "broken" slats.) Manufacturers reported that the Canadian torque test would not always detect unsatisfactory glue joints. Manufacturers also stated that they believed the problem was not with the ASTM standard but with some manufacturers who were not testing cribs frequently enough during the manufacturing process.

On February 8, 1996, CPSC's Compliance staff sent questionnaires to JPMA for distribution to 48 manufacturers of juvenile furniture concerning the manufacturers' quality control procedures. Twenty-one companies responded to the questionnaire (18 do not currently manufacture cribs and 9 had provided the information previously). Each of the nine largest crib manufacturers (produced over 100,000 cribs between January 1993 and December 1995) performed some quality assurance testing on their cribs. However, the responses to the questionnaire were not sufficiently detailed for the staff to determine how these tests were conducted.

The ASTM crib subcommittee met again on March 12 and May 29, 1996. Manufacturers at the May ASTM

meeting stated that they believed only a few manufacturers were involved in the slat separation incidents and, therefore, there was no need to change the ASTM F1169 standard.

In the summer of 1996, the Commission's Engineering Laboratory staff conducted tests on a variety of cribs, as described below. The staff found that cribs that passed ASTM's side panel test failed when tested under more stringent conditions.

When the ASTM subcommittee met on September 26, 1996, the CPSC staff presented results of its tests and suggested amending the ASTM F1169 standard to (1) require a torque test similar to the Canadian crib standard and (2) strengthen the ASTM test to specify 1,000 drops of a 50 pound weight from a height of 3 inches onto crib side panels.

In November 1996, the Commission's Compliance staff worked with a fifth manufacturer to conduct a corrective action plan for its cribs with disengaging slats. A total of approximately 682,000 cribs were affected by the five corrective actions since 1991 for slat separation.

### 3. CPSC Staff's Testing

The Commission's Engineering Laboratory staff tested eight crib samples which had rounded or rectangular slats secured by various means (e.g., some slats were glued and some were pinned). None of the samples tested separated when tested in accordance with the ASTM side panel test (50 drops of a 25-pound weight from a height of 3 inches). However, when the weight dropped onto the side panel was increased from 25 pounds to 50 pounds, all four of the samples with slats secured only by glue did separate. One sample separated after only 27 cycles, two separated after fewer than 130 cycles and one sample separated after 539 cycles. Because a 95th percentile 30-month-old child (the oldest child likely to be in a crib) weighs 35 pounds, the staff chose 50 pounds as a test weight to allow a margin of safety.

The staff also tested these eight cribs in a manner similar to the Canadian torque test but used a lower force. Under the Canadian test, a torque of 8 newton meters (N.m) (approximately 6 pounds feet) is applied to each slat and maintained for 10 seconds. In the CPSC staff's tests a force of 6.78 N.m (5 pounds feet) was applied. During these tests, samples with pinned and mortised crib slats (i.e., rectangular slat ends which fit into rectangular openings in the crib rails) did not rotate when torque tested. However, samples with rounded

slats which were pinned did rotate when torque tested, as did samples with round slat ends that were glued.

### B. Statutory Authority

This proceeding is conducted under provisions of the Federal Hazardous Substances Act ("FHSA"), 15 U.S.C. 1261 *et seq.* Cribs with slats that disengage may present a mechanical hazard and would therefore be banned as "hazardous substances" under the FHSA.

A "hazardous substance" includes any toy or other article intended for use by children which the Commission determines, by regulation, presents an electrical, mechanical, or thermal hazard. 15 U.S.C. 1261(f)(1)(D). An article may present a mechanical hazard if, "in normal use or when subjected to reasonably foreseeable damage or abuse, its design or manufacture presents an unreasonable risk of personal injury or illness (1) from fracture, fragmentation, or disassembly of the article \* \* \*" 15 U.S.C. 1261(s). Under the FHSA, a toy, or other article intended for use by children which is or contains a "hazardous substance" susceptible to access by a child is banned. 15 U.S.C. 1261(q)(1)(A).

A proceeding to promulgate a regulation determining that a toy or other children's article presents a mechanical hazard is governed by the requirements set forth in section 3(f) through 3(i) of the FHSA. 15 U.S.C. 1262(e)(1)-(i). First, the Commission must issue an advance notice of proposed rulemaking ("ANPR") as provided in section 3(f). 15 U.S.C. 1262(f). The ANPR must identify the product and the risk of injury; summarize the regulatory alternatives under consideration; describe existing standards and explain why they do not appear to be adequate; invite comments from the public; and request submission of a new or modified standard. *Id.*

If the Commission decides to continue the rulemaking proceeding after considering responses to the ANPR, the Commission must publish the text of the proposed rule along with a preliminary regulatory analysis in accordance with section 3(h) of the FHSA. 15 U.S.C. 1262(h). If the Commission then wishes to issue a final rule, it must publish the text of the final rule and a final regulatory analysis that includes the elements stated in section 3(i)(1) of the FHSA. 15 U.S.C. 1262(i)(1). Before the Commission may issue a final regulation, it must make findings concerning voluntary standards, the relationship of the costs and benefits of the rule, and the burden imposed by the regulation. 15 U.S.C. 1262(i)(2).

### C. The Product

Both full-size and non-full-size cribs (with non-mesh sides), as defined in 16 CFR Parts 1508 and 1509, are covered by this notice. Cribs are one of the few products that are intended for use when children are unattended. Thus, their safety is essential.

As discussed above, there are both mandatory and voluntary safety standards for cribs. Accordingly, crib safety efforts have generally focused on hazards from older "used" cribs. However, many cribs from which slats have become disengaged were relatively new. Of 62 crib slat disengagement incidents reported to CPSC between January 1, 1990 and December 31, 1995, only 7 cribs were purchased used or were more than 3 years old. (In 14 incidents the age of the crib was unknown.) Moreover, the problem appears to affect a range of manufacturers. Since 1991, five different companies have conducted recalls or other corrective actions for cribs with slats that became disengaged. Twenty-six manufacturers or retailers were involved in the 62 slat disengagement incidents that the Commission's engineering staff brought to the ASTM subcommittee's attention at its January and March 1996 meetings.

Currently, there are at least 20 manufacturers of cribs. In 1995, about 2.2 million cribs were sold. Assuming a product life of 10 to 25 years, there may be 23 to 48 million cribs available for use. However, based on the population of children who would use cribs (under 30 months of age), only about 10 million cribs would be in use at any given time. According to a leading juvenile product trade publication, the average expenditure for a crib or cradle in 1993 (the most recent year for which such information is available) was about \$160.

Over the three year period from 1993 to 1995, the largest eight manufacturers each produced in excess of 200,000 cribs. Six of these eight manufacturers each had three or more crib slat disengagement incidents reported during that period of time. These six are all certified by JPMA as being in conformance with the ASTM F1169 crib standard. All of the eight manufacturers conduct some type of quality assurance tests. However, as discussed above, the Commission does not have sufficient information to evaluate the adequacy of these tests.

### D. Risks of Injury and Death

As explained above, this notice concerns the risk of injury and death posed to children when the slats of a

crib become disengaged from their side panels. Since January 1, 1985, 138 such incidents have been reported to the Commission. This includes cases in which the slats were disengaged, loose, missing, or broken. It does not include incidents that apparently resulted from poor maintenance (such as missing or improper hardware), misuse, or very old "antique" cribs.

When slats disengage from the crib side panel, a gap is left between the remaining slats. A child may be able to get his or her body through the space but not his or her head, resulting in entrapment and severe injury or death. Or, if the space is larger, a child could fall out of the crib.

Fortunately most of the reported incidents did not result in injury. In some cases, a parent noticed that slats were loose or detached before any injuries could occur. In some other cases, slats detached when a parent raised or lowered the side rail of the crib. However, twelve of these incidents did result in fatalities and five in injuries. Children who died or were injured generally had gotten their necks trapped in the space left by missing slats.

Although the Commission has worked with crib manufacturers to recall cribs which present this hazard, the problem has continued. Fifteen of the 138 incidents were reported to the Commission since January of 1996.

#### E. Existing Standards

##### 1. CPSC Regulations

The Commission's regulations for full-size and non-full-size cribs are substantially similar. The full-size crib regulation applies to cribs with interior dimensions of 133 cm long by 71 cm wide (+ or - 1.5 cm). 16 CFR 1508.3(a). The nonfull-size crib regulation applies to most other rigid-sided cribs that are either smaller or larger than full-size cribs. 16 CFR 1509.2(b)(1).

All cribs must comply with a requirement for the spacing of components such as slats and spindles. *Id.* 1508.4, 1508.5, 1509.5 and 1509.6. Both standards also have requirements concerning crib hardware, construction and finishing, and assembly instructions. *Id.* 1508.7, 1508.8, 1509.7, and 1509.8. The standards also include a requirement and test procedure to prohibit any cutouts that could entrap a child. *Id.* 1508.11 and 1509.13. They also require cautionary labeling, manufacturer identification, and recordkeeping. *Id.* 1508.9, 1508.10, 1509.11 and 1509.12.

Nothing in CPSC's current crib regulations requires any performance

test to ensure the structural integrity of crib side panels and slats. Provisions do require that slats be spaced no more than 6 cm (2 $\frac{3}{8}$  inches) apart and that they maintain their spacing when force is applied in accordance with specified testing. *Id.* 1508.4 and 1509.4. The regulations also contain a general requirement that all wood parts be "free from splits, cracks, or other defects which might lead to structural failure." *Id.* 1508.7(b) and 1509.8(b). However, these requirements do not specifically address the hazard of slats disengaging from crib side panels.

##### 2. The ASTM F1169 Crib Standard

The ASTM F1169 voluntary standard for full-size cribs contains several safety testing procedures. In addition to crib side testing, the standard includes vertical impact testing, a mattress support system test, a test method for crib side latches, a plastic teething rail test, and requirements for labeling and instructional literature.

As stated above, JPMA operates a certification program to certify that cribs meet the ASTM F1169 standard. For a manufacturer's cribs to be certified, the manufacturer must test at least 15 percent of models quarterly and the balance once a year in accordance with the F1169 specification.

The crib side test of F1169 includes a cyclic test and a static test. For the cyclic test, a 25-pound weight is dropped onto the side rail 50 times from a 3 inch height. For the static test—conducted after the cyclic test—a static load of 100 pounds is applied to the bottom rail of the side panel as the panel is suspended by the top rail. Both the drop side and the stationary side of the crib are tested.

Based on testing conducted by the Commission staff and other available information, the current ASTM F1169 standard does not appear to be adequate. One of the cribs that had been recalled and was involved in the death of a child nevertheless passed the ASTM side panel test when the Commission's engineering lab conducted its tests. Yet, it failed a more stringent test.

#### F. Regulatory Alternatives Under Consideration

The Commission is considering alternatives to reduce the risks of injury and death related to disengaged crib slats. The primary alternative being considered is amending CPSC's crib regulations to require a test to ensure the structural integrity of crib side panels and their slats. Such a standard could be based on an enhancement of the ASTM F1169 side panel test (e.g.,

increasing the weight that is dropped onto the crib and the number of cycles) and addition of a torque test.

Another alternative is for the Commission to take no regulatory action but to pursue recalls of hazardous cribs on a case-by-case basis using its authority from section 15 of the FHSA, 15 U.S.C. 1274. As explained above, there have been five corrective action plans for cribs which had slats that became disengaged. However, since numerous manufacturers appear to be involved, the Commission is concerned that this may be a wide-spread problem that would be better addressed through regulation. As explained above, the Commission is also concerned that the existing crib side testing procedure under ASTM standard F1169 is not adequate.

Finally, the Commission staff could continue to work with the ASTM crib subcommittee to strengthen the F1169 voluntary standard. This option would not require any regulatory action. However, the Commission staff has been working with the ASTM crib subcommittee since October 1995. Although slat disengagement incidents continue to occur, industry has not agreed to make the voluntary standard more stringent.

#### G. Request for Information and Comments

This ANPR is the first step of a proceeding which could result in amending CPSC's crib standards to require structural integrity tests for crib side panels and their slats. All interested persons are invited to submit to the Commission their comments on any aspect of the alternatives discussed above. Specifically, in accordance with section 3(f) of the FHSA, the Commission requests:

- (1) Written comments with respect to the risk of injury identified by the Commission, the regulatory alternatives being considered, and other possible alternatives for addressing the risk.
- (2) Any existing standard or portion of a standard which could be issued as a proposed regulation.
- (3) A statement of intention to modify or develop a voluntary standard to address the risk of injury discussed in this notice, along with a description of a plan to do so.

All comments and submissions should be addressed to the Office of the Secretary, Consumer Product Safety Commission, Washington, D.C. 20207, and received no later than February 14, 1997.

Dated: December 9, 1996.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

#### Reference Documents

The following documents contain information relevant to this rulemaking proceeding and are available for inspection at the Office of the Secretary, Consumer Product Safety Commission, Room 502, 4330 East-West Highway, Bethesda, Maryland 20814-4408:

1. Memorandum from Suzanne P. Cassidy, EHHA, to John Preston, ES, dated June 13, 1996, entitled "Incident Data on Crib Slat Disengagements."
2. Memorandum from Suzanne P. Cassidy, EHHA, to John Preston, ES, dated June 13, 1996, entitled "Data Update on Crib Slat Disengagements—Incidents Reported Since June 13, 1996."
3. Memorandum from Anthony C. Homan, EC, to Debbie Tinsworth, Project Manager, dated October 31, 1996, entitled "Infant Cribs".
4. Letter from John Preston, P.E., Directorate for Engineering Sciences, CPSC, to Mr. William S. Suvak, P.E., Chairman, Crib Section of ASTM Subcommittee F15.18, dated October 20, 1995.
5. Letter from John Preston, P.E., Directorate for Engineering Sciences, CPSC, to Mr. Willion S. Suvak, P.E., Chairman, Crib Section of ASTM Subcommittee F15.18, dated November 8, 1995.
6. Letter from John Preston, P.E., Directorate for Engineering Sciences, CPSC, to Mr. Willion S. Suvak, P.E., Chairman, Crib Section of ASTM Subcommittee F15.18, dated July 10, 1996.
7. List of Crib Slat Incidents—1/1/90 to 12/30/95 (prepared by John Preston, CPSC/ES, 6/12/96).
8. Chronology of Crib Slat Activities (prepared by John Preston, CPSC/ES, 10/11/96).
9. Memorandum from Carol Cave, Office of Compliance, to Debbie Tinsworth, Project Manager, dated October 17, 1996, entitled "Crib Slat Disengagement."
10. CPSC Press Releases No. 91-114, dated August 22, 1991; No. 95-076, dated February 10, 1995; No. 95-088, dated March 1, 1995; No. 96 December 1995.
11. Sample Letter from David Schmeltzer, Assistant Executive Director, Office of Compliance, CPSC, to Crib Manufacturers and Importers, November 15, 1995.
12. Letter from Marc Schoem, Director of Corrective Actions, CPSC, to Mr. William Macmillan, Chairman, Juvenile Products Manufacturers Association, Inc., February 8, 1996.
13. Canadian Standard for Cribs, Portable Cribs and Cradles, PSB-TC-076, Printed in Trade Communique, Issue N. 7, October 1986.
14. ASTM F1169-88, Standard Specification for Full Size Baby Crib.

15. Memorandum from Robert Hundemer, LSEL, to Deborah Tinsworth, Project Manager, dated November 5, 1996, entitled "Crib Slat Testing."
16. Memorandum from Ronald L. Medford, Assistant Executive Director, and Deborah Kale Tinsworth, Project Manager, to the Commission, dated November 19, 1996, "Options Paper: Crib Slat Disengagement."

[FR Doc. 96-31834 Filed 12-13-96; 8:45 am]

BILLING CODE 6355-01-P

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

#### 26 CFR Part 1

[REG-209834-96]

RIN 1545-AU30

#### Empowerment Zone Employment Credit

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

**ACTION:** Notice of proposed rulemaking and notice of public hearing.

**SUMMARY:** This document contains proposed regulations relating to the period employers may use in computing the empowerment zone employment credit under section 1396 of the Internal Revenue Code. These proposed regulations reflect and implement certain changes made by the Omnibus Budget Reconciliation Act of 1993 (OBRA '93). They affect employers of employees who live and work in an empowerment zone designated under the statute. These proposed regulations provide employers with the guidance necessary to claim the credit. This document also contains a notice of public hearing on these proposed regulations.

**DATES:** Written comments must be received March 17, 1997. Outlines of oral comments and requests to speak at the public hearing scheduled for May 7, 1997, at 10 a.m., must be received by April 16, 1997.

**ADDRESSES:** Send submissions to: CC:DOM:CORP:R (REG-209834-96), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, D.C. 20044. Submissions may be hand delivered between the hours of 8 a.m. and 5 p.m. to: CC:DOM:CORP:R (REG-209834-96), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC. Alternatively, taxpayers may submit comments electronically via the Internet by selecting the "Tax Regs" option on the

IRS Home Page, or by submitting comments directly to the IRS Internet site at [http://www.irs.ustreas.gov/prod/tax\\_regs/comments.html](http://www.irs.ustreas.gov/prod/tax_regs/comments.html). The public hearing will be held in room 2615, Internal Revenue Building, 1111 Constitution Avenue, NW, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Concerning the proposed regulations, Robert G. Wheeler, (202) 622-6060; concerning submissions and the hearing, Michael Slaughter, (202) 622-7190 (not toll-free numbers).

#### SUPPLEMENTARY INFORMATION:

##### Background

This document contains proposed amendments to the Income Tax Regulations (26 CFR part 1) relating to the empowerment zone employment credit under section 1396. Sections 1391 through 1397D (relating to empowerment zones and enterprise communities) were added to the Internal Revenue Code by the Omnibus Budget Reconciliation Act of 1993 (OBRA '93). Section 1397D of the Code authorizes the Secretary of the Treasury to prescribe regulations that may be necessary or appropriate to carry out the purposes of section 1394 through 1397C.

The amount of the empowerment zone employment credit under section 1396 is equal to a specified percentage of qualified zone wages, which are certain wages paid or incurred by an employer for services performed by a qualified zone employee. Questions have arisen about the definition of a "qualified zone employee" in section 1396(d). In particular, questions have been raised about the appropriate period under section 1396(d)(1)(A) during which substantially all of the services performed by an employee for his or her employer must be performed within an empowerment zone in a trade or business of the employer.

In Notice 96-1, 1996-3 I.R.B. 30, the IRS announced its intention to publish a notice of proposed rulemaking that would clarify the relevant period for this purpose. Notice 96-1 described a rule under which employers would have a choice about what period to use, and invited comments on this and any other related issues for which guidance would be helpful to employers. No comments were received. These proposed regulations set forth the rule described in Notice 96-1.

##### Explanation of Provisions

Under the proposed regulations, an employer may use either each pay period or the entire calendar year as the

relevant period in determining whether a particular employee performed substantially all of his or her services within an empowerment zone (the "location-of-services" requirement). For each taxable year the employer must use the same method for all its employees, but the employer may change methods from one year to the next.

In addition to comments on the relevant period for applying the location-of-services requirement, Treasury and IRS request comments on other issues relating to the empowerment zone employment credit with respect to which guidance may be helpful to employers. In particular, comments are requested on whether the final regulations should include guidance on (1) the meaning of "substantially all" in the location-of-services requirement, or (2) a provision authorizing employers to rely on employee certifications to demonstrate compliance with the requirement that a qualified zone employee's principal place of abode be in an empowerment zone. In this regard, commentators may wish to consider analogous provisions in the final regulations under § 1.1394-1 on enterprise zone facility bonds (TD 8673, 61 FR 27258, May 31, 1996).

Some taxpayers and their representatives have asked whether there is any requirement that an employee's status as a qualified zone employee be certified by a third party in a fashion similar to the eligibility certifications required under the targeted jobs tax credit (prior to its expiration on December 31, 1994). There is no such requirement.

#### Proposed Effective Date

These proposed regulations are proposed to be effective December 21, 1994, the date on which the nine empowerment zones authorized by OBRA'93 were designated by the Secretaries of Housing and Urban Development and Agriculture.

#### Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because the regulation does not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the

Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

#### Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (preferably a signed original and eight (8) copies) that are timely submitted to the IRS. All comments will be available for public inspection and copying.

A public hearing has been scheduled for Wednesday, May 7, 1997 in room 2615, Internal Revenue Building, 1111 Constitution Avenue NW, Washington, DC. Because of access restrictions, visitors will not be admitted beyond the building lobby more than 15 minutes before the hearing starts.

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons that wish to present oral comments at the hearing must submit written comments and an outline of topics to be discussed and the time to be devoted to each topic (signed original and eight (8) copies by Wednesday, April 16, 1997).

A period of 10 minutes will be allotted to each person for making comments.

An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

#### Drafting Information

The principal author of these regulations is Robert G. Wheeler, Office of Associate Chief Counsel, Employee Benefits and Exempt Organizations. However, other personnel from the IRS and Treasury Department participated in their development.

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

Income taxes, Reporting and recordkeeping requirements.

#### Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

#### **PART 1—INCOME TAXES**

Paragraph 1. The authority citation for part 1 is amended by adding an entry in numerical order to read as follows:

Authority: 26 U.S.C. 7805 \* \* \*  
Section 1.1396-1 also issued under 26 U.S.C. 1397D.

Par. 2. A new undesignated centerheading and § 1.1396-1 are added to read as follows:

#### Empowerment Zone Employment Credit

#### **§ 1.1396-1 Qualified zone employees.**

(a) *In general.* A qualified zone employee of an employer is an

employee who satisfies the location-of-services requirement and the abode requirement with respect to the same empowerment zone and is not otherwise excluded by section 1396(d).

(1) *Location-of-services requirement.* The location-of-services requirement is satisfied if substantially all of the services performed by the employee for the employer are performed in the empowerment zone in a trade or business of the employer.

(2) *Abode requirement.* The abode requirement is satisfied if the employee's principal place of abode while performing those services is in the empowerment zone.

(b) *Period for applying location-of-services requirement.* In applying the location-of-services requirement, an employer may use either the pay period method described in paragraph (b)(1) of this section or the calendar year method described in paragraph (b)(2) of this section. For each taxable year of an employer, the employer must either use the pay period method with respect to all of its employees or use the calendar year method with respect to all of its employees. The employer may change the method applied to all of its employees from one taxable year to the next.

(1) *Pay period method—(i) Relevant period.* Under the pay period method, the relevant period for applying the location-of-services requirement is each pay period in which an employee provides services to the employer. If an employer has one pay period for certain employees and a different pay period for other employees (e.g., a weekly pay period for hourly wage employees and a bi-weekly pay period for salaried employees), the pay period actually applicable to a particular employee is the relevant pay period for that employee under this method.

(ii) *Application of method.* Under this method, an employee does not satisfy the location-of-services requirement during a pay period unless substantially all of the services performed by the employee for the employer during that pay period are performed within the empowerment zone in a trade or business of the employer.

(2) *Calendar year method—(i) Relevant period.* Under the calendar year method, the relevant period for an employee is the entire calendar year with respect to which the credit is being claimed. However, for any employee who is employed by the employer for less than the entire calendar year, the relevant period is the portion of that

calendar year during which the employee is employed by the employer.

(ii) *Application of method.* Under this method, an employee does not satisfy the location-of-services requirement during any part of a calendar year unless substantially all of the services performed by the employee for the employer during that calendar year (or, if the employee is employed by the employer for less than the entire calendar year, the portion of that calendar year during which the employee is employed by the employer) are performed within the empowerment zone in a trade or business of the employer.

(3) *Examples.* This paragraph (b) may be illustrated by the following examples. In each example, the employees satisfy the abode requirement at all relevant times and all services performed by the employees for their employer are performed in a trade or business of the employer. The employees are not precluded from being qualified zone employees by section 1396(d)(2) (certain employees ineligible). No portion of the employees' wages is precluded from being qualified zone wages by section 1396(c)(2) (only first \$15,000 of wages taken into account) or section 1396(c)(3) (coordination with targeted jobs credit and work opportunity credit). The examples are as follows:

*Example 1.* (i) Employer X has a weekly pay period for all its employees. Employee A works for X throughout 1997. During each of the first 20 weekly pay periods in 1997, substantially all of A's work for X is performed within the empowerment zone in which A resides. A also works in the zone at various times during the rest of the year, but there is no other pay period in which substantially all of A's work for X is performed within the empowerment zone.

(ii) Employer X uses the pay period method. For each of the first 20 pay periods of 1997, A is a qualified zone employee, all of A's wages from X are qualified zone wages, and X may claim the empowerment zone employment credit with respect to those wages. X cannot claim the credit with respect to any of A's wages for the rest of 1997.

*Example 2.* (i) Employer Y has a weekly pay period for its factory workers and a bi-weekly pay period for its office workers. Employee B works for Y in various factories and Employee C works for Y in various offices.

(ii) Employer Y uses the pay period method. Y must use B's weekly pay periods to determine the periods (if any) in which B is a qualified zone employee. Y may claim the empowerment zone employment credit with respect to B's wages only for the weekly pay periods for which B is a qualified zone employee, because those are B's only wages that are qualified zone wages. Y must use C's bi-weekly pay periods to determine the periods (if any) in which C is a qualified zone

employee. Y may claim the credit with respect to C's wages only for the bi-weekly pay periods for which C is a qualified zone employee, because those are C's only wages that are qualified zone wages.

*Example 3.* (i) Employees D and E work for Employer Z throughout 1997. Although some of D's work for Z in 1997 is performed outside the empowerment zone in which D resides, substantially all of it is performed within the empowerment zone. E's work for Z is performed within the empowerment zone in which E resides for several weeks of 1997 but outside the zone for the rest of the year so that, viewed on an annual basis, E's work is not substantially all performed within the empowerment zone.

(ii) Employer Z uses the calendar year method. D is a qualified zone employee for the entire year, all of D's 1997 wages from Z are qualified zone wages, and Z may claim the empowerment zone employment credit with respect to all of those wages, including the portion attributable to work outside the zone. Under the calendar year method, E is not a qualified zone employee for any part of 1997, none of E's 1997 wages are qualified zone wages, and Z cannot claim any empowerment zone employment credit with respect to E's wages for 1997. Z cannot use the calendar year method for D and the pay period method for E because Z must use the same method for all employees. For 1998, however, Z can switch to the pay period method for E if Z also switches to the pay period method for D and all Z's other employees.

(c) *Effective date.* This section applies with respect to wages paid or incurred on or after December 21, 1994.

Margaret Milner Richardson,  
*Commissioner of Internal Revenue.*

[FR Doc. 96-31718 Filed 12-13-96; 8:45 am]  
BILLING CODE 4830-01-U

## DEPARTMENT OF LABOR

### Occupational Safety and Health Administration

#### 29 CFR Part 1926

[Docket No. S-775]

RIN 1218-AA65

#### Negotiated Rulemaking Committee; Reestablish

**AGENCY:** Occupational Safety and Health Administration (OSHA), Department of Labor.

**ACTION:** Notice of reestablishment of the Steel Erection Negotiated Rulemaking Advisory Committee charter.

**SUMMARY:** The Secretary of Labor has determined that it is in the public interest to reestablish the charter of Steel Erection Negotiated Rulemaking Advisory Committee (SENAC) for the Committee to complete its charge to

make recommendations to OSHA on a proposed rule for steel erection activities in construction. The reestablishment of the charter will allow SENAC to continue its work for a period of two years or until the promulgation of the final standard, whichever occurs first.

**DATES:** The Charter will be filed on December 31, 1996.

**ADDRESSES:** Any written comments in response to this notice should be sent in quadruplicate, to the Docket Officer, Docket S-775, U.S. Department of Labor, Occupational Safety and Health Administration, Room N2624, 200 Constitution Avenue, N.W., Washington, D.C. 20210 (202) 219-7894.

**FOR FURTHER INFORMATION CONTACT:** Ms. Bonnie Friedman, Director, Office of Information and Consumer Affairs, OSHA, U.S. Department of Labor, Room N-3647, 200 Constitution Avenue, N.W., Washington, D.C. 20210; telephone (202) 219-8615.

**SUPPLEMENTARY INFORMATION:** In accordance with the Federal Advisory Committee Act (Title 5 U.S.C. App. I), section 3 of 1990, Title 5 U.S.C. 561, et seq., the Secretary of Labor has determined that the reestablishment of SENAC's charter is in the public interest in connection with the performance of duties imposed on the Department by the Occupational Safety and Health Act (29 U.S.C. 651, et seq.).

SENAC is composed of 20 members including representatives from labor, industry, small business, public interests and government agencies appointed by the Secretary of Labor.

The Department of Labor anticipates that the SENAC Committee will soon complete its work on the first phase of a revised steel erection standard. The Committee did not believe it had enough information to agree on one issue that was a part of its original mandate, the standards governing slippery metal deck surfaces. The Committee will seek information, data, studies, and views from all interested members of the public to assist in developing a recommendation on this issue.

The Committee will report to the Assistant Secretary for Occupational Safety and Health. It will function solely as an advisory body in compliance with the provisions of the Federal Advisory Committee Act (FACA) and the Negotiated Rulemaking Act (NRA). Its charter will be filed, as required by FACA, within fifteen (15) days of the date of this publication.

Meetings of this committee will be announced in the Federal Register and are open to the public.

Interested parties are invited to submit comments regarding the re-establishment of the committee to the Docket Officer, Docket S-775, U.S. Department of Labor, Occupational Safety and Health Administration, Room N2624, 200 Constitution Avenue, N.W., Washington, D.C. 20210; (202) 219-7894. All parties interested in furnishing information, data, studies, and views on the matter of slippery metal deck surfaces may furnish such material to the Committee at the same address.

With this notice, I am reestablishing the charter of the Steel Erection Negotiated Rulemaking Advisory Committee.

Signed at Washington, DC this 10th day of December, 1996.

Robert B. Reich,

*Secretary of Labor.*

[FR Doc. 96-31807 Filed 12-13-96; 8:45 am]

BILLING CODE 4510-26-P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[FL-067-1-9635b; FRL-5640-5]

#### Approval and Promulgation of Implementation Plans Florida: Approval of Revisions to the State Implementation Plan

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

**ACTION:** Proposed rule.

**SUMMARY:** The EPA proposes to approve the State implementation plan (SIP) revision submitted by the State of Florida for the purpose of granting variances from the Stage II vapor recovery program. In the final rules section of this Federal Register, the EPA is approving the State's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision amendment and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this proposed rule, no further activity is contemplated in relation to this proposed rule. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this document. Any parties interested in commenting on this document should do so at this time.

**DATES:** To be considered, comments must be received by January 15, 1997.

**ADDRESSES:** Written comments on this action should be addressed to Alan Powell at the EPA Regional Office listed.

Copies of the documents relative to this action are available for public inspection during normal business hours at the following locations. The interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day.

Environmental Protection Agency, Region 4 Air Programs Branch, 100 Alabama Street, SW, Atlanta, Georgia 30303. Florida Department of Environmental Protection, Twin Towers Office Building, 2600 Blair Stone Road, Tallahassee, Florida 32399-2400.

**FOR FURTHER INFORMATION CONTACT:** Alan Powell, Regulatory Planning and Development Section, Air Programs Branch, Air, Pesticides & Toxics Management Division, Region 4 Environmental Protection Agency, 100 Alabama Street, SW., Atlanta, Georgia 30303. The telephone number is 404/562-9045. Reference file FL-067-1-9635.

**SUPPLEMENTARY INFORMATION:** For additional information see the direct final rule which is published in the rules section of this Federal Register.

Dated: September 5, 1996.

A. Stanley Meiburg,

*Acting Regional Administrator.*

[FR Doc. 96-31593 Filed 12-13-96; 8:45 am]

BILLING CODE 6560-50-F

### 40 CFR Part 55

[FRL-5664-5]

#### Outer Continental Shelf Air Regulations; Consistency Update for California

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

**ACTION:** Notice of proposed rulemaking; consistency update.

**SUMMARY:** EPA is proposing to update a portion of the Outer Continental Shelf ("OCS") Air Regulations. Requirements applying to OCS sources located within 25 miles of states' seaward boundaries must be updated periodically to remain consistent with the requirements of the corresponding onshore area ("COA"), as mandated by section 328(a)(1) of the Clean Air Act ("the Act"), the Clean Air Act Amendments of 1990. The portion of the OCS air regulations that is being updated pertains to the requirements for OCS sources for which the Santa

Barbara County Air Pollution Control District (Santa Barbara County APCD), the South Coast Air Quality Management District (South Coast AQMD) and the Ventura County Air Pollution Control District (Ventura County APCD) are the designated COAs. The OCS requirements for the above Districts, contained in the Technical Support Document, are proposed to be incorporated by reference into the Code of Federal Regulations and are listed in the appendix to the OCS air regulations. Proposed changes to the existing requirements are discussed below.

**DATES:** Comments on the proposed update must be received on or before January 15, 1997.

**ADDRESSES:** Comments must be mailed (in duplicate if possible) to: EPA Air Docket (A-5), Attn: Docket No. A-93-16 Section XIII, Environmental Protection Agency, Air and Toxics Division, Region 9, 75 Hawthorne St., San Francisco, CA 94105.

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

EPA Air Docket (A-5), Attn: Docket No. A-93-16 Section XIII, Environmental Protection Agency, Air and Toxics Division, Region 9, 75 Hawthorne St., San Francisco, CA 94105.

EPA Air Docket (LE-131), Attn: Air Docket No. A-93-16 Section XIII, Environmental Protection Agency, 401 M Street SW, Room M-1500, Washington, DC 20460. A reasonable fee may be charged for copying.

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

#### SUPPLEMENTARY INFORMATION:

##### Background

On September 4, 1992, EPA promulgated 40 CFR part 55<sup>1</sup>, which established requirements to control air pollution from OCS sources in order to attain and maintain federal and state

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

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

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

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

#### EPA Evaluation and Proposed Action

In updating 40 CFR part 55, EPA reviewed the rules submitted for inclusion in part 55 to ensure that they are rationally related to the attainment or maintenance of federal or state ambient air quality standards or part C

of title I of the Act, that they are not designed expressly to prevent exploration and development of the OCS and that they are applicable to OCS sources. 40 CFR 55.1. EPA has also evaluated the rules to ensure they are not arbitrary or capricious. 40 CFR 55.12 (e). In addition, EPA has excluded administrative or procedural rules,<sup>2</sup> and requirements that regulate toxics which are not related to the attainment and maintenance of federal and state ambient air quality standards.

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

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

- Rule 102 Definitions (Adopted 7/18/96)
- Rule 205 Standards for Granting Applications (Adopted 8/15/96)
- Rule 323 Architectural Coatings (Adopted 7/18/96)

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

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

- Rule 301 Permit Fees (except (e)(3) and Table IV) (Adopted 5/10/96)
- Rule 304 Equipment, Materials, and Ambient Air Analyses (Adopted 5/10/96)
- Rule 304.1 Analyses Fee (Adopted 5/10/96)
- Rule 306 Plan Fees (Adopted 5/10/96)
- Rule 309 Fees for Regulation XVI Plans (Adopted 5/10/96)
- Rule 430 Breakdown Provisions ((a) and (e) only) (Adopted 7/12/96)
- Rule 1107 Coating of Metal Parts and Products (Adopted 3/8/96)
- Rule 1113 Architectural Coatings (Adopted 3/8/96)
- Rule 1129 Aerosol Coatings (Adopted 3/8/96)
- Rule 1136 Wood Products Coatings (Adopted 6/14/96)
- Rule 1303 Requirements (Adopted 5/10/96)
- Rule 1304 Exemptions (Adopted 6/14/96)

<sup>2</sup> After delegation, each COA will use its administrative and procedural rules as onshore. In those instances where EPA does not delegate authority to implement and enforce part 55, EPA will use its own administrative and procedural requirements to implement the substantive requirements. 40 CFR 55.14 (c)(4).

- Rule 1306 Emission Calculations (Adopted 6/14/96)
  - Rule 1610 Old-Vehicle Scrapping (Adopted 3/8/96)
  - Rule 2002 Allocations for Oxides of Nitrogen and Oxides of Sulfur (Adopted 7/12/96)
  - Rule 2004 Requirements (except (1)(B) and C) (Adopted 7/12/96)
  - Rule 2005 New Source Review for RECLAIM (except (i)) (Adopted 7/12/96)
  - Rule 2011 Requirements for Monitoring, Reporting, and Recordkeeping for SO<sub>x</sub> Emissions (Adopted 7/12/96)
  - Rule 2012 Requirements for Monitoring, Reporting, and Recordkeeping for NO<sub>x</sub> Emissions (Adopted 7/12/96)
  - Rule 2015 Backstop Provisions (except (b)(1)(G) and (b)(3)(B)) (Adopted 7/12/96)
2. *The following rules were submitted but will not be included until the District's Title V Operating Permits program has been approved:*
- Rule 518 Variance Procedures for Title V Facilities (Adopted 8/11/95)
  - Rule 518.1 Permit Appeal Procedures for Title V Facilities (Adopted 8/11/95)
  - Rule 518.2 Federal Alternative Operating Conditions (Adopted 1/12/96)
  - Rule XXX Title V Permits (Adopted 8/11/95)
3. *The following rule was submitted but will not be included because it does not apply to OCS Sources:*
- Rule 1902 Transportation Conformity (Adopted 5/10/96)
- C. After review of the rules submitted by Ventura County APCD against the criteria set forth above and in 40 CFR part 55, EPA is proposing to make the following rules applicable to OCS sources for which Ventura County APCD is designated as the COA.
1. *The following rules were submitted as revisions to existing requirements:*
- Rule 2 Definitions (Adopted 4/9/96)
  - Rule 23 Exemptions (Adopted 7/9/96)
  - Rule 44 Exemption Evaluation Fee (Adopted 9/10/96)
  - Rule 72 New Source Performance Standards (NSPS) (Adopted 9/10/96)
  - Rule 74.6 Surface Cleaning and Degreasing (Adopted 7/9/96)
  - Rule 74.6.1 Cold Cleaning Operations (Adopted 7/9/96)
  - Rule 74.6.2 Batch Loaded Vapor Degreasing Operations (Adopted 7/9/96)
  - Rule 74.12 Surface Coating of Metal Parts and Products (Adopted 9/10/96)
  - Rule 74.20 Adhesives and Sealants (adopted 9/10/96)

Rule 74.24 Marine Coating Operations (Adopted 9/10/96)  
 Rule 74.30 Wood Products Coatings (Adopted 9/10/96)

2. The following rule was submitted to be removed from Section 54.14:

Rule 66 Organic Solvents

Executive Order 12291 (Regulatory Impact Analysis)

The Office of Management and Budget has exempted this rule from the requirements of Section 3 of Executive Order 12291. This exemption continues in effect under Executive Order 12866 which superseded Executive Order 12291 on September 30, 1993.

Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 requires each federal agency to perform a Regulatory Flexibility Analysis for all rules that are likely to have a "significant impact on a substantial number of small entities." Small entities include small businesses, organizations, and governmental jurisdictions.

As was stated in the final regulation, the OCS rule does not apply to any small entities, and the structure of the rule averts direct impacts and mitigates indirect impacts on small entities. This consistency update merely incorporates onshore requirements into the OCS rule to maintain consistency with onshore regulations as required by section 328 of the Act and does not alter the structure of the rule.

The EPA certifies that this notice of proposed rulemaking will not have a significant impact on a substantial number of small entities.

List of Subjects in 40 CFR Part 55

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

Dated: December 8, 1996.

Felicia Marcus,

Regional Administrator.

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

#### PART 55—[AMENDED]

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

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

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

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

\* \* \* \* \*

(e) \* \* \*

(3) \* \* \*

(ii) \* \* \*

(F) *Santa Barbara County Air Pollution Control District Requirements Applicable to OCS Sources.*

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

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

\* \* \* \* \*

3. Appendix A to 40 CFR Part 55 is proposed to be amended by revising paragraphs (b)(6), (b)(7), and (b)(8) under the heading "California" to read as follows:

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

\* \* \* \* \*

California

\* \* \* \* \*

(b) \* \* \*

(6) The following requirements are contained in *Santa Barbara County Air Pollution Control District Requirements Applicable to OCS Sources*:

Rule 102 Definitions (Adopted 7/18/96)

Rule 103 Severability (Adopted 10/23/78)

Rule 201 Permits Required (Adopted 7/2/79)

Rule 202 Exemptions to Rule 201 (Adopted 3/10/92)

Rule 203 Transfer (Adopted 10/23/78)

Rule 204 Applications (Adopted 10/23/78)

Rule 205 Standards for Granting Applications (Adopted 8/15/96)

Rule 206 Conditional Approval of Authority to Construct or Permit to Operate (Adopted 10/15/91)

Rule 207 Denial of Application (Adopted 10/23/78)

Rule 210 Fees (Adopted 5/7/91)

Rule 212 Emission Statements (Adopted 10/20/92)

Rule 301 Circumvention (Adopted 10/23/78)

Rule 302 Visible Emissions (Adopted 10/23/78)

Rule 304 Particulate Matter-Northern Zone (Adopted 10/23/78)

Rule 305 Particulate Matter Concentration-Southern Zone (Adopted 10/23/78)

Rule 306 Dust and fumes-Northern Zone (Adopted 10/23/78)

Rule 307 Particulate Matter Emission Weight Rate-Southern Zone (Adopted 10/23/78)

Rule 308 Incinerator Burning (Adopted 10/23/78)

Rule 309 Specific Contaminants (Adopted 10/23/78)

Rule 310 Odorous Organic Sulfides (Adopted 10/23/78)

Rule 311 Sulfur Content of Fuels (Adopted 10/23/78)

Rule 312 Open Fires (Adopted 10/2/90)

Rule 316 Storage and Transfer of Gasoline (Adopted 12/14/93)

Rule 317 Organic Solvents (Adopted 10/23/78)

Rule 318 Vacuum Producing Devices or Systems-Southern Zone (Adopted 10/23/78)

Rule 321 Control of Degreasing Operations (Adopted 7/10/90)

Rule 322 Metal Surface Coating Thinner and Reducer (Adopted 10/23/78)

Rule 323 Architectural Coatings (Adopted 7/18/96)

Rule 324 Disposal and Evaporation of Solvents (Adopted 10/23/78)

Rule 325 Crude Oil Production and Separation (Adopted 1/25/94)

Rule 326 Storage of Reactive Organic Liquid Compounds (Adopted 12/14/93)

Rule 327 Organic Liquid Cargo Tank Vessel Loading (Adopted 12/16/85)

Rule 328 Continuous Emission Monitoring (Adopted 10/23/78)

Rule 330 Surface Coating of Miscellaneous Metal Parts and Products (Adopted 4/21/95)

Rule 331 Fugitive Emissions Inspection and Maintenance (Adopted 12/10/91)

Rule 332 Petroleum Refinery Vacuum Producing Systems, Wastewater Separators and Process Turnarounds (Adopted 6/11/79)

Rule 333 Control of Emissions from Reciprocating Internal Combustion Engines (Adopted 12/10/91)

Rule 342 Control of Oxides of Nitrogen (NO<sub>x</sub> from Boilers, Steam Generators and Process Heaters) (Adopted 03/10/92)

Rule 343 Petroleum Storage Tank Degassing (Adopted 12/14/93)

Rule 344 Petroleum Sumps, Pits, and Well Cellars (Adopted 11/10/94)

Rule 359 lares and Thermal Oxidizers (6/28/94)

Rule 370 Potential to Emit—Limitations for Part 70 Sources (Adopted 6/15/95)

Rule 505 Breakdown Conditions Sections A., B.1., and D. only (Adopted 10/23/78)

Rule 603 Emergency Episode Plans (Adopted 6/15/81)

Rule 702 General Conformity (Adopted 10/20/94)

Rule 1301 Part 70 Operating Permits—General Information (Adopted 11/09/93)

Rule 1302 Part 70 Operating Permits—Permit Application (Adopted 11/09/93)

Rule 1303 Part 70 Operating Permits—Permits (Adopted 11/09/93)

Rule 1304 Part 70 Operating Permits—Issuance, Renewal, Modification and Reopening (Adopted 11/09/93)

Rule 1305 Part 70 Operating Permits—Enforcement (Adopted 11/09/93)

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

- Rule 102 Definition of Terms (Adopted 11/4/88)
- Rule 103 Definition of Geographical Areas (Adopted 1/9/76)
- Rule 104 Reporting of Source Test Data and Analyses (Adopted 1/9/76)
- Rule 108 Alternative Emission Control Plans (Adopted 4/6/90)
- Rule 109 Recordkeeping for Volatile Organic Compound Emissions (Adopted 3/6/92)
- Rule 201 Permit to Construct (Adopted 1/5/90)
- Rule 201.1 Permit Conditions in Federally Issued Permits to Construct (Adopted 1/5/90)
- Rule 202 Temporary Permit to Operate (Adopted 5/7/76)
- Rule 203 Permit to Operate (Adopted 1/5/90)
- Rule 204 Permit Conditions (Adopted 3/6/92)
- Rule 205 Expiration of Permits to Construct (Adopted 1/5/90)
- Rule 206 Posting of Permit to Operate (Adopted 1/5/90)
- Rule 207 Altering or Falsifying of Permit (Adopted 1/9/76)
- Rule 208 Permit for Open Burning (Adopted 1/5/90)
- Rule 209 Transfer and Voiding of Permits (Adopted 1/5/90)
- Rule 210 Applications (Adopted 1/5/90)
- Rule 212 Standards for Approving Permits (Adopted 8/12/94) except (c)(3) and (e)
- Rule 214 Denial of Permits (Adopted 1/5/90)
- Rule 217 Provisions for Sampling and Testing Facilities (Adopted 1/5/90)
- Rule 218 Stack Monitoring (Adopted 8/7/81)
- Rule 219 Equipment Not Requiring a Written Permit Pursuant to Regulation II (Adopted 8/12/94)
- Rule 220 Exemption—Net Increase in Emissions (Adopted 8/7/81)
- Rule 221 Plans (Adopted 1/4/85)
- Rule 301 Permit Fees (Adopted 5/10/96) except (e)(3) and Table IV
- Rule 304 Equipment, Materials, and Ambient Air Analyses (Adopted 5/10/96)
- Rule 304.1 Analyses Fees (Adopted 5/10/96)
- Rule 305 Fees for Acid Deposition (Adopted 10/4/91)
- Rule 306 Plan Fees (Adopted 5/10/96)
- Rule 309 Fees for Regulation XVI Plans (Adopted 5/10/96)
- Rule 401 Visible Emissions (Adopted 4/7/89)
- Rule 403 Fugitive Dust (Adopted 7/9/93)
- Rule 404 Particulate Matter—Concentration (Adopted 2/7/86)
- Rule 405 Solid Particulate Matter—Weight (Adopted 2/7/86)
- Rule 407 Liquid and Gaseous Air Contaminants (Adopted 4/2/82)
- Rule 408 Circumvention (Adopted 5/7/76)
- Rule 409 Combustion Contaminants (Adopted 8/7/81)
- Rule 429 Start-Up and Shutdown Provisions for Oxides of Nitrogen (Adopted 12/21/90)
- Rule 430 Breakdown Provisions, (a) and (e) only (Adopted 7/12/96)
- Rule 431.1 Sulfur Content of Gaseous Fuels (Adopted 10/2/92)
- Rule 431.2 Sulfur Content of Liquid Fuels (Adopted 5/4/90)
- Rule 431.3 Sulfur Content of Fossil Fuels (Adopted 5/7/76)
- Rule 441 Research Operations (Adopted 5/7/76)
- Rule 442 Usage of Solvents (Adopted 3/5/82)
- Rule 444 Open Fires (Adopted 10/2/87)
- Rule 463 Organic Liquid Storage (Adopted 3/11/94)
- Rule 465 Vacuum Producing Devices or Systems (Adopted 11/1/91)
- Rule 468 Sulfur Recovery Units (Adopted 10/8/76)
- Rule 473 Disposal of Solid and Liquid Wastes (Adopted 5/7/76)
- Rule 474 Fuel Burning Equipment-Oxides of Nitrogen (Adopted 12/4/81)
- Rule 475 Electric Power Generating Equipment (Adopted 8/7/78)
- Rule 476 Steam Generating Equipment (Adopted 10/8/76)
- Rule 480 Natural Gas Fired Control Devices (Adopted 10/7/77) Addendum to Regulation IV (Effective 1977)
- Rule 701 General (Adopted 7/9/82)
- Rule 702 Definitions (Adopted 7/11/80)
- Rule 704 Episode Declaration (Adopted 7/9/82)
- Rule 707 Radio—Communication System (Adopted 7/11/80)
- Rule 708 Plans (Adopted 7/9/82)
- Rule 708.1 Stationary Sources Required to File Plans (Adopted 4/8/80)
- Rule 708.2 Content of Stationary Source Curtailment Plans (Adopted 4/4/80)
- Rule 708.4 Procedural Requirements for Plans (Adopted 7/11/80)
- Rule 709 First Stage Episode Actions (Adopted 7/11/80)
- Rule 710 Second Stage Episode Actions (Adopted 7/11/80)
- Rule 711 Third Stage Episode Actions (Adopted 7/11/80)
- Rule 712 Sulfate Episode Actions (Adopted 7/11/80)
- Rule 715 Burning of Fossil Fuel on Episode Days (Adopted 8/24/77)
- Regulation IX—New Source Performance Standards (Adopted 3/8/94)
- Rule 1106 Marine Coatings Operations (Adopted 1/13/95)
- Rule 1107 Coating of Metal Parts and Products (Adopted 3/8/96)
- Rule 1109 Emissions of Oxides of Nitrogen for Boilers and Process Heaters in Petroleum Refineries (Adopted 8/5/88)
- Rule 1110 Emissions from Stationary Internal Combustion Engines (Demonstration) (Adopted 11/6/81)
- Rule 1110.1 Emissions from Stationary Internal Combustion Engines (Adopted 10/4/85)
- Rule 1110.2 Emissions from Gaseous and Liquid-Fueled Internal Combustion Engines (Adopted 12/9/94)
- Rule 1113 Architectural Coatings (Adopted 3/8/96)
- Rule 1116.1 Lightering Vessel Operations—Sulfur Content of Bunker Fuel (Adopted 10/20/78)
- Rule 1121 Control of Nitrogen Oxides from Residential-Type Natural Gas-Fired Water Heaters (Adopted 3/10/95)
- Rule 1122 Solvent Cleaners (Degreasers) (Adopted 4/5/91)
- Rule 1123 Refinery Process Turnarounds (Adopted 12/7/90)
- Rule 1129 Aerosol Coatings (Adopted 3/8/96)
- Rule 1134 Emissions of Oxides of Nitrogen from Stationary Gas Turbines (Adopted 8/4/89)
- Rule 1136 Wood Products Coatings (Adopted 6/14/96)
- Rule 1140 Abrasive Blasting (Adopted 8/2/85)
- Rule 1142 Marine Tank Vessel Operations (Adopted 7/19/91)
- Rule 1146 Emissions of Oxides of Nitrogen from Industrial, Institutional, and Commercial Boilers, Steam Generators, and Process Heaters (Adopted 5/13/94)
- Rule 1146.1 Emission of Oxides of Nitrogen from Small Industrial, Institutional, and Commercial Boilers, Steam Generators, and Process Heaters (Adopted 5/13/94)
- Rule 1148 Thermally Enhanced Oil Recovery Wells (Adopted 11/5/82)
- Rule 1149 Storage Tank Degassing (Adopted 4/1/88)
- Rule 1168 Control of Volatile Organic Compound Emissions from Adhesive Application (Adopted 12/10/93)
- Rule 1171 Solvent Cleaning Operations (Adopted 5/12/95)
- Rule 1173 Fugitive Emissions of Volatile Organic Compounds (Adopted 5/13/94)
- Rule 1176 Sumps and Wastewater Separators (Adopted 5/13/94)
- Rule 1301 General (Adopted 6/28/90)
- Rule 1302 Definitions (Adopted 5/3/91)
- Rule 1303 Requirements (Adopted 5/10/96)
- Rule 1304 Exemptions (Adopted 6/14/96)
- Rule 1306 Emission Calculations (Adopted 6/14/96)
- Rule 1313 Permits to Operate (Adopted 6/28/90)
- Rule 1403 Asbestos Emissions from Demolition/Renovation Activities (Adopted 4/8/94)
- Rule 1610 Old-Vehicle Scrapping (Adopted 3/8/96)
- Rule 1701 General (Adopted 1/6/89)
- Rule 1702 Definitions (Adopted 1/6/89)
- Rule 1703 PSD Analysis (Adopted 10/7/88)
- Rule 1704 Exemptions (Adopted 1/6/89)
- Rule 1706 Emission Calculations (Adopted 1/6/89)
- Rule 1713 Source Obligation (Adopted 10/7/88)
- Regulation XVII Appendix (effective 1977)
- Rule 1901 General Conformity (Adopted 9/9/94)
- Rule 2000 General (Adopted 7/12/96)
- Rule 2001 Applicability (Adopted 10/15/93)
- Rule 2002 Allocations for oxides of nitrogen (NO<sub>x</sub>) and oxides of sulfur (SO<sub>x</sub>) Emissions (Adopted 7/12/96)
- Rule 2004 Requirements (Adopted 7/12/96) except (I) (B and C)
- Rule 2005 New Source Review for RECLAIM (Adopted 7/12/96) except (i)
- Rule 2006 Permits (Adopted 10/15/93)
- Rule 2007 Trading Requirements (Adopted 10/15/93)
- Rule 2008 Mobiles Source Credits (Adopted 10/15/93)
- Rule 2010 Administrative Remedies and Sanctions (Adopted 10/15/93)
- Rule 2011 Requirements for Monitoring, Reporting, and Recordkeeping for Oxides of Sulfur (SO<sub>x</sub>) Emissions (Adopted 7/12/96)
- Appendix A Volume IV—(Protocol for oxides of sulfur) (Adopted 3/10/95)

- Rule 2012 Requirements for Monitoring, Reporting, and Recordkeeping for Oxides of Nitrogen (NO<sub>x</sub>) Emissions (Adopted 7/12/96)
- Appendix A Volume V—(Protocol for oxides of nitrogen) (Adopted 3/10/95)
- Rule 2015 Backstop Provisions (Adopted 7/12/96) except (b)(1)(G) and (b)(3)(B)
- XXXI Acid Rain Permit Program (Adopted 2/10/95)
- (8) The following requirements are contained in *Ventura County Air Pollution Control District Requirements Applicable to OCS Sources*:
- Rule 2 Definitions (Adopted 4/9/96)
- Rule 5 Effective Date (Adopted 5/23/72)
- Rule 6 Severability (Adopted 11/21/78)
- Rule 7 Zone Boundaries (Adopted 6/14/77)
- Rule 10 Permits Required (Adopted 6/13/95)
- Rule 11 Definition for Regulation II (Adopted 6/13/95)
- Rule 12 Application for Permits (Adopted 6/13/95)
- Rule 13 Action on Applications for an Authority to Construct (Adopted 6/13/95)
- Rule 14 Action on Applications for a Permit to Operate (Adopted 6/13/95)
- Rule 15.1 Sampling and Testing Facilities (Adopted 10/12/93)
- Rule 16 BACT Certification (Adopted 6/13/95)
- Rule 19 Posting of Permits (Adopted 5/23/72)
- Rule 20 Transfer of Permit (Adopted 5/23/72)
- Rule 23 Exemptions from Permits (Adopted 7/9/96)
- Rule 24 Source Recordkeeping, Reporting, and Emission Statements (Adopted 9/15/92)
- Rule 26 New Source Review (Adopted 10/22/91)
- Rule 26.1 New Source Review—Definitions (Adopted 10/22/91)
- Rule 26.2 New Source Review—Requirements (Adopted 10/22/91)
- Rule 26.3 New Source Review—Exemptions (Adopted 10/22/91)
- Rule 26.6 New Source Review—Calculations (Adopted 10/22/91)
- Rule 26.8 New Source Review—Permit To Operate (Adopted 10/22/91)
- Rule 26.10 New Source Review—PSD (Adopted 10/22/91)
- Rule 28 Revocation of Permits (Adopted 7/18/72)
- Rule 29 Conditions on Permits (Adopted 10/22/91)
- Rule 30 Permit Renewal (Adopted 5/30/89)
- Rule 32 Breakdown Conditions: Emergency Variances, A., B.1., and D. only. (Adopted 2/20/79)
- Rule 33 Part 70 Permits—General (Adopted 10/12/93)
- Rule 33.1 Part 70 Permits—Definitions (Adopted 10/12/93)
- Rule 33.2 Part 70 Permits—Application Contents (Adopted 10/12/93)
- Rule 33.3 Part 70 Permits—Permit Content (Adopted 10/12/93)
- Rule 33.4 Part 70 Permits—Operational Flexibility (Adopted 10/12/93)
- Rule 33.5 Part 70 Permits—Timeframes for Applications, Review and Issuance (Adopted 10/12/93)
- Rule 33.6 Part 70 Permits—Permit Term and Permit Reissuance (Adopted 10/12/93)
- Rule 33.7 Part 70 Permits—Notification (Adopted 10/12/93)
- Rule 33.8 Part 70 Permits—Reopening of Permits (Adopted 10/12/93)
- Rule 33.9 Part 70 Permits—Compliance Provisions (Adopted 10/12/93)
- Rule 33.10 Part 70 Permits—General Part 70 Permits (Adopted 10/12/93)
- Rule 34 Acid Deposition Control (Adopted 3/14/95)
- Appendix II-B Best Available Control Technology (BACT) Tables (Adopted 12/86)
- Rule 42 Permit Fees (Adopted 7/11/95)
- Rule 44 Exemption Evaluation Fee (Adopted 9/10/96)
- Rule 45 Plan Fees (Adopted 6/19/90)
- Rule 45.2 Asbestos Removal Fees (Adopted 8/4/92)
- Rule 50 Opacity (Adopted 2/20/79)
- Rule 52 Particulate Matter-Concentration (Adopted 5/23/72)
- Rule 53 Particulate Matter-Process Weight (Adopted 7/18/72)
- Rule 54 Sulfur Compounds (Adopted 6/14/94)
- Rule 56 Open Fires (Adopted 3/29/94)
- Rule 57 Combustion Contaminants-Specific (Adopted 6/14/77)
- Rule 60 New Non-Mobile Equipment-Sulfur Dioxide, Nitrogen Oxides, and Particulate Matter (Adopted 7/8/72)
- Rule 62.7 Asbestos—Demolition and Renovation (Adopted 6/16/92)
- Rule 63 Separation and Combination of Emissions (Adopted 11/21/78)
- Rule 64 Sulfur Content of Fuels (Adopted 6/14/94)
- Rule 67 Vacuum Producing Devices (Adopted 7/5/83)
- Rule 68 Carbon Monoxide (Adopted 6/14/77)
- Rule 71 Crude Oil and Reactive Organic Compound Liquids (Adopted 12/13/94)
- Rule 71.1 Crude Oil Production and Separation (Adopted 6/16/92)
- Rule 71.2 Storage of Reactive Organic Compound Liquids (Adopted 9/26/89)
- Rule 71.3 Transfer of Reactive Organic Compound Liquids (Adopted 6/16/92)
- Rule 71.4 Petroleum Sumps, Pits, Ponds, and Well Cellars (Adopted 6/8/93)
- Rule 71.5 Glycol Dehydrators (Adopted 12/13/94)
- Rule 72 New Source Performance Standards (NSPS) (Adopted 9/10/96)
- Rule 74 Specific Source Standards (Adopted 7/6/76)
- Rule 74.1 Abrasive Blasting (Adopted 11/12/91)
- Rule 74.2 Architectural Coatings (Adopted 08/11/92)
- Rule 74.6 Surface Cleaning and Degreasing (Adopted 7/9/96)
- Rule 74.6.1 Cold Cleaning Operations (Adopted 7/9/96)
- Rule 74.6.2 Batch Loaded Vapor Degreasing Operations (Adopted 7/9/96)
- Rule 74.7 Fugitive Emissions of Reactive Organic Compounds at Petroleum Refineries and Chemical Plants (Adopted 1/10/89)
- Rule 74.8 Refinery Vacuum Producing Systems, Waste-water Separators and Process Turnarounds (Adopted 7/5/83)
- Rule 74.9 Stationary Internal Combustion Engines (Adopted 12/21/93)
- Rule 74.10 Components at Crude Oil Production Facilities and Natural Gas Production and Processing Facilities (Adopted 6/16/92)
- Rule 74.11 Natural Gas-Fired Residential Water Heaters-Control of NO<sub>x</sub> (Adopted 4/9/85)
- Rule 74.12 Surface Coating of Metal Parts and Products (Adopted 9/10/96)
- Rule 74.15 Boilers, Steam Generators and Process Heaters (5MM BTUs and greater) (Adopted 11/8/94)
- Rule 74.15.1 Boilers, Steam Generators and Process Heaters (1–5MM BTUs) (Adopted 6/13/95)
- Rule 74.16 Oil Field Drilling Operations (Adopted 1/8/91)
- Rule 74.20 Adhesives and Sealants (Adopted 9/10/96)
- Rule 74.23 Stationary Gas Turbines (Adopted 3/14/95)
- Rule 74.24 Marine Coating Operations (Adopted 9/10/96)
- Rule 74.26 Crude Oil Storage Tank Degassing Operations (Adopted 11/8/94)
- Rule 74.27 Gasoline and ROC Liquid Storage Tank Degassing Operations (Adopted 11/8/94)
- Rule 74.28 Asphalt Roofing Operations (Adopted 5/10/94)
- Rule 74.30 Wood Products Coatings (Adopted 9/10/96)
- Rule 75 Circumvention (Adopted 11/27/78)
- Appendix IV-A Soap Bubble Tests (Adopted 12/86)
- Rule 100 Analytical Methods (Adopted 7/18/72)
- Rule 101 Sampling and Testing Facilities (Adopted 5/23/72)
- Rule 102 Source Tests (Adopted 11/21/78)
- Rule 103 Stack Monitoring (Adopted 6/4/91)
- Rule 154 Stage 1 Episode Actions (Adopted 9/17/91)
- Rule 155 Stage 2 Episode Actions (Adopted 9/17/91)
- Rule 156 Stage 3 Episode Actions (Adopted 9/17/91)
- Rule 158 Source Abatement Plans (Adopted 9/17/91)
- Rule 159 Traffic Abatement Procedures (Adopted 9/17/91)
- Rule 220 General Conformity (Adopted 5/9/95)
- \* \* \* \* \*
- [FR Doc. 96–31840 Filed 12–13–96; 8:45 am]
- BILLING CODE 6050–50–P
- 
- 40 CFR Part 132**
- [FRL–5666–2]**
- Proposed Selenium Criterion Maximum Concentration for the Water Quality Guidance for the Great Lakes System**
- AGENCY:** Environmental Protection Agency (EPA).
- ACTION:** Extension of public comment period for proposed rule.
- 
- SUMMARY:** EPA is today extending the public comment period on its proposed

acute aquatic life criterion for selenium (61 FR 58444, November 14, 1996) for the final Water Quality Guidance for the Great Lakes System that was published on March 23, 1995 (60 FR 15366). The U.S. Court of Appeals for the D.C. Circuit vacated the 1995 acute selenium criterion on September 19, 1996.

**DATES:** Written comments on this proposed rule will be accepted until January 15, 1997.

**ADDRESSES:** An original and 4 copies of all comments on the proposal should be addressed to Mark Morris (4301), U.S. EPA, 401 M Street., SW, Washington, D.C. 20460.

**FOR FURTHER INFORMATION CONTACT:** Mark Morris (4301), U.S. EPA, 401 M Street, SW., Washington, D.C. 20460, (202-260-0312).

**SUPPLEMENTARY INFORMATION:**

I. Legal Authority

These regulations are proposed under the authority of section 188(c) of the Clean Water Act, 33 U.S.C. 1268(c).

II. Today's Action

On November 14, 1996 (61 FR 58444), EPA proposed to revise the portion of the aquatic life criterion for selenium protecting against acute exposures that it promulgated as part of the final Water Quality Guidance for the Great Lakes System. The proposal takes into account data showing that selenium's two most prevalent oxidation states, selenate and selenite, have different potentials for acute toxicity. It also presents new data indicating that the toxicities of all forms of selenium are additive. EPA proposed a new Criterion Maximum Concentration that would vary depending on the relative proportions of selenate, selenite, and other forms of selenium that are present. EPA provided 30 days for comment on this proposal.

At least one member of the regulated community potentially affected by this proposal has requested EPA to extend the comment period to provide more time to analyze the data supporting the proposal and to develop adequate comments. EPA agrees that additional time is warranted and is today extending the comment period by 30 days, from December 16, 1996 to January 15, 1997.

Dated: December 10, 1996.

Robert Perciasepe,

*Assistant Administrator, Office of Water.*

[FR Doc. 96-31842 Filed 12-13-96; 8:45 am]

BILLING CODE 6560-50-P

**DEPARTMENT OF THE INTERIOR**

**Bureau of Land Management**

**43 CFR Parts 2800, 2920, 4100, 4300, 4700, 5460, 5510, 8200, 8340, 8350, 8360, 8370, 8560, 9210, and 9260**

[WO-130-1820-00-24 1A]

RIN 1004-AC30

**Law Enforcement—Criminal; Proposed Regulations**

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Proposed regulations, extension of comment period.

**SUMMARY:** On November 7, 1996, the Bureau of Land management ("BLM") published a document in the Federal Register announcing a proposed rule to revise and consolidate many of the regulations which instruct the public regarding BLM criminal law enforcement (61 FR 57605). The 60-day comment period for the proposed rule expires on January 6, 1997. The proposed rule is very complex and hard to follow because of the conforming language for a large number of different regulatory parts. BLM recently received a request for an extension of the comment period. BLM understands that the rule is difficult to comment on, and is therefore extending the comment period for an additional 30 days.

**DATES:** Submit comments on February 5, 1997.

**ADDRESSES:** If you wish to comment, you may:

(a) Hand-deliver comments to the Bureau of Land Management, Administrative Record, Room 401, 1620 L St., NW., Washington, DC.;

(b) Mail comments to the Bureau of Land Management, Administrative Record, Room 401LS, 1849 C Street, NW., Washington, DC 20240; or

(c) Send comments through the Internet to WOCComment@wo.blm.gov. Please include "attn: AC30", and your name and return address in your Internet message. If you do not receive a confirmation from the system that we have received your Internet message, please contact us directly at (202) 452-5030.

You will be able to review comments at BLM's Regulatory Affairs Group office, Room 401, 1620 L Street, N.W., Washington, D.C., during regular business hours (7:45 a.m. to 4:15 p.m.) Monday through Friday.

**FOR FURTHER INFORMATION CONTACT:** Dennis McLane, (208) 387-5126, or Erica Petacchi, (202) 452-5084.

Dated: December 10, 1996.

Annetta Cheek,

*Regulatory Affairs Group Manager.*

[FR Doc. 96-31854 Filed 12-13-96; 8:45 am]

BILLING CODE 4310-84-M

**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 622**

[Docket No. 961204340-6340-01; I.D. 110196D]

RIN 0648-A113

**Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic; Catch Specifications**

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

**ACTION:** Proposed rule, request for comments.

**SUMMARY:** In accordance with the framework procedure for adjusting management measures of the Fishery Management Plan for the Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic (FMP), NMFS proposes to reduce the commercial quotas for Atlantic group king and Spanish mackerel, revise the trip limits for Atlantic group Spanish mackerel, reduce the commercial quota for Gulf group Spanish mackerel, revise the commercial trip limits in the eastern zone for Gulf group king mackerel, and establish a Gulf group king mackerel bag limit of zero for captains and crews of charter vessels and headboats. The intended effects of this rule are to protect king and Spanish mackerel from overfishing and maintain healthy stocks while still allowing catches by important commercial and recreational fisheries.

**DATES:** Written comments must be received on or before December 31, 1996.

**ADDRESSES:** Comments on the proposed rule must be sent to Mark Godcharles, Southeast Regional Office, NMFS, 9721 Executive Center Drive N., St. Petersburg, FL 33702.

Requests for copies of the environmental assessment and regulatory impact review supporting aspects of this action relating to Atlantic migratory groups of king and Spanish mackerel should be sent to the South Atlantic Fishery Management Council,

Southpark Building, One Southpark Circle, Suite 306, Charleston, SC 29407-4699, Phone: 803-571-4366, Fax: 803-769-4520. Requests for comparable documents relating to Gulf group king and Spanish mackerel should be sent to the Gulf of Mexico Fishery Management Council, 3018 U.S. Highway North, Suite 1000, Tampa, FL, 33619, Phone: 813-228-2815, Fax: 813-225-7015.

**FOR FURTHER INFORMATION CONTACT:** Mark Godcharles, 813-570-5305.

**SUPPLEMENTARY INFORMATION:** The fisheries for coastal migratory pelagic resources are regulated under the FMP. The FMP was prepared jointly by the Gulf of Mexico and South Atlantic Fishery Management Councils (Councils) and is implemented by regulations at 50 CFR part 622.

In accordance with the framework procedures of the FMP, the Councils made recommendations for the 1996/97 fishing year in separate regulatory amendments to the Regional Administrator, Southeast Region, NMFS (RA). For Atlantic migratory groups, the recommendations would reduce the commercial quotas and recreational allocations for king and Spanish mackerel and modify the commercial

trip limits for Spanish mackerel. For Gulf migratory groups, the recommendations would reduce the commercial quota and recreational allocation for Spanish mackerel and revise the commercial trip limits and recreational bag limit for king mackerel. The Gulf group king mackerel bag limit would be reduced from two to zero for the captain and crew aboard charter vessels and headboats. The recommended changes are within the scope of the management measures that may be adjusted under the framework procedure, as specified in 50 CFR 622.48.

**Proposed Total Allowable Catches (TACs), Allocations, and Quotas**

The Councils recommended TACs for the fishing year that began April 1, 1996. The South Atlantic Council recommended a decrease of the annual TAC for the Atlantic migratory group of king mackerel from 7.30 million lb (3.31 million kg) to 6.80 million lb (3.08 million kg), and for the Atlantic migratory group of Spanish mackerel from 9.40 million lb (4.26 million kg) to 7.00 million lb (3.18 million kg). The Gulf Council recommended a decrease

of the annual TAC for the Gulf migratory group of Spanish mackerel from 8.60 million lb (3.90 million kg) to 7.00 million lb (3.18 million kg). Consistent with the FMP's framework procedure, the recommended TACs are within the range of the acceptable biological catch established by the Councils and represent a conservative approach supported by their Scientific and Statistical Committees and Mackerel Advisory Panels. These TACs are consistent with current stock rebuilding programs and with the attainment of optimum yield (OY) for each managed mackerel group as provided by the FMP. The proposed lower TACs would require reductions in the commercial quotas and recreational allocations. However, such reduced quotas and allocations would still be higher than recent harvest levels. Consequently, no fishery closures or quota/allocation overruns are likely.

Under the provisions of the FMP, the recreational and commercial fisheries are allocated a fixed percentage of the TAC. Under the established percentages, the proposed revised TACs for the fishing year that commenced April 1, 1996, would be allocated as follows:

Species/migratory groups	m. lb	m. kg
Atlantic King Mackerel—TAC .....	6.80	3.08
Recreational allocation (62.9%) .....	4.28	1.94
Commercial quota (37.1%) .....	2.52	1.14
Atlantic Spanish Mackerel—TAC .....	7.00	3.18
Recreational allocation (50%) .....	3.50	1.59
Commercial quota (50%) .....	3.50	1.59
Gulf Spanish Mackerel—TAC .....	7.00	3.18
Recreational allocation (43%) .....	3.01	1.37
Commercial quota (57%) .....	3.99	1.81

**Atlantic Group Spanish Mackerel: Commercial Vessel Trip Limits**

The commercial sector of the Atlantic group Spanish mackerel fishery is managed under trip limits. In the southern zone (i.e., south of a line extending directly east from the Georgia/Florida boundary), the trip limits vary depending on the percentage of the adjusted quota landed. The adjusted quota is the commercial quota reduced by an amount calculated to allow continued harvest of Atlantic group Spanish mackerel at the rate of 500 lb (227 kg) per vessel per day for the remainder of the fishing year after the adjusted quota is reached. Along with the decreased commercial quota, the South Atlantic Council recommended that the adjusted quota be decreased

from 4.45 million lb (2.02 million kg) to 3.25 million lb (1.47 million kg).

For Atlantic group Spanish mackerel, the South Atlantic Council proposed modifications to the trip limit regime for commercial vessels operating off the Florida east coast as follows: Establish an earlier start, November 1 rather than December 1, for the unlimited harvest season and increase the daily trip limit for Saturday and Sunday from 500 to 1,500 lb (227 to 680 kg) during that season; and increase the daily trip limit from 1,000 to 1,500 lb (454 to 680 kg) for all days of the week during the period that follows the unlimited season and continues until the adjusted quota is taken. These changes would provide increased opportunity for Florida fishermen to harvest Spanish mackerel in the exclusive economic zone (EEZ),

make profitable trips, and harvest the remaining portion of the commercial quota. Gillnet prohibitions implemented for Florida waters on July 1, 1995, severely reduced the 1995/96 harvest (1.82 million lb; 0.83 million kg) to one of the three lowest levels recorded since 1900. Prior to 1987 when the fishery was largely unregulated, annual commercial landings mostly ranged between 2.00-6.00 million lb (0.91-2.72 million kg), with the greatest landings (9.5-11.0 million pounds; 4.31-4.99 million kg) occurring between 1976 and 1980. Under quota management, landings have increased from the 1986/87 low of 2.57 million pounds (1.17 million kg) to the 1994/95 high of 5.23 million pounds (2.37 million kg). With the main body of fish overwintering in Florida's southeast waters last year, the

principal resource harvesters, Florida gillnet fishermen, were unable to take the major and remaining portion of the 1995/96 commercial quota (4.70 million lb, 2.13 million kg), leaving about 2.88 million pounds unharvested. Invariably, the Florida winter fishery (December through March period) has harvested the quota balance remaining after completion of the northern fishery, which occurs during the first half of the fishing year (April through October) mainly off North Carolina and Virginia. The Council believes that an earlier start of the unlimited season (November 1 rather than December 1) would afford increased opportunity for Florida gillnetters to intercept migrating schools of Spanish mackerel in the EEZ before they establish their usual winter residence again in State waters off southeast Florida. For the Florida east coast fishery, the Council also proposed increased trip limits. The greater daily harvest is expected to help offset increased operational expenses resulting from fishing on more distant EEZ fishing grounds.

#### Gulf Group King Mackerel: Commercial Vessel Trip Limits

For the commercial sector of the Gulf group king mackerel fishery in the eastern zone of the Gulf of Mexico (off Florida), the Gulf Council proposed revising the vessel trip limits. The Council proposed converting the units of the trip limits from numbers of fish to pounds of fish based on an estimated average fish weight of 10.0 lb (4.5 kg). The conversion would reduce waste from high-grading (i.e., discarding smaller fish and replacing them with larger ones to maximize aggregate poundage landed while complying with the trip limit on the number of fish landed).

In addition, the Gulf Council proposed that the Florida east coast subzone trip limit of 50 king mackerel per day be increased to 75 fish per day as a means of better ensuring harvest of the full commercial quota. The Council later changed the proposal to a poundage equivalent of 750 lb (340 kg) per day based on the estimated average fish weight of 10.0 lb (4.5 kg). Further, the trip limit would be decreased to 500 lb (227 kg) per day if 75 percent of the subzone's fishing year quota is harvested before February 15. If 75 percent of the quota is not taken before February 15, the trip limit would remain at 750 lb (340 kg) of king mackerel per day until the entire quota has been harvested or until March 31, whichever occurs first. Currently, the trip limit is reduced from 50 to 25 king mackerel per day if 75 percent of the quota is taken

before March 1; if not taken by March 1, the trip limit remains at 50 king mackerel until the entire quota has been harvested or until March 31, whichever occurs first. Last season, projected harvest for the Florida east coast subzone reached 75 percent of the quota before March 1, 1996, and, thus, the trip limit was reduced to 25 king mackerel per day. Total harvest, however, only reached about 83 percent of the quota.

For the Florida west coast subzone, the Gulf Council's recommended trip limit conversion from numbers to pounds of fish would apply to the daily trip limits for vessels harvesting Gulf group king mackerel under the hook-and-line quota. For a vessel using hook-and-line gear in the Florida west coast subzone, the trip limit would be converted from 125 king mackerel to 1,250 lb (567 kg) of king mackerel. After 75 percent of the hook-and-line quota is harvested, and continuing until the entire quota has been harvested, the trip limit would be reduced to 500 lb (227 kg) of king mackerel rather than 50 king mackerel.

#### Gulf Group King Mackerel: Recreational Bag Limits

For Gulf group king mackerel, the Gulf Council also proposed a recreational bag limit of zero for the captain and crew on for-hire vessels (i.e., charter vessels and headboats). The proposal was determined to be the least burdensome option for the recreational sector as a whole for restraining the recreational harvest to its allocation. Recent recreational catch estimates indicate that the allocation has been exceeded in recent years and a substantial portion of the overrun was attributable to increased landings by charter vessels.

The RA initially concurs that the Councils' recommendations are necessary to protect the king and Spanish mackerel stocks and prevent overfishing and that they are consistent with the FMP, the Magnuson-Stevens Fishery Conservation and Management Act, and other applicable law. Accordingly, the Councils' recommended changes are published for comment.

#### Classification

This proposed rule has been determined to be not significant for purposes of E.O. 12866.

The Assistant General Counsel for Legislation and Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on

a substantial number of small entities as follows:

Both the South Atlantic and Gulf Councils concluded that a substantial number of small entities (greater than 20 percent) operating in commercial and for-hire recreational fisheries for Atlantic and Gulf groups of king and Spanish mackerel would be affected by the proposed changes in mackerel management measures if they are approved and implemented (i.e., by the proposed reductions in commercial quotas and recreational allocations, and by the proposed changes to the current commercial trip limits). Although the exact numbers of small businesses operating in these fisheries is unknown, as of October 18, 1996, Federal permits allow a total of 3,819 vessels from Atlantic (1,722 vessels) and Gulf states (2,097 vessels) to operate in mackerel fisheries in the EEZ. For Atlantic states, 1,093 vessels possess commercial permits, 393 possess charter/headboat permits, and 236 vessels possess both permits. For Gulf states, 1,266 vessels possess commercial permits, 613 possess charter/headboat permits, and 218 vessels possess both permits. All commercial fishing and charter/headboat businesses are considered small entities and will be affected by the proposed management measures. Therefore, a substantial number of such entities are expected to be affected for purposes of the Regulatory Flexibility Act (RFA).

The South Atlantic Council concluded, based upon a regulatory impact review (RIR), that the proposed revisions would not have a significant economic impact on a substantial number of small entities participating in the affected fisheries for the Atlantic groups of king and Spanish mackerel. The RIR analysis included examination of the proposals to: (1) Reduce TAC for Atlantic group king mackerel, (2) reduce TAC for Atlantic group Spanish mackerel, and (3) revise the Atlantic group Spanish mackerel trip limits for commercial vessels operating off the Florida east coast. Reductions in the commercial quotas and recreational allocations are not expected to negatively impact harvesters because recent landings indicate that the proposed quotas/allocations would not be reached and fisheries would not be closed. The increased catches resulting from the proposed trip limits for Atlantic group Spanish mackerel are expected to increase revenues, but by less than 5 percent. Therefore, the South Atlantic Council determined that (1) any impacted businesses would be small entities, (2) any reduction in annual gross revenues likely would be much less than 5 percent, (3) any increase in compliance costs would be much less than a 5 percent increase in total costs of production, (4) capital costs of compliance would represent a very small portion of capital, and (5) no entity would be expected to cease business operations. For these reasons, the South Atlantic Council's RIR analysis concluded that these proposed measures were not significant under the RFA. Therefore, an initial regulatory flexibility analysis (IRFA) was not prepared for the Atlantic group mackerel proposals.

The Gulf Council examined the potential impacts of the proposals for Gulf group king

and Spanish mackerel and found that: (1) The proposed revisions to the trip limit for Gulf group king mackerel in the Florida east and west coast subzones would be expected to increase benefits to the industry or some segments of the fishery, but by less than 5 percent; (2) the proposed trip limits would not be expected to result in major increases in compliance costs to the entire industry, or force any business to cease operation; (3) the reduced TAC proposed for Gulf group Spanish mackerel would not be expected to result in fishery closures, and, therefore, would not have any effect on gross revenue, costs of compliance to either commercial or recreational fishing businesses, or cause any business closures; and (4) the proposed zero bag limit for charter/headboat captains and crews for Gulf group king mackerel would be expected to have a minimal effect on production and compliance cost, and would not force any charter/headboat business to cease operation. However, the zero bag limit may reduce charter/headboat business revenues in the Gulf between 3 and 6 percent. For this reason, the Gulf Council concluded that the zero bag limit was significant under the RFA. The Gulf Council prepared an IRFA describing the small businesses that would be affected and the potential impacts on them.

Notwithstanding the above conclusions of the South Atlantic and Gulf Councils regarding the impacts of the proposed zero bag limit for Gulf group king mackerel for captain and crew for their respective areas, when the potential impacts of this measure are assessed for all charter/headboat businesses harvesting Gulf group king mackerel in both Gulf and Atlantic mackerel fisheries together, there should not be a significant economic impact on a substantial number of small entities. Specifically, no more than 20 percent of the estimated 1,031 charter/headboat businesses affected will experience a reduction in gross revenues by more than 5 percent.

Considering all the management measures proposed by both Councils in aggregate, it is anticipated that these measures will not result in a significant economic impact on a substantial number of small entities participating in the commercial and for-hire recreational fisheries for Atlantic and Gulf groups of king and Spanish mackerel. Specifically, no more than 20 percent of the 3,819 permitted small entities affected will experience a reduction in gross revenues by more than 5 percent.

List of Subjects in 50 CFR Part 622

Fisheries, Fishing, Puerto Rico, Reporting and recordkeeping requirements, Virgin Islands.

Dated: December 10, 1996.

Gary Matlock,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 622 is proposed to be amended as follows:

**PART 622—FISHERIES OF THE CARIBBEAN, GULF, AND SOUTH ATLANTIC**

1. The authority citation for part 622 continues to read as follows:

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

2. In § 622.39, paragraph (c)(1)(ii) is revised to read as follows:

**§ 622.39 Bag and possession limits.**

\* \* \* \* \*

(c) \* \* \*

(1) \* \* \*

(ii) Gulf migratory group king mackerel—2, except that for an operator or member of the crew of a charter vessel or headboat, the bag limit is 0.

\* \* \* \* \*

3. In § 622.42, paragraphs (c)(1)(ii) and (c)(2) are revised to read as follows:

**§ 622.42 Quotas.**

\* \* \* \* \*

(c) \* \* \*

(1) \* \* \*

(ii) *Atlantic migratory group.* The quota for the Atlantic migratory group of king mackerel is 2.52 million lb (1.14 million kg). No more than 0.4 million lb (0.18 million kg) may be harvested by purse seines.

(2) *Migratory groups of Spanish mackerel—(i) Gulf migratory group.* The quota for the Gulf migratory group of Spanish mackerel is 3.99 million lb (1.81 million kg).

(ii) *Atlantic migratory group.* The quota for the Atlantic migratory group of Spanish mackerel is 3.50 million lb (1.59 million kg).

\* \* \* \* \*

4. In § 622.44, paragraphs (a)(2)(i) (A) and (B); (a)(2)(ii)(B) (1) and (2); (b)(1)(ii) (A), (B) and (C); and (b)(2) are revised to read as follows:

**§ 622.44 Commercial trip limits.**

\* \* \* \* \*

(a) \* \* \*

(2) \* \* \*

(i) \* \* \*

(A) From November 1 each fishing year, until 75 percent of the subzone's fishing year quota of king mackerel has been harvested—in amounts not exceeding 750 lb (340 kg) per day.

(B) From the date that 75 percent of the subzone's fishing year quota of king mackerel has been harvested until a closure of the Florida east coast subzone has been effected under § 622.43(a)—in amounts not exceeding 500 lb (227 kg) per day. However, if 75 percent of the subzone's quota has not been harvested

by February 15, the vessel limit remains at 750 lb (340 kg) per day until the subzone's quota is filled or until March 31, whichever occurs first.

(ii) \* \* \*

(B) \* \* \*

(1) From July 1 each fishing year, until 75 percent of the subzone's hook-and-line gear quota has been harvested—in amounts not exceeding 1250 lb (567 kg) per day.

(2) From the date that 75 percent of the subzone's hook-and-line gear quota has been harvested, until a closure of the west coast subzone's hook-and-line fishery has been effected under § 622.43(a)—in amounts not exceeding 500 lb (227 kg) per day.

\* \* \* \* \*

(b) \* \* \*

(1) \* \* \*

(ii) \* \* \*

(A) From April 1 through October 31, in amounts exceeding 1,500 lb (680 kg).

(B) From November 1 until 75 percent of the adjusted quota is taken, in amounts as follows:

(1) Mondays, Wednesdays, and Fridays—unlimited.

(2) Tuesdays, Thursdays, Saturdays, and Sundays—not exceeding 1,500 lb (680 kg).

(C) After 75 percent of the adjusted quota is taken until 100 percent of the adjusted quota is taken, in amounts not exceeding 1,500 lb (680 kg).

\* \* \* \* \*

(2) For the purpose of paragraph (b)(1)(ii) of this section, the adjusted quota is 3.25 million lb (1.47 million kg). The adjusted quota is the quota for Atlantic migratory group Spanish mackerel reduced by an amount calculated to allow continued harvests of Atlantic migratory group Spanish mackerel at the rate of 500 lb (227 kg) per vessel per day for the remainder of the fishing year after the adjusted quota is reached. By filing a notification with the Office of the Federal Register, the Assistant Administrator will announce when 75 percent and 100 percent of the adjusted quota is reached or is projected to be reached.

\* \* \* \* \*

[FR Doc. 96-31851 Filed 12-13-96; 8:45 am]

BILLING CODE 3510-22-P

# Notices

Federal Register

Vol. 61, No. 242

Monday, December 16, 1996

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

### Commodity Credit Corporation

#### Request for Extension and Revision of a Currently Approved Information Collection

**AGENCY:** Commodity Credit Corporation.

**ACTION:** Notice and request for comments.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, this notice announces the intention of the Commodity Credit Corporation (CCC) to request an extension for and revision to an information collection currently approved in support of the production flexibility contracts issued under the Federal Agriculture Improvement and Reform Act of 1996 (1996 Act).

**DATES:** Comments on this notice must be received on or before February 14, 1997 to be assured consideration.

**ADDITIONAL INFORMATION:** Comments should be forwarded to Charles M. Cox, Jr., Agricultural Program Specialist, USDA-Farm Service Agency-Compliance and Production Adjustment Division, STOP 0517, P.O. Box 2415, Washington, D.C. 20013-2415; telephone (202) 720-7935.

#### SUPPLEMENTARY INFORMATION

*Title:* Production Flexibility Contracts For Wheat, Feed Grains, Rice, and Upland Cotton, 7 CFR Part 1412.

*OMB Control Number:* 0560-0092

*Expiration Date:* July 31, 1998.

*Type of Request:* Revision of a Currently Approved Information Collection.

*Abstract:* The information collected under Office of Management and Budget (OMB) Number 0560-0092, as identified above, is needed to enable the Farm Service Agency (FSA) to effectively administer and regulate the production flexibility contract.

Automated Form CCC-478 is used by FSA county offices for the purpose of

allowing producers on farms with 1996 wheat, corn, barley, oats, grain sorghum, upland cotton and rice crop acreage bases the opportunity to enter into Production Flexibility Contracts with the CCC for the years 1996 through 2002. Terms and conditions for the Production Flexibility Contract are set forth in the CCC-478, CCC-478 Appendix, and the applicable regulations. The 1996 Act provides for a significant reduction in the public burden for farm program participants, as shown in the following revised estimates:

*Respondents:* Eligible producers on contract farms.

*Estimated Average Time to Respond:* 17 minutes.

*Estimated Total Annual Responses:* 1,428,571.

*Estimated Number of Reports Filed per person:* 1.

*Estimated Total Burden Hours:* 404,762 hours.

Topics for comments include but are not limited to the following: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; or (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electric, mechanical, or other technological collection techniques or other forms of information technology. Comments should be sent to Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D. C. 20503, and to Charles M. Cox, Jr., Program Specialist, USDA-Farm Service Agency-Compliance and Production Adjustment Division, STOP 0517, P. O. Box 2415, Washington, D.C. 20013-2413; telephone (202) 720-6688. Copies of the information collection may be obtained from Charles M. Cox, Jr., at the above address.

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

Signed at Washington, DC, on December 9, 1996.

Bruce R. Weber,

*Acting Executive Vice President, Commodity Credit Corporation.*

[FR Doc. 96-31821 Filed 12-13-96; 8:45 am]

BILLING CODE 3410-05-P

### Farm Service Agency

#### Request for Extension and Revision of a Currently Approved Information Collection

**AGENCY:** Farm Service Agency, USDA.

**ACTION:** Notice and request for comments.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, this notice announces the intention of the Farm Service Agency (FSA) to request an extension for and revision to an information collection currently approved in support of farm reconstitutions authorized by 7 CFR 718.

**DATES:** Comments on this notice must be received on or before February 14, 1997 to be assured consideration.

**ADDITIONAL INFORMATION:** Comments should be forwarded to: Joanne Franta, Agricultural Program Specialist, Compliance and Production Adjustment Division, FSA, USDA, STOP 0517, P.O. Box 2415, Washington, D.C. 20013-2415; telephone (202) 720-5103.

#### SUPPLEMENTAL INFORMATION

*Title:* Provisions Applicable to Multiple Programs, Farm Reconstitutions

*OMB Control Number:* 0560-0025.

*Expiration Date:* October 31, 1999.

*Type of Request:* Extension of a Currently Approved Information Collection.

*Abstract:* The information collected under Office of Management and Budget (OMB) Number 0560-0025, as identified above, is needed to enable the FSA to effectively administer the programs relating to reconstitution of farms, allotments, quotas, and acreages governed by 7 CFR 718.

Form FSA-155 is used as a request for farm reconstitution initiated by the producer who wishes to combine a farm with another farm or divide a farm into multiple farming operations. The reconstitution process is a required procedure when a producer wishes to

increase acreage attributed to the farm from leases or change farm acreage records as a result of a sale of any part of a farm. The FSA county committee must act on all proposed farm reconstitutions and issue their approval or disapproval on FSA-155. It is necessary to collect the information recorded on FSA-155 to determine farmland, cropland, agricultural use land and changes to contract acreages resulting from combination or division of the farming operation.

*Respondents:* Farm owners and operators.

*Estimated Number of Respondents:* 359,291.

*Estimate Average Time to Respond:* 45 minutes.

*Estimated Number of Annual Responses:* 358,215.

*Estimated Number of Reports Filed per person:* 1.

*Estimated Total Burden Hours:* 268,661 hours.

Topics for comments include but are not limited to the following: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; or (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electric, mechanical, or other technological collection techniques or other forms of information technology. Comments should be sent to Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D. C. 20503 and to Joanne Franta, Program Specialist, Compliance and Production Adjustment Division, FSA, USDA, STOP 0517, P.O. Box 2415, Washington, D.C. 20013-2415; telephone (202) 720-5103. Copies of the information collection may be obtained from Joanne Franta at the above address.

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

Signed at Washington, DC, on December 5, 1996.

Bruce R. Weber,

*Acting Administrator, Farm Service Agency.*  
[FR Doc. 96-31820 Filed 12-13-96; 8:45 am]

BILLING CODE 3410-05-P

## Food and Consumer Service

### Agency Information Collection Activities: Proposed Collection; Comment Request—Assessment of the Implementation of Nutrition Objectives for School Meals Project

**AGENCY:** Food and Consumer Service, USDA.

**ACTION:** Notice.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, this notice announces the Food and Consumer Service's (FCS) intention to request OMB approval of the Assessment of the Implementation of Nutrition Objectives for School Meals Project.

**DATES:** Comments on this notice must be received by February 14, 1997.

**ADDRESSES:** Send comments and requests for copies of this information collection to: Michael E. Fishman, Acting Director, Office of Analysis and Evaluation, Food and Consumer Service, U.S. Department of Agriculture, 3101 Park Center Drive, Alexandria, VA 22302.

Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

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

**FOR FURTHER INFORMATION CONTACT:** Michael E. Fishman, (703) 305-2117.

#### SUPPLEMENTARY INFORMATION:

*Title:* Assessment of the Implementation of Nutrition Objectives for School Meals Project.

*OMB Number:* Not yet assigned.

*Expiration Date:* N/A.

*Type of Request:* New collection of information.

*Abstract:* The Assessment of the Implementation of Nutrition Objectives for School Meals Project will examine the food and nutrient composition of

National School Lunch Program/School Breakfast Program (NSLP/SBP) meals currently being offered, i.e., meals planned in accordance with program guidelines and made available to participating students. It includes a comparison of the findings of this study with the findings of the School Nutrition Dietary Assessment Study (SNDA) conducted in 1992. More specifically, the study is designed to address the following major research objectives:

- Determine the average nutrient composition of USDA meals currently offered to students during a typical school week in elementary schools, middle schools, and high schools.
- Determine the primary food sources for the various nutrients.
- Determine the availability and nutrient content of low-fat (30 percent or less of calories from fat) meals.
- Determine the changes in the nutrient composition of USDA meals since School Year 1991-92 when SNDA was conducted.

Data obtained from a nationally representative sample of about 1,152 public schools (384 elementary, 384 middle, and 384 high schools) will be collected during the 1997-98 School Year to determine the progress School Food Authorities (SFAs) have made in implementing the 1995 Dietary Guidelines for Americans in the NSLP and SBP. The Menu Survey Instrument will collect information on foods and portions in breakfasts and lunches offered during a target week. Data on the nutrient content of meals offered in the NSLP and SBP will be compared to similar data obtained previously in SNDA for School Year 1991-92. The School Food Service Characteristics Survey will obtain descriptive information on school food service operations.

*Estimate of Burden:* Public reporting burden is estimated to average 5 minutes for State Child Nutrition directors; 5 minutes for School Food Service Authority directors; and 258 minutes for School Food Service managers.

*Respondents:* State Child Nutrition directors will be asked to confirm name, address and telephone number of selected SFAs and directors. SFA directors will respond to a telephone survey. School Food Service managers will complete a mail survey.

*Estimated Number of Respondents:* 45 State Child Nutrition directors, 384 SFA directors, and 1,152 School Food Service managers.

*Estimated Number of Responses per Respondent:* One.

*Estimated Total Annual Burden on Respondents:* 4,990 hours.

Dated: December 6, 1996.

William E. Ludwig,

Administrator, Food and Consumer Service.

[FR Doc. 96-31819 Filed 12-13-96; 8:45 am]

BILLING CODE 3410-30-U

## Forest Service

### Newspapers Used for Publication of Legal Notice of Appealable Decisions for Intermountain Region, Utah, Idaho, Nevada, and Wyoming

AGENCY: Forest Service, USDA.

ACTION: Notice.

**SUMMARY:** This notice lists the newspapers that will be used by all ranger districts, forests, and the Regional Office of the Intermountain Region to publish legal notice of all decisions subject to appeal under 36 CFR 215 and 36 CFR 217. The intended effect of this action is to inform interested members of the public which newspapers will be used to publish legal notices of decisions, thereby allowing them to receive constructive notice of a decision, to provide clear evidence of timely notice, and to achieve consistency in administering the appeals process.

**DATES:** Publication of legal notices in the listed newspapers will begin with decisions subject to appeal that are made on or after December 1, 1996. The list of newspapers will remain in effect until April 1997 when another notice will be published in the Federal Register.

**FOR FURTHER INFORMATION CONTACT:** Vaughn Stokes, Regional Appeals Manager, Intermountain Region, 324 25th Street, Ogden, UT 84401, phone (801) 625-5232.

**SUPPLEMENTARY INFORMATION:** The administrative appeal procedures 36 CFR 215 and 36 CFR 217, of the Forest Service require publication of legal notice in a newspaper of general circulation of all decisions subject to appeal. This newspaper publication of notices of decisions is in addition to direct notice to those who have requested notice in writing and to those known to be interested and affected by a specific decision.

The legal notice is to identify: the decision by title and subject matter; the date of the decision; the name and title of the official making the decision; and how to obtain copies of the decision. In addition, the notice is to state the date the appeal period begins which is the day following publication of the notice.

The timeframe for appeal shall be based on the date of publication of the notice in the first (principal) newspaper listed for each unit.

The newspapers to be used are as follows:

#### Regional Forester, Intermountain Region

For decisions made by the Regional Forester affecting National Forests in Idaho:

*The Idaho Statesman*, Boise, Idaho

For decisions made by the Regional Forester affecting National Forests in Nevada:

*The Reno Gazette-Journal*, Reno, Nevada

For decisions made by the Regional Forester affecting National Forests in Wyoming:

*Casper Star-Tribune*, Casper, Wyoming

For decisions made by the Regional Forester affecting National Forests in Utah:

*Standard Examiner*, Ogden, Utah

If the decision made by the Regional Forester affects all National Forests in the Intermountain Region, it will appear in:

*Standard Examiner*, Ogden, Utah

#### Ashley National Forest

Ashley Forest Supervisor decisions:

*Vernal Express*, Vernal, Utah

Vernal District Ranger decisions:

*Vernal Express*, Vernal, Utah

Flaming Gorge District Ranger for decisions affecting Wyoming:

*Casper Star Tribune*, Casper, Wyoming

Flaming Gorge District Ranger for decisions affecting Utah:

*Vernal Express*, Vernal, Utah

Roosevelt and Duchesne District Ranger decisions:

*Uintah Basin Standard*, Roosevelt, Utah

#### Boise National Forest

Boise Forest Supervisor decisions:

*The Idaho Statesman*, Boise, Idaho

Mountain Home District Ranger decisions:

*The Idaho Statesman*, Boise, Idaho

Boise District Ranger decisions:

*The Idaho Statesman*, Boise, Idaho

Idaho City District Ranger decisions:

*The Idaho Statesman*, Boise, Idaho

Cascade District Ranger decisions:

*The Advocate*, Cascade, Idaho

Lowman District Ranger decisions:

*The Idaho City World*, Idaho City, Idaho

Emmett District Ranger decisions:

*The Messenger-Index*, Emmett, Idaho

#### Bridger-Teton National Forest

Bridger-Teton Forest Supervisor decisions:

*Casper Star-Tribune*, Casper, Wyoming

Jackson District Ranger decisions:

*Casper Star-Tribune*, Casper, Wyoming

Buffalo District Ranger decisions:

*Casper Star-Tribune*, Casper, Wyoming

Big Piney District Ranger decisions:

*Casper Star-Tribune*, Casper, Wyoming

Pinedale District Ranger decisions:

*Casper Star-Tribune*, Casper, Wyoming

Greys River District Ranger decisions:

*Casper Star-Tribune*, Casper, Wyoming

Kemmerer District Ranger decisions:

*Casper Star-Tribune*, Casper, Wyoming

Caribou National Forest

Caribou Forest Supervisor decisions:

*Idaho State Journal*, Pocatello, Idaho

Soda Springs District Ranger decisions:

*Idaho State Journal*, Pocatello, Idaho

Montpelier District Ranger decisions:

*Idaho State Journal*, Pocatello, Idaho

Malad District Ranger decisions:

*Idaho State Journal*, Pocatello, Idaho

Pocatello District Ranger decisions:

*Idaho State Journal*, Pocatello, Idaho

Dixie National Forest

Dixie Forest Supervisor decisions:

*The Daily Spectrum*, St. George, Utah

Pine Valley District Ranger decisions:

*The Daily Spectrum*, St. George, Utah

Cedar City District Ranger decisions:

*The Daily Spectrum*, St. George, Utah

Powell District Ranger decisions:

*The Daily Spectrum*, St. George, Utah

Escalante District Ranger decisions:

*The Daily Spectrum*, St. George, Utah

Teasdale District Ranger decisions:

*The Daily Spectrum*, St. George, Utah

Fishlake National Forest

Fishlake Forest Supervisor decisions:

*Richfield Reaper*, Richfield, Utah

Loa District Ranger decisions:

*Richfield Reaper*, Richfield, Utah

Richfield District Ranger decisions:

*Richfield Reaper*, Richfield, Utah

Beaver District Ranger decisions:

*Richfield Reaper*, Richfield, Utah

Fillmore District Ranger decisions:

*Richfield Reaper*, Richfield, Utah

Humboldt-Toiyabe National Forests

Humboldt Forest Supervisor decisions:

*Elko Daily Free Press*, Elko, Nevada

Toiyabe Forest Supervisor decisions:

*Reno Gazette-Journal*, Reno, Nevada

Sierra Ecosystem Coordination Center (SECO):

Carson District Ranger decisions:

*Reno Gazette-Journal*, Reno, Nevada

Bridgeport District Ranger decisions:

*The Review-Herald*, Mammoth Lakes, California

Spring Mountains National Recreation Area Ecosystems (SMNRAE):  
Spring Mountain National Recreation Area District Ranger decisions:  
*Las Vegas Review Journal*, Las Vegas, Nevada

Central Nevada Ecosystems (CNECO):  
Austin District Ranger decisions:  
*Reno Gazette-Journal*, Reno, Nevada

Tonopah District Ranger decisions:  
*Tonopah Times Bonanza-Goldfield News*, Tonopah, Nevada

Ely District Ranger decisions:  
*Ely Daily Times*, Ely Nevada

Northeast Nevada Ecosystem (NNECO):  
Mountain City District Ranger decisions:  
*Elko Daily Free Press*, Elko, Nevada

Ruby Mountains District Ranger decisions:  
*Elko Daily Free Press*, Elko, Nevada

Jarbridge District Ranger decisions:  
*Elko Daily Free Press*, Elko, Nevada

Santa Rosa District Ranger decisions:  
*Humboldt Sun*, Winnemucca, Nevada

Manti-Lasal National Forest  
Manti-Lasal Forest Supervisor decisions:  
*Sun Advocate*, Price, Utah

Sanpete District Ranger decisions:  
*The Pyramid*, Mt. Pleasant, Utah

Ferron District Ranger decisions:  
*Emery County Progress*, Castle Dale, Utah

Price District Ranger decisions:  
*Sun Advocate*, Price, Utah

Moab District Ranger decisions:  
*The Times Independent*, Moab, Utah

Monticello District Ranger decisions:  
*The San Juan Record*, Monticello, Utah

Payette National Forest  
Payette Forest Supervisor decisions:  
*Idaho Statesman*, Boise, Idaho

Weiser District Ranger decisions:  
*Signal American*, Weiser, Idaho

Council District Ranger decisions:  
*Council Record*, Council, Idaho

New Meadows, McCall, and Krassel District Ranger decisions:  
*Star News*, McCall, Idaho

Salmon and Challis National Forests  
Salmon Forest Supervisor decisions:  
*The Recorder-Herald*, Salmon, Idaho

Cobalt District Ranger decisions:  
*The Recorder-Herald*, Salmon, Idaho

North Fork District Ranger decisions:  
*The Recorder-Herald*, Salmon, Idaho

Leadore District Ranger decisions:  
*The Recorder-Herald*, Salmon, Idaho

Salmon District Ranger decisions:  
*The Recorder-Herald*, Salmon, Idaho

Challis Forest Supervisor decisions:  
*The Challis Messenger*, Challis, Idaho

Middle Fork District Ranger decisions:

*The Challis Messenger*, Challis Idaho

Challis District Ranger decisions:  
*The Challis Messenger*, Challis Idaho

Yankee Fork District Ranger decisions:  
*The Challis Messenger*, Challis Idaho

Lost River District Ranger decisions:  
*The Challis Messenger*, Challis Idaho

Sawtooth National Forest  
Sawtooth Forest District Ranger decisions:  
*The Times News*, Twin Falls, Idaho

Burley District Ranger decisions:  
*Ogden Standard Examiner*, Ogden, Utah for those decisions on the Burley District involving the Raft River Unit.  
*South Idaho Press*, Burely, Idaho for decisions issued on the Idaho portions of the Burley District.

Twin Falls District Ranger decisions:  
*The Times News*, Twin Falls, Idaho

Ketchum District Ranger decisions:  
*Wood River Journal*, Hailey, Idaho

Sawtooth National Recreation Area:  
*Challis Messenger*, Challis, Idaho

Fairfield District Ranger decisions:  
*The Times News*, Twin Falls, Idaho

Targhee National Forest  
Targhee Forest Supervisor decisions:  
*The Post Register*, Idaho Falls, Idaho

Dubois District Ranger decisions:  
*The Post Register*, Idaho Falls, Idaho

Island Park District Ranger decisions:  
*The Post Register*, Idaho Falls, Idaho

Ashton District Ranger decisions:  
*The Post Register*, Idaho Falls, Idaho

Palisades District Ranger decisions:  
*The Post Register*, Idaho Falls, Idaho

Teton Basin District Ranger decisions:  
*The Post Register*, Idaho Falls, Idaho

Uinta National Forest  
Uinta Forest Supervisor decisions:  
*The Daily Herald*, Provo, Utah

Pleasant Grove District Ranger decisions:  
*The Daily Herald*, Provo, Utah

Heber District Ranger decisions:  
*The Daily Herald*, Provo, Utah, and  
*Wasatch Wave*, Heber City, Utah

Spanish Fork District Ranger decisions:  
*The Daily Herald*, Provo, Utah

Wasatch-Cache National Forest  
Wasatch-Cache Forest Supervisor decisions:  
*Salt Lake Tribune*, Salt Lake City, Utah

Salt Lake District Ranger decisions:  
*Salt Lake Tribune*, Salt Lake City, Utah

Kamas District Ranger decisions:  
*Salt Lake Tribune*, Salt Lake City, Utah

Evanston District Ranger decisions:  
*Uintah County Herald*, Evanston, Wyoming

Mountain View District Ranger decisions:  
*Uintah County Herald*, Evanston, Wyoming

Ogden District Ranger decisions:  
*Ogden Standard Examiner*, Ogden, Utah

Logan District Ranger decisions:  
*Logan Herald Journal*, Logan, Utah

Jack A. Blackwell,  
*Deputy Regional Forester.*  
[FR Doc. 96-31823 Filed 12-13-96; 8:45 am]  
BILLING CODE 3410-11-M

## ASSASSINATION RECORDS REVIEW BOARD

### Notice of Additional Determinations

**AGENCY:** Assassination Records Review Board.

**SUMMARY:** The Assassination Records Review Board (Review Board) met in a closed meeting on November 14, 1996, and made formal determinations on the release of records under the President John F. Kennedy Assassination Records Collection Act of 1992 (Supp. V 1994) (JFK Act). On December 6, 1996, the Review Board noticed the formal determinations from that meeting. This notice identifies two additional releases from that meeting.

**FOR FURTHER INFORMATION CONTACT:** T. Jeremy Gunn, General Counsel and Associate Director for Research and Analysis, Assassination Records Review Board, Second Floor, Washington, D.C. 20530, (202) 724-0088, fax (202) 724-0457.

**SUPPLEMENTARY INFORMATION:** On November 14, 1996, the Review Board made formal determinations on records it reviewed under the JFK Act. Determinations for that meeting were published at FR Doc. 96-31046, 61 FR 64662. The determinations listed below should have been published in that notice. The assassination records are identified by the record identification number assigned in the President John F. Kennedy Assassination Records Collection database maintained by the National Archives.

### Notice of Formal Determinations

For each document, the number of releases of previously redacted information immediately follows the record identification number, followed in turn by the number of postponements sustained, and, where appropriate, the date the document is scheduled to be released or re-reviewed.

USSS Documents: Opened in Full:  
154-10002-10422; 2; 0; n/a  
154-10002-10423; 2; 0; n/a

Dated: December 10, 1996.  
David G. Marwell,  
*Executive Director.*  
[FR Doc. 96-31751 Filed 12-13-96; 8:45 am]  
BILLING CODE 6118-01-P

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## DEPARTMENT OF COMMERCE

### Foreign-Trade Zones Board

[Order No. 858]

**Grant of Authority for Subzone Status;  
Abbott Manufacturing, Inc.(Infant  
Formula, Adult Nutritional Products),  
Casa Grande, AZ**

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a-81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, by an Act of Congress approved June 18, 1934, an Act "To provide for the establishment \* \* \* of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," as amended (19 U.S.C. 81a-81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs ports of entry;

Whereas, the Board's regulations (15 CFR Part 400) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved;

Whereas, an application from the City of Phoenix, Arizona, grantee of Foreign-Trade Zone 75, for authority to establish special-purpose subzone status for export activity at the infant formula and adult nutritional products manufacturing plant of Abbott Manufacturing, Inc., in Casa Grande, Arizona, was filed by the Board on January 22, 1996, and notice inviting public comment was given in the Federal Register (FTZ Docket 7-96, 61 FR 3669, 2-1-96); and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and Board's regulations are satisfied, and that approval of the application for export manufacturing is in the public interest;

Now, Therefore, the Board hereby authorizes the establishment of a subzone (Subzone 75E) at the Abbott Manufacturing, Inc., plant in Casa Grande, Arizona, at the location described in the application, subject to

the FTZ Act and the Board's regulations, including § 400.28, and subject to the further requirement that all foreign-origin dairy products and sugar admitted to the subzone shall be reexported.

Signed at Washington, DC, this 5th day of December 1996.

Robert S. LaRussa,

*Acting Assistant Secretary of Commerce for Import Administration, Alternate Chairman Foreign-Trade Zones Board.*

John J. Da Ponte, Jr.,

*Executive Secretary.*

[FR Doc. 96-31846 Filed 12-13-96; 8:45 am]

BILLING CODE 3510-DS-P

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[Order No. 859]

**Grant of Authority for Subzone Status;  
PETsMART, Inc. (Pet Products  
Warehouse/Distribution Facility),  
Phoenix, AZ**

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a-81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, by an Act of Congress approved June 18, 1934, an Act "To provide for the establishment \* \* \* of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," as amended (19 U.S.C. 81a-81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs ports of entry;

Whereas, the Board's regulations (15 CFR Part 400) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved;

Whereas, an application from the City of Phoenix, grantee of Foreign-Trade Zone 75, for authority to establish special-purpose subzone status at the pet products warehouse/distribution facility of PETsMART, Inc., in Phoenix, Arizona, was filed by the Board on February 22, 1996, and notice inviting public comment was given in the Federal Register (FTZ Docket 15-96, 61 FR 9674, 3/11/96); and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and Board's regulations are satisfied, and that approval of the application is in the public interest;

Now, therefore, the Board hereby authorizes the establishment of a

subzone (Subzone 75F) at the PETsMART, Inc., plant in Phoenix, Arizona, at the location described in the application, subject to the FTZ Act and the Board's regulations, including § 400.28.

Signed at Washington, DC, this 5th day of December, 1996.

Robert S. LaRussa,

*Acting Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.*

John J. Da Ponte, Jr.,

*Executive Secretary.*

[FR Doc. 96-31847 Filed 12-13-96; 8:45 am]

BILLING CODE 3510-DS-P

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[Order No. 857]

**Approval of Expanded Manufacturing  
Activity Within Foreign-Trade Zone  
196, Fort Worth, TX Area; Nokia Mobile  
Phones Americas Inc. (Cellular  
Phones/Telecommunication Products)**

Pursuant to its authority under the Foreign-Trade Zone Act of June 18, 1934, as amended (19 U.S.C. 81a-81u), the Foreign-Trade Zones Board adopts the following Order:

Whereas, an application from the Alliance Corridor, Inc., grantee of FTZ 196, requesting authority on behalf of Nokia Mobile Phones Americas Inc. to expand authority to manufacture cellular phones and other telecommunication products under zone procedures within FTZ 196, Fort Worth, Texas area, was filed by the Foreign-Trade Zones (FTZ) Board (the Board) on May 8, 1995 (FTZ Docket 22-95, 60 FR 26716, 5/18/95);

Whereas, the Board adopts the findings and recommendation of the examiner's report, and finds that the requirements of the FTZ Act and the Board's regulations are satisfied and that the proposal is in the public interest; and,

Now, therefore, the Board hereby approves the request, subject to the FTZ Act and the Board's regulations, including § 400.28.

Signed at Washington, DC, this 5th day of December 1996.

Robert S. LaRussa,

*Acting Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.*

Attest:

John J. Da Ponte, Jr.,

*Executive Secretary.*

[FR Doc. 96-31845 Filed 12-13-96; 8:45 am]

BILLING CODE 3510-DS-M

**International Trade Administration**

**Initiation of Antidumping and Countervailing Duty Administrative Reviews**

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

**ACTION:** Notice of initiation of antidumping and countervailing duty administrative reviews.

**SUMMARY:** The Department of Commerce (the Department) has received requests to conduct administrative reviews of various antidumping and countervailing duty orders and findings with November anniversary dates. In accordance with the Department's regulations, we are initiating those administrative reviews.

**EFFECTIVE DATE:** December 16, 1996.

**FOR FURTHER INFORMATION CONTACT:** Holly A. Kuga, Office of AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230, telephone: (202) 482-4737.

**SUPPLEMENTARY INFORMATION:**

**Background**

The Department has received timely requests, in accordance with 19 C.F.R. 353.22(a) and 355.22(a)(1994), for administrative reviews of various antidumping and countervailing duty orders and findings with November anniversary dates.

**Initiation of Reviews**

In accordance with sections 19 CFR 353.22(c) and 355.22(c), we are

initiating administrative reviews of the following antidumping and countervailing duty orders and findings. The Department is not initiating an administrative review of any exporters and/or producers who were not named in a review request because such exporters and/or producers were not specified as required under section 353.22(a) (19 CFR 353.22(a)). The Department will issue preliminary results of these reviews within 245 days of the last day of the anniversary month of each finding/order. The Department will issue notices of final results of these review within 120 days of publication in the Federal Register of the review-specific notices of preliminary results, unless it extends specific due dates in accordance with section 751(a)(3) of the Act.

	Period to be reviewed
Antidumping Duty Proceedings:	
KOREA: Circular Welded Non-Alloy Steel Pipe A-580-809 ..... Dongbu Steel Co., Ltd., Hyundai Pipe Co., Ltd., Korea Iron & Steel Co., Ltd., Shinho Steel Co., Ltd., SeAH Steel Corporation, Union Steel Manufacturing Co., Ltd.	11/1/95-10/31/96
MEXICO: Circular Welded Non-Alloy Pipe A-201-805 ..... Hysla, S.A. de C.V. Tuberia Nacional, S.A. de C.V.	11/1/95-10/31/96
THE PEOPLE'S REPUBLIC OF CHINA: Fresh Garlic* A-570-831 ..... China Xinxing Qingdao Import/Export Corp., Helka Express International, Kenwa Shipping Co., Ltd., Lee Tung Trading Company, OAG International Inc., Rizhao Hanxi Fisheries & Comprehensive Development Co., Ltd., Sea Trade International Inc., Shandong General Merchandise Import and Export Corporation, Transunion International Company, Ltd.	11/1/95-10/31/96
Countervailing Duty Proceedings:	
NONE..	
Suspension Agreements:	
SINGAPORE: Certain Refrigeration Compressors C-559-001 .....	4/1/95-3/31/96

\* All other exporters of fresh garlic from the People's Republic of China are conditionally covered by this review.

If requested within 30 days of publication of this notice, the Department will determine, where appropriate, whether antidumping duties have been absorbed by an exporter or producer subject to any of these reviews if the subject merchandise is sold in the United States through an importer which is affiliated with such exporter or producer.

Interested parties must submit applications for disclosure under administrative protective orders in accordance with 19 C.F.R. 353.34(b) and 355.34(b).

These initiations and this notice are in accordance with section 751(a) of the Tariff Act of 1930, as amended (19 U.S.C. 1675(a)) and 19 CFR 353.22(c)(1) and 355.22(c)(1).

Dated: December 10, 1996.  
Joseph A. Spetrini,  
*Deputy Assistant Secretary for Group III.*  
[FR Doc. 96-31844 Filed 12-13-96; 8:45 am]  
BILLING CODE 3510-DS-M

**Applications for Duty-Free Entry of Scientific Instruments**

Pursuant to Section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89-651; 80 Stat. 897; 15 CFR part 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with 15 CFR 301.5(a) (3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, D.C. 20230. Applications may be examined between 8:30 A.M. and 5:00 P.M. in Room 4211, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C.

**Docket Number:** 96-116. **Applicant:** Centers for Disease Control & Prevention, Mailstop F17, 4770 Buford

Hwy, N.E., Atlanta, GA 30341-3724.  
**Instrument:** Mass Spectrometer, Model VG AutoSpec. **Manufacturer:** Micromass, Ltd., United Kingdom.  
**Intended Use:** The instrument will be used for analysis of toxic components present at ultra trace levels in biological matrices, carcinogens in cigarette smoke and additives in cigarettes. **Application accepted by Commissioner of Customs:** November 12, 1996.

**Docket Number:** 96-117. **Applicant:** University of Wyoming, Department of Geology and Geophysics, P.O. Box 3006, Laramie, WY 82071-3006. **Instrument:** Electron Microprobe, Model JXA-8900/5CH. **Manufacturer:** JEOL Ltd., Japan.  
**Intended Use:** The instrument will be used in the study of chemical compositions of geological samples, museum samples, synthetically prepared chemical samples, concrete and cement samples and any other solid materials of interest to the researchers. In addition, the instrument will be used for teaching theory and practice of

electron microprobe analysis in the course "Microbeam Techniques".  
*Application accepted by Commissioner of Customs:* November 13, 1996.

*Docket Number:* 96-118. Applicant: The Pennsylvania State University, 156 Materials Research Laboratory, Hastings Road, University Park, PA 16802.  
*Instrument:* Accessories for CCD Microscope. *Manufacturer:* Linkam Scientific Instruments, Ltd., United Kingdom. *Intended Use:* The instruments are accessories for a CCD microscope system which is being used for studies of dynamic movement of the domains and phase boundaries in special relaxor-type ferroelectric materials (e.g., single crystals, ceramics).  
*Application accepted by Commissioner of Customs:* November 18, 1996.

*Docket Number:* 96-120. Applicant: U.S. Environmental Protection Agency, 26 West Martin Luther King Blvd., Cincinnati, OH 45268. *Instrument:* ICP Mass Spectrometer, Model PlasmaQuad 3. *Manufacturer:* Fisons Instruments, United Kingdom. *Intended Use:* The instrument will be used to research the speciation of mercury and other metals in complex matrices using isotope tracers, liquid chromatography and direct injection nebulization. The elements of interest will be in liquid or gaseous form that are known to be toxic to human and animal life if inhaled or ingested.  
*Application accepted by Commissioner of Customs:* November 21, 1996.

Frank W. Creel,

*Director Statutory Import Programs Staff.*

[FR Doc. 96-31848 Filed 12-13-96; 8:45 am]

BILLING CODE 3510-DS-P

## National Oceanic and Atmospheric Administration

[I.D. 120596B]

### Gulf of Mexico Fishery Management Council; Public Meeting

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

**ACTION:** Notice of public meeting.

**SUMMARY:** The Gulf of Mexico Fishery Management Council (Council) will convene a public meeting of the Shrimp Advisory Panel (AP).

**DATES:** The meeting will be held on January 3, 1997, beginning at 9:00 a.m. and will conclude at 4:00 p.m.

**ADDRESSES:** The meeting will be held at the New Orleans Airport Hilton Hotel, 901 Airline Highway, Kenner, LA; telephone: 504-469-5000.

*Council address:* Gulf of Mexico Fishery Management Council, 3018 U.S. Highway 301 North, Suite 1000, Tampa, FL 33619.

**FOR FURTHER INFORMATION CONTACT:** Richard L. Leard, Senior Fishery Biologist; telephone: 813-228-2815.

**SUPPLEMENTARY INFORMATION:** The Shrimp AP will review scientific information on the cooperative shrimp seasonal closure with the state of Texas, and it may also consider information on the potential for cooperative closures with Mexico.

The AP may develop recommendations to the Council regarding the extent of Federal waters off Texas that will be closed in 1997 concurrently with the closure of Texas waters. It may also provide direction to the Council regarding the potential for future cooperative closures with Mexico.

The AP consists principally of commercial shrimp fishermen, dealers and association representatives.

#### Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Anne Alford at the Council (see ADDRESSES) by December 27, 1996.

Dated: December 6, 1996.  
Bruce Morehead,

*Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

[FR Doc. 96-31767 Filed 12-13-96; 8:45 am]

BILLING CODE 3510-22-F

[I.D. 120696B]

### Gulf of Mexico Fishery Management Council; Public Meeting

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

**ACTION:** Notice of public meeting.

**SUMMARY:** The Gulf of Mexico Fishery Management Council (Council) will convene a public meeting of an Ad Hoc Habitat Panel (Panel).

**DATES:** This meeting will be held beginning at 10:00 a.m. on January 7, 1997, and ending at 3:00 p.m. on January 8, 1997.

**ADDRESSES:** This meeting will be held at the New Orleans Airport Hilton Hotel, 901 Airline Highway, Kenner, LA; telephone: 504-469-5000.

*Council address:* Gulf of Mexico Fishery Management Council, 3018 U.S. Highway 301 North, Suite 1000, Tampa, FL 33619.

**FOR FURTHER INFORMATION CONTACT:** Dr. Richard L. Leard, Senior Fishery Biologist; telephone: 813-228-2815.

**SUPPLEMENTARY INFORMATION:** The purpose of the meeting will be to review upcoming guidelines regarding essential fish habitat (EFH) that are being developed by NMFS. These guidelines are mandated by the recent passage of the Magnuson-Stevens Fishery Conservation and Management Act which replaces the Magnuson Fishery Conservation and Management Act of 1976, as amended. The NMFS anticipates that the draft EFH guidelines will be published in December 1996.

The Panel intends to hold a round-table discussion and review what the Council's role should be with regard to the development and implementation of EFH guidelines. A public comment period on the EFH guidelines will also be part of the meeting. The Panel may also develop comments and recommendations for consideration by the Council at its upcoming meeting on January 13-16, 1997, in Corpus Christi, TX.

#### Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Anne Alford at the Council (see ADDRESSES) by December 31, 1996.

Dated: December 10, 1996.

Gary C. Matlock,

*Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

[FR Doc. 96-31768 Filed 12-13-96; 8:45 am]

BILLING CODE 3510-22-F

### Notice of Sea Grant Review Panel

**AGENCY:** National Oceanic and Atmospheric Administration, Commerce.

**ACTION:** Notice of open meeting.

**SUMMARY:** This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the Sea Grant Review Panel. The meeting will have several purposes. Panel members will provide and discuss follow-up reports of business transacted at the last Sea Grant Review Panel meeting in the areas of management and organization, budget status, strategic and tactical issues, law and policy, new technology and research, economic development, outreach for enhancement of Department of Commerce goals, and new business.

**DATES:** The announced meeting is scheduled during two days: Monday,

January 6, 8:30 a.m. to 5:00 p.m.;  
Tuesday, January 7, 8:30 a.m. to 3:00  
p.m.

**ADDRESSES:** National Oceanic and Atmospheric Administration, Silver Spring Metro Center Building III, 1315 East-West Highway, Room 4527, Silver Spring, Maryland 20910.

**FOR FURTHER INFORMATION CONTACT:** Dr. Ronald C. Baird, Director, National Sea Grant College Program, National Oceanic & Atmospheric Administration, 1315 East-West Highway, Room 11716, Silver Spring, Maryland 20910 (301) 713-2448 extension 163.

**SUPPLEMENTARY INFORMATION:** The Panel, which consists of balanced representation from academia, industry, state government, and citizens groups, was established in 1976 by Section 209 of the Sea Grant Improvement Act (Public Law 94-461, 33 U.S.C. 1128) and advises the Secretary of Commerce, the Under Secretary for Oceans and Atmosphere, also the Administrator of NOAA, and the Director of the National Sea Grant College Program with respect to operations under the act, and such other matters as the Secretary refers to the Panel for review and advice. The agenda for the meeting is:

*Monday, January 6, 1997*

8:30 am—Opening Formalities  
9:00 am—Status of Sea Grant Reinvention  
11:00 am—Status of Sea Grant Reauthorization  
12:00 noon—Lunch  
1:00 pm—Sea Grant Research Presentation  
2:00 pm—Report of the Committee on Panel Membership  
3:00 pm—Report of the Committee on the Allocation of Funds  
4:00 pm—Report of the Committee on Regional Collaboration  
5:00 pm—Adjourn

*Tuesday, January 7, 1997*

8:30 am—Report of the Committee on the 30th Anniversary of Sea Grant Awards  
9:00 am—Additional Strategic Investments  
10:30 am—Quantitative and Qualitative Program Evaluation—Getting Started  
12:00 pm—Lunch  
1:00 pm—Sea Grant Week—1997  
2:00 pm—Summarize Action Items  
3:00 pm—Adjourn

The meeting will be open to the public.

Dated: December 3, 1996.  
Alan R. Thomas,  
*Acting Assistant Administrator for Oceanic and Atmospheric Research.*  
[FR Doc. 96-31796 Filed 12-13-96; 8:45 am]  
**BILLING CODE 3510-12-P**

### National Oceanic and Atmospheric Administration

[I.D. 120696D]

#### Marine Mammals; Permit No. 966 (P586)

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

**ACTION:** Issuance of amendment.

**SUMMARY:** Notice is hereby given that permit no. 966, issued to Continental Shelf Associates, Inc., 759 Parkway Street, Jupiter, FL 33477-9596 (Principal Investigator: Stephen T. Viada) was amended to expand the area of study to include Charleston, South Carolina (32°44.00'N Lat) to Cape Canaveral, Florida (28°50.00'N Lat) and extend the duration of activities to June 30, 1999.

**ADDRESSES:** The amendment and related documents are available for review upon written request or by appointment in the following offices:

Permits Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13130 Silver Spring, MD 20910 (301/713-2289);

Southeast Region, NMFS, 9721 Executive Center Drive, North, St. Petersburg, FL 33702-2532 (813/570-5301); and

Northeast Region, NMFS, One Blackburn Drive, Gloucester, MA 01930-2298 (508/281-9250).

**SUPPLEMENTARY INFORMATION:** The subject amendment has been issued under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the provisions of paragraphs (d) and (e) of § 216.33 of the regulations governing the taking and importing of marine mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), and the provisions of § 222.25 of the regulations governing the taking, importing, and exporting of endangered fish and wildlife (50 CFR parts 217-222).

Issuance of this permit as required by the ESA was based on a finding that such permit: (1) Was applied for in good faith; (2) will not operate to the disadvantage of the endangered species

which is the subject of this permit; and (3) is consistent with the purposes and policies set forth in section 2 of the ESA.

Dated: December 9, 1996.  
Ann D. Terbush,  
*Chief, Permits and Documentation Division, Office of Protected Resources, National Marine Fisheries Service.*  
[FR Doc. 96-31765 Filed 12-13-96; 8:45 am]  
**BILLING CODE 3510-22-F**

### CONSUMER PRODUCT SAFETY COMMISSION

#### Senior Executive Service; Performance Review Board; Membership

**AGENCY:** Consumer Product Safety Commission.

**ACTION:** Notice of names of members.

**SUMMARY:** This notice lists the individuals who have been appointed to the Commission's Senior Executive Service Performance Review Board.

**EFFECTIVE DATE:** [insert date of publication in the **FEDERAL REGISTER**]

**ADDRESSES:** Consumer Product Safety Commission, Office of the Secretary, Washington, DC 20207.

**FOR FURTHER INFORMATION CONTACT:** Joseph F. Rosenthal, Office of the General Counsel, Consumer Product Safety Commission, Washington, DC 20207, telephone (301) 504-0980.

Members of the Performance Review Board are listed below:

Mary Sheila Gall  
Thomas Hill Moore  
Eric A. Rubel  
Clarence Bishop  
Thomas W. Murr, Jr.  
Ronald L. Medford  
Douglas L. Noble  
Mary Ann Danello (alternate)  
Warren J. Prunella (alternate)  
David Schmeltzer (alternate)  
Alan H. Schoem (alternate)  
Andrew G. Stadnik (alternate)  
Andrew G. Ulsamer (alternate)

Alternate members may be designated by the Chairman or the Chairman's designee to serve in the place of regular members who are unable to serve for any reason.

Dated: December 10, 1996.  
Sadye E. Dunn,  
*Secretary, Consumer Product Safety Commission.*  
[FR Doc. 96-31833 Filed 12-13-96; 8:45 am]  
**BILLING CODE 6355-01-F**

**DEPARTMENT OF DEFENSE****Office of the Secretary**

[Transmittal No. 97-05]

**36(b) Notification**

**AGENCY:** Department of Defense, Defense Security Assistance Agency.

**ACTION:** Notice.

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**SUMMARY:** The Department of Defense is publishing the unclassified text of a section 36(b) arms sales notification. This is published to fulfill the requirements of section 155 of Pub.L. 104-164 dated 21 July 1996.

**FOR FURTHER INFORMATION CONTACT:** Mr. A. Urban, DSAA/COMPT/FPD, (703) 604-6575.

The following is a copy of the letter to the Speaker of the House of Representatives, Transmittal 97-05, with attached transmittal, policy justification and sensitivity of technology pages.

Dated: December 10, 1996.

L.M. Bynum,

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

**BILLING CODE 5000-04-M**



## DEFENSE SECURITY ASSISTANCE AGENCY

WASHINGTON, DC 20301-2800

02 DEC 1996

In reply refer to:  
I-04304/96ct

Honorable Newt Gingrich  
Speaker of the House of  
Representatives  
Washington, D.C. 20515-6501

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, we are forwarding herewith Transmittal No. 97-05, concerning the Department of the Air Force's proposed Letter(s) of Offer and Acceptance (LOA) to Korea for defense articles and services estimated to cost \$250 million. Soon after this letter is delivered to your office, we plan to notify the news media.

Sincerely,

A handwritten signature in black ink that reads "Thomas G. Rhame".

Thomas G. Rhame  
Lieutenant General, USA  
Director

Attachments

Same ltr to: House Committee on International Relations  
Senate Committee on Appropriations  
Senate Committee on Foreign Relations  
House Committee on National Security  
Senate Committee on Armed Services  
House Committee on Appropriations

## Transmittal No. 97-05

Notice of Proposed Issuance of Letter of Offer  
Pursuant to Section 36(b)(1)  
of the Arms Export Control Act

- (i) Prospective Purchaser: Korea
- (ii) Total Estimated Value:
- |                          |                      |
|--------------------------|----------------------|
| Major Defense Equipment* | \$215 million        |
| Other                    | <u>\$ 35 million</u> |
| TOTAL                    | \$250 million        |
- (iii) Description of Articles or Services Offered:  
One hundred sixteen AGM-130 and 116 AGM-142 air-to-ground missiles (including training missiles), containers, spare and repair parts, special test sets and support equipment, modification of 30 F-4E aircraft, integration of the missile systems with the F-4E aircraft, aircraft ground and flight testing with new missile systems, mission planning software, personnel training and training equipment including three missile system simulators, publications and technical data, U.S. Government and contractor technical and logistics personnel services and other related elements of program support.
- (iv) Military Department: Air Force (YGR and YGS)
- (v) Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid: None
- (vi) Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold:  
See Annex attached.
- (vii) Date Report Delivered to Congress: 02 DEC 1996

as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATIONKorea - AGM-130 and AGM-142 Air-to-Ground Missiles

The Government of Korea has requested the purchase of 116 AGM-130 and 116 AGM-142 air-to-ground missiles (including training missiles), containers, spare and repair parts, special test sets and support equipment, modification of 30 F-4E aircraft, integration of the missile systems with the F-4E aircraft, aircraft ground and flight testing with new missile systems, mission planning software, personnel training and training equipment including three missile system simulators, publications and technical data, U.S. Government and contractor technical and logistics personnel services and other related elements of program support. The estimated cost is \$250 million.

This sale will contribute to the foreign policy and national security of the United States by helping to improve the security of a friendly country which has been and continues to be an important force for political stability and economic progress in the Pacific region.

This is the first procurement by Korea of these missiles which will be used to enhance its F-4E aircraft air-to-ground attack capability. Korea will have no difficulty absorbing these missiles into its armed forces.

The sale of this equipment and support will not affect the basic military balance in the region.

The principal contractors will be Rockwell International, Tactical Systems Division, Duluth, Georgia - AGM-130 missiles and Lockheed Martin Corporation, Orlando, Florida - AGM-142 missiles. There are no offset agreements proposed to be entered into in connection with this potential sale.

Implementation of this program will not require the assignment of any U.S. Government personnel in-country but will however require approximately 40 contractor representatives to provide in-country technical support for a period of up to 18 months.

There will be no adverse impact on U.S. defense readiness as a result of this sale.

## Transmittal No. 97-05

Notice of Proposed Issuance of Letter of Offer  
Pursuant to Section 36(b)(1)  
of the Arms Export Control ActAnnex  
Item No. vi(vi) Sensitivity of Technology:

1. The AGM-142 stand-off air-to-ground missile hardware and software contain the following sensitive technologies which are classified Confidential: missile seeker hardware, range capability, data link capabilities and launch software (guidance algorithms).

2. The AGM-130 stand-off air-to-ground missile hardware and software contain the following sensitive technologies which are classified Confidential: missile seeker hardware, range capability and data link capabilities.

3. If a technologically advanced adversary were to obtain knowledge of the specific hardware and software involved in this sale, the information could be used to develop countermeasures or systems which could reduce weapon system effectiveness or be used in the development of a system with similar or advanced capabilities.

4. A determination has been made that the recipient country can provide substantially the same degree of protection for the sensitive technology being released as the U.S. Government. This sale is necessary in furtherance of the U.S. foreign policy and national security objectives outlined in the Policy Justification.

## U.S. Court of Appeals for the Armed Forces Proposed Rule Changes

**ACTION:** Notice of proposed changes to the rules of practice and procedure of the United States Court of Appeals for the Armed Forces.

**SUMMARY:** This notice announces the following proposed changes (italicized) to Rules 10, 26, 43 (new), 43A (new), and 44 of the Rules of Practice and Procedure, United States Court of Appeals for the Armed Forces for public notice and comment:

### Rule 10. Docket

\* \* \* \* \*

(d) Entry of Judgment. The Clerk shall prepare, sign, *date* and enter the *judgment immediately upon the filing of the opinion of the Court*. If a *judgment* is rendered without an opinion, the Clerk shall prepare, sign, *date* and enter *such judgment in an order* following instruction from the Court. The Clerk shall, on the date a *judgment* is entered, distribute to all parties and the Judge Advocate General of the service in which the case arose a copy of the *judgment and opinion*, if any, or of the order if no opinion was written. See Rule 43.

### Rule 26. Amicus Curiae Briefs

\* \* \* \* \*

(e) [new] A member of the Bar of the Court who represents an *amicus curiae* and is authorized to file a brief under paragraph (a) of this rule may file a motion for leave to have a law student enter an appearance on behalf of the *amicus curiae*. To be eligible to participate under this rule, a law student must be acting under the attorney's supervision and the attorney and the law student must substantially comply with the requirements of Rule 13A (b)(1)–(5) and (d)(1)–(3). Argument by a law student granted permission to appear on behalf of an *amicus curiae* may be requested by motion filed under Rule 30.

### Rule 42. Entry of Judgment [New]

(a) *Immediately upon the filing of an opinion of the Court, the Clerk shall prepare, sign, date and enter the judgment. The notation of a judgment in the docket constitutes entry of the judgment. On the date judgment is entered, the Clerk shall distribute to all parties and the Judge Advocate General of the service in which the case arose a copy of the opinion and judgment. See Rule 10(d).*

(b) *If a judgment is rendered without an opinion, the Clerk shall prepare, sign, date and enter such judgment in an order following instruction from the*

*Court. Notation of such order in the docket constitutes entry of the judgment and the effective date of the judgment is the date of that order. On the date such order is entered, the Clerk shall distribute to all parties and the Judge Advocate General of the service in which the case arose a copy of the order. See Rule 10(d).*

### Rule 43A. Issuance of Mandate [Old Rule 43 as changed]

(a) *The mandate of the Court shall issue 7 days after the expiration of the time for filing a petition for reconsideration under Rule 31(a) unless such a petition is filed or the time is shortened or enlarged by order. A certified dated copy of the judgment and a copy of the opinion of the Court, if any, shall constitute the mandate, unless the Court directs that a formal mandate issue. The timely filing of a petition for reconsideration shall stay the mandate until disposition of the petition unless otherwise ordered by the Court. If the petition is denied, the mandate shall issue 7 days after entry of the order denying the petition unless the time is shortened or enlarged by order.* In any case, the Court may order the mandate to issue forthwith.

(b) The effective date of any order shall be the date of that order, and no mandate shall issue. The Clerk *shall distribute* copies of all such orders to *all parties* and the Judge Advocate General of the service in which the case arose.

### Rule 44. Judicial Conference

[Delete from paragraph (a) the "(a)" and the section title "Purpose" and the second sentence, and delete paragraph (b) in its entirety to read as follows:]

There shall be held annually, at such time and place as shall be designated by the Court, a conference for the purpose of considering the state of business of the Court and advising on ways and means of improving the administration of military justice.

### Rules Advisory Committee Comment on Proposed Rules 10, 43, and 43A

The Committee notes the absence in the Court's rules of any provision for the entry of a judgment and the distribution of a copy of the judgment to all parties when the Court issues an opinion. This omission makes it presently impossible to determine with confidence the beginning of the 90-day period within which a petition for a writ of certiorari may be filed under Supreme Court Rule 13.1. To remedy this situation, the Committee has drafted recommended changes to Rule 10(d) (Entry of final decision) and Rule 43 (Issuance of Mandates) as well as a new Rule (Entry

of Judgment) which reflects the relevant provisions of Rules 36 and 41 of the Federal Rules of Appellate Procedure (FRAP).

The Court's current practice differentiates between two types of case dispositions when an opinion is issued: (1) opinions which finally dispose of a case by affirmance or reversal, in whole or in part, or the lower court's decision are followed as a "mandate" of the Court issued under current Rule 43; and (2) opinions in which a case is remanded to the lower court or to a convening authority or court-martial for further interlocutory proceedings are followed by a "Finality Order" or "Because Order" which is issued in lieu of a mandate. The Committee recommends that this distinction and practice be discontinued and that a judgment and mandate be issued in all cases in which an opinion is filed, since the present practice departs for no reason from that of the geographical circuits. Indeed, the Committee has determined that no matter what type or kind of dispositive action a court of appeals directs in an opinion in a criminal case, a judgment document is prepared and entered upon the filing of the opinion of the court under FRAP 36, and a mandate of the court is issued separately as required by FRAP 41.

The Committee considers it appropriate to promulgate the recommended changes in order to conform the Court's practice to that of the other courts of appeals and to remove the present uncertainty as to when the 90-day period begins to run for filing a petition for a writ of certiorari.

### Rules Advisory Committee Comment on Proposed Rule 26

The Court has previously allowed students to appear on behalf of an *amicus curiae* on an ad hoc basis. Although the Court will continue to do so, the rule has been amended to provide some guidance to those seeking leave of court to have law students appear in this capacity. While literal compliance with the requirements for student practice on behalf of parties is not necessarily, the rule reflects a desire to limit *amicus* participation to students who have completed a substantial portion of their legal studies and are undertaking representation with appropriate supervision from a member of the Bar of this Court. Only law students who substantially comply with the requirements of Rule 13A(b) (1)–(5) and who are under the supervision of attorneys who substantially comply with Rule 13A(d) (1)–(3) will be

considered eligible for participation under this rule.

**Rules Advisory Committee Comment on Proposed Rule 44**

The purpose of the proposed rule change is to conform the rule more closely to the Court's practice. Since the Court has not conducted a Judicial Conference other than in the context of the Homer Ferguson Conference, and has taken to referring to that annual proceeding as its Judicial Conference, no purpose is served by distinguishing between the two. In addition, the list of invitees currently set out in paragraph (b) is unnecessary.

\* \* \* \* \*

**DATE:** Comments on the proposed changes must be received by February 14, 1997.

**ADDRESS:** Forward written comments Thomas F. Granahan, Clerk of Court, United States Court of Appeals for the Armed Forces, 450 E Street, Northwest, Washington, DC 20442-0001.

**FOR FURTHER INFORMATION CONTACT:** Thomas F. Granahan, Clerk of Court, telephone (202) 761-1448 (x600).

Dated: December 10, 1996.

L.M. Bynum,

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 96-31756 Filed 12-13-96; 8:45 am]

**BILLING CODE 5000-04-M**

**Department of the Army**

**Military Traffic Management Command Rules and Accessorial Services Governing the Movement of Department of Defense Freight Traffic by Motor or Railroad Carriers (Request for Carrier Industry Comments)**

**AGENCY:** Military Traffic Management Command, DOD.

**ACTION:** Notice.

**SUMMARY:** The Military Traffic Management Command (MTMC), for the Department of Defense, is updating MTMC Freight Traffic Rules Publication (MFTP) No. 1A for transport of military freight by motor carriers and MFTRP No. 10 for railroads and requests that carriers submit beneficial suggestions and comments for needed changes, additions, and enhancements. MTMC will consider carrier input received at Headquarters, MTMC, ATTN: MTOP-T-SR, by January 20, 1997.

**FOR FURTHER INFORMATION CONTACT:** Mr. Julian Jolkovsky, Headquarters, Military Traffic Management Command, ATTN: MTOP-T-SR, 5611 Columbia Pike, Falls Church, VA 22040-5050 or

phone (703) 681-3440, fax (703) 681-7687, e-mail jolkovsj@baileysemh5.army.mil.

**SUPPLEMENTARY INFORMATION:** None.

Gregory D. Showalter,

*Army Federal Register Liaison Officer.*

[FR Doc. 96-31829 Filed 12-13-96; 8:45 am]

**BILLING CODE 3710-08-M**

**Notice of Intent To Grant an Exclusive or Partially Exclusive License to Micromet Instruments Inc.**

**AGENCY:** U.S. Army Research Laboratory.

**ACTION:** Notice of intent.

**SUMMARY:** In compliance with 37 CFR 404 et seq., the Department of the Army hereby gives notice of its intent to grant to Micromet Instruments Inc., a corporation having its principle place of business at 7 Wells Avenue, Newton Centre, MA, 02159; an exclusive or partially exclusive license under U.S. Patent 5,210,499, issued 11 May 1993, entitled "In-Situ Sensor Method and Device". Anyone wishing to object to the granting of this license has 60 days from the date of this notice to file written objections along with supporting evidence, if any.

**FOR FURTHER INFORMATION CONTACT:** Michael D. Rausa, U.S. Army Research Laboratory, Office of Research and Technology Applications, ATTN: AMSRL-CS-TT/Bldg. 459, Aberdeen Proving Ground, Maryland 21005-5425, Telephone: (410) 278-5028.

**SUPPLEMENTARY INFORMATION:** None.

Gregory D. Showalter,

*Army Federal Register Liaison Officer.*

[FR Doc. 96-31830 Filed 12-13-96; 8:45 am]

**BILLING CODE 3710-08-M**

**DEPARTMENT OF EDUCATION**

**Recognition of Accrediting Agencies, State Agencies for Approval of Public Postsecondary Vocational Education**

**AGENCY:** Department of Education.

**ACTION:** Request for comments on agencies applying to the Secretary for Initial Recognition or Renewal of Recognition.

**DATES:** Commentors should submit their written comments by January 30, 1997 to the address below.

**FOR FURTHER INFORMATION CONTACT:**

Karen W. Kershenstein, Director, Accreditation and Eligibility Determination Division, U.S. Department of Education, 600 Independence Avenue, S.W., Room 3915 ROB-3, Washington, DC 20202-

5244, telephone: (202) 708-7417.

Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service at 1-800-877-8339 between 8 a.m. and 7 p.m., Eastern time, Monday through Friday.

**SUBMISSION OF THIRD-PARTY COMMENTS:**

The Secretary of Education recognizes, as reliable authorities as to the quality of education offered by institutions or programs within their scope, accrediting agencies and State approval agencies for public postsecondary vocational education and nurse education that meet certain criteria for recognition. The purpose of this notice is to invite interested third parties to present written comments on the agencies listed in this notice that have applied for initial or continued recognition. All comments received in response to this notice will be reviewed by Department staff as part of its evaluation of the agencies' compliance with the criteria for recognition. In order for Department staff to give full consideration to the comments received, the comments must arrive at the address listed above not later than January 30, 1997. Comments must relate to the Secretary's Criteria for the Recognition of Accrediting Agencies. Comments pertaining to agencies whose interim reports will be reviewed must be restricted to the concerns raised in the Secretary's letter for which the report is requested.

The National Advisory Committee on Institutional Quality and Integrity (the "Advisory Committee") advises the Secretary of Education on the recognition of accrediting agencies and State approval agencies. The Advisory Committee is scheduled to meet June 16-18, 1997 in Washington, D.C. All written comments received by the Department in response to this notice will be considered by both the Advisory Committee and the Secretary. A subsequent Federal Register notice will announce the meeting and invite individuals and/or groups to submit requests for oral presentation before the Advisory Committee on the agencies being reviewed. That notice, however, does not constitute another call for written comment. This notice is the only call for written comment.

The following agencies will be reviewed during the June 1997 meeting of the Advisory Committee:

Nationally Recognized Accrediting Agencies and Associations

*Petition for Initial Recognition—*

Planning Accreditation Board

(requested scope of recognition: The

accreditation of baccalaureate and masters degrees in planning)

*Petitions for Renewal of Recognition—*

1. American Academy for Liberal Education (requested scope of recognition: The accreditation and preaccreditation of institutions of higher education and programs within institutions of higher education that offer liberal arts degree(s) at the baccalaureate level or a documented equivalency)
2. Association of Advanced Rabbinical and Talmudic Schools, Accreditation Commission (requested scope of recognition: The accreditation and preaccreditation of advanced rabbinical and Talmudic schools)
3. American Bar Association, Council of the Section of Legal Education and Admissions to the Bar (requested scope of recognition: The accreditation of professional law schools)
4. American Board of Funeral Service Education, Committee on Accreditation (requested scope of recognition: The accreditation of institutions and programs awarding diplomas, associate degrees and bachelor's degrees)
5. American Speech-Language-Hearing Association (requested scope of recognition: the accreditation of graduate degree programs)
6. American Veterinary Medical Association, Council on Education (requested scope of recognition: The accreditation of colleges of veterinary medicine offering programs leading to a professional degree)
7. The Council on Chiropractic Education, Commission on Accreditation (requested scope of recognition: The accreditation of programs and institutions leading to the D.C. degree)
8. Council on Education for Public Health (requested scope of recognition; The accreditation and preaccreditation of graduate schools of public health and graduate programs offered outside schools of public health in community health education and in community health/preventive medicine)
9. Commission on Opticianry Accreditation (requested scope of recognition: The accreditation of two-year programs for the ophthalmic dispenser and one-year programs for the ophthalmic laboratory technician)
10. Liaison Committee on Medical Education of the Council on Medical Education of the American

Medical Association and the American Medical Colleges (requested scope of recognition: the accreditation and preaccreditation of programs leading to the M.D. degree)

11. Montessori Accreditation Council for Teacher Education ( requested scope of recognition: The accreditation of Montessori teacher education programs and institutions)

*Interim Report* (An interim report is a follow-up report on an accrediting agency's compliance with specific criteria for recognition that was requested by the Secretary when the Secretary granted recognition to the agency)—

1. Accrediting Bureau of Health Education Schools
2. Accrediting Commission of Career Schools and Colleges of Technology
3. Accrediting Commission on Education for Health services Administration
4. Accrediting Council for Independent Colleges and Schools
5. American College of Nurse-Midwives, Division of Accreditation
6. American Dental Association, Commission on Accreditation
7. Association of Theological Schools in the United States and Canada, Commission on Accrediting
8. Council on Occupational Education
9. Joint Review Committee on Educational Programs in Nuclear Medicine Technology
10. Joint Review Committee on Education in Radiologic Technology
11. Southern Association of Colleges and Schools, Commission on Colleges
12. Western Association of Schools and Colleges, Accrediting Commission for Schools
13. Commission on Accreditation of Allied Health Education Programs
14. Commission on Accreditation of Allied Health Education Programs—for the accreditation of the following health education programs:
  - a. Cytotechnology
  - b. Diagnostic Medical Sonography
  - c. Electroneurodiagnostic Technology
  - d. Emergency Medical Services
  - e. Perfusion
  - f. Physician Assistant Education
  - g. Respiratory Therapy
  - h. Surgical Technology
15. Middle States Association of Colleges and Schools, Commission on Secondary Schools

*State Agencies Recognized for the Approval of Public Postsecondary Vocational Education*

*Interim Report—*

1. Board of Trustees of the Minnesota State Colleges and Universities

*Public Inspection of Petitions and Third-Party Comments*

All petitions and interim reports, and those third-party comments received in advance of the meeting, will be available for public inspection and copying at the U.S. Department of Education, ROB-3, Room 3915, 7th and D Streets, S.W., Washington, DC 20202-5244, telephone (202) 708-7417 between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, until June 6, 1997. They will be available again after the June 16-18 Advisory Committee meeting. It is preferred that an appointment be made in advance of such inspection or copying.

Dated: December 10, 1996.

Davis A. Longanecker,

*Assistant Secretary for Postsecondary Education.*

[FR Doc. 96-31764 Filed 12-13-96; 8:45 am]

BILLING CODE 4000-01-M

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**DEPARTMENT OF ENERGY**

**Environmental Management Site-Specific Advisory Board, Nevada Test Site**

**AGENCY:** Department of Energy.

**ACTION:** Notice of open meeting.

**SUMMARY:** Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770) notice is hereby given of the following Advisory Committee meeting: Environmental Management Site-Specific Advisory Board (EM SSAB), Nevada Test Site. **DATES:** Wednesday, January 8, 1997: 5:30 p.m.-9:00 p.m.

**ADDRESSES:** Community College of Southern Nevada (Cheyenne Avenue Campus), High Desert Conference and Training Center, Room 1422, 3200 East Cheyenne Avenue, North Las Vegas, Nevada 89030-4296, 702-651-4294.

**FOR FURTHER INFORMATION CONTACT:** Kevin Rohrer, U.S. Department of Energy, Office of Environmental Management, P.O. Box 98518, Las Vegas, Nevada 89193-8513, phone: 702-295-0197.

**SUPPLEMENTARY INFORMATION:**

*Purpose of the Board:* The purpose of the Advisory Board is to make recommendations to DOE and its regulators in the areas of environmental

restoration, waste management, and related activities.

*January Agenda:*

5:30 pm—Call to Order  
 5:40 pm—Presentations  
 7:00 pm—Public Comment/Questions  
 7:30 pm—Break  
 7:45 pm—Review Action Items  
 8:00 pm—Approve Meeting Minutes  
 8:10 pm—Committee Reports  
 8:45 pm—Public Comment  
 9:00 pm—Adjourn

*Public Participation:* The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Kevin Rohrer, at the telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Designated Federal Official is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business.

*Minutes:* The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E-190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585 between 9:00 a.m. and 4 p.m., Monday-Friday, except Federal holidays. Minutes will also be available by writing to Kevin Rohrer at the address listed above.

Issued at Washington, DC on December 9, 1996.

Rachel M. Samuel,

*Acting Deputy Advisory Committee  
 Management Officer.*

[FR Doc. 96-31817 Filed 12-13-96; 8:45 am]

BILLING CODE 6450-01-P

**Environmental Management Site-Specific Advisory Board, Monticello Site**

**AGENCY:** Department of Energy.

**ACTION:** Notice of open meeting.

**SUMMARY:** Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770) notice is hereby given of the following Advisory Board Committee Meeting:  
 Environmental Management Site-Specific Advisory Board, Monticello Site.

**DATES AND TIMES:** Tuesday, December 17, 1996 7:00 p.m.-9:00 p.m.

**ADDRESSES:** San Juan County Courthouse, 2nd Floor Conference Room, 117 South Main, Monticello, Utah 84535.

**FOR FURTHER INFORMATION CONTACT:**  
 Audrey Berry, Public Affairs Specialist,  
 Department of Energy Grand Junction  
 Projects Office, P.O. Box 2567, Grand  
 Junction, CO 81502 (303) 248-7727.

**SUPPLEMENTARY INFORMATION:**

*Purpose of the Board:* The purpose of the Board is to advise DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

*Tentative Agenda:* Update on repository status, Monticello surface and ground water discussion, reports from subcommittees on local training and hiring, health and safety, and future land use.

*Public Participation:* The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Audrey Berry's office at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Designated Federal Official is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of 5 minutes to present their comments. This notice is being published less than 15 days in advance of the meeting due to programmatic issues that needed to be resolved.

*Minutes:* The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E-190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585 between 9:00 a.m. and 4 p.m., Monday-Friday, except Federal holidays. Minutes will also be available by writing to Audrey Berry, Department of Energy Grand Junction Projects Office, P.O. Box 2567, Grand Junction, CO 81502, or by calling her at (303)-248-7727.

Issued at Washington, DC on December 9, 1996.

Rachel M. Samuel,

*Acting Deputy Advisory Committee  
 Management Officer.*

[FR Doc. 96-31816 Filed 12-13-96; 8:45 am]

BILLING CODE 6450-01-P

**Federal Energy Regulatory  
 Commission**

[Docket No. CP97-139-000]

**ANR Pipeline Company; Notice of  
 Request Under Blanket Authorization**

December 10, 1996.

Take notice that on December 5, 1996, ANR Pipeline Company (ANR), 500 Renaissance Center, Detroit, Michigan 48243 filed in Docket No. CP96-797-000 a request pursuant to §§ 157.205, and 157.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.211) for approval and permission to construct and operate a delivery tap for Louisiana Resources Limited Partnership (LRC), under the blanket certificate issued in Docket No. CP88-532-000, pursuant to Section 7(c) of the Natural Gas Act (NGA), all as more fully set forth in the request which is on file with the Commission and open to public inspection.

ANR states that it proposes to construct and operate a point of interconnection by modifying an existing interconnection between ANR and LRC (LRC interconnection) and operating this interconnection under Section 7 of the NGA for the delivery of gas to LRC in St. Martin Parish, Louisiana. ANR further states that it currently receives natural gas from LRC at the LRC interconnection and is proposing to modify it to enable ANR to deliver gas to LRC. It is indicated that the estimated total construction cost of the proposed facilities is \$5,000 and that ANR will be fully reimbursed by LRC for the cost of the proposed facilities. ANR asserts that it will provide between 5 and 100 MMcf per day of natural gas to LRC under ANR's Rate Schedule ITS at the new interconnection.

Any person or the Commission's Staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214), a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205), a protest to the request. If no protest is filed within the time allowed therefor, the proposed activities shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn 30 days after the time allowed for filing a protest, the instant request shall be treated as an

application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

*Secretary.*

[FR Doc. 96-31790 Filed 12-13-96; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. TM97-5-23-001; TQ97-2-23-001; and TM97-6-23-000]

**Eastern Shore Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff**

December 10, 1996.

Take notice that on December 6, 1996, Eastern Shore Natural Gas Company (ESNG) tendered for filing certain revised tariff sheets in the above captioned dockets as part of its FERC Gas Tariff, First Revised Volume No. 1, with proposed effective dates of November 1, 1996 and December 1, 1996, respectively.

ESNG states that the purpose of the instant filing is twofold. First, ESNG is filing Substitute 2nd Revised Eighty-Sixth Revised Sheet No. 6, proposed to be effective November 1, 1996. ESNG states that such tariff sheet is being filed to correct a clerical error with respect to Rate Schedule CWS and CFSS storage rates shown thereon. ESNG neglected to bring the proper rates forward from First Revised 36th Sheet No. 14A, also as filed in Docket No. TM97-5-23-000. This error carried through ESNG's subsequent out-of-cycle quarterly PGA filing in Docket No. TQ97-2-23-000, thus requiring ESNG to also file Substitute Eighty-Seventh Revised Sheet No. 6, proposed to be effective December 1, 1996.

Second, ESNG states that it is filing herein to track certain more recent rate changes attributable to storage service purchased from Transcontinental Gas Pipe Line Corporation (Transco) under their Rate Schedules GSS and LSS, respectively, the costs of which are included in the rates and charges payable under ESNG's respective Rate Schedules GSS-1 and LSS-1. ESNG proposes to track the changes concurrently with Transco, namely November 1, 1996. This tracking filing is being filed pursuant to Section 24 of the General Terms and Conditions of ESNG's FERC Gas Tariff.

ESNG states that copies of the filing have been served upon its jurisdictional customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C.

20426, in accordance with Rule 211 and Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

*Secretary.*

[FR Doc. 96-31786 Filed 12-13-96; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP91-143-038]

**Great Lakes Gas Transmission Limited Partnership; Notice of Revenue Sharing Report**

December 10, 1996.

Take notice that on September 27, 1996, Great Lakes Gas Transmission Limited Partnership (Great Lakes) filed its Interruptible/Overrun (I/O) Revenue Sharing Report with the Federal Energy Regulatory Commission (Commission) in accordance with the Stipulation and Agreement (Settlement Agreement) filed on September 24, 1992, and approved by the Commission's February 3, 1993, order issued in Docket No. RP91-143-000, et al.

Great Lakes states that in accordance with Article IV of the Settlement Agreement as modified by Commission order issued in Great Lakes' restructuring proceeding in Docket No. RS92-63 on October 1, 1993, this report reflects application of the revenue sharing mechanism and remittances made to firm shippers for I/O revenue collections resulting from the return to rolled-in pricing for the period November 1, 1991, through September 30, 1995, period. Such remittances, totaling \$5,484,249, were made to Great Lakes' firm shippers on August 28, 1996 and September 24, 1996.

Great Lakes states that copies of the report were sent to its firm customers, parties to this proceeding and the Public Service Commissions of Minnesota, Wisconsin and Michigan.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street N.E., Washington, D.C. 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests must be filed on or before

December 17, 1996. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

*Secretary.*

[FR Doc. 96-31788 Filed 12-13-96; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RP93-206-013, RP96-347-003 and RP96-347-002 (not consolidated)]

**Northern Natural Gas Company; Notice of Compliance Filing**

December 10, 1996.

Take notice that on December 6, 1996, Northern Natural Gas Company (Northern), tendered for filing to become part of Northern's FERC Gas Tariff, Fifth Revised Volume No. 1, the following tariff sheets proposed to be effective December 1, 1996:

Substitute Fourth Revised Sheet No. 263  
Substitute Third Revised Sheet No. 263A  
Substitute Original Sheet No. 263B  
Substitute Original Sheet No. 263C  
Substitute Original Sheet No. 263D  
Original Sheet No. 263E  
Original Sheet No. 263F  
Original Sheet No. 263G  
Original Sheet No. 263H  
Original Sheet No. 263I  
First Revised Sheet No. 264

On October 28, 1996, Northern filed a Stipulation and Agreement of Settlement, including revised tariff sheets, to resolve the issue of the 250,000 MMBtu per day needed at Carlton. On November 21, 1996, the Commission issued an Order Approving Settlement as Modified, and Denying Requests for Rehearing. This filing is to comply with ordering paragraph (B) of the Commission's order.

Northern states that copies of the filing were served upon the company's customers and interested State Commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C., 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. All protests will be considered by the Commission in determining the appropriate action to be taken in this proceeding, but will not serve to make protestant a party to the proceeding. Copies of this filing are on

file with the Commission and are available for inspection.

Lois D. Cashell,

*Secretary.*

[FR Doc. 96-31787 Filed 12-13-96; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP97-137-000]

**Northern Natural Gas Company; Notice of Request Under Blanket Authorization**

December 10, 1996.

Take notice that on December 3, 1996, Northern Natural Gas Company (Northern), 1111 South 103rd Street, Omaha, Nebraska 68124-1000, filed in Docket No. CP97-137-000 a request pursuant to §§ 157.205 and 157.216 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.216) for authorization to abandon 12 small volume measuring stations located in the states of Iowa and Minnesota, under Northern's blanket certificate issued in Docket No. CP82-401-000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Northern requests authority to abandon 12 small volume measuring stations located in Webster and Polk Counties, Iowa, and Dakota, Washington, Isanti, Rice, Scott and Dodge Counties, Minnesota. Northern states that the end-users have requested the removal of these measuring stations from their property. Northern further states that copies of the consent forms from each end-user authorizing removal of such measuring stations are included in its application.

Northern also states that the facilities to be abandoned are jurisdictional facilities under the Natural Gas Act and were constructed pursuant to superseded 2.55 regulations, budget, or blanket authority, depending on the year the facilities were originally placed in-service.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn

within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

*Secretary.*

[FR Doc. 96-31791 Filed 12-13-96; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP94-38-001]

**Oachita River Gas Storage Company, L.L.C.; Notice of Application**

December 10, 1996.

Take notice that on December 2, 1996, Oachita Gas Storage Company, L.L.C. (Oachita), 9801 Westheimer, Suite 602, Houston, Texas 77042, filed in Docket No. CP94-38-001 an application pursuant to Section 7(c) of the Natural Gas Act, requesting authority to amend its certificate issued August 1, 1996, in Docket No. CP94-38-000 so as to modify certain tariff provisions and substitute a new rate schedule for an existing approved rate schedule, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Oachita states that on August 1, 1996, the Commission issued an order granting to Oachita a certificate to construct and operate the South Downsville Storage Project. The order also reaffirmed that Oachita could market-based for its storage services (firm, interruptible and hub). However, the Commission denied market-based rates for IHS transportation services without prejudice to Oachita filing a market-based rate proposal which was fully supported and met the standards of the Commission's Policy Statement. In the alternative, Oachita was directed to file propose cost-based initial rates for interruptible hub service, together with supporting cost data, within 75 days of the date of the order. Oachita states that it filed its initial rate proposal for hub transportation service on October 15, 1996, in Docket No. CP94-38-000.

Oachita states that it has been advised that Interruptible Hub Service (IHS) should more appropriately be limited to transportation-only service, with all storage-type services expressly handled through Oachita's Rate Schedules FSS (firm storage service) and ISS (interruptible Storage service). To facilitate this change, Oachita proposes to delete Rate Schedule IHS and replace it with Rate Schedule IHTS (interruptible hub transportation service). It is stated that Rate Schedule IHTS would be limited to interruptible

hub transportation service. It is further indicated that Rate Schedule ISS has been clarified to cover expressly both interruptible storage services and hub storage services (which are also interruptible). Thus, all storage services, including interruptible hub storage service and interruptible storage service would be offered under Oachita's Rate Schedule ISS.

Any person desiring to be heard or to make any protest with reference to said application should on or before December 31, 1996, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that approval for the proposed application is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Oachita to appear or be represented at the hearing.

Lois D. Cashell,

*Secretary.*

[FR Doc. 96-31792 Filed 12-13-96; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER96-2879-001]

**US Energy Inc.; Notice of Filing**

December 10, 1996.

Take notice that on October 23, 1996, US Energy Inc. tendered for filing an

amendment in the above-referenced docket.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before December 19, 1996. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

*Secretary.*

[FR Doc. 96-31793 Filed 12-13-96; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP97-140-000]

**Williams Natural Gas Company; Notice of Request Under Blanket Authorization**

December 10, 1996.

Take notice that on December 5, 1996, Williams Natural Gas Company (WNG), P.O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP97-140-000 a request pursuant to §§ 157.205 and 157.216 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.216) for authorization to abandon facilities used for the receipt of transportation gas from Energy Dynamics, Inc. (EDI) and the related service, located in Stafford County, Kansas, under WNG's blanket certificate issued in Docket No. CP82-479-000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

WNG proposes to abandon facilities used for the receipt of transportation gas from EDI and related services in Section 29, Township 25 South, Range 12 West, Stafford County, Kansas. WNG states that the metering facilities are owned by EDI and that EDI has informed WNG that the measurement facilities have been reclaimed. WNG's facilities consist of the tap and appurtenant facilities. WNG states that its cost to reclaim the above-ground piping and other appurtenances will be approximately \$1,620.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

*Secretary.*

[FR Doc. 96-31789 Filed 12-13-96; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER97-542-000, et al.]

**Energy Spring, Inc., et al.; Electric Rate and Corporate Regulation Filings**

December 10, 1996.

Take notice that the following filings have been made with the Commission:

1. Energy Spring, Inc.

[Docket No. ER97-542-000]

Take notice that on December 5, 1996, Energy Spring, Inc. tendered for filing an amendment in the above-referenced docket.

*Comment date:* December 23, 1996, in accordance with Standard Paragraph E at the end of this notice.

2. Torco Energy Marketing, Citizens Lehman Power Sales

[Docket Nos. ER92-429-010 and ER94-1685-010 (not consolidated)]

Take notice that the following informational filings have been made with the Commission and are on file and available for public inspection and copying in the Commission's Public Reference Room:

On November 27, 1996, Torco Energy Marketing filed certain information as required by the Commission's May 18, 1992, order in Docket No. ER92-429-000.

On November 27, 1996, Citizens Lehman Power Sales filed certain information as required by the Commission's February 2, 1995, order in Docket No. ER94-1685-000.

3. Florida Power Corporation

[Docket No. ER97-606-000]

Take notice that on November 26, 1996, Florida Power Corporation (Florida Power) filed amendments to its contract for all requirements service to the City of Williston, Florida (Williston), which will enable the Company to retain Williston as an all requirements customer through at least December 31, 2002, in exchange for a negotiated competitive discount in the price that Williston pays for all requirement service. The filing is the outcome of negotiations between the Company and Williston that began when Williston's City Council voted on March 5, 1996 to give three years' notice of termination of the contract. The Company agreed to this arrangement in order to obtain Williston's agreement not to give the notice of termination in the face of competition from other potential suppliers of the Williston load.

The Company requests waiver of the notice requirement so that this filing may be allowed to become effective on January 1, 1997.

*Comment date:* December 24, 1996, in accordance with Standard Paragraph E at the end of this notice.

4. MidAmerican Energy Company

[Docket No. ER97-607-000]

Take notice that on November 26, 1996, MidAmerican Energy Company (MidAmerican), 106 East Second Street, Davenport, Iowa 52801 tendered for filing proposed changes in its Open Access Transmission Tariff (OATT). The revisions consist of the following:

1. First Revised Sheet No. 140, superseding Original Sheet No. 140;
2. First Revised Sheet No. 141, superseding Original Sheet No. 141; and
3. First Revised Sheet No. 142, superseding Original Sheet No. 142.

MidAmerican states that the revisions update the Index of Point-To-Point Transmission Service Customers under the OATT and do not affect the terms, conditions or rates under the OATT. MidAmerican requests a waiver of the Commission's 60-day notice period for this filing.

Copies of the filing were mailed to representatives of point-to-point transmission service customers under the OATT and to the Iowa Utilities Board, the Illinois Commerce Commission and the South Dakota Public Utilities Commission.

*Comment date:* December 24, 1996, in accordance with Standard Paragraph E at the end of this notice.

## 5. Great Bay Power Corporation

[Docket No. ER97-608-000]

Take notice that on November 26, 1996, Great Bay Power Corporation (Great Bay), tendered for filing a service agreement between Green Mountain Power Corporation and Great Bay for service under Great Bay's revised Tariff for Short Term Sales. This Tariff was accepted for filing by the Commission on May 17, 1996, in Docket No. ER96-726-000. The service agreement is proposed to be effective November 15, 1996.

*Comment date:* December 24, 1996, in accordance with Standard Paragraph E at the end of this notice.

## 6. Cinergy Services, Inc.

[Docket No. ER97-609-000]

Take notice that on November 26, 1996, Cinergy Services, Inc. (Cinergy), tendered for filing a service agreement under Cinergy's Open Access Transmission Service Tariff (the Tariff) entered into between Cinergy and Engelhard Power Marketing, Inc.

Cinergy and Engelhard Power Marketing, Inc. are requesting an effective date of December 1, 1996.

*Comment date:* December 24, 1996, in accordance with Standard Paragraph E at the end of this notice.

## 7. Murphy Oil USA

[Docket No. ER97-610-000]

Take notice that on November 26, 1996, Murphy Oil USA (Murphy), tendered for filing pursuant to Rules 205 and 207 of the Commission's Rules of Practice and Procedure, 18 CFR 385.205 and 385.207, its Rate Schedule No. 1, to be effective sixty days after November 26, 1996, and a petition for waivers of and blanket approvals under various regulations of the Commission.

Murphy intends to engage in electric power and energy transactions as a power marketer. Murphy proposes to charge rates mutually agreed upon by the parties.

Murphy is not in the business of producing or transmitting electric power. Neither Murphy nor its affiliates currently have or contemplates acquiring title to any electric power transmission or generation facilities. Murphy's Energy Rate Schedule No. 1 provides for the sales of energy and capacity at prices mutually agreed upon by the purchaser and Murphy.

*Comment date:* December 24, 1996, in accordance with Standard Paragraph E at the end of this notice.

## 8. Louisville Gas and Electric Company

[Docket No. ER97-611-000]

Take notice that on November 25, 1996, Louisville Gas and Electric Company, tendered for filing copies of service agreements between Louisville Gas and Electric Company and PanEnergy Power Services under rate GSS.

*Comment date:* December 24, 1996, in accordance with Standard Paragraph E at the end of this notice.

## 9. Boston Edison Company

[Docket No. ER97-612-000]

Take notice that on November 26, 1996, Boston Edison Company (Boston Edison), tendered for filing a Service Agreement and Appendix A under Original Volume No. 6, Power Sales and Exchange Tariff (Tariff) for Green Mountain Power Corp. (Green Mountain). Boston Edison requests that the Service Agreement become effective as of November 1, 1996.

Edison states that it has served a copy of this filing on Green Mountain and the Massachusetts Department of Public Utilities.

*Comment date:* December 24, 1996, in accordance with Standard Paragraph E at the end of this notice.

## 10. New England Power Company

[Docket No. ER97-613-000]

Take notice that on November 27, 1996, New England Power Company, tendered for filing a formula rate amendment to its Rate Schedule No. 351, which provides service to Northeast Utilities over NEP's North-South Interface. NEP seeks an effective date of December 1, 1996 for the amendment.

*Comment date:* December 24, 1996, in accordance with Standard Paragraph E at the end of this notice.

## 11. UtiliCorp United Inc.

[Docket No. ER97-614-000]

Take notice that on November 27, 1996, UtiliCorp United Inc., tendered for filing on behalf of its operating division, WestPlains Energy-Colorado, a Service Agreement under its Power Sales Tariff, FERC Electric Tariff Original Volume No. 11, with Entergy Power Marketing Corporation. The Service Agreement provides for the sale of capacity and energy by WestPlains Energy-Colorado to Entergy Power Marketing Corporation pursuant to the tariff, and for the sale of capacity and energy by Entergy Power Marketing Corporation to WestPlains Energy-Colorado pursuant to Entergy Power Marketing Corporation's Rate Schedule No. 1.

UtiliCorp also has tendered for filing a Certificate of Concurrence by Entergy Power Marketing Corporation.

UtiliCorp requests waiver of the Commission's Regulations to permit the Service Agreement to become effective in accordance with its terms.

*Comment date:* December 24, 1996, in accordance with Standard Paragraph E at the end of this notice.

## 12. UtiliCorp United Inc.

[Docket No. ER97-615-000]

Take notice that on November 27, 1996, UtiliCorp United Inc., tendered for filing on behalf of its operating division, WestPlains Energy-Kansas, a Service Agreement under its Power Sales Tariff, FERC Electric Tariff Original Volume No. 12, with Entergy Power Marketing Corporation. The Service Agreement provides for the sale of capacity and energy by WestPlains Energy-Kansas to Entergy Power Marketing Corporation pursuant to the tariff, and for the sale of capacity and energy by Entergy Power Marketing Corporation to WestPlains Energy-Kansas pursuant to Entergy Power Marketing Corporation's Rate Schedule No. 1.

UtiliCorp also has tendered for filing a Certificate of Concurrence by Entergy Power Marketing Corporation.

UtiliCorp requests waiver of the Commission's Regulations to permit the Service Agreement to become effective in accordance with its terms.

*Comment date:* December 24, 1996, in accordance with Standard Paragraph E at the end of this notice.

## 13. UtiliCorp United Inc.

[Docket No. ER97-616-000]

Take notice that on November 27, 1996, UtiliCorp United Inc., tendered for filing on behalf of its operating division, Missouri Public Service, a Service Agreement under its Power Sales Tariff, FERC Electric Tariff Original Volume No. 10, with Entergy Power Marketing Corporation. The Service Agreement provides for the sale of capacity and energy by Missouri Public Service to Entergy Power Marketing Corporation pursuant to the tariff, and for the sale of capacity and energy by Entergy Power Marketing Corporation to Missouri Public Service pursuant to Entergy Power Marketing Corporation's Rate Schedule No. 1.

UtiliCorp also has tendered for filing a Certificate of Concurrence by Entergy Power Marketing Corporation.

UtiliCorp requests waiver of the Commission's Regulations to permit the Service Agreement to become effective in accordance with its terms.

*Comment date:* December 24, 1996, in accordance with Standard Paragraph E at the end of this notice.

14. Cinergy Services, Inc.

[Docket No. ER97-618-000]

Take notice that on November 27, 1996, Cinergy Services, Inc. (Cinergy), tendered for filing on behalf of its operating companies, The Cincinnati Gas & Electric Company (CG&E) and PSI Energy, Inc. (PSI), an Interchange Agreement, dated October 1, 1996 between Cinergy, CG&E, PSI and The Power Company of America, L.P. (PCA).

The Interchange Agreement provides for the following service between Cinergy and PCA.

1. Exhibit A—Power Sales by PCA
2. Exhibit B—Power Sales by Cinergy

Cinergy and PCA have requested an effective date of November 25, 1996.

Copies of the filing were served on The Power Company of America, L.P., the New York Public Service Commission, the Kentucky Public Service Commission, the Public Utilities Commission of Ohio and the Indiana Utility Regulatory Commission.

*Comment date:* December 24, 1996, in accordance with Standard Paragraph E at the end of this notice.

15. Central Vermont Public Service Corporation

[Docket No. ER97-619-000]

Take notice that on November 27, 1996, Central Vermont Public Service Corporation (CVPS), tendered for filing the Forecast 1997 Cost Report in accordance with Article IV, Section A(2) of the North Hartland Transmission Service Contract (Contract) between Central Vermont Public Service Corporation (CVPS or Company) and the Vermont Electric Generation and Transmission Cooperative, Inc. (VG&T) under which CVPS transmits the output of the VG&T's 4.0 MW hydroelectric generating facility located in North Hartland, Vermont via 12.5 kV circuit owned and maintained by CVPS to CVPS's substation in Quechee, Vermont. The North Hartland Transmission Service Contract was filed with the Commission on September 6, 1984 in Docket No. ER84-674-000 and was designated as Rate Schedule FERC No. 121.

Article IV, Section A(2) of the Contract requires CVPS to submit the forecast cost report applicable to a service year by December 1 of the preceding year.

*Comment date:* December 24, 1996, in accordance with Standard Paragraph E at the end of this notice.

16. Central Vermont Public Service Corporation

[Docket No. ER97-620-000]

Take notice that on November 27, 1996, Central Vermont Public Service Corporation (CVPS), tendered for filing a letter stating that CVPS does not plan to file a Forecast 1997 Cost Report for FERC Electric Tariff, Original Volume No. 4, since there are no customers expected to take such service.

*Comment date:* December 24, 1996, in accordance with Standard Paragraph E at the end of this notice.

17. Connecticut Valley Electric Company, Inc.

[Docket No. ER97-621-000]

Take notice that on November 27, 1996, Connecticut Valley Electric Company, Inc. (Connecticut Valley), tendered for filing the determination of the 1996 payment to Connecticut Valley as provided by the Transmission Service Agreement with Woodsville Water & Light Department (Woodsville) dated December 15, 1975. Such agreement was originally filed in Docket No. ER94-637-000 and designated at Rate Schedule FERC No. 12.

*Comment date:* December 24, 1996, in accordance with Standard Paragraph E at the end of this notice.

18. Pennsylvania Power & Light Company

[Docket No. ER97-622-000]

Take notice that on November 27, 1996, Pennsylvania Power & Light Company (PP&L), filed a Service Agreement dated November 25, 1996, with Citizens Lehman Power Sales (Citizens) for non-firm point-to-point transmission service under PP&L's Open Access Transmission Tariff. The Service Agreement adds Citizens as an eligible customer under the Tariff.

PP&L requests an effective date of November 27, 1996, for the Service Agreement.

PP&L states that copies of this filing have been supplied to Citizens and to the Pennsylvania Public Utility Commission.

*Comment date:* December 24, 1996, in accordance with Standard Paragraph E at the end of this notice.

19. Pennsylvania Power & Light Company

[Docket No. ER97-623-000]

Take notice that on November 27, 1996, Pennsylvania Power & Light Company (PP&L), filed a Service Agreement dated November 22, 1996, with Rainbow Energy Marketing, Inc. (Rainbow) for non-firm point-to-point transmission service under PP&L's Open

Access Transmission Tariff. The Service Agreement adds Rainbow as an eligible customer under the Tariff.

PP&L requests an effective date of November 27, 1996, for the Service Agreement.

PP&L states that copies of this filing have been supplied to Rainbow and to the Pennsylvania Public Utility Commission.

*Comment date:* December 24, 1996, in accordance with Standard Paragraph E at the end of this notice.

20. Delmarva Power & Light Company

[Docket No. ER97-624-000]

Take notice that on November 27, 1996, Delmarva Power & Light Company (Delmarva), tendered for filing a service agreement providing for firm point-to-point transmission service from October 29, 1996 through November 1, 1996 to the City of Dover pursuant to Delmarva's open access transmission tariff.

Delmarva states that copies of the filing were provided to the City of Dover and its agent, Duke/Louis Dreyfus.

*Comment date:* December 24, 1996, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 96-31814 Filed 12-13-96; 8:45 am]

BILLING CODE 6717-01-P

**Sunshine Act Meeting**

December 11, 1996.

THE FOLLOWING NOTICE OF MEETING IS PUBLISHED PURSUANT TO SECTION 3(A) OF THE GOVERNMENT IN THE SUNSHINE ACT (PUB. L. NO. 94-409), 5 U.S.C. 552B:

**AGENCY HOLDING MEETING: FEDERAL ENERGY REGULATORY COMMISSION.**

**DATE AND TIME:** DECEMBER 18, 1996, 10:00 A.M.

**PLACE:** ROOM 2C, 888 FIRST STREET, N.E., WASHINGTON, D.C. 20426.

**STATUS:** OPEN.

**MATTERS TO BE CONSIDERED:** AGENDA.

\* NOTE—ITEMS LISTED ON THE AGENDA MAY BE DELETED WITHOUT FURTHER NOTICE.

**CONTACT PERSON FOR MORE INFORMATION:**

LOIS D. CASHELL, SECRETARY, TELEPHONE (202) 208-0400, FOR A RECORDING LISTING ITEMS STRICKEN FROM OR ADDED TO THE MEETING, CALL (202) 208-1627.

THIS IS A LIST OF MATTERS TO BE CONSIDERED BY THE COMMISSION. IT DOES NOT INCLUDE A LISTING OF ALL PAPERS RELEVANT TO THE ITEMS ON THE AGENDA; HOWEVER, ALL PUBLIC DOCUMENTS MAY BE EXAMINED IN THE REFERENCE AND INFORMATION CENTER.

CONSENT AGENDA—HYDRO, 664TH MEETING—DECEMBER 18, 1996, REGULAR MEETING, (10:00 A.M.)

**CAH-1.**

DOCKET# P-2030,025, CONFEDERATED TRIBES OF THE WARM SPRINGS RESERVATION OF OREGON AND PORTLAND GENERAL ELECTRIC COMPANY

**CAH-2.**

DOCKET# P-2389,025, EDWARDS MANUFACTURING COMPANY, INC. AND CITY OF AUGUSTA, MAINE

**CAH-3.**

DOCKET# P-4632,020, CLIFTON POWER CORPORATION  
OTHER#S P-4357,015, CLIFTON HYDRO POWER LIMITED PARTNERSHIP  
P-6879 018, SOUTHEASTERN HYDRO-POWER, INC.

**CAH-4.**

DOCKET# P-10078,014, CARL AND ELAINE HITCHCOCK  
OTHER#S P-9974,030, ROUGH AND READY HYDRO COMPANY  
P-10058,007, ELAINE HITCHCOCK

**CAH-5.**

DOCKET# P-2290,006, SOUTHERN CALIFORNIA EDISON COMPANY

**CAH-6.**

DOCKET# P-2538,001, BEEBEE ISLAND CORPORATION

**CAH-7.**

DOCKET# P-2569,004, NIAGARA MOHAWK POWER CORPORATION

**CAH-8.**

DOCKET# P-10813,026, CITY OF SUMMERSVILLE, WEST VIRGINIA

CONSENT AGENDA—ELECTRIC

**CAE-1.**

DOCKET# ER97-324,000, DETROIT EDISON COMPANY

**CAE-2.**

DOCKET# ER97-293,000, PACIFICORP

**CAE-3.**

DOCKET# ER96-3091,000, AMERICAN ENERGY SERVICE CORPORATION

**CAE-4.**

DOCKET# EL91-13,004, NORTHERN STATES POWER COMPANY V. SOUTHERN MINNESOTA MUNICIPAL POWER AGENCY

OTHER#S EC95-16,011, WISCONSIN ELECTRIC POWER COMPANY AND NORTHERN STATES POWER COMPANY, ET AL.

EL91-13,003, NORTHERN STATES POWER COMPANY V. SOUTHERN MINNESOTA MUNICIPAL POWER AGENCY

EL91-43,003, SOUTHERN MINNESOTA MUNICIPAL POWER AGENCY V. NORTHERN STATES POWER COMPANY

ER95-1357,011, WISCONSIN ELECTRIC POWER COMPANY AND NORTHERN STATES POWER COMPANY, ET AL.

ER95-1358,011, WISCONSIN ENERGY COMPANY AND NORTHERN STATES POWER COMPANY

**CAE-5.**

DOCKET# ER93-150,000, BOSTON EDISON COMPANY

OTHER#S EL93-10,000, BOSTON EDISON COMPANY

**CAE-6.**

DOCKET# TX96-4,000, SUFFOLK COUNTY ELECTRICAL AGENCY

**CAE-7.**

DOCKET# ER96-1695,000, FLORIDA POWER CORPORATION

OTHER#S ER96-1826,000, FLORIDA POWER CORPORATION

ER96-1893,000, FLORIDA POWER CORPORATION

ER96-1914,000, FLORIDA POWER CORPORATION

**CAE-8.**

DOCKET# OA96-18,000, ALLEGHENY POWER AND MONONGAHELA POWER COMPANY

OTHER#S OA96-11,000, LONG SAULT, INC.

OA96-14,000, CENTRAL HUDSON GAS & ELECTRIC CORPORATION

OA96-15,000, CENTRAL LOUISIANA ELECTRIC COMPANY, INC.

OA96-17,000, OKLAHOMA GAS & ELECTRIC COMPANY

OA96-18,000, ALLEGHENY POWER AND MONONGAHELA POWER COMPANY

OA96-19,000, NORTHEAST UTILITIES SERVICE COMPANY

OA96-27,000, SOUTHERN COMPANY SERVICES, INC.

OA96-28,000, PACIFIC GAS & ELECTRIC COMPANY

OA96-30,000, TEXAS-NEW MEXICO POWER COMPANY

OA96-33,000, SOUTHWESTERN PUBLIC SERVICE COMPANY

OA96-37,000, GREEN MOUNTAIN POWER CORPORATION

OA96-43,000, CENTRAL MAINE POWER COMPANY

OA96-46,000, DUKE POWER COMPANY

OA96-49,000, SOUTH CAROLINA ELECTRIC & GAS COMPANY

OA96-50,000, UNION ELECTRIC COMPANY

OA96-52,000, VIRGINIA ELECTRIC & POWER COMPANY

OA96-53,000, CENTRAL VERMONT

PUBLIC SERVICE CORPORATION  
OA96-64,000, DAYTON POWER & LIGHT COMPANY

OA96-68,000, SIERRA PACIFIC POWER COMPANY

OA96-75,000, BLACK HILLS POWER AND LIGHT COMPANY

OA96-116,000, TAMPA ELECTRIC COMPANY

OA96-140,000, TUCSON ELECTRIC POWER COMPANY

OA96-141,000, ROCHESTER GAS & ELECTRIC CORPORATION

OA96-142,000, PENNSYLVANIA POWER & LIGHT COMPANY

OA96-154,000, CENTRAL ILLINOIS PUBLIC SERVICE COMPANY

OA96-161,000, PUGET SOUND POWER & LIGHT COMPANY

OA96-164,000, MINNESOTA POWER & LIGHT COMPANY

OA96-186,000, UTILICORP UNITED, INC.  
OA96-189,000, MAINE ELECTRIC POWER COMPANY

OA96-192,000, OTTER TAIL POWER COMPANY

OA96-196,000, WISCONSIN ELECTRIC POWER COMPANY

OA96-197,000, OHIO EDISON COMPANY AND PENNSYLVANIA POWER COMPANY

OA96-199,000, MONTANA POWER COMPANY

OA96-202,000, PUBLIC SERVICE COMPANY OF NEW MEXICO

OA96-203,000, WESTERN RESOURCES, INC.

OA96-206,000, EMPIRE DISTRICT ELECTRIC COMPANY

OA96-210,000, ORANGE AND ROCKLAND UTILITIES, INC.

OA96-213,000, INTERSTATE POWER COMPANY

**CAE-9.**

DOCKET# ER94-478,000, MEDINA POWER COMPANY

OTHER#S ER95-1230,000, NIAGARA MOHAWK POWER CORPORATION

**CAE-10.**

DOCKET# EC96-13,000, IES UTILITIES, INC., INTERSTATE POWER COMPANY AND WISCONSIN POWER & LIGHT COMPANY, ET AL.

OTHER#S ER96-1236,000, IES UTILITIES, INC., INTERSTATE POWER COMPANY AND WISCONSIN POWER & LIGHT COMPANY, ET AL.

ER96-2560,000, IES UTILITIES, INC., INTERSTATE POWER COMPANY AND WISCONSIN POWER & LIGHT COMPANY, ET AL.

OA96-133,000, INTERSTATE ENERGY CORPORATION

**CAE-11.**

DOCKET# ER92-67,000, WESTERN MASSACHUSETTS ELECTRIC COMPANY

OTHER#S ER92-67,002, WESTERN MASSACHUSETTS ELECTRIC COMPANY

**CAE-12.**

DOCKET# ER96-2677,002, CENTRAL LOUISIANA ELECTRIC COMPANY, INC.

**CAE-13.**

- DOCKET# ER96-2516,001, ATLANTIC CITY ELECTRIC COMPANY, BALTIMORE GAS AND ELECTRIC CO. AND DELMARVA POWER & LIGHT COMPANY, ET AL.  
OTHER#S EC96-28,001, ATLANTIC CITY ELECTRIC COMPANY, BALTIMORE GAS AND ELECTRIC CO. AND DELMARVA POWER & LIGHT COMPANY, ET AL.  
EC96-29,001, PECO ENERGY COMPANY  
EL96-69,001, ATLANTIC CITY ELECTRIC COMPANY, BALTIMORE GAS AND ELECTRIC CO. AND DELMARVA POWER & LIGHT COMPANY, ET AL.  
ER96-2668,001, PECO ENERGY COMPANY  
CAE-14.  
DOCKET# AC93-93,000, BOSTON EDISON COMPANY  
CAE-15.  
DOCKET# AC95-162,000, COLUMBUS SOUTHERN POWER COMPANY  
CAE-16.  
DOCKET# AC95-164,000, APPALACHIAN POWER COMPANY  
CAE-17.  
DOCKET# EL96-62,000, ROCHESTER GAS & ELECTRIC CORPORATION V. NIAGARA MOHAWK POWER CORPORATION  
CAE-18.  
OMITTED  
CAE-19.  
DOCKET# ER76-205,017, SOUTHERN CALIFORNIA EDISON COMPANY  
OTHER#S ER79-150,025, SOUTHERN CALIFORNIA EDISON COMPANY  
ER81-177,020, SOUTHERN CALIFORNIA EDISON COMPANY  
ER82-427,015, SOUTHERN CALIFORNIA EDISON COMPANY  
ER84-75,021, SOUTHERN CALIFORNIA EDISON COMPANY  
CAE-20.  
DOCKET# RM96-16,000, REVISION OF FORM OF NOTICE REQUIREMENTS  
CONSENT AGENDA—GAS AND OIL  
CAG-1.  
DOCKET# PR97-1,000, CONSUMERS POWER COMPANY  
CAG-2.  
DOCKET# RP97-55,000, GREAT LAKES GAS TRANSMISSION LIMITED PARTNERSHIP  
CAG-3.  
DOCKET# RP97-86,000, COLUMBIA GAS TRANSMISSION CORPORATION  
CAG-4.  
DOCKET# RP97-88,000, ALABAMA-TENNESSEE NATURAL GAS COMPANY  
OTHER#S RP97-89,000, ALABAMA-TENNESSEE NATURAL GAS COMPANY  
CAG-5.  
DOCKET# RP97-94,000, ANR PIPELINE COMPANY  
CAG-6.  
DOCKET# RP97-60,000, TENNESSEE GAS PIPELINE COMPANY  
CAG-7.  
DOCKET# RP97-84,000, NORTHWEST ALASKAN PIPELINE COMPANY  
CAG-8.  
DOCKET# PR95-12,000, SONAT INTRASTATE-ALABAMA INC.  
OTHER#S PR95-12,001, SONAT INTRASTATE-ALABAMA INC.  
CAG-9.  
DOCKET# RP95-197,019, TRANSCONTINENTAL GAS PIPELINE CORPORATION  
OTHER#S RP95-197,018, TRANSCONTINENTAL GAS PIPELINE CORPORATION  
RP96-44,002, TRANSCONTINENTAL GAS PIPELINE CORPORATION  
RP96-44,003, TRANSCONTINENTAL GAS PIPELINE CORPORATION  
CAG-10.  
DOCKET# RP96-147,000, EQUITRANS, L.P.  
CAG-11.  
DOCKET# RP96-283,001, COLUMBIA GULF TRANSMISSION COMPANY  
CAG-12. OMITTED  
CAG-13.  
DOCKET# RP96-359,002, TRANSCONTINENTAL GAS PIPELINE CORPORATION  
CAG-14.  
DOCKET# RP97-56,000, FLORIDA GAS TRANSMISSION COMPANY  
CAG-15.  
DOCKET# RP97-58,000, EAST TENNESSEE NATURAL GAS COMPANY  
CAG-16.  
DOCKET# RP97-59,000, MIDWESTERN GAS TRANSMISSION COMPANY  
CAG-17.  
DOCKET# RP91-229 ET AL., 021, PANHANDLE EASTERN PIPELINE COMPANY  
OTHER#S RP88-262 ET AL., 000, PANHANDLE EASTERN PIPELINE COMPANY  
RP92-166 ET AL., 015, PANHANDLE EASTERN PIPELINE COMPANY  
RS92-22 ET AL., 000, PANHANDLE EASTERN PIPELINE COMPANY  
CAG-18.  
DOCKET# RP96-302,000, NORTHERN NATURAL GAS COMPANY  
CAG-19.  
DOCKET# RP97-54,000, TRAILBLAZER PIPELINE COMPANY  
CAG-20.  
OMITTED  
CAG-21.  
OMITTED  
CAG-22.  
OMITTED  
CAG-23.  
DOCKET# RP97-64,000, NATURAL GAS PIPELINE COMPANY OF AMERICA  
CAG-24.  
DOCKET# RP97-66,000, CANYON CREEK COMPRESSION COMPANY  
CAG-25.  
DOCKET# RP97-67,000, WILLIAMS NATURAL GAS COMPANY  
CAG-26.  
DOCKET# RP97-68,000, STINGRAY PIPELINE COMPANY  
CAG-27.  
OMITTED  
CAG-28.  
DOCKET# RP97-85,000, NORTHERN BORDER PIPELINE COMPANY  
CAG-29.  
DOCKET# RP97-87,000, WYOMING INTERSTATE COMPANY, LTD.  
CAG-30.  
DOCKET# RP93-109,000, WILLIAMS NATURAL GAS COMPANY  
CAG-31.  
DOCKET# RP96-190,007, COLORADO INTERSTATE GAS COMPANY  
CAG-32.  
DOCKET# RP96-265,001, PECO ENERGY COMPANY V. TEXAS EASTERN TRANSMISSION CORPORATION  
CAG-33.  
DOCKET# RP96-184,003, NATURAL GAS PIPELINE COMPANY OF AMERICA  
CAG-34.  
OMITTED  
CAG-35.  
DOCKET# RP96-351,002, ARKANSAS WESTERN PIPELINE COMPANY  
CAG-36.  
DOCKET# RP96-272,003, NORTHERN NATURAL GAS COMPANY  
CAG-37.  
DOCKET# RP96-248,001, EAST TENNESSEE NATURAL GAS COMPANY  
CAG-38.  
DOCKET# IS94-10,007, AMERADA HESS PIPELINE CORPORATION  
OTHER#S IS94-11,007, ARCO TRANSPORTATION ALASKA, INC.  
IS94-12,007, BP PIPELINES (ALASKA) INC.  
IS94-13,006, MOBIL ALASKA PIPELINE COMPANY  
IS94-14,007, EXXON PIPELINE COMPANY  
IS94-15,007, MOBIL ALASKA PIPELINE COMPANY  
IS94-16,007, PHILLIPS ALASKA PIPELINE CORPORATION  
IS94-17,007, UNOCAL PIPELINE COMPANY  
IS94-31,007, UNOCAL PIPELINE COMPANY  
IS94-34,006, ARCO TRANSPORTATION ALASKA, INC.  
IS94-38,007, PHILLIPS ALASKA PIPELINE CORPORATION  
OR94-2,002, TRANS ALASKA PIPELINE SYSTEM  
CAG-39.  
DOCKET# RP93-136,008, TRANSCONTINENTAL GAS PIPE LINE CORPORATION  
OTHER#S RP92-137,041, TRANSCONTINENTAL GAS PIPE LINE CORPORATION  
CAG-40.  
DOCKET# RP96-268,001, TENNESSEE GAS PIPELINE COMPANY  
OTHER#S RP96-269,002, EAST TENNESSEE NATURAL GAS COMPANY  
CAG-41.  
DOCKET# RP96-367,001, NORTHWEST PIPELINE CORPORATION  
CAG-42.  
DOCKET# RP93-197,001, UNION PACIFIC FUELS, INC. ET AL. V. SOUTHERN CALIFORNIA GAS COMPANY  
OTHER#S RP93-194,001, SOUTHERN CALIFORNIA UTILITY POWER POOL AND IMPERIAL IRRIGATION DISTRICT V. SOUTHERN CALIFORNIA GAS COMPANY

RP94-51,001, SHELL WESTERN E&P INC.  
V. SOUTHERN CALIFORNIA GAS  
COMPANY  
CAG-43.  
OMITTED  
CAG-44.  
DOCKET# RP94-72,000, IROQUOIS GAS  
TRANSMISSION SYSTEM, L.P.  
OTHER#S FA92-59,003, IROQUOIS GAS  
TRANSMISSION SYSTEM, L.P.  
CAG-45.  
DOCKET# IS94-34,000, ARCO  
TRANSPORTATION ALASKA, INC., ET  
AL.  
OTHER#S IS94-38,003, PHILLIPS  
ALASKA PIPELINE CORPORATION  
IS95-13,003, AMERADA HESS PIPELINE  
CORPORATION  
IS95-14,003, ARCO TRANSPORTATION  
ALASKA, INC.  
IS95-15,003, BP PIPELING (ALASKA),  
INC.  
IS95-16,003, EXXON PIPELINE  
COMPANY  
IS95-17,003, MOBIL ALASKA PIPELINE  
COMPANY  
IS95-18,003, PHILLIPS ALASKA  
PIPELINE CORPORATION  
IS95-19,003, UNOCAL PIPELINE  
COMPANY  
IS96-1,003, AMERADA HESS PIPELINE  
CORPORATION  
IS96-2,003, ARCO TRANSPORTATION  
ALASKA, INC.  
IS96-3,003, BP PIPELINE (ALASKA), INC.  
IS96-4,003, EXXON PIPELINE COMPANY  
IS96-5,003, MOBIL ALASKA PIPELINE  
COMPANY  
IS96-6,003, PHILLIPS ALASKA PIPELINE  
CORPORATION  
IS96-7,003, UNOCAL PIPELINE  
COMPANY  
CAG-46.  
DOCKET# MG96-13,000, K N  
INTERSTATE GAS TRANSMISSION  
COMPANY  
OTHER#S MG96-13,001, K N  
INTERSTATE GAS TRANSMISSION  
COMPANY  
CAG-47.  
DOCKET# MG96-14,000, K N  
WATTENBERG TRANSMISSION, L.L.C.  
CAG-48.  
DOCKET# MG97-1,000, WILLIAMS  
NATURAL GAS COMPANY  
CAG-49.  
DOCKET# MG97-2,000, TRUNKLINE GAS  
COMPANY  
CAG-50.  
DOCKET# CP94-762,001, COLORADO  
INTERSTATE GAS COMPANY  
OTHER#S CP95-26,001, MIGC, INC.  
CAG-51.  
DOCKET# CP96-168,001, NORTHWEST  
PIPELINE CORPORATION  
CAG-52.  
DOCKET# CP96-201,000, ALGONQUIN  
GAS TRANSMISSION COMPANY  
CAG-53.  
DOCKET# CP96-213,000, COLUMBIA GAS  
TRANSMISSION CORPORATION  
OTHER#S CP96-559,000, TEXAS  
EASTERN TRANSMISSION  
CORPORATION  
CAG-54.

DOCKET# CP96-591,000, ALGONQUIN  
GAS TRANSMISSION COMPANY  
CAG-55.  
DOCKET# CP96-686,000,  
TRANSCONTINENTAL GAS PIPE LINE  
CORPORATION  
CAG-56.  
DOCKET# CP96-603,000, TENNESSEE  
GAS PIPELINE COMPANY  
CAG-57.  
DOCKET# CP96-727,000, KERN RIVER  
GAS TRANSMISSION COMPANY  
CAG-58.  
DOCKET# CP96-794,000, NATURAL GAS  
PIPELINE COMPANY OF AMERICA  
CAG-59.  
DOCKET# CP96-680,000,  
TRANSCONTINENTAL GAS PIPE LINE  
CORPORATION  
CAG-60.  
DOCKET# CP96-588,000, CENTANA  
INTRASTATE PIPELINE COMPANY  
OTHER#S CP96-586,000, TEXAS  
EASTERN TRANSMISSION  
CORPORATION  
HYDRO AGENDA  
H-1. RESERVED  
ELECTRIC AGENDA  
E-1.  
DOCKET# RM96-6,000, INQUIRY  
CONCERNING THE COMMISSION'S  
MERGER POLICY UNDER THE  
FEDERAL POWER ACT  
THE COMMISSION WILL CONSIDER A  
DRAFT POLICY STATEMENT.  
E-2.  
DOCKET# ER96-1663,000, PACIFIC GAS  
AND ELECTRIC COMPANY, SAN  
DIEGO GAS & ELECTRIC COMPANY  
AND SOUTHERN CALIFORNIA EDISON  
COMPANY  
THE COMMISSION WILL CONSIDER THE  
COMPANIES' APPLICATION FOR  
AUTHORIZATION TO SELL POWER AT  
MARKET-BASED RATES THROUGH A  
POWER EXCHANGE.  
OIL AND GAS AGENDA  
I. PIPELINE RATE MATTERS  
PR-1.  
DOCKET# RP93-100,000, DAKOTA  
GASIFICATION COMPANY  
OTHER#S RP93-151,015, TENNESSEE  
GAS PIPELINE COMPANY  
RP94-39,006, TENNESSEE GAS PIPELINE  
COMPANY  
RP94-87,008, NATURAL GAS PIPELINE  
COMPANY OF AMERICA  
RP94-122,006, NATURAL GAS PIPELINE  
COMPANY OF AMERICA  
RP94-150,000, ANR PIPELINE COMPANY  
RP94-169,006, NATURAL GAS PIPELINE  
COMPANY OF AMERICA  
RP94-195,005, NATURAL GAS PIPELINE  
COMPANY OF AMERICA  
RP94-202,000, TENNESSEE GAS  
PIPELINE COMPANY  
RP94-208,000, NATURAL GAS PIPELINE  
COMPANY OF AMERICA  
RP94-222,000, TENNESSEE GAS  
PIPELINE COMPANY  
RP94-249,004, NATURAL GAS PIPELINE  
COMPANY OF AMERICA  
RP94-260,004, NATURAL GAS PIPELINE  
COMPANY OF AMERICA

RP94-266,000, ANR PIPELINE COMPANY  
RP94-298,000, TRANSCONTINENTAL  
GAS PIPE LINE CORPORATION  
RP94-305,002, NATURAL GAS PIPELINE  
COMPANY OF AMERICA  
RP94-309,003, TENNESSEE GAS  
PIPELINE COMPANY  
RP94-347,000, ANR PIPELINE COMPANY  
RP94-364,001, NATURAL GAS PIPELINE  
COMPANY OF AMERICA  
RP94-384,000, ANR PIPELINE COMPANY  
TM94-14-29,000, TRANSCONTINENTAL  
GAS PIPE LINE CORPORATION  
ORDER ON INITIAL DECISION.

## II. PIPELINE CERTIFICATE MATTERS PC-1.

RESERVED

Lois D. Cashell,

*Secretary.*

[FR Doc. 96-31953 Filed 12-12-96; 8:45 am]

BILLING CODE 6717-01-P

## ENVIRONMENTAL PROTECTION AGENCY

[FRL-5666-3]

### National Drinking Water Advisory Council; Request for Nominations

The Environmental Protection Agency (EPA) invites all interested persons to suggest individuals to serve as members of the working groups that will be formed under the National Drinking Water Advisory Council on specific matters relating to implementation of the Safe Drinking Water Act. The Advisory Council was established to provide practical and independent advice, consultation, and recommendations to the Agency on the activities, functions and policies related to the Act as amended. At the November 13 and 14, 1996, meeting of the Council, it was decided that working groups should be formed on the following subjects: Small Systems Capacity Building; Operator Certification; Source Water Protection; Consumer Confidence Reports; Drinking Water State Revolving Fund; and Occurrence and Contaminant Selection.

Because membership on these groups will be limited and must be representative of balanced views, selections will be made by the Director, Office of Ground Water and Drinking Water, based on drinking water expertise and demonstrated interest in drinking water policy. Any interested person or organization may suggest an individual for a position on the working groups. Candidates should be identified by name, occupation, position, address and telephone number and the working group for which they wish to be considered for membership.

Persons selected for membership are responsible for any expenses that would

be incurred while attending meetings. Suggestions should be submitted to Charlene E. Shaw, Designated Federal Officer, National Drinking Water Advisory Council, U.S. Environmental Protection Agency, Office of Ground Water and Drinking Water (4601), 401 M Street SW, Washington, D.C. 20460, no later than December 31, 1996. The agency will not formally acknowledge or respond to nominations. E-Mail your questions to Shaw.Charlene@epamail.epa.gov or call 202/260-2285.

Dated: December 10, 1996.  
Cynthia C. Dougherty,  
*Director, Office of Ground Water and Drinking Water.*  
[FR Doc. 96-31841 Filed 12-13-96; 8:45 am]  
BILLING CODE 6560-50-M

[FRL-5666-4]

### National Guidance on Source Water Protection; Notice of Public Meeting

The Environmental Protection Agency (EPA) is holding a public meeting in Washington, D.C. for purposes of information exchange on various issues related to the development of guidance for State source water assessment programs, State source water protection programs including petition programs, and other program issues related to the new provisions established in the Safe Drinking Water Act of 1996, including the Drinking Water State Revolving Fund.

EPA is inviting all interested members of the public to attend the meeting and to actively provide viewpoints, ideas, and suggestions to EPA on its drinking water protection programs and activities. EPA encourages the public's response to options included in its discussion guide. We hope you can join us and share your experience and perspectives. Similar meetings will be held in each EPA Regional office between March and May of 1997.

The meeting is scheduled for January 7 (8:30 a.m.-5:30 p.m.) and January 8 (8:30 a.m.-2:30 p.m.), 1997, at the Hyatt Regency Washington on Capitol Hill, 400 New Jersey Avenue, N.W., Washington, DC, 20001. For more information about the meeting, or for copies of the discussion guide, please call the EPA Drinking Water Hotline at 1-800-426-4791. Written comments on the discussion guide are requested to be sent by Friday, January 17, 1997, to EPA's Office of Ground Water and Drinking Water, Implementation and Assistance Division, Prevention and Support Branch, 401 M Street, S.W.,

Mail Code 4606, Washington, D.C., 20460.

Dated: December 10, 1996.  
Barbara Elkus,  
*Acting Director, Office of Ground Water and Drinking Water.*  
[FR Doc. 96-31843 Filed 12-13-96; 8:45 am]  
BILLING CODE 6560-50-P

### FEDERAL MARITIME COMMISSION

#### Notice of Agreement(s) Filed

The Commission hereby gives notice of the filing of the following agreement(s) under the Shipping Act of 1984.

Interested parties can review or obtain copies of agreements at the Washington, DC offices of the Commission, 800 North Capitol Street, NW., Room 962. Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days of the date this notice appears in the Federal Register.

*Agreement No.:* 203-011555-001.  
*Title:* Policing Services Agreement.  
*Parties:*

Atlantic Container Line AB  
DSR-Senator Lines  
Evergreen Marine Corp. (Taiwan), Ltd.  
Hapag-Lloyd AG  
Hanjin Shipping Co., Inc.  
Orient Overseas Container Line (UK) Ltd.  
Mediterranean Shipping Co.  
Neptune Orient Lines Ltd.  
Sea-Land Service, Inc.  
P&O Containers Limited  
Nedlloyd Lijnen BV  
POL-Atlantic  
A.P. Moller-Maersk Line  
Tecomar S.A. de C.V.  
Nippon Yusen Kaisha  
Transportacion Maritima Mexicana, S.A. de C.V.  
Cho Yang Shipping Co., Ltd.  
Hyundai Merchant Marine Co., Ltd.

*Synopsis:* The proposed modification describes a cargo inspection and manifest audit program adopted by the parties pursuant to Article 5.2 of the Agreement. The parties have requested a shortened review period.

Dated: December 10, 1996.  
By Order of the Federal Maritime Commission.  
Joseph C. Polking,  
*Secretary.*  
[FR Doc. 96-31798 Filed 12-13-96; 8:45 am]  
BILLING CODE 6730-01-M

### Ocean Freight Forwarder License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission applications for licenses as ocean freight forwarders pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718 and 46 CFR part 510).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to contact the Office of Freight Forwarders, Federal Maritime Commission, Washington, D.C. 20573.

Joseph Esposito, 17 Main Street, Bloomingdale, NJ 07403, Sole Proprietor.  
Cargo, Inc., 515 Busse Highway, Elk Grove Village, IL 60007, Officers: Richard T. White, President, David R. White, Secretary/Treasurer.  
Brixton Management, Inc., 13560 Berlin Station Rd., Berlin Center, OH 44401, Officers: Aimee L. Huter, President; Karen L. Alestock, Secretary.  
I.C.A.T. Logistics, Inc., 1340 Charwood Road, Suite G, Hanover, MD 21076, Officers: Richard Campbell, President; John T. Greene, Director of Sales.

Dated: December 10, 1996.  
Joseph C. Polking,  
*Secretary.*  
[FR Doc. 96-31752 Filed 12-13-96; 8:45 am]  
BILLING CODE 6730-01-M

### 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. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the 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, including whether the acquisition of the nonbanking company can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices" (12 U.S.C. 1843). Any request for a hearing must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than January 10, 1997.

A. Federal Reserve Bank of San Francisco (Kenneth R. Binning, Director, Bank Holding Company) 101 Market Street, San Francisco, California 94105:

1. *Bank of Whitman Employee Stock Ownership Plan*, Colfax, Washington; to become a bank holding company by acquiring 30 percent of the voting shares of Whitman Bancorporation, Colfax, Washington, and thereby indirectly acquire Bank of Whitman, Logan, Utah.

Board of Governors of the Federal Reserve System, December 10, 1996.

Jennifer J. Johnson,

*Deputy Secretary of the Board.*

[FR Doc. 96-31799 Filed 12-13-96; 8:45 am]

BILLING CODE 6210-01-F

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## FEDERAL TRADE COMMISSION

[File No. 971-0006]

### The Boeing Company; Analysis To Aid Public Comment

**AGENCY:** Federal Trade Commission.

**ACTION:** Proposed consent agreement.

**SUMMARY:** In settlement of alleged violations of federal law prohibiting unfair or deceptive acts or practices and unfair methods of competition, this

consent agreement, accepted subject to final Commission approval, settles allegations that the Seattle-based defense and space contractor's acquisition of Rockwell International Corporation's Aerospace and Defense business would violate antitrust laws by reducing competition in two markets: High altitude endurance unmanned air vehicles and space launch vehicles. Boeing and Rockwell are members of the only two teams currently competing to develop high-altitude endurance unmanned air vehicles for the Department of Defense. The agreement would require, among other things, that Boeing deliver to Teledyne Ryan, which heads the team competing against Boeing, all of the assets needed to produce Tier II Plus wings for the Teledyne Ryan team. The proposed acquisition would also make Boeing both a competitor in the market for space launch vehicles and a provider of the space launch vehicle propulsion systems used by Boeing and its space launch vehicle competitors. The agreement prohibits Boeing from making any space launch vehicle manufacturer's non-public information available to Boeing's launch vehicle division, and from using a competitor's proprietary, non-public data in any capacity except as a provider of launch vehicle propulsion systems.

**DATES:** Comments must be received on or before February 14, 1997.

**ADDRESSES:** Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th St. and Pa. Ave., N.W., Washington, DC. 20580.

**FOR FURTHER INFORMATION CONTACT:** William J. Baer or George Cary, Federal Trade Commission, H-374, 6th and Pennsylvania Ave., NW, Washington, DC 20580. (202) 326-2932 or (202) 326-3741.

**SUPPLEMENTARY INFORMATION:** Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46, and § 2.34 of the Commission's rules of practice (16 CFR 2.34), notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the accompanying complaint. An electronic copy of the full text of the consent agreement package can be obtained from the Commission Actions section of the FTC Home Page (for December 5, 1996), on the World Wide Web, at "http://

www.ftc.gov/os/actions/htm." A paper copy can be obtained from the FTC Public Reference Room, Room H-130, Sixth Street and Pennsylvania Avenue, NW., Washington, DC. 20580, either in person or by calling (202) 326-3627. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(6)(ii) of the Commission's rules of practice (16 CFR 4.9(b)(6)(ii)).

### Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission ("Commission") has accepted, subject to final approval, an agreement containing a proposed Consent Order from The Boeing Company ("Boeing") designed to remedy the anticompetitive effects likely to result from Boeing's proposed acquisition of Rockwell International Corporation's Aerospace and Defense business ("Rockwell Aerospace and Defense"). The proposed Consent Order enables Teledyne Ryan, the prime contractor for the Tier II Plus high altitude endurance unmanned air vehicle ("HAE UAV"), to replace Boeing as its teammate and wing supplier for Tier II Plus, without incurring any significant cost or risk, by requiring Boeing, at Teledyne Ryan's request, to deliver to Teledyne Ryan all of the assets needed to manufacture wings for the Tier II Plus and provide technical assistance to Teledyne Ryan. In addition, the proposed Consent Order prohibits Boeing's space launch vehicle division from gaining access to any non-public information that Boeing's space launch vehicle propulsion system division will receive after the acquisition from competing space launch vehicle providers.

The proposed Consent Order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and any comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed Order.

On or about July 31, 1996, Boeing agreed to acquire Rockwell Aerospace and Defense for approximately \$3.025 billion. The proposed complaint alleges that the acquisition, if consummated, would violate section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and Section 5 of the Federal Trade Commission Act as amended, 15 U.S.C. 45, in the markets for HAE UAVs and space launch vehicles.

The proposed Consent Order would remedy the alleged violations in each market. First, Boeing and Rockwell are members of the only two teams currently competing in the design and development of HAE UAVs. Boeing and its teammate Lockheed Martin are currently developing the Tier III Minus HAE UAV, and Teledyne Ryan and a team of subcontractors, including Rockwell Aerospace and Defense, are currently developing the Tier II Plus HAE UAV.

HAE UAVs are unmanned aircraft used to perform high-altitude, broad area reconnaissance. These aircraft are controlled from the ground and transmit reconnaissance sensor data on a real time basis. HAE UAVs are being designed to satisfy the Defense Airborne Reconnaissance Office's goal of providing the U.S. military with the ability to obtain responsive and continuous reconnaissance data from anywhere within enemy territory, day or night, as the needs of the warfighter dictate.

Under its teaming agreement with Lockheed Martin, Boeing is responsible for providing, among other things, the wings, launch station and avionics for Tier III Minus. As a subcontractor to Teledyne Ryan for Tier II Plus, Rockwell is responsible for providing only the aircraft's wings. The proposed acquisition therefore would position Boeing as a member of both competing HAE UAV teams while Boeing would stand to earn a far greater share of the revenue from its participation on the Tier III Minus team than it could earn from its role as the wing supplier for the Tier II Plus team.

The acquisition is likely to lead to anticompetitive effects in the HAE UAV market. Because the proposed acquisition would cause Boeing to be a member of the only two competing HAE UAV teams, Boeing would be in a position to raise price and/or reduce quality on one or both teams. Boeing would not only have the opportunity to diminish competition, but would also have the incentive to cause the Tier II Plus team to become non-competitive because Boeing stands to earn significantly more revenue from its participation in the Tier III Minus program than it would earn as a supplier of wings to the Tier II Plus team. Moreover, if the Tier II Plus system became non-competitive, or simply less competitive, Boeing would then be in a position to also raise the price of the Tier III Minus system.

The proposed consent agreement resolves the likely anticompetitive effects of the acquisition in the HAE UAV market by enabling Teledyne Ryan

to replace Rockwell Aerospace and Defense, which would be owned by Boeing after the acquisition, as the Tier II Plus wing supplier without incurring any significant costs or risk. As a result, Boeing will either agree to supply Tier II Plus wings in a competitive manner after the acquisition or be replaced by Teledyne Ryan.

Specifically, under the terms of the Order, Boeing is required to deliver, upon request from Teledyne Ryan, to business locations in the United States designated by Teledyne Ryan, at no cost to Teledyne Ryan, all of the assets needed to produce Tier II Plus wings, including the special tooling, special test equipment, engineering data and design data. Teledyne Ryan can request that Boeing deliver such assets at anytime prior to six months from the date the Order becomes final, provided Teledyne Ryan and Boeing have not agreed to a new contract for Boeing to supply wings for Tier II Plus. This ensures that Boeing will have the incentive to compete vigorously to remain a supplier of wings for Tier II Plus. In addition, Boeing is prohibited from asserting or enforcing any proprietary rights in such equipment or data, or holding Teledyne Ryan liable for any damages or costs resulting from the replacement of Boeing as the Tier II plus wing supplier.

In order to ensure a smooth transition of the wing manufacturing to a new supplier and to offset any lost learning curve efficiencies, the proposed Order requires Boeing to provide technical assistance, not to exceed four man years over a one year period, at no cost to Teledyne Ryan. Because Teledyne Ryan may need Boeing's assistance in resolving any technical issues that arise during the upcoming Tier II Plus flight tests, the Order requires Boeing to provide additional technical assistance through the duration of such tests. Finally, in order to prevent the anticompetitive flow of competitively sensitive information, the order establishes a "firewall" between Boeing's Tier III Minus business and the Rockwell North American Aircraft Division that is currently providing Tier II Plus wings.

Boeing is also a significant competitor in the research, development, manufacture and sale of space launch vehicles, and is expected to bid for the upcoming Department of Defense ("DoD") Evolved Expendable Launch Vehicle ("EELV") program. The EELV competition is expected to produce the next generation of launch vehicles to replace all current medium to heavy launchers—Lockheed Martin's Atlas, Titan II and Titan IV series, and

McDonnell Douglas's Delta series—with a single family of vehicles capable of launching medium and heavy payloads into orbit at a significantly lower cost. The EELV will handle the bulk of the U.S. government's launch requirements after the year 2000 and is also expected to be used for commercial applications. Boeing, McDonnell Douglas, Lockheed Martin and Alliant Techsystems are currently facing a down-selection from four to two contractors in the next phase of the EELV program.

Rockwell, through its Rocketdyne Division ("Rocketdyne"), is one of the world's leading manufacturers of space launch vehicle propulsion systems. Currently, Boeing and McDonnell Douglas are planning to use Rocketdyne propulsion systems as part of their EELV proposals. Thus, the proposed acquisition would vertically integrate Boeing as an EELV bidder and a launch vehicle propulsion systems provider.

Because an EELV manufacturer that is using a Rockwell propulsion system must work very closely with Rockwell in order to integrate that system into its EELV, Boeing and McDonnell Douglas have provided, and will continue to provide, a wide range of competitively sensitive proprietary design, performance, cost-related, marketing and business strategy information to Rockwell.

If DoD selects the Boeing and McDonnell Douglas teams as the finalists for the EELV competition, Boeing's launch vehicle division could gain access to the proprietary information that McDonnell Douglas has provided to Rockwell's launch vehicle propulsion business, which could affect the prices and services that Boeing would offer. Thus, the proposed acquisition increases the likelihood that competition between the participants in the EELV program would decrease.

In addition, Boeing also competes in the commercial market for space launch vehicles and Rockwell also supplies space launch propulsion systems to Boeing's commercial space launch vehicle competitors. As a result, the proposed acquisition may result in similar anticompetitive effects in future commercial space launch vehicle procurements. In addition to causing higher prices, the proposed acquisition may also reduce innovation in the commercial space launch vehicle market, as Boeing's competitors who use Rockwell propulsion systems will be less willing to invest in new space launch vehicle developments for fear that Boeing will be able to "free-ride" off their technological developments.

To remedy the proposed acquisition's likely anticompetitive effects in the

space launch vehicle market, the proposed Consent Order preserves the confidentiality of space launch vehicle suppliers' proprietary information by prohibiting Boeing's division that provides space launch vehicle propulsion systems from making any proprietary information from competing space launch vehicle manufacturers available to Boeing's space launch vehicle division. Under the proposed Consent Order, Boeing may only use such information in its capacity as a provider of space launch vehicle propulsion systems. Non-public information in this context includes any information not in the public domain that is designated as proprietary information by any space launch vehicle manufacturer that provides such information to Boeing as well as information not in the public domain provided by any space launch vehicle manufacturer to Rockwell prior to the acquisition. The purpose of the proposed Consent Order is to preserve the opportunity for full competition in the market for the research, development, manufacture and sale of space launch vehicles. The Commission has issued similar orders limiting potentially anticompetitive information transfers following mergers or acquisitions, including *Lockheed Martin*, (C-3685) (September 20, 1996); *Raytheon Company*, (C-3681) (September 10, 1996); *Lockheed Corporation/Martin Marietta Corporation*, (C-3576) (May 9, 1995); *Alliant Techsystems Inc.*, (C-3567) (April 7, 1995); *Martin Marietta*, (C-3500) (June 28, 1994).

Under the provisions of the proposed Consent Order, Boeing is required to deliver a copy of the Order to any space launch vehicle manufacturer prior to obtaining any information from such manufacturer that is outside of the public domain. The Order also requires Boeing to provide the Commission a report of compliance with the provisions of the Order within (60) days of the date the Order becomes final, and annually for the next (10) years on the anniversary of the date the Order becomes final.

In order to preserve competition in the relevant markets during the period prior to the final acceptance of the proposed Consent Order (after the 60-day public notice period), Boeing has entered into an Interim Agreement with the Commission in which it has agreed to be bound by the proposed Consent Order as of the date the Commission accepts the proposed Consent Order subject to final approval.

The purpose of this analysis is to facilitate public comment on the

proposed Consent Order, and it is not intended to constitute an official interpretation of the agreement and proposed Consent Order or to modify in any way their terms.

Donald S. Clark,  
*Secretary.*

[FR Doc. 96-31806 Filed 12-13-96; 8:45 am]  
BILLING CODE 6750-01-P

**[File No. 962-3047]**

**Comtrad Industries, Inc.; Analysis To Aid Public Comment**

**AGENCY:** Federal Trade Commission.  
**ACTION:** Proposed consent agreement.

**SUMMARY:** In settlement of alleged violations of federal law prohibiting unfair or deceptive acts or practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would prohibit, among other things, the Midlothian, Virginia-based company from misrepresenting, in connection with any product for use in the storage of food, the product's comparative or absolute ability to refrigerate or cool food items or medicines or to maintain proper cold storage temperatures; the product's comparative or absolute ability to heat or warm food items; the product's comparative or absolute ability to hold its cooling capacity after being unplugged from a power source; or the effect of operating the product off a car battery when the car is not running. The agreement settles allegations stemming from advertisements for Comtrad's "Koolatron" thermo-electric cooler.

**DATES:** Comments must be received on or before February 14, 1997.

**ADDRESSES:** Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th St. and Pa. Ave., NW., Washington, DC 20580.

**FOR FURTHER INFORMATION CONTACT:**

Phoebe D. Morse, Federal Trade Commission, Boston Regional Office, 101 Merrimac Street, Suite 810, Boston, MA 02114-4719. (617) 424-5960

John T. Dugan, Federal Trade Commission, Boston Regional Office, 101 Merrimac Street, Suite 810, Boston, MA 02114-4719. (617) 424-5960

**SUPPLEMENTARY INFORMATION:** Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46, and § 2.34 of the Commission's rules of practice (16 CFR 2.34), notice is hereby given that the above-captioned consent agreement containing a consent

order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the accompanying complaint. An electronic copy of the full text of the consent agreement package can be obtained from the Commission Actions section of the FTC Home Page (for December 9, 1996), on the World Wide Web, at "http://www.ftc.gov/os/actions/htm." A paper copy can be obtained from the FTC Public Reference Room, Room H-130, Sixth Street and Pennsylvania Avenue, NW., Washington, DC 20580, either in person or by calling (202) 326-3627. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(6)(ii) of the Commission's rules of practice (16 CFR 4.9(b)(6)(ii)).

**Analysis of Proposed Consent Order To Aid Public Comment**

The Federal Trade Commission has accepted an agreement to a proposed consent order from Comtrad Industries, Inc. The proposed respondent is a marketer of "Koolatron," a portable electronic food cooler that doubles as a food warmer.

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement and take other appropriate action or make final the agreement's proposed order.

The Commission's complaint charges that the proposed respondent made the following false and unsubstantiated representations about Koolatron: (1) Koolatron is as effective at cooling food items and medicines as a home refrigerator; (2) Koolatron will effectively cool down warm items and heat up cold items; (3) once unplugged from a power source, Koolatron will hold its cooling capacity for 24 hours; and (4) operating Koolatron off a car battery when the car is not running will result in only a minimal drain off the car's battery. The complaint also charges that the proposed respondents represented that Koolatron is effective, useful, or appropriate for cooling or heating food items, but failed to disclose that in some circumstances Koolatron

may not keep perishable food items sufficiently cold to prevent the growth of harmful bacteria on the food, or that Koolatron's maximum internal heating temperature is not high enough to kill or prevent the growth of certain harmful bacteria on perishable food items.

The proposed consent order contains provisions designed to remedy the violations charged and to prevent proposed respondent from engaging in similar acts in the future.

Part I of the proposed order, in connection with any product for use in the storage of food, prohibits the proposed respondent from misrepresenting: (1) The comparative or absolute ability of such product to refrigerate or cool food items or medicines or to maintain proper cold storage temperatures; (2) the comparative or absolute ability of such product to heat or warm food items; (3) the comparative or absolute ability of such product to hold its cooling capacity after being unplugged from a power source; or (4) the effect of operating such product off a car battery when the car is not running, including the amount of power used by the product in such circumstances or the potential for such use to drain the car battery of all power. Part II, in connection with any product for use in the storage of food, prohibits any representation about the benefits, performance, efficacy, or safety of such product, unless proposed respondent possesses and relies upon competent and reliable evidence, which when appropriate must be competent and reliable scientific evidence, that substantiates the representation.

Part III of the proposed order, in connection with Koolatron or any substantially similar product, prohibits any representation about the effectiveness, usefulness, or appropriateness of such product for cooling food items, unless proposed respondent also discloses that such product may not keep perishable food items sufficiently cold in some circumstances to prevent the growth of harmful bacteria on the food. Part IV of the proposed order, in connection with Koolatron or any substantially similar product, prohibits any representation about the effectiveness, usefulness, or appropriateness of such product for heating or warming food items, unless proposed respondent also discloses that use of the product for such purposes may pose a risk of buildup of harmful bacteria on the food.

The proposed order (Part V) contains record keeping requirements for materials that substantiate, qualify, or contradict covered claims and requires

the proposed respondent to keep and maintain all advertisements and promotional materials containing any representation covered by the proposed order. In addition, the proposed order (Part VI) requires distribution of a copy of the consent decree to current and future officers and agents.

Part VII provides for Commission notification upon a change in the corporate respondent. The proposed order also requires the filing of compliance report(s) (Part VIII). Finally, Part IX provides for the termination of the order after twenty years under certain circumstances.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

Donald S. Clark,

*Secretary.*

[FR Doc. 96-31802 Filed 12-13-96; 8:45 am]

BILLING CODE 6750-01-P

[File No. 971-0016; 971-0017]

**J.C. Penney Company, Inc.; Thrift Drug, Inc.; Analysis To Aid Public Comment**

**AGENCY:** Federal Trade Commission.

**ACTION:** Proposed consent agreement.

**SUMMARY:** In settlement of alleged violations of federal law prohibiting unfair or deceptive acts or practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would require, among other things, Penney, the parent company of Thrift Drug, to divest a total of 161 drug stores in North and South Carolina by March 1997. The agreement settles allegations that Penney's acquisition of Eckerd Corporation and 190 Rite Aid stores in these two states would violate federal antitrust laws by allowing the firm to raise prices for pharmacy services to health insurance companies and other third party payors.

**DATES:** Comments must be received on or before February 14, 1997.

**ADDRESSES:** Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th St. and Pa. Ave., NW., Washington, DC. 20580.

**FOR FURTHER INFORMATION CONTACT:**

William J. Baer, Federal Trade Commission, H-374, 6th and Pennsylvania Ave. NW, Washington, DC 20580. (202) 326-2932  
George S. Cary, Federal Trade Commission, H-374, 6th and

Pennsylvania Ave. NW, Washington, DC 20580. (202) 326-3741  
Ann Malester, Federal Trade Commission, S-2308, 6th and Pennsylvania Ave. NW, Washington, DC 20580. (202) 326-2682

**SUPPLEMENTARY INFORMATION:** Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46, and § 2.34 of the Commission's rules of practice (16 CFR 2.34), notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the accompanying complaint. An electronic copy of the full text of the consent agreement package can be obtained from the Commission Actions section of the FTC Home Page (for December 9, 1996), on the World Wide Web, at "http://www.ftc.gov/os/actions/htm." A paper copy can be obtained from the FTC Public Reference Room, Room H-130, Sixth Street and Pennsylvania Avenue, NW., Washington, DC. 20580, either in person or by calling (202) 326-3627. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(6)(ii) of the Commission's rules of practice (16 CFR 4.9(b)(6)(ii)).

**Analysis of Proposed Consent Order To Aid Public Comment**

The Federal Trade Commission ("Commission") has accepted, subject to final approval, an agreement containing a proposed Consent Order from J.C. Penney Company, Inc. and its wholly-owned subsidiary Thrift Drug, Inc. (collectively "J.C. Penney/Thrift") under which J.C. Penney/Thrift would be required to divest a total of 34 Thrift Drug retail drug stores in the Raleigh-Durham and Charlotte, North Carolina metropolitan areas and all of the Rite Aid retail drug stores in the state of North Carolina and in the Charleston, South Carolina metropolitan area, to a Commission-approved purchaser. The agreement is designed to remedy the anticompetitive effects resulting from J.C. Penney/Thrift's acquisitions of both the Eckerd Corporation and the Rite Aid drug stores in North Carolina and South Carolina.

The proposed Consent Order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received

during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed Order.

The proposed complaint alleges that the proposed acquisitions, if consummated, would constitute violations of section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and section 5 of the FTC Act, as amended, 15 U.S.C. 45, in the market for the retail sale of pharmacy services to third-party payors.

The retail sale of pharmacy services to third-party payors refers to prescription drugs sold by retail outlets such as drug store chains, independent drug stores, food stores and mass merchandise stores, to third-party payors, which include insurance carriers, health maintenance organizations, preferred provider organizations, and corporate employers. Third-party payors provide retail pharmacy service benefits to their beneficiaries, typically through intermediaries known as pharmacy benefit management ("PBM") firms that create and administer retail pharmacy networks on behalf of third-party payors, whereby third-party payor beneficiaries may go to any pharmacy participating in the network to have prescriptions filled. In establishing these pharmacy networks, third-party payors rely on competition between large pharmacy chains to drive down the cost of pharmacy services. In markets where only a small number of pharmacy chains compete, third-party payors pay higher rates for pharmacy services. Where a single pharmacy chain controls a large share of pharmacy locations in a given area, that chain is able to extract higher prices, and this situation is exacerbated when the second largest pharmacy chain in that given area has a much smaller number of pharmacies than the largest one.

J.C. Penney/Thrift's proposed acquisitions of Eckerd and the Rite Aid stores in North Carolina and South Carolina will give the combined entity a dominant position in the state of North Carolina and its three major metropolitan areas—Charlotte, Greensboro, and Raleigh-Durham—and in Charleston, South Carolina, the second largest metropolitan area in South Carolina, and as a result, the ability to increase prices for the retail sale of pharmacy services to third-party payors. Further, timely entry is unlikely in the market for the retail sale of pharmacy services to third-party payors in these geographic markets on the scale necessary to offset the competitive harm

likely from the combination of J.C. Penney/Thrift, Eckerd and Rite Aid.

The proposed Consent Order would remedy the alleged violations by replacing the lost competition that would result from the acquisitions. Under the proposed Consent Order, J.C. Penney/Thrift is required to divest within four (4) months of November 21, 1996, the date J.C. Penney/Thrift signed the Consent Agreement, the following: fourteen (14) Thrift drug stores in the Charlotte metropolitan area; twenty (20) Thrift drug stores in the Raleigh-Durham metropolitan area; all Rite Aid drug stores in North Carolina (110 stores); and all Rite Aid drug stores in the Charleston, South Carolina metropolitan area (17 stores). In the event that J.C. Penney/Thrift does not acquire the Rite Aid stores in North Carolina and South Carolina, then J.C. Penney/Thrift will have five (5) months from November 21, 1996, to sell the 34 Thrift drug stores in Charlotte and Raleigh-Durham, North Carolina. The proposed Order specifies that the 34 Thrift drug stores will go to a single purchaser to ensure competition by recreating a chain of sufficient size and coverage to serve as an alternative anchor pharmacy chain for a PBM retail pharmacy network.

Under the proposed Order, if the divestiture is not accomplished within the required time period, then the Commission may appoint a trustee to divest not only the 34 Thrift drug stores and the Rite Aid stores in North Carolina and Charleston, South Carolina, but also the remaining sixty-three (63) Rite Aid stores in South Carolina, representing the entire package of Rite Aid stores that J.C. Penney/Thrift had proposed to acquire. Further, under the proposed Order, J.C. Penney/Thrift is prohibited from acquiring any of the Rite Aid stores in North Carolina and Charleston, South Carolina until it has entered into an agreement, approved by the Commission, to divest those stores. The Commission has not required a hold separate agreement in this case because the proposed Order contemplates a short divestiture time period; the appointment of a trustee should the divestiture not occur within the prescribed time period; and a prohibition against J.C. Penney/Thrift's acquiring any of the North Carolina and the Charleston, South Carolina Rite Aid stores until it has entered an agreement with a Commission-approved purchaser to divest those stores.

Under the provisions of the proposed Order, J.C. Penney/Thrift is also required to provide the Commission with a report of compliance with the

divestiture provisions of the Order within thirty (30) days following the date this Order becomes final, and every thirty (30) days thereafter until J.C. Penney/Thrift has fully complied with the divestiture provisions of the proposed Order.

The purpose of this analysis is to facilitate public comment on the proposed Order, and it is not intended to constitute an official interpretation of the agreement and proposed Order or to modify in any way their terms.

Donald S. Clark,

Secretary.

[FR Doc. 96-31803 Filed 12-13-96; 8:45 am]

BILLING CODE 6750-01-P

[File No. 942-3251]

**Natural Innovations, Inc.; William S. Gandee; World Media T.V., Inc.; Analysis To Aid Public Comment**

**AGENCY:** Federal Trade Commission.

**ACTION:** Proposed consent agreements.

**SUMMARY:** In settlement of alleged violations of federal law prohibiting unfair or deceptive acts or practices and unfair methods of competition, these two consent agreements, accepted subject to final Commission approval, would, among other things, require the respondents to have scientific proof to back up any pain relief or other health or medical benefit claims they make in the future. The agreement settles Commission allegations stemming from the advertising and sale of Natural Innovation's "The Stimulator," a purported pain relief device widely advertised in an infomercial titled "Saying No To Pain," which was created and distributed by World Media.

**DATES:** Comments must be received on or before February 14, 1997.

**ADDRESSES:** Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th St. and Pa. Ave., NW., Washington, DC 20580.

**FOR FURTHER INFORMATION CONTACT:** Lesley Anne Fair, Federal Trade Commission, S-4002, 6th and Pennsylvania Ave., NW, Washington, DC 20580. (202) 326-3081.

**SUPPLEMENTARY INFORMATION:** Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46, and § 2.34 of the Commission's rules of practice (16 CFR 2.34), notice is hereby given that the above-captioned consent agreements containing consent orders to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, have been placed on the public record for a period of sixty (60) days. The following

Analysis to Aid Public Comment describes the terms of the two consent agreements, and the allegations in the accompanying complaints. Electronic copies of the full text of the consent agreement packages can be obtained from the Commission Actions section of the FTC Home Page (for December 5, 1996), on the World Wide Web, at "http://www.ftc.gov/os/actions/htm." Paper copies can be obtained from the FTC Public Reference Room, Room H-130, Sixth Street and Pennsylvania Avenue, NW., Washington, DC 20580, either in person or by calling (202) 326-3627. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(6)(ii) of the Commission's rules of practice (16 CFR 4.9(b)(6)(ii)).

#### Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted, subject to final approval, agreements to a proposed consent order from Natural Innovations, Inc. ("Natural Innovations") and its officer and director, Ohio chiropractor William S. Gandee ("Dr. Gandee"), and a proposed consent from World Media T.V., Inc. ("World Media") (collectively "respondents").

The proposed consent orders have been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreements and the comments received and will decide whether it should withdraw from the agreements or make final the agreements' proposed orders.

The Commission's complaint against respondents Natural Innovations and Dr. Gandee alleges that they deceptively advertising the Stimulator, a purported pain relief device, primarily through an infomercial entitled "Saying No To Pain." The Stimulator is a syringe-shaped device that purports to relieve pain by emitting an electrical spark when applied to the skin. The complaint against World Media TV alleges that it served as an advertising agency, production company, and media buyer for Natural Innovations, Inc., and participated in the creation and dissemination of advertisements for the Stimulator.

The complaints further allege that respondents made unsubstantiated representations that the Stimulator will significantly relieve or eliminate a wide variety of pain, including

musculoskeletal pain, carpal tunnel syndrome, abdominal pain, pain caused by allergies and sinus conditions, diverticulosis, menstrual cramps, and headaches, including but not limited to occipital, frontal, migraine, cluster, and stress headaches, and headaches caused by benign tumors.

The complaints also allege that respondents represented without substantiation that pain relief from the device is immediate; that the device provides long-term relief; and that the device is as effective as, or more effective than, prescription and over-the-counter medications, physical therapy, chiropractic treatment, acupuncture, acupressure, and reflexology.

The proposed consent orders contain provisions designed to remedy the violations charged and to prevent respondents from engaging in similar acts and practices in the future. Part I of both orders requires respondents to possess well-controlled clinical testing to support any claim that a device relieves or eliminates pain, relieves pain immediately, or is as effective as or better than over-the-counter pain medication or physical treatments. For representations that a device is effective for temporary relief of minor aches and pains due to fatigue or overexertion, easing and relaxing tired muscles, or temporary increase of local blood circulation, Part I requires that respondents possess competent and reliable scientific evidence.

Part II requires respondents to possess competent and reliable scientific evidence for any claims about the health or medical benefits of any product.

Part III of both orders forbids respondents from representing that an endorsement represents the typical experience of users of the product unless respondents possess competent and reliable scientific evidence substantiating that representation or they disclose clearly and prominently either the results that consumers can generally expect or that consumers should not expect to achieve results similar to the endorsers.

Part IV allows respondents to make representations for any drug that are permitted in labeling for that drug under any tentative or final FDA standard or under any FDA-approved new drug application.

Parts V through VIII and X of the Natural Innovations Order and Parts V through VII and IX of the World Media Order relate to respondents' obligations to make available to the Commission materials substantiating claims covered by the order; to notify the Commission of changes in Natural Innovation's or

World Media's corporate structure; to notify the Commission of changes in Dr. Gandee's employment or business affiliations; to provide copies of the orders to certain Natural Innovations and World Media personnel; and to file compliance reports with the Commission. Part IX of the Natural Innovations Order and Part VIII of the World Media Order provide that the orders will terminate after twenty years under certain circumstances.

The purpose of this analysis is to facilitate public comment on the proposed orders, and it is not intended to constitute an official interpretation of the agreements and proposed orders or to modify in any way their terms.

Donald S. Clark,

*Secretary.*

[FR Doc. 96-31805 Filed 12-13-96; 8:45 am]

BILLING CODE 6750-01-P

[File No. 952-3357]

**Premier Products, Inc.; T.V. Products, Inc.; T.V.P. Corporation; Michael Sander; Issie Kroll; Analysis to Aid Public Comment**

**AGENCY:** Federal Trade Commission.

**ACTION:** Proposed consent agreement.

**SUMMARY:** In settlement of alleged violations of federal law prohibiting unfair or deceptive acts or practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would prohibit, among other things, the Florham Park, New Jersey-based company from misrepresenting, with respect to any product involving the storage or preparation of food, the risk of buildup of harmful or unsafe levels of bacteria on food items defrosted, thawed, prepared, or stored using the product; the amount of time it may take to defrost, thaw, or prepare food items using the product; the process by which the product achieves any claimed defrosting, thawing, or preparation times; or the existence, contents, validity, results, conclusions, or interpretations of any test, study, or research. The agreement settles allegations stemming from advertisements for Premier's "Miracle Thaw" food thawing tray.

**DATES:** Comments must be received on or before February 14, 1997.

**ADDRESSES:** Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th St. and Pa. Ave., NW., Washington, DC 20580.

**FOR FURTHER INFORMATION CONTACT:**

Phoebe D. Morse, Federal Trade Commission, Boston Regional Office, 101 Merrimac Street, Suite 810, Boston, MA 02114-4719 (617) 424-5960

John T. Dugan, Federal Trade Commission, Boston Regional Office, 101 Merrimac Street, Suite 810, Boston, MA 02114-4719 (617) 424-5960

**SUPPLEMENTARY INFORMATION:** Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46, and § 2.34 of the Commission's rules of practice (16 CFR 2.34), notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the accompanying complaint. An electronic copy of the full text of the consent agreement package can be obtained from the Commission Actions section of the FTC Home Page (for December 9, 1996), on the World Wide Web, at "http://www.ftc.gov/os/actions/htm." A paper copy can be obtained from the FTC Public Reference Room, Room H-130, Sixth Street and Pennsylvania Avenue, NW., Washington, DC 20580, either in person or by calling (202) 326-3627. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(6)(ii) of the Commission's rules of practice (16 CFR 4.9(b)(6)(ii)).

**Analysis of Proposed Consent Order To Aid Public Comment**

The Federal Trade Commission has accepted an agreement to a proposed consent order from Premier Products, Inc., T.V. Products, Inc., T.V.P. Corporation, Michael Sander, and Issie Kroll. The proposed respondents are marketers of a food thawing tray known as "Miracle Thaw."

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement and take other appropriate action or make final the agreement's proposed order.

The Commission's complaint charges that the proposed respondents made the following false and unsubstantiated representations about Miracle Thaw: (1) Laboratory testing proves that food items defrosted or thawed on Miracle Thaw will not develop harmful or unsafe levels of bacteria; (2) there is no risk of buildup of harmful or unsafe levels of bacteria on perishable frozen food items defrosted or thawed on Miracle Thaw; (3) Miracle Thaw will defrost or thaw particular frozen food items within specific time periods; and (4) Miracle Thaw achieves the accelerated defrosting or thawing depicted in advertisements because it is a superconductive metal tray that transfers heat energy from the air into frozen food items, thereby speeding up the natural defrosting or thawing process. The complaint further charges that the proposed respondents represented that Miracle Thaw is effective, useful, or appropriate for defrosting or thawing frozen food items, but failed to disclose that defrosting or thawing perishable food on Miracle Thaw may pose a risk of buildup of harmful or unsafe bacteria on the food.

The proposed consent order contains provisions designed to remedy the violations charged and to prevent proposed respondents from engaging in similar acts in the future.

Part I of the proposed order, in connection with any product involving the preparation or storage of food, prohibits the proposed respondents from misrepresenting: (1) The existence, contents, validity, results, conclusions or interpretations of any test, study, or research; (2) the risk of buildup of harmful or unsafe levels of bacteria on food items defrosted, thawed, prepared, or stored using such product; (3) the amount of time it may take to defrost, thaw, or prepare food items using such product; or (4) the process by which such product achieves any claimed defrosting, thawing, or preparation times. Part II, in connection with any product for use in the preparation or storage of food, prohibits any representation about the benefits, performance, efficacy, or safety of such product, unless proposed respondents possess and rely upon competent and reliable evidence, which when appropriate must be competent and reliable scientific evidence, that substantiates the representation.

Part III of the proposed order, in connection with Miracle Thaw or any substantially similar product, prohibits any representation about the effectiveness, usefulness, or appropriateness of such product for defrosting or thawing frozen food items,

unless proposed respondents also make certain specified disclosures in advertisements, on product packages, and in product inserts warning of the potential risk of harmful or unsafe bacteria buildup associated with use of the product.

The proposed order (Part IV) contains record keeping requirements for materials that substantiate, qualify, or contradict covered claims and requires the proposed respondents to keep and maintain all advertisements and promotional materials containing any representation covered by the proposed order. In addition, the proposed order (Part V) requires distribution of a copy of the consent decree to past, present, and future purchasers for resale (such as wholesalers or retailers) and licensees of Miracle Thaw or any substantially similar product. Part V also requires that the proposed respondents provide warnings to and eventually terminate their business relationship with a purchaser for resale or licensee about whom the proposed respondents receive evidence that such purchaser for resale or licensee is making claims prohibited by the order or failing to disclose information required by the order. Further, the proposed order (Part VI) requires distribution of a copy of the consent decree to current and future officers and agents.

Part VII provides for Commission notification upon a change in the corporate respondents and Commission notification when each of the individual respondents changes his present business or employment (Part VIII). The proposed order also requires the filing of compliance report(s) (Part IX). Finally, Part X provides for the termination of the order after twenty years under certain circumstances.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

Donald S. Clark,

*Secretary.*

[FR Doc. 96-31801 Filed 12-13-96; 8:45 am]

BILLING CODE 6750-01-P

[File No. 951-0130]

**SoftSearch Holdings, Inc.; GeoQuest International Holdings, Inc.; Analysis To Aid Public Comment**

**AGENCY:** Federal Trade Commission.

**ACTION:** Proposed consent agreement.

**SUMMARY:** In settlement of alleged violations of federal law prohibiting

unfair or deceptive acts or practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would require, among other things, Dwight's EnergyData, Inc., a subsidiary of SoftSearch and the largest supplier of U.S. gas and oil production data, to license its data to a Commission-approved buyer, which will operate as an independent competitor. The agreement settles allegations that Dwight's merger with its major competitor Petroleum Information Corporation, a subsidiary of GeoQuest International, could create a monopoly for production and well history data, in violation of federal antitrust laws.

**DATES:** Comments must be received on or before February 14, 1997.

**ADDRESSES:** Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th St. and Pa. Ave., NW., Washington, DC 20580.

**FOR FURTHER INFORMATION CONTACT:**

William J. Baer, Federal Trade Commission, H-374, 6th and Pennsylvania Ave., NW, Washington, DC 20580. (202) 326-2932.  
George Cary, Federal Trade Commission, H-374, 6th and Pennsylvania Ave., NW, Washington, DC 20580. (202) 326-3741

**SUPPLEMENTARY INFORMATION:** Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46, and § 2.34 of the Commission's rules of practice (16 CFR 2.34), notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the accompanying complaint. An electronic copy of the full text of the consent agreement package can be obtained from the Commission Actions section of the FTC Home Page (for December 5, 1996), on the World Wide Web, at "<http://www.ftc.gov/os/actions/htm>." A paper copy can be obtained from the FTC Public Reference Room, Room H-130, Sixth Street and Pennsylvania Avenue, NW., Washington, DC 20580, either in person or by calling (202) 326-3627. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(6)(ii) of the Commission's rules of practice (16 CFR 4.9(b)(6)(ii)).

**Analysis To Aid Public Comment on the Provisionally Accepted Consent Order**

The Federal Trade Commission ("Commission") has accepted for public comment from SoftSearch Holdings, Inc. ("SoftSearch"), and GeoQuest International, Inc. ("GeoQuest"), an agreement containing consent order. This agreement has been placed on the public record for sixty (60) days for receiving comments from interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will review the agreement and the comments received, and will decide what additional action to take.

The proposed merger involving GeoQuest and SoftSearch may be anticompetitive. Both firms, through Petroleum Information Corporation ("Petroleum Information") and Dwight's EnergyData ("Dwight's"), their respective subsidiaries, collect and distribute certain data to the petroleum industry relating to oil and gas well drilling and production. The proposed consent order would require the respondents to license the Dwight's database to HPDI, L.L.C., ("HPDI"), a Texas limited liability corporation currently engaged in the collection and distribution of similar data. HPDI could use Dwight's data to compete with the merged companies. Should the Commission determine, after the public comment period, that granting a license to HPDI will not be effective in maintaining competition after the merger, the Commission may appoint a trustee to license the data to a purchaser other than HPDI. The purpose of this analysis is to elicit public comments on all aspects of the complaint and the proposed remedy.

Dwight's and Petroleum Information are engaged in the business of selling petroleum data. One type of data, known as "well data," includes a variety of geological and other types of information derived from, or related to, the drilling of specific oil and gas wells. Another type of data, known as "production data," deals with volumes of oil and gas produced over time from specific wells or leases. Purchasers use this data in a variety of ways, including evaluating potential production and reserves of geological formations and finding patterns of oil and gas production for future exploration and development.

**The Commission's Investigation and Concerns**

Potential anticompetitive problems in the sale or license of this data could result from a merger of Dwight's and

Petroleum Information. They are by far the two largest data vendors, and offer the most thorough sets of petroleum data in the United States. The draft complaint alleges that the proposed merger would eliminate direct, ongoing competition between the respondents in the distribution of well and production data and lead to anticompetitive increases in the prices charged for well and production data. The proposed complaint also alleges that substitutes for the data provided by respondents are economically infeasible, and that the proposed merger would cause customers to pay more, receive less, or both.

Rivalry in innovation and product quality might deteriorate. The respondents compete in being the first to the market in offering product enhancements to meet the changing needs of petroleum data users and timely delivery of accurate data. The respondents have assembled their databases from different sources of information. The respondents presently compete to offer the most complete and accurate information for a particular customer's needs.

The respondents have asserted that there are efficiencies or cost reductions from assimilation of separate databases into a common computer format and reduction of redundant personnel. They also assert that devoting resources to finding and resolving discrepancies can improve the accuracy of the data when Dwight's and Petroleum Information report different data for the same well or lease, and that such efforts are not feasible absent the merger. Presently, in order to ensure access to the most complete and accurate data, customers must buy both companies' products. Finally the respondents claim that many customers will save substantial resources by reducing their internal computer support that currently services two sets of data.

Even if the respondents are correct in their analysis, the draft complaint alleges that the merger as originally proposed presented risks of increased prices or other anticompetitive behavior. Entry by others into this business would be unlikely to offset this behavior. The proposed complaint alleges that entry by others into this business would be unlikely to offset this behavior. Entry is very difficult because of the extensive nature of the Dwight's and Petroleum Information databases. Information for pre-1970s wells, for example, would be practically impossible to duplicate.

### The Proposed Consent Order

The draft complaint alleges that SoftSearch and GeoQuest violated Section 5 of the Federal Trade Commission Act by agreeing, in July 1995, to merge the businesses of Dwight's and Petroleum Information and that the merger, if consummated, would violate section 7 of the Clayton Act. The draft complaint alleges relevant markets are the provision of well data and the provision of production data in the United States. The draft complaint alleges that the merger may substantially lessen competition by eliminating direct competition between Dwight's and Petroleum Information; increasing the likelihood that respondents will unilaterally exercise market power; and increasing the likelihood of, or facilitating, collusion or coordinated interaction. The draft complaint alleges that each of these effects increases the likelihood that the prices of well data and production data will increase, and services to customers of well data and production data will decrease.

The Agreement Containing Consent Order would, if finally issued by the Commission, settle charges alleged in the draft Complaint.

The order accepted for public comment contains provisions that would permit the proposed merger to occur, thus allowing customers to realize the alleged benefits described above. However, the proposed order would require the respondents to license a set of complete data currently sold by Dwight's to a third company, that could resell the data in competition with the merged Petroleum Information/Dwight's, thus preserving competition. In addition to obtaining a license to the complete Dwight's database, the third party would also receive the right to distribute well coordinate information generated by Tobin Data Graphs, LLC, a firm affiliated with Dwight's. The purpose of the proposed order is to create a viable and competitive vendor of data now sold by the respondents.

### The Licensee and Trustee Provisions of the Proposed Order

HPDI has been provisionally approved as the licensee under the order of Dwight's data. The identification of a specific licensee in the proposed consent order will allow the public to comment on the effectiveness of the proposed relief in the context of a specific proposed licensee (Exhibit A to the proposed

consent order). It also minimizes the delay in restoring competition, allegedly lost as a result of the transaction and, thus, lessens the risk that the licensing provision will fail.

HPDI is a Texas limited liability corporation organized on August 24, 1994. HPDI provides limited production data to firms engaged in gas or oil gathering and transportation. Few, if any, current HPDI customers use that data to assist in decisions relating to exploration or production of oil and gas resources.

HPDI, like Dwight's and Petroleum Information, obtains its production data from governmental agencies. HPDI obtains current production data from files maintained by the states of Alaska, Colorado, Kansas, Louisiana, New Mexico, Oklahoma, Oregon, South Dakota, and Texas. It also obtains data from the Minerals Management Service for the Gulf Offshore. HPDI converts disparate data formats of the various government agencies into a single format and provides the data to users on window-based CD-ROMs. HPDI's database covers only those years for which the government agencies have put data into a machine-readable (as opposed to written on paper) format. HPDI's Texas data, for example, dates from 1974. This means that HPDI lacks historical production data for many wells, which has impeded HPDI's expansion into serving the exploration and production segment of the oil and gas industry, the primary customer base for Dwight's and Petroleum Information. The license provided by the proposed order would supply HPDI with this historical data.

Capitol Appraisal Group, Inc. ("CAG"), a Texas corporation, owns the majority of HPDI. CAG appraises oil and gas leases for Texas counties and other Texas taxing jurisdictions. In its appraisal business, CAG uses the Texas state oil production records and processes oil and gas data on its computer mainframe. CAG supplies HPDI with office space, computer programming and processing capacity, and financing.

HPDI is a recent entrant to the business of selling petroleum data. HPDI has experience collecting, processing, and distributing production data derived from the computerized records of various state and federal government agencies. HPDI believes that it could integrate Dwight's data into its current CD-ROM products within sixty days after the effective date of a Commission order. HPDI plans to update virtually all

of the Dwight's production and well data that is available from governmental agencies. In the future, HPDI may collect additional well data directly from oil companies (so-called "scouting data"), although it does not have any experience in collecting and distributing such scouting data.

If the Commission, after review of the public comments, determines not to approve HPDI as the licensee, it may appoint a trustee to divest the data to another person. The proposed order provides for the appointment of Ben C. Burkett, II, of Burkett Consulting, Dallas, Texas, as a trustee to license Dwight's database.

Mr. Burkett has for more than fifteen years been an independent corporate finance and merger/acquisition consultant to clients in the oil and gas and other industries. Before forming his consulting firm, Mr. Burkett was a co-founder and director of Lear Petroleum Corp. Before that time, he was an employee with Mesa Petroleum Co. and Shamrock Oil and Gas Corp.

As a consultant, Mr. Burkett has managed initial public offerings of stock, facilitated a variety of mergers and acquisitions, and managed the restructuring and turnaround of companies in the oil and gas and chemical industries. In the mid-1980s, Mr. Burkett advised the prior owners of Dwight's on a financial restructuring of the company.

A separate agreement with SoftSearch ("Asset Maintenance Agreement") requires respondents to preserve Dwight's data in the form now available. SoftSearch has therefore agreed to maintain and update the data until the Commission accepts or rejects the proposed order.

### Solicitation of Public Comments

The purpose of this analysis is to invite public comment concerning the consent order. The Commission is particularly interested in receiving comments on the efficacy of the remedy if the Commission should approve HPDI as the licensee of Dwight's database and on the expression of interest by alternative potential licensees.

This analysis is not an official interpretation of the agreement and order and does not modify their terms in any way.

Donald S. Clark,

*Secretary.*

[FR Doc. 96-31804 Filed 12-13-96; 8:45 am]

BILLING CODE 6750-01-P

## GENERAL SERVICES ADMINISTRATION

[Wildlife Order 184; 7-D-KS-486]

### Public Buildings Service; Cheney Dam and Reservoir, Sedgwick and Reno Counties, Kansas; Transfer of Property

Pursuant to section 2 of Public Law 537, 80th Congress, approved May 19, 1948 (16 U.S.C. 667c), notice is hereby given that:

1. By deed from the General Services Administration, dated July 13, 1995, and 150.80 acres of land, known as Cheney Dam and Reservoir situated in the counties of Sedgwick and Reno, Kansas, has been transferred to the State of Kansas.

2. The above described property was conveyed for wildlife conservation in accordance with the provisions of section 1 of Public Law 80-537 (16 U.S.C. 667b), as amended by Public Law 92-432.

Dated: December 4, 1996.

Gordon S. Creed,

Assistant Deputy Commissioner, Office of Property Disposal.

[FR Doc. 96-31815 Filed 12-13-96; 8:45 am]

BILLING CODE 6820-23-M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Office of the Secretary

#### Agency Information Collection Activities: Proposed Collections; Comment Request

The Department of Health and Human Services, Office of the Secretary will periodically publish summaries of proposed information collections projects and solicit public comments in compliance with the requirements of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995. To request more information on the project or to obtain a copy of the information collection plans and instruments, call the OS Reports clearance Officer on (202) 690-6207.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques

or other forms of information technology.

#### Proposed Projects

1. HHS Acquisition Regulations—HHSAR Subpart 315, Solicitation and Receipt of Proposals and Quotations—0990-0139—Extension with no change—Subpart 315.4 is needed to ensure consistency in all Departmental solicitations and to ensure that all solicitations describe all of the information which an offeror would need to submit an acceptable proposal. *Respondents:* State or local governments, businesses or other for-profit organizations, non-profit institutions, small businesses; *Total Number of Respondents:* 12,914; *Frequency of Response:* One time; *Average Burden per Response:* 2 hours; *Estimated Annual Burden:* 25,828 hours.

2. National Study of Assisted Living Facilities for the Frail Elderly—New—the goal of this study is to determine where assisted living fits in the continuum of long term care and to examine its potential for addressing the needs of elderly persons with disabilities. The study will address such topics as trends in supply and demand; barriers to development; the effect of key assisted living features on resident satisfaction and other outcomes. Surveys of operators, staff and elderly residents will be conducted.

*Respondents:* Assisted Living Facilities operators, staff and residents—*Burden Information on Operator Screen—Number of Responses:* 1912; *Burden per Response:* 11 minutes; *Total Screen Burden:* 351 hours—*Burden Information for Operator Telephone Interview—Number of Responses:* 230; *Burden per Response:* 20 minutes; *Total Burden:* 77 hours—*Burden Information for Operator In-Person Interview—Number of Responses:* 690; *Burden per Response:* 30 minutes; *Total Burden:* 345 hours—*Burden Information for Staff Interview—Number of Responses:* 1380; *Burden per Response:* 20 minutes; *Total Burden:* 460 hours—*Burden Information for Resident Interview—Number of Responses:* 2300; *Burden per Response:* 35 minutes; *Total Burden:* 1342 hours—*Burden Information for Resident Proxy Interview—Number of Responses:* 1150; *Burden per Response:* 20 minutes; *Total Burden:* 383 hours—*Total Burden for the Survey:* 2958 hours.

OMB Desk Officer: Allison Eydt.

Send comments to Cynthia Agens Bauer, OS Reports Clearance Officer, Room 503H, Humphrey Building, 200 Independence Avenue S.W., Washington DC, 20201. Written comments should be received within 60 days of this notice.

Dated: December 9, 1996.

Dennis P. Williams,

Deputy Assistant Secretary, Budget.

[FR Doc. 96-31757 Filed 12-13-96; 8:45 am]

BILLING CODE 4150-04-M

## Centers for Disease Control and Prevention

[Announcement Number 711]

### Cooperative Agreement Program To Strengthen the Public Health System by Effectively Translating the Essential Public Health Services Into Practice

#### Introduction

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 1997 funds for a cooperative agreement program with national public health associations and organizations to strengthen the public health system by effectively translating the essential public health services into practice. The CDC is committed to achieving the health promotion and disease prevention objectives of "Healthy People 2000," a national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to Objective 8.14 of Healthy People 2000: National Health Promotion and Disease Prevention Objectives: "Increase to at least 90 percent the proportion of people who are served by a local health department that is effectively carrying out the core functions of public health." (To order a copy of "Healthy People 2000," see the section WHERE TO OBTAIN ADDITIONAL INFORMATION.

The Institute of Medicine (IOM) defined the mission of public health as fulfilling society's interest in assuring conditions in which people can be healthy (The Future of Public Health, IOM, 1988). CDC proposes to support associations and organizations with a clearly defined membership or constituency and the capacity to serve communities across the nation. This ensures that all communities—urban, suburban, and rural—have the opportunity to access and receive the benefits of this comprehensive implementation strategy.

The CDC has committed substantial resources to promote and ultimately measure the implementation and impact of the Essential Public Health Services (see Attachment 1 which is included in the application kit). This program will also contribute to an overall strategy to assure the achievement of the Year 2000: National Health Promotion and Disease Prevention Objectives. To

ensure that the perspectives of the communities and local values are appropriately integrated into local public health policy and program implementation plans, public health associations and the professionals they represent must be engaged collectively and collaboratively.

Authority: This program is authorized under section 317(k)(2) of the Public Health Service Act, 42 U.S.C. 247b(k)(2), as amended.

#### *Smoke-Free Workplace*

CDC strongly encourages all grant recipients to provide a smoke-free workplace and to promote the nonuse of all tobacco products, and Public Law 103-277, the Pro-Children Act of 1994, prohibits smoking in certain facilities that receive Federal funds in which education, library, day care, health care, and early childhood development services are provided to children.

#### *Eligible Applicants*

Eligible applicants are national, nonprofit, nonacademic associations and organizations, whose primary mission is to represent State and local public health practitioners and policy makers.

Organizations described in section 501(c)(4) of the Internal Revenue Code of 1986 that engage in lobbying are not eligible to receive Federal grant/cooperative agreement funds.

#### *Availability of Funds*

Approximately \$800,000 is expected to be available in FY 1997 to fund 3-5 cooperative agreements. It is expected that the average award will be \$200,000 per year, ranging from \$100,000 to \$300,000 per year (includes both direct and indirect costs). Applications requesting \$350,000 or more, will not be considered and will be returned to applicants. It is expected that the awards will begin on or about May 1, 1997, and will be made for a 12-month budget period within a project period of up to 3 years. The funding estimate may vary and is subject to change. Continuation awards within the project period will be made on the basis of satisfactory progress and the availability of funds.

Cooperative agreement funds may not supplant or duplicate existing funding from any other public or private source. Although contracts with other organizations are allowable, grantees must perform a substantial portion of each activity for which funds are requested. Funds may not be expended for construction, renovation of existing facilities, or relocation of headquarters, affiliates, or personnel.

#### *Background*

The Essential Public Health Services (Essential Services) provide a contemporary definition of the practice of public health. The Essential Services were developed in collaboration with representatives from major public health professional associations and organizations and supported by CDC. While acknowledged and endorsed by public health professionals, the Essential Services have not been fully integrated into public health agencies. They remain mostly conceptual, in part due to an absence of a nationally-focused, comprehensive implementation strategy. This program and the resulting cooperative agreements will facilitate development and implementation of a comprehensive, national strategy to integrate the services into the practice of public health. Please see Attachment 1 (included in the application kit) for more information regarding the Essential Public Health Services.

The Essential Public Health Services are:

- (1) Monitor health status to identify community health problems.
- (2) Diagnose and investigate health problems and health hazards in the community.
- (3) Inform, educate, and empower people about health issues.
- (4) Mobilize community partnerships to identify and solve health problems.
- (5) Develop policies and plans that support individual and community health efforts.
- (6) Enforce laws and regulations that protect health and ensure safety.
- (7) Link people to needed personal health services and assure the provisions of health care when otherwise unavailable.
- (8) Assure a competent public health and personal health care workforce.
- (9) Evaluate effectiveness, accessibility, and quality of personal and population-based health services.
- (10) Research for new insights and innovative solutions to health problems.

Activities should be designed to increase understanding, adoption, and ultimately full implementation of the Essential Services into the practice of public health. Implementation refers to official public health agencies incorporating the language into operational planning and the policies and procedures of their programs and services.

CDC's partnership activities have sought to strengthen the public health system within all communities through collaboration with local, State, and

national partners. This program will further strengthen these partnerships and extend the reach of CDC's community-based activities.

In September 1995, the CDC Director presented his vision of partnership at the annual meeting of State and Territorial Health Officials. This vision outlined three critical "principles of partnership." This program announcement addresses each of these principles. The first principle—shared vision—will be achieved by asking each applicant to, individually and collectively, focus their creative efforts on the development and implementation of a comprehensive, national strategy to integrate the Essential Services into the practice of public health. The second principle—regular, effective communication—will be achieved, as each applicant will develop an internal capacity building plan. This internal plan will focus on identified needs, with particular emphasis on enhancing internal skills that will improve electronic communication and information-sharing. The final principle of partnership—building capacity in the community—will be achieved by encouraging associations to undertake projects and activities that will strengthen their internal ability to improve community capacities.

Applicants are encouraged to design and develop creative and innovative methodologies and solutions, and seize every opportunity to accelerate the transfer of the Essential Services into all State and local health agencies and thousands of communities. In addition, this program will enhance the existing collaborative partnerships established between CDC and national public health associations and organizations.

#### *Purpose*

The purpose of this program is for CDC to develop and sustain partnerships between national associations and organizations in order to strengthen the public health system by effectively incorporating the Essential Services into the practice of public health. This cooperative agreement program will:

A. Introduce a more contemporary model for supporting public health partnerships and providing associations with increasing flexibility for administrative decision-making.

B. Ensure the health of the public is best protected and served by integrating the efforts of grantees and their constituency to coordinate activities toward incorporation of these services into the practice of public health.

C. Ensure that national public health associations and organizations are supported to provide the most effective and sustainable leadership and consensus of mission.

D. Enhance existing partnership linkages between State and local health agencies, private providers, foundations, and other organizations in support of the Essential Services.

E. Improve understanding and integration of all levels of governance through coordination of public health policy and program implementation.

F. Improve overall public health management by undertaking activities that value and respect diversity among the professional disciplines represented in public health.

G. Increase partnership opportunities with private sector providers, nonprofit and not-for-profit organizations and Federal agencies with responsibilities for the health of the public.

Priority consideration will be given only to applications supporting CDC's initiative to strengthen the public health system with a distinctive focus on the Essential Public Health Services. While there is not an exact formula for distribution of funds across the identified priorities (see the section "Recipient Activities"), CDC/Public Health Practice Program Office (PHPPO) offers the following guidance: (a) At least 30% of the requested funds will be dedicated to Priority #1, (b) at least 20% of the requested funds will be dedicated to Priority #2, and (c) at least 10% of the requested funds will be dedicated to Priority #3. This "level of emphasis" recognizes the differing needs and capacities among potential applicants. Therefore, CDC/PHPPO expects applicants to present varied plans which justify distribution of funds, and are appropriate for the respective association or organization. This guidance further reinforces CDC's commitment to strengthening partnerships by requiring each applicant to identify the most appropriate association-specific distribution of the balance of the funding request.

#### *Program Requirements*

To be considered for funding under this program announcement, applicants must address each of the three priorities listed below. Successful partnership strategies must focus on identified priorities. The priorities identified in this program announcement provide a framework for potential applicants to develop and focus their proposal. This framework offers an opportunity for organizations to focus more emphasis on performance measures and specific indicators. CDC fully recognizes and

accepts the probability that applicants will submit applications with varying degrees of emphasis for each identified priority.

Activities proposed must be consistent with the intent of the priority area. Each activity should be constructed in the context of how it will contribute to the priority and ultimately, to a national strategy for implementation of the Essential Services. Creative, innovative activities are encouraged, but applicants are cautioned that implementation plans must be designed to achieve stated objectives. All activities should be coordinated with CDC, and when practical, in collaboration with relevant national, regional, State, and local public health groups.

An expectation of this program is that each grantee becomes an advocate for the Essential Services as "the standard" for official health agencies and supports agency efforts to incorporate the Essential Services language into their official statements of authority, mission, and operational planning.

In conducting activities to achieve the purpose of this program, the recipient will be responsible for the following activities under A. (Recipient Activities), and CDC will be responsible for conducting activities under B. (CDC Activities).

#### A. Recipient Activities

Priority #1 Promote as a long-term public health system's outcome, the translation of the Essential Services as "the standard" for the practice of public health.

Projects/activities that may accelerate the translation of Essential Services into public health practice may include: (1) Promoting partnerships, such as joint projects, meetings, workshops, and conferences, (2) demonstrating association support for the Essential Services through position papers, resolutions, and formal recommendations, (3) enhancing the Essential Services or a defined subset, (4) promoting dialogue that will result in consensus definitions for the Essential Services, and (5) supporting "Implementation of Essential Public Health Services" as a Year 2010, national health objective.

Priority #2 Improve project planning and implementation of the grantee and their constituencies, whereby evaluation plans focus on objectives and indicators of measurable performance.

Projects/activities that may emphasize performance may include: (1) Increasing the grantee's management staff capacities to conduct performance-based planning, implementation, and

evaluation, (2) developing appropriate indicators for measuring effectiveness of activities, including projects that focus on training, consultation, and technical assistance, (3) initiating a process for peer review of projects/activities, (4) developing procedures for sharing resources among partners, and (5) increasing capacity to access and utilize relevant electronic communication networks.

Priority #3 Build the internal capacities of the grantee to develop, enhance, and sustain partnership activities among both traditional and non-traditional groups.

Projects/activities that may enhance the internal capacities of the association/organization may include: (1) Conducting an internal needs assessment (e.g., Assessment Protocol for Excellence in Public Health—APEXPH, Part I) (2) developing a plan to address identified needs, (3) identifying opportunities to secure new revenue sources, (4) developing procedures to secure individuals with critical skills for special short-term needs, (e.g., survey design), (5) acquiring hard- and software to increase electronic communication and information-sharing capacity, and (6) developing an organizational capacity to augment project implementation with technical assistance.

#### B. CDC Activities

1. Provide information to, and collaborate with, funded associations and organizations in developing and implementing short- and long-term plans.

2. Provide consultation, assistance, and guidance in planning and implementing program activities under this announcement including promotion and publicity related to accomplishments.

3. Assist in identifying, acquiring, or developing appropriate materials to be used in projects and activities.

4. To the extent that resources and skilled personnel are available, provide science-based collaboration and technical assistance.

5. Provide technical assistance in developing and implementing evaluation strategies for the program.

6. Facilitate collaboration with other public and private sector agencies involved at the national, regional, State, and community levels and facilitate technical assistance between other public and private agencies at all levels.

7. Facilitate the exchange of program information and technical assistance among public and private agencies at all levels.

8. Monitor the successful applicants' performance, projects, activities for compliance with all programmatic, administrative, and budgetary requirements.

#### *Technical Reporting Requirements*

All reports must be submitted to Ron Van Duyne, Grants Management Officer, Attention: David Elswick, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Room 321, Mailstop E-13, Atlanta, GA 30305. The following reports are required:

A. An original and two copies of a quarterly narrative progress report (not to exceed 4 pages) for the first, second and fourth quarters of each budget period due to CDC no later than 30 days after the end of each quarter.

B. A cumulative progress report for the first three quarters of each budget period as part of a grantee's continuation application for funding during the project period (this report will serve as the third quarter report). Progress reports should document activity status in comparison to the stated objectives and other relevant observations. Awardees should pay careful attention to answering the evaluation questions and documenting accomplishments and problems encountered in meeting program objectives, as described in the evaluation requirements section in their reports. The progress report is intended not only as a way of informing CDC of the progress made by cooperative agreement recipients in implementing projects and activities and evaluating performance, but also as a tool for documenting and sharing important information with other organizations and agencies. CDC may share portions of the progress report with other partners, grantees and Centers/Institute/Offices within CDC.

C. A Financial Status Report (FSR) no later than 90 days after the end of each budget period. A final FSR and performance report are required no later than 90 days after the end of the project period.

#### *Application Content*

Applications must be prepared in accordance with PHS Form 5161-1, information contained in the program announcement, and the general instructions outlined below. When writing the application, careful consideration should be given to the "Evaluation Criteria" section below. The applicant should provide a detailed description of the objectives, program plan, intended collaboration(s), and

evaluation activities for the first-year budget period only and briefly describe future activities during the project period. If indirect costs are requested, a current, approved indirect cost rate agreement must be included with the application.

Proof of nonprofit and organizational status and compliance with all other eligibility criteria must be submitted with the application for determination of eligibility.

Applicants must use the following format for the narrative portion of their applications and refer to the relevant program requirements and guidance, address requirements and issues in A-G as follows, and consider the review and evaluation criteria when developing the application. Applicants must address all three priorities, but have some discretion regarding the level of activity and commitment of funds.

A. Abstract (not to exceed 1 page): Summarize the overall proposal including the applicant's organizational structure, projects/activities, funding request, collaboration and coordination with CDC and other national associations and organizations, and relationship to priority area.

I. Translating the Essential Services into public health practice (Priority #1)

II. Increasing emphasis on performance measures (Priority #2)

III. Enhancing internal capacities (Priority #3)

B. Program Rationale and Need (not to exceed three pages):

1. For activities related to the Essential Services, describe the rationale for the projects/activities and include a summary of existing information on identified association needs that the proposed program will help address. This should include a description of the activity, the expected impact on the need, and an explanation of how the activity will contribute to the national strategy to strengthen the public health system, particularly as it relates to the Essential Public Health Services.

2. For activities that focus on increasing performance, applicants should focus their attention to progress relative to their objectives. In situations where the performance is difficult to measure or not easily quantifiable, the proposal should outline activities with a series of time-phased tasks to be completed during the budget period.

3. For capacity building activities, including staff training, describe the need(s) to be met, why it is necessary, and how it will impact or benefit the association. This should include an explanation of how this capacity building activity may contribute to the overall national implementation

strategy. Any relevant evidence supporting this need should be included in the application.

C. Program Objectives (not to exceed one page): Specify the measurable program objectives. An outcome objective will address (at least partially) resolution of an unmet need. Include at least one outcome objective for each priority, and the indicators that will be used to measure activities and benchmarks toward meeting those objectives.

D. Detail Experience (not to exceed two pages): Specify time, project title, and organization's role related to previous public health initiatives. Accomplishments with supporting documentation and evidence of an association's sustainability will be a critical component in the evaluation phase of each applicant's proposal. An applicant's experience should be described in relation to its ability to provide technical assistance and/or training or other relevant technical assistance to affiliates, constituency groups, other organizations, and agencies. This should also demonstrate the applicant's understanding of the varying information needs of those working with specific audience segments, and how these varying needs will be addressed.

E. Collaboration/Coordination (not to exceed two pages):

1. Describe in sufficient detail the intended collaboration, coordination, and relationships with CDC; regional, State, and local affiliates, members, etc.; other national organizations; State/local health agencies; community-based organizations; and other organizations and agencies. Letters of support would be evidence of collaboration.

2. Describe the role of each of the collaborating organizations, including the specific activities each will undertake in the proposed program plan. Describe proposed technical assistance activities anticipated and summarize other efforts to secure collaboration in the proposed program plan.

3. Describe past experience, if any, in collaborating and coordinating programs and activities among other organizations.

4. Include in the attachments evidence of past collaboration and coordination, such as jointly-developed work plans or memoranda of understanding.

F. Evaluation Plan (not to exceed two pages): Describe the plan for evaluating program activities and services. Indicate how progress toward achieving objectives will be measured and how the quality of services will be ensured

or how the applicant will work with CDC to develop and implement a comprehensive evaluation plan. Describe how needs for technical assistance and training will be identified and monitored, and specify the process through which program objectives and plans will be modified to meet the emerging and changing needs of target populations and the organizations and agencies serving them.

G. Attachments (attach the following documents):

1. Proof of the applicant organization's nonprofit status.
2. A list of participating affiliates or organizations, or description of the constituency(ies) served by the applicant.
3. A list of the names, addresses, and phone numbers of members of the board(s) or governing body(ies) for the applicant.

#### *Evaluation Criteria*

Applications will be objectively reviewed and evaluated in accordance with the following criteria:

### I. Review and Evaluation of Application

#### A. *Organizational Capability (20%)*

The extent to which the applicant documents:

- (1) Recent experience administering/coordinating health-related, public health, or community-based programs in conjunction with a national plan, and
- (2) Ability to access and influence a particular sector such as public, private, professional, voluntary groups through a network of affiliates, constituents, or members, and
- (3) Capacity (or planned capacity) to provide technical assistance and training to their affiliates, constituents, members, and others regarding the Essential Services.

#### B. *Understanding of the Problem (15%)*

The extent to which the applicant demonstrates and documents an understanding of the priorities for the public health system, the unmet needs of the association or organization, and the opportunities and barriers that exist among the target audience(s).

#### C. *Program Objectives (15%)*

The extent to which the proposed objectives are specific, measurable, time-phased, and consistent with the purpose of the program announcement, the identified priorities, and the applicant organization's overall mission.

#### D. *Quality of Plan (20%)*

The strength of the applicant's plan for conducting program activities and the likelihood that the proposed plans will adequately address the priorities.

#### E. *Organizational Experience (15%)*

The extent to which the applicant can demonstrate existing support for partnership activities and collaboration with CDC, other associations and organizations, and official public health agencies.

#### F. *Evaluation Plan (15%)*

The extent to which the evaluation plan measures the achievement of program objectives and monitors the implementation of proposed activities or the commitment to implement a collaboratively developed evaluation plan.

#### G. *Budget Justification (not scored)*

The budget will be evaluated for the extent to which it is reasonable, clearly justified, and consistent with the intended use of cooperative agreement funds. Applicants are also requested to present an estimate (percentage) of their total request budgeted for each identified priority.

### II. Predecisional Site Visits

Site visits may be conducted before CDC makes final funding decisions. Only those associations and organizations with high-ranking applications may be visited. During the visit, CDC staff will meet with project staff, a representative of the board of directors, and other applicant principals to assess the applicant's ability to implement the proposed program, review the application and program plans for current or planned activities, and determine the special programmatic conditions and technical assistance requirements of the applicant.

#### *Executive Order 12372 Review*

This program is not subject to the Executive Order 12372 review.

#### *Public Health System Reporting Requirements*

This program is not subject to the Public Health System Reporting Requirements.

#### *Catalog of Federal Domestic Assistance*

The Catalog of Federal Domestic Assistance Number is 93.283.

#### *Other Requirements*

A. Confidentiality of Records: All identifying information obtained in connection with the provision of services to any person in any program that is being carried out through a cooperative agreement made under this announcement may not be disclosed unless required by a law of a State or political subdivision or unless written, voluntary informed consent is provided by persons who receive services.

B. OMB Review: Projects/activities that involve the collection of information from 10 or more individuals and funded by the cooperative agreement will be subject to review by the Office of Management and Budget under the Paperwork Reduction Act.

#### *Application and Submission Deadline*

##### *Preapplication Letter of Intent*

A non-binding letter of intent-to-apply is required from potential applicants. An original and two copies of the letter should be submitted to the Grants Management Branch, CDC at the address for Ron Van Duyne given below. It should be postmarked no later than January 15, 1997. The letter should identify the announcement number, name of the Principal Investigator, and specify the activity(ies) to be addressed by the proposed project. The letter of intent does not influence review or funding decisions, but it will enable CDC to plan the review more efficiently, and will ensure that each applicant receives timely and relevant information prior to application submission.

##### *Application*

The original and two copies of the application PHS Form 5161-1 (Revised 7/92, OMB Control Number 0937-0189) must be submitted to Ron Van Duyne, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Room 321, Mailstop E-13, Atlanta, GA 30305, on or before February 14, 1997.

1. *Deadline:* Applications meet the deadline if they are either:

(a) Received on or before the deadline date; or

(b) Sent on or before the deadline date and received in time for submission to the objective review group. (Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks will not be acceptable as proof of timely mailing.)

2. *Late Applications:* Applications which do not meet the criteria in 1. (a) or 1. (b), above are considered late applications. Late applications will not be considered and will be returned to applicants.

##### *Where to Obtain Additional Information*

A complete program description, information on application procedures, an application package, and business management technical assistance may be obtained from David Elswick, Grants Management Specialist, Grants

Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Room 321, Mailstop E-13, Atlanta, GA 30305, telephone (404) 842-6521, Internet address: DCE1@opspgo1.em.cdc.gov. Programmatic technical assistance may be obtained from Deane Johnson, Division of Public Health Systems, Public Health Practice Program Office, Centers for Disease Control and Prevention (CDC), 1600 Clifton Road, NE., Mailstop K-39, Atlanta, GA 30333, telephone (770) 488-2495.

Please refer to Announcement 711 when requesting information and submitting an application.

Potential applicants may obtain a copy of "Healthy People 2000" (Full Report, Stock No. 017-001-00474-0) or "Healthy People 2000" (Summary Report, Stock No. 017-001-00473-1) referenced in the **INTRODUCTION** through the Superintendent of Documents, Government Printing Office, Washington, DC 20402-9325, telephone (202) 512-1800.

Dated: December 10, 1996

Joseph R. Carter,

*Acting Associate Director for Management and Operations, Centers for Disease Control and Prevention (CDC).*

[FR Doc. 96-31822 Filed 12-13-96; 8:45 am]

**BILLING CODE 4163-18-P**

### **Board of Scientific Counselors, National Institute for Occupational Safety and Health: Announcement of Meeting and Request for Comments on Diesel Exhaust Study Protocol**

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), the Centers for Disease Control and Prevention (CDC) announces the following committee meeting:

*Name:* Board of Scientific Counselors, National Institute for Occupational Safety and Health (BSC, NIOSH).

*Time and Date:* 9 a.m.-5 p.m., January 14, 1997.

*Place:* The Washington Court Hotel, Montpelier Room, 525 New Jersey Avenue NW, Washington, DC 20001.

*Status:* Open to the public, limited only by the space available. The meeting room accommodates approximately 50 people.

*Purpose:* The BSC, NIOSH is charged with providing advice to the Director, NIOSH on NIOSH research programs. Specifically, the Board shall provide guidance on NIOSH's research activities related to developing and evaluating hypotheses, systematically documenting findings, and disseminating results.

*Matters to be Discussed:* Agenda items include a report from the Director of NIOSH

and reports on the January NIOSH/OSHA effective ergonomic practices conference; NIOSH construction and agriculture programs; women's safety and health at work; the National Occupational Research Agenda; review of the Health Hazard Evaluation Program; and future activities of the Board.

In addition, the Board will consider the August 1995 draft protocol for the NIOSH/National Cancer Institute (NCI) study entitled "A Cohort Mortality Study With a Nested Case-Control Study of Lung Cancer and Diesel Exhaust Among Non-Metal Miners." The Board will provide NIOSH with an assessment of the scientific quality of the draft protocol, including a review of the stated objectives of the study and the methods proposed to achieve those objectives.

Given the public interest in this study, the Board and NIOSH will review the draft protocol as follows:

1. On January 14, 1996, the Board will begin its review of the draft protocol.

2. Copies of the draft protocol are available from Michael Attfield, Ph.D., NIOSH Project Director, NIOSH, Division of Respiratory Disease Studies, Mail Stop 234, 1095 Willowdale Road, Morgantown, West Virginia 26505-2888; (304)285-5751; Internet address mda1@niords1.em.cdc.gov; and from the NIOSH Home Page at <http://www.cdc.gov/niosh/homepage.html>.

3. The public is invited to submit written comments on the draft protocol to NIOSH through January 31, 1997. All written comments should be submitted to Dr. Attfield at the above address. At this January 14, 1997 meeting of the Board, members of the public may make oral comments up to five minutes in length if time allows.

4. NIOSH will revise the draft protocol after receipt of all written and oral comments. A revised protocol will thereafter be made available to the Board and to any interested person. The availability of the revised protocol will be announced in the Federal Register and on the NIOSH Home Page.

5. In approximately 90 days following the January 14, 1997 meeting, the Board will reconvene at a public meeting (to be announced in the Federal Register) to consider the revised protocol and any written comments provided to NIOSH. The Board will provide comments and recommendations to NIOSH on the revised protocol.

Agenda items are subject to change as priorities dictate.

*Contact Person for More Information:* Bryan D. Hardin, Ph.D., Executive Secretary, BSC, NIOSH, CDC, 200 Independence Avenue, SW, Humphrey Building, Washington, DC 20201, telephone (202) 205-8556.

Dated: December 11, 1996.

John C. Burckhardt,

*Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).*

[FR Doc. 96-31948 Filed 12-13-96; 8:45 am]

**BILLING CODE 4163-19-P**

### **National Institutes of Health**

#### **Proposed Collection; Comment Request; Clinical, Laboratory, and Epidemiologic Characterization of Individuals at High Risk of Cancer**

**SUMMARY:** In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, for opportunity for public comment on proposed extension of existing data collection projects, the National Cancer Institute (NCI), the National Institutes of Health (NIH) will publish periodic summaries of proposed projects to be submitted to the Office of Management and Budget (OMB) for review and approval.

**PROPOSED COLLECTION:** *Title* Clinical, Laboratory, and Epidemiologic Characterization of Individuals at High Risk of Cancer. *Type of Information Collection Request:* Extension of OMB No. 0925-0194 (Expiration date 01/31/97). *Need and Use of Information Collection:* This ongoing research study will identify cancer-prone persons in order to learn about cancer risk and cancer causes in individuals and families. The primary objectives of this research study are to utilize clinical, laboratory, and epidemiologic approaches in studies of individuals and families at high risk of cancer to identify and further characterize cancer susceptibility factors. Respondents are members of families in which multiple cancers are thought to have occurred. Information about the occurrence of cancer is collected and reviewed to determine eligibility for further etiologic study. Participation is entirely voluntary. The findings will lead to a better understanding of the causes and risk factors for selected cancers, which may reduce cancer incidence, and promote the earlier diagnosis of some cancers. *Frequency of Response:* One time. *Affected Public:* Individuals or households. *Type of Respondents:* Adults. The annual reporting burden is as follows: *Estimated Number of Respondents:* 600 per year; *Estimated Number of Responses per Respondent:* 1; *Average Burden Hours Per Response:* .75; and *Estimated Total Annual Burden Hours Requested:* 450. The annualized cost to respondent is estimated at: \$4,500. There are no Capital Costs to report. There are no Operating or Maintenance Costs to report.

**REQUEST FOR COMMENTS:** Written comments and/or suggestions from the public and affected agencies are invited on one or more of the following points: (1) Whether the proposed collection of information is necessary for the proper performance of the function of the

agency, including whether the information will have practical utility; (2) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (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 those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

**FOR FURTHER INFORMATION:** To request more information on this project or to obtain a copy of the data collection plans and instrument, write to Dr. Margaret Tucker, Chief, Genetic Epidemiology Branch, National Cancer Institute, NIH, Executive Plaza North, Room 439, 6130 Executive Blvd., Bethesda, MD 20892, or call non-toll-free number (301) 496-4375, or E-mail your request, including your address to: tuckerp@epndce.nci.nih.gov

**COMMENTS DUE DATE:** Comments regarding this information collection are

best assured of having their full effect if received on or before February 14, 1997.

Dated: December 9, 1996.  
Nancie L. Bliss,  
*OMB Project Clearance Liaison.*  
[FR Doc. 96-31781 Filed 12-13-96; 8:45 am]  
BILLING CODE 4140-01-M

**Proposed Collection; Comment Request; NCI Cancer Information Service Demographic/Customer Service Data Collection**

**SUMMARY:** In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, for opportunity for public comment on proposed data collection projects, the National Cancer Institute, the National Institutes of Health (NIH) will publish periodic summaries of proposed projects to be submitted to the Office of Management and Budget (OMB) for review and approval.

**PROPOSED COLLECTION:** Title: NCI Cancer Information Service Demographic/Customer Service Data Collection. *Type of Information Collection Request:* Revision of a currently approved

collection. *Form Number:* 0937-0201. *Need and Use of Information Collection:* The CIS provides the general public, cancer patients, families, health professionals, and others with the latest information on cancer. Essential to providing the best customer service is the need to collect data about callers and how they found out about the service. This effort involves asking seven questions to five categories of callers for an annual total of approximately 378,165 callers. *Frequency of Response:* Single time. *Affected Public:* Individuals or households. *Type of Respondents:* Patients, relatives, friends, and general public. The annual reporting burden is as follows: *Estimated Number of Respondents:* 378,165; *Estimated Number of Responses per Respondent:* 1; *Average Burden Hours Per Response:* .0167; and *Estimated Total Annual Burden Hours Requested:* 6,303. The annualized cost to respondents is estimated at: \$75,633. There are no Capital Costs to report. There are no Operating or Maintenance Costs to report.

Type of Respondents	Estimated number of respondents	Estimated number of responses per respondent	Average burden hours per response	Estimated total annual burden hours requested
Individuals or households .....	378,165	1	.0167	6,303
Total .....				6,303

**REQUEST FOR COMMENTS:** Written comments and/or suggestions from the public and affected agencies are invited on one or more of the following points: (1) Whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (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 those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

**FOR FURTHER INFORMATION CONTACT:** To request more information on the proposed project or to obtain a copy of the data collection plans and instructions, contact Chris Thomsen, Acting Chief, Cancer Information

Service, National Cancer Institute, NIH, Building 31, Room 10A16, 9000 Rockville Pike, Bethesda, MD 20892, or call non-toll-free number (301) 496-5583 or E-mail your request, including your address to: thomsenc@occ.nci.nih.gov

**COMMENTS DUE DATE:** Comments regarding this information collection are best assured of having their full effect if received on or before February 14, 1997.

Dated: December 9, 1996.  
Nancie L. Bliss,  
*OMB Project Clearance Liaison.*  
[FR Doc. 96-31782 Filed 12-13-96; 8:45 am]  
BILLING CODE 4140-01-M

**National Institute of General Medical Sciences; Notice of Meeting of the National Advisory General Medical Sciences Council**

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the National Advisory General Medical Sciences Council, National Institute of General Medical Sciences, National Institutes of Health, on January 30-31,

1997, Natcher Building 45, Conference Rooms E1 and E2, Bethesda, Maryland.

This meeting will be open to the public from 11 a.m. to 6 p.m. on January 30, and from 8:30 a.m. to 10:30 a.m. on January 31, for the discussion of program policies and issues, opening remarks, report of the Director, NIGMS, and other business of Council. Attendance by the public will be limited to space available.

In accordance with provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and sec. 10(d) of Pub. L. 92-463, the meeting will be closed to the public on January 30 from 8:30 a.m. to 11:00 a.m., and on January 31, from 10:30 a.m. until adjournment, for the review, discussion, and evaluation of individual grant applications. The discussions of these applications could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mrs. Ann Dieffenbach, Public Information Officer, National Institute of

General Medical Sciences, National Institutes of Health, Natcher Building, Room 3AS-43H, Bethesda, Maryland 20892, telephone: 301-496-7301, FAX 301-402-0224, will provide a summary of the meeting, and a roster of Council members. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Mrs. Dieffenbach in advance of the meeting. Dr. W. Sue Shafer, Executive Secretary, NAGMS Council, National Institutes of Health, Natcher Building, Room 2AN-32C, Bethesda, Maryland 20892, telephone: 301-594-4499 will provide substantive program information upon request.

(Catalog of Federal Domestic Assistance Program Nos. 93.821, Biophysics and Physiological Sciences; 93.859, Pharmacological Sciences; 93.862, Genetics Research; 93.863, Cellular and Molecular Basis of Disease Research; 93.880, Minority Access Research Careers [MARC]; and 93.375, Minority Biomedical Research Support [MBRS]; Special Programs, 93.960)

Dated: December 6, 1996.

Paula N. Hayes,

Acting Committee Management Officer, NIH.  
[FR Doc. 96-31773 Filed 12-13-96; 8:45 am]

BILLING CODE 4140-01-M

## Public Health Service

### National Toxicology Program; Availability of Technical Report on Toxicology and Carcinogenesis Studies of Nickel Sub sulfide

The HHS' National Toxicology Program announces the availability of the NTP Technical Report on the toxicology and carcinogenesis studies of nickel subsulfide, this study was conducted because there is potential for exposure to this nickel compound during mining production and/or manufacturing processes in the nickel industry.

Toxicology and carcinogenicity studies were conducted by inhalation administration of nickel subsulfide to a core group of 63 F344/N rats of each sex at 0, 0.15, or 1 mg (equivalent to 0, 0.11, or 0.73 nickel mg/m<sup>3</sup>) for 6 hours per day, 5 days per week, for up to 104 weeks and groups of 80 B6C3F<sub>1</sub> mice of each sex at 0, 0.6, or 1.2 mg (equivalent to 0, 0.44, or 0.88 mg nickel/m<sup>3</sup>) for 6 hours per day, 5 days per week for up to 105 weeks. Animals were removed at 7 or 15 months for interim evaluation and/or determination of lung nickel levels.

Under the conditions of these 2-year inhalation studies, there was clear

evidence of carcinogenic activity<sup>1</sup> of nickel subsulfide in male F344/N rats based on increased incidences of alveolar/bronchiolar adenoma, carcinoma, and adenoma or carcinoma (combined) and on increased incidences of benign, malignant, and benign or malignant (combined) pheochromocytoma of the adrenal medulla. There was clear evidence of carcinogenic activity of nickel subsulfide in female F344/N rats based on increased incidences of alveolar/bronchiolar carcinoma and alveolar/bronchiolar adenoma or carcinoma (combined) and an increased incidence of benign pheochromocytoma of the adrenal medulla. There was no evidence of carcinogenic activity of nickel subsulfide in male or female B6C3F<sub>1</sub> mice exposed to 0.6 or 1.2 mg/m<sup>3</sup>.

Exposure of male and female rats to nickel subsulfide by inhalation for 2 years resulted in inflammation, hyperplasia, and fibrosis in the lung; inflammation and atrophy of the olfactory epithelium in the nose; and hyperplasia in the adrenal medulla (females). Exposure of male and female mice to nickel subsulfide by inhalation for 2 years resulted in inflammation, bronchialization, hyperplasia, and fibrosis in the lung and inflammation and atrophy of the olfactory epithelium in the nose.

Copies of *Toxicology and Carcinogenesis Studies Nickel Sub sulfide* (CAS No. 12035-72-2) (TR-453) are available without charge from Central Data Management, NIEHS, MD E1-02 P.O. Box 12233, Research Triangle Park, NC 27709; telephone (919) 541-3419.

Dated: November 13, 1996.

Samuel H. Wilson,

Deputy Director, NIEHS.

[FR Doc. 96-31774 Filed 12-13-96; 8:45 am]

BILLING CODE 4140-01-M

### National Toxicology Program; Availability of Technical Report on Toxicology and Carcinogenesis Studies of Nickel Oxide

The HHS' National Toxicology Program announces the availability of the NTP Technical Report on the toxicology and carcinogenesis studies of nickel oxide. Nickel oxide "sinters" are used in stainless steel and alloy steel production. Nickel oxide was

<sup>1</sup>The NTP uses five categories of evidence of carcinogenic activity observed in each animal study: Two categories for positive results ("clear evidence"), one category for uncertain findings ("equivocal evidence"), one category for studies that cannot be evaluated because of major flaws ("inadequate study").

nominated by the National Cancer Institute to the NTP for testing because exposure to this form of nickel may occur in the nickel industry. Increased incidences of lung and nasal sinus cancers have occurred among workers in certain nickel refining facilities, and nickel oxide was studied as part of a class study of nickel compounds.

Toxicology and carcinogenicity studies were conducted by inhalation administration of nickel oxide (high temperature nickel oxide) to groups of 65 F344/N rats at exposures of 0, 0.62, 1.25, or 2.5 mg (equivalent to 0, 0.5, 1.0, or 2.0 mg) and to groups of 74 to 79 B6C3F<sub>1</sub> mice of each sex at exposures of 0, 1.25, 2.5, or 5 mg for 6 hours per day, 5 days per week for 104 weeks.

Under the conditions of these 2-year inhalation studies, there was some evidence of carcinogenic activity<sup>1</sup> of nickel oxide in male F344/N rats based on increased incidences of alveolar/bronchiolar adenoma or carcinoma (combined) and increased incidences of benign of malignant pheochromocytoma (combined) of the adrenal medulla.

There was some evidence of carcinogenic activity of nickel oxide in female F344/N rats based on increased incidences of alveolar/bronchiolar adenoma or carcinoma (combined) and increased incidences of benign pheochromocytoma of the adrenal medulla. There was no evidence of carcinogenic activity of nickel oxide in male B6C3F<sub>1</sub> mice exposed to 1.25, 2.5, or 5 mg/m<sup>3</sup>. There was equivocal evidence of carcinogenic activity of nickel oxide in female B6C3F<sub>1</sub> mice based on marginally increased incidences of alveolar/bronchiolar adenoma in 2.5 mg/m<sup>3</sup> females and of alveolar/bronchiolar adenoma or carcinoma (combined) in 1.25 mg/m<sup>3</sup> females.

Exposure of rats to nickel oxide by inhalation for 2 years resulted in inflammation and pigmentation in the lung, lymphoid hyperplasia and pigmentation in the bronchial lymph nodes, and hyperplasia of the adrenal medulla (females). Exposure of mice to nickel oxide by inhalation for 2 years resulted in bronchialization, proteinosis, inflammation, and pigmentation in the lung and lymphoid hyperplasia and pigmentation in the bronchial lymph nodes.

Questions or comments about the Technical Report should be directed to

<sup>1</sup>The NTP uses five categories of evidence of carcinogenic activity observed in each animal study: two categories for positive results ("clear evidence" and "some evidence"), one category for uncertain findings ("equivocal evidence"), one category for studies that cannot be evaluated because of major flaws ("inadequate study").

Central Data Management at P.O. Box 12233, Research Triangle Park, NC 27709 or telephone (919) 541-3419.

Copies of *Toxicology and Carcinogenesis Studies of Nickel Oxide* (CAS No. 1313-99-1) (TR-451) are available without charge from Central Data Management, NIEHS, MD E1-02, P.O. Box 12233, Research Triangle Park, NC 27709; telephone (919) 541-3419.

Dated: November 13, 1996.

Samuel H. Wilson,

Deputy Director, NIEHS.

[FR Doc. 96-31775 Filed 12-13-96; 8:45 am]

BILLING CODE 4140-01-M

### **National Toxicology Program; Availability of Technical Report on Toxicology and Carcinogenesis Studies of Isobutyl Nitrite**

The HHS' National Toxicology Program announces the availability of the NTP Technical Report on the toxicology and carcinogenesis studies of isobutyl nitrite which is used as an intermediate in the syntheses of aliphatic nitrites. It is also an ingredient of various incenses or room odorizers and is used as a euphoric. The chemical has also been used as a jet propellant and in the preparation of fuels.

Toxicology and carcinogenicity studies were conducted by inhalation administration of isobutyl nitrite to groups of 56 F344/N rats and 60 B6C3F<sub>1</sub> mice of each sex at exposures of 0, 37.5, 75, or 150 ppm (equivalent to 0, 158, 315, or 630 mg/m<sup>3</sup>) for 6 hours per day, 5 days per week, for 103 weeks.

Under the conditions of these 2-year studies, there was clear evidence of carcinogenic activity<sup>1</sup> of isobutyl nitrite in male and female F344/N rats based on the increased incidences of alveolar/bronchiolar adenoma and alveolar/bronchiolar adenoma or carcinoma (combined). There was some evidence of carcinogenic activity of isobutyl nitrite in male and female B6C3F<sub>1</sub> mice based on the increased incidences of alveolar/bronchiolar adenoma and alveolar/bronchiolar adenoma or carcinoma (combined) in males and females. The increased incidence of thyroid gland follicular cell adenoma in male mice may have been related to isobutyl nitrite exposure.

Exposure of rats and mice to isobutyl nitrite by inhalation for 2 years resulted in increased incidences of alveolar

epithelial hyperplasia (male and female rate and mice), thyroid gland follicular cell hyperplasia and splenic hemosiderin pigmentation (male mice), and serous exudate and atrophy of the olfactory epithelium of the nose (female mice).

Exposure of rats to isobutyl nitrite by inhalation for 2 years resulted in decreased incidences of mononuclear cell leukemia in males and females.

Questions or comments about the Technical Report should be directed to Central Data Management at P.O. Box 12233, Research Triangle Park, NC 27709 or telephone (919) 541-3419.

Copies of *Toxicology and Carcinogenesis Studies of Isobutyl Nitrite* (CAS No. 542-56-3) (TR-448) are available without charge from Central Data Management, NIEHS, MD E1-02, P.O. Box 12233, Research Triangle Park, NC 27709; telephone (919) 541-3419.

Dated: November 13, 1996.

Samuel H. Wilson,

Deputy Director, NIEHS

[FR Doc. 96-31776 Filed 12-13-96; 8:45 am]

BILLING CODE 4140-01-M

### **National Toxicology Program; Availability of Technical Report on Toxicology and Carcinogenesis Studies of 1-Amino-2,4-Dibromoanthraquinone**

The HHS' National Toxicology Program announces the availability of the NTP Technical Report on the toxicology and carcinogenesis studies of 1-amino-2,4-dibromoanthraquinone. This chemical is an anthraquinone-derived vat dye, a member of a class of insoluble dyes that are impregnated into textile fibers.

Toxicology and carcinogenicity studies were conducted by administering 1-amino-2,4-dibromoanthraquinone to groups of 70 F344/N rats of each sex at 0, 5,000; or 10,000 ppm in feed for 104 weeks. In addition, groups of 50 F344/N rats of each sex were given 2,000 ppm for 104 weeks. Groups of 60 B6C3F<sub>1</sub> mice of each sex were given 0, 10,000, or 20,000 ppm in feed for 104 weeks.

Under the conditions of these 2-year feed studies, there was clear evidence of carcinogenic activity<sup>1</sup> of 1-amino-2,4-dibromoanthraquinone in male and female F344/N rats based on increased incidences of neoplasms in the liver,

large intestine, kidney, and urinary bladder. There was clear evidence of carcinogenic activity of 1-amino-2,4-dibromoanthraquinone in male and female B6C3F<sub>1</sub> mice based on increased incidences of neoplasms in the liver, forestomach, and lung.

Questions or comments about the Technical Report should be directed to Central Data Management at P.O. Box 12233, Research Triangle Park, NC 27709 or telephone (919) 541-3419.

Copies of *Toxicology and Carcinogenesis Studies of 1-Amino-2,4-Dibromoanthraquinone* (CAS No. 81-49-2) (TR-383) are available without charge from Central Data Management, NIEHS, MD E1-02, P.O. Box 12233, Research Triangle Park, NC 27709; telephone (919) 541-3419.

Dated: November 13, 1996.

Samuel H. Wilson,

Deputy Director, NIEHS.

[FR Doc. 96-31777 Filed 12-13-96; 8:45 am]

BILLING CODE 4140-01-M

### **National Toxicology Program; Availability of Technical Report on Toxicology and Carcinogenesis Studies of Codeine**

The HHS' National Toxicology Program announces the availability of the NTP Technical Report on the toxicology and carcinogenesis studies of codeine, which is used in a variety of pharmaceuticals including analgesics, sedatives, hypnotics, antiperistaltics, and antitussive agents.

Toxicology and carcinogenicity studies were conducted by oral administration of codeine to groups of 60 F344/N rats of each sex at 0, 400, 800, or 1,600 ppm and 60 B6C3F<sub>1</sub> mice of each sex at 0, 750, 1,500, or 3,000 ppm in feed for up to 106 weeks. In addition 9 or 10 animals per group were evaluated at 15 months.

Under the conditions of these 2-year feed studies, there was no evidence of carcinogenic activity<sup>1</sup> of codeine in male or female F344/N rats exposed to 400, 800, or 1,600 ppm. There was no evidence of carcinogenic activity of codeine in male or female B6C3F<sub>1</sub> mice exposed to 750, 1,500, or 3,000 ppm.

Thyroid gland follicular cell hyperplasia was increased in exposed male and female mice.

Decreased incidences of benign pheochromocytomas of the adrenal

<sup>1</sup> The NTP uses five categories of evidence of carcinogenic activity observed in each animal study: two categories for positive results ("clear evidence" and "some evidence"), one category for uncertain findings ("equivocal evidence"), one category for studies that cannot be evaluated because of major flaws ("inadequate study").

<sup>1</sup> The NTP uses five categories of evidence of carcinogenic activity observed in each animal study: two categories for positive results ("clear evidence" and "some evidence"), one category for uncertain findings ("equivocal evidence"), one category for studies that cannot be evaluated because of major flaws ("inadequate study").

<sup>1</sup> The NTP uses five categories of evidence of carcinogenic activity observed in each animal study: two categories for positive results ("clear evidence" and "some evidence"), one category for uncertain findings ("equivocal evidence"), one category for studies that cannot be evaluated because of major flaws ("inadequate study").

medulla in male rats and mammary gland fibroadenomas and fibroadenomas or adenocarcinomas (combined) in female rats were related to codeine exposure.

Questions or comments about the Technical Report should be directed to Central Data Management at P.O. Box 12233, Research Triangle Park, NC 27709 or telephone (919) 541-3419.

Copies of *Toxicology and Carcinogenesis Studies of Codeine (CAS No. 76-57-3) (TR-455)* are available without charge from Central Data Management, NIEHS, MD E1-02, P.O. Box 12233, Research Triangle Park, NC 27709; telephone (919) 541-3419.

Dated: November 13, 1996.

Samuel H. Wilson,

*Deputy Director, NIEHS.*

[FR Doc. 96-31778 Filed 12-13-96; 8:45 am]

BILLING CODE 4140-01-M

**National Toxicology Program;  
Availability of Technical Report on  
Toxicology and Carcinogenesis  
Studies of 2,2-Bis(Bromomethyl)-1,3-  
Propanediol**

The HHS' National Toxicology Program announces the availability of the NTP Technical Report on the toxicology and carcinogenesis studies of 2,2-bis(bromomethyl)-1,3-propanediol which is used as a fire retardant in unsaturated polyester resins, in molded products, and in rigid polyurethane foam.

Toxicology and carcinogenicity studies were conducted by administering 2,2-bis(bromomethyl)-1,3-propanediol to groups of 60 F344/N rats of each sex in feed at exposures of 0, 2,500, 5,000, or 10,000 for 104 to 105 weeks. Nine or ten control animals and five to nine animals from each of the continuous-exposure groups were evaluated at 15 months. Additional male rats added for a "stop-study" received 0 or 20,000 ppm for 3 months, after which animals received undosed feed for the remainder of the 2-year study. Groups of 60 B6C3F<sub>1</sub> mice of each sex received 0, 312, 625, or 1,250 ppm in feed for 104 to 105 weeks. Eight to 10 animals were evaluated at 15 months.

Under the conditions of these 2-year feed studies, there was clear evidence of carcinogenic activity<sup>1</sup> of 2,2-

bis(bromomethyl)-1,3-propanediol (FR-1138®) in male F344/N rats based on increased incidences of neoplasms of the skin, subcutaneous tissue, mammary gland, Zymbal's gland, oral cavity, esophagus, forestomach, small and large intestines, mesothelium, urinary bladder, lung, thyroid gland, and seminal vesicle, and the increased incidence of mononuclear cell leukemia.

There was clear evidence of carcinogenic activity of 2,2-bis(bromomethyl)-1,3-propanediol in female F344/N rats based on increased incidences of neoplasms of the oral cavity, esophagus, mammary gland, and thyroid gland. There was clear evidence of carcinogenic activity of 2,2-bis(bromomethyl)-1,3-propanediol in male B6C3F<sub>1</sub> mice based on increased incidences of neoplasms of the harderian gland, lung, and kidney.

There was clear evidence of carcinogenic activity of 2,2-bis(bromomethyl)-1,3-propanediol in female B6C3F<sub>1</sub> mice based on increased incidences of neoplasms of the harderian gland, lung, and subcutaneous tissue. Slight increases in the incidences of neoplasms of the pancreas and kidney in male rats; forestomach in male mice; and forestomach mammary gland, and circulatory system in female mice may have also been related to treatment.

Exposure of male and female rats to 2,2-bis(bromomethyl)-1,3-propanediol was associated with alveolar/bronchiolar hyperplasia in the lung (males only); focal atrophy, papillary degeneration, transitional epithelial hyperplasia (pelvis), and papillary epithelial hyperplasia in the kidney; follicular cell hyperplasia in the thyroid gland (males only); hyperplasia in the seminal vesicle and pancreas (males only); mucosal hyperplasia in the forestomach (males only); and urinary bladder hyperplasia (males only). Exposure of mice to 2,2-bis(bromomethyl)-1,3-propanediol was associated with hyperplasia of the alveolar epithelium in females.

Questions or comments about the Technical Report should be directed to Central Data Management at P.O. Box 12233, Research Triangle Park, NC 27709 or telephone (919) 541-3419.

Copies of *Toxicology and Carcinogenesis Studies of 2,2-Bis(bromomethyl)-1,3-propanediol (CAS No. 3296-90-0) (TR-452)* are available without charge from Central Data Management, NIEHS, MD E1-02, P.O. Box 12233, Research Triangle Park, NC 27709; telephone (919) 541-3419.

Dated: November 13, 1996.

Samuel H. Wilson,

*Deputy Director, NIEHS.*

[FR Doc. 96-31779 Filed 12-13-96; 8:45 am]

BILLING CODE 4140-01-M

**National Toxicology Program;  
Availability of Technical Report on  
Toxicology and Carcinogenesis  
Studies of Nickel Sulfate Hexahydrate**

The HHS' National Toxicology Program announces the availability of the NTP Technical Report on the toxicology and carcinogenesis studies of nickel sulfate hexahydrate which is used in nickel plating, as a mordant in dyeing and printing textiles, as a blackening agent for zinc and brass, and in the manufacture of organic nickel salts. This chemical was studied because of potential for exposure in nickel industries.

Toxicology and carcinogenicity studies were conducted by inhalation administration of nickel sulfate hexahydrate to groups of 63 to 65 female F344/N rats at concentrations of 0, 0.12, 0.25, or 0.5 mg/m<sup>3</sup> (equivalent to 0, 0.03, 0.06, or 0.11 mg nickel/m<sup>3</sup>) and groups of 80 B6C3F<sub>1</sub> mice of each sex at concentrations of 0, 0.25, 0.5, or 1 mg/m<sup>3</sup> (equivalent to 0, 0.06, 0.11, or 0.22 mg nickel/m<sup>3</sup>) for 6 hours per day 5 days per week, for up to 104 weeks.

Under the conditions of these 2-year inhalation studies, there was no evidence of carcinogenic<sup>1</sup> activity of nickel sulfate hexahydrate in male or female F344/N rats exposed to 0.12, 0.25, or 0.5 mg/m<sup>3</sup> (0.03, 0.06, or 0.11 mg nickel/m<sup>3</sup>). There was no evidence of carcinogenic activity of nickel sulfate hexahydrate in male or female B6C3F<sub>1</sub> mice exposed to 0.25, 0.5, or 1 mg/m<sup>3</sup> (0.06, 0.11, or 0.22 mg nickel/m<sup>3</sup>).

Exposure of rats to nickel sulfate hexahydrate by inhalation for 2 years resulted in increased incidences of chronic active inflammation, macrophage hyperplasia, alveolar proteinosis, and fibrosis of the lung; lymphoid hyperplasia of the bronchial lymph node; and atrophy of the olfactory epithelium. Exposure of mice to nickel sulfate hexahydrate by inhalation for 2 years resulted in increased incidences of chronic active inflammation, bronchialization (alveolar

<sup>1</sup> The NTP uses five categories of evidence of carcinogenic activity observed in each animal study: two categories for positive results ("clear evidence" and "some evidence"), one category for uncertain findings ("equivocal evidence"), one category for no observable effect ("no evidence"), and one category for studies that cannot be evaluated because of major flaws ("inadequate study").

<sup>1</sup> The NTP uses five categories of evidence of carcinogenic activity observed in each animal study: two categories for positive results ("clear evidence" and "some evidence"), one category for uncertain findings ("equivocal evidence"), one category for studies that cannot be evaluated because of major flaws ("inadequate study").

epithelial hyperplasia), macrophage hyperplasia, interstitial infiltration, and alveolar proteinosis of the lung; lymphoid and macrophage hyperplasia of the bronchial lymph node; and atrophy of the olfactory epithelium.

Questions or comments about the Technical Report should be directed to Central Data Management at P.O. Box 12233, Research Triangle Park, NC 27709 or telephone (919) 541-3419.

Copies of *Toxicology and Carcinogenesis Studies of Nickel Sulfate Hexahydrate (CAS No. 10101-97-0)* (TR-454) are available without charge from Central Data Management, NIEHS, MD E1-02, P.O. Box 12233, Research Triangle Park, NC 27709; telephone (919) 541-3419.

Dated: November 13, 1996.

Samuel H. Wilson,

Deputy Director, NIEHS.

[FR Doc. 96-31780 Filed 12-13-96; 8:45 am]

BILLING CODE 4140-01-M

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

[NV 910 0777 30]

#### Northeastern Great Basin Resource Advisory Council Meeting Location and Time

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** resource advisory councils' meeting location and time.

**SUMMARY:** In accordance with the Federal Land Policy and Management Act and the Federal Advisory Committee Act of 1972 (FACA), 5 U.S.C., the Department of the Interior, Bureau of Land Management (BLM), Council meetings will be held as indicated below. The agenda for this meeting includes: Approval of minutes of the previous meetings, update on land sales-exchanges-trades, Wild Horse & Burros Appropriate Management Level, Nevada Division of Wildlife Statewide Elk Species Management Plan and elk introductions as implementation of the Wells Resource Management Plan, noxious weeds, identification of issues to be resolved and determination of the subject matter for future meetings.

All meetings are open to the public. The public may present written comments to the Council. Each formal Council meeting will also have time allocated for hearing public comments. The public comment period for the Council meeting is listed below. Depending on the number of persons

wishing to comment and time available, the time for individual oral comments may be limited. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact the District Manager at the Elko District Office, 3900 East Idaho Street, Elko, Nevada, 89801, telephone (702) 753-0200.

**DATES, TIMES:** The time and location of the meeting is as follows: Northeastern Great Basin Resource Advisory Council, BLM Office, 3900 East Idaho Street, Elko, Nevada, 89801; January 10, 1997, starting at 9 a.m.; public comments will be at 11 a.m. and 3 p.m.; tentative adjournment 5 p.m. If additional time is required to complete the scheduled business, the meeting may continue on January 11, 1997, following the same meeting and public comment time schedule until the meeting is adjourned.

**FOR FURTHER INFORMATION CONTACT:** Curtis G. Tucker, Team Leader for the Northeastern Resource Advisory Council, Ely District Office, 702 North Industrial Way, HC 33 Box 33500, Ely, NV 89301-9408, telephone 702-289-1841.

**SUPPLEMENTARY INFORMATION:** The purpose of the 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 the public lands.

Dated: December 6, 1996.

Helen Hankins,

District Manager, Elko.

[FR Doc. 96-31760 Filed 12-13-96; 8:45 am]

BILLING CODE 4310-HC-M

### National Programmatic Agreement

**AGENCY:** Bureau of Land Management (BLM), DOI.

**ACTION:** Notice of proposed national programmatic agreement; request for comments.

**SUMMARY:** The purpose of this notice is to invite comments on a proposal to execute a programmatic agreement among the Bureau of Land Management, the Advisory Council on Historic Preservation, and the National Conference of State Historic Preservation Officers. The agreement would establish an alternate structure, to substitute for the standard regulatory process in 36 CFR Part 800, for complying with Section 106 of the National Historic Preservation Act. Representatives of the Bureau of Land Management have been meeting with representatives of the Advisory Council on Historic Preservation and the

National Conference of State Historic Preservation Officers to develop concepts for the proposed agreement and to prepare a draft agreement. The Bureau of Land Management requests comments from parties interested in historic preservation and other uses of public lands.

**DATES:** Comments should be received by January 15, 1997.

**ADDRESSES:** If you wish to comment, you may mail comments to the Bureau of Land Management, Administrative Record, Room 401LS, 1849 C Street, N.W., Washington, D.C. 20240, or you may hand-deliver comments to the Bureau of Land Management, Administrative Record, Room 401, 1620 L St., N.W., Washington, D.C. You may also transmit comments electronically via the Internet to [WOCComments@wo.blm.gov](mailto:WOCComments@wo.blm.gov). Please include "attn: 240" and your name and return address in your internet message. If you do not receive a confirmation from the system that we have received your Internet message, contact us directly at (202) 452-5030. You will be able to review comments, including names and street addresses of respondents, at BLM's Regulatory Management Team office, Room 401, 1620 L St., N.W., Washington, D.C., during regular business hours (7:45 a.m. to 4:15 p.m.) Monday through Friday, except holidays. Individual respondents may request confidentiality. If you wish to withhold your name or street address, except for the city or town, from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your comment. Such requests will be honored to the extent allowed by law. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public inspection in their entirety.

**FOR FURTHER INFORMATION CONTACT:** Dr. John G. Douglas, BLM's Preservation Officer, (202) 452-0327, between 7:15 a.m. and 3:45 p.m., Monday through Friday.

**SUPPLEMENTARY INFORMATION:** The Bureau of Land Management (BLM) invites comments on the concepts that are being considered for a proposed national programmatic agreement, the purpose of which would be to streamline the procedure and to strengthen the BLM's internal organizational structure for complying with Section 106 of the National Historic Preservation Act (NHPA).

Under Section 106, the BLM's field office managers are required (a) to take into account the potential effects of proposed BLM undertakings (both direct BLM actions and BLM authorizations for others to act) on properties included in or eligible for the National Register of Historic Places, and (b) to give the Advisory Council on Historic Preservation (Council) a reasonable opportunity to comment on the undertakings. The Council has published regulations at 36 CFR part 800 to implement Section 106. The regulations specify the manner in which Federal agencies are to take effects into account and to give the Council its opportunity to comment. In both Section 106 and 36 CFR part 800, the requirements are predominantly procedural in nature. Each Federal agency is required to follow the governmentwide standard procedures in 36 CFR part 800 unless the Council has approved alternative compliance procedures for the agency to follow.

Provisions at 36 CFR 800.13 offer an opportunity for an Agency Official to negotiate alternative procedures with the Council, leading to a programmatic agreement that tailors the compliance process to fit the agency's particular circumstances. Under 36 CFR 800.13, the Agency Official and Council are the principal consulting parties. They are directed to invite the State Historic Preservation Officer (SHPO) to participate in developing and signing the agreement if a particular State would be affected, or to invite the National Conference of State Historic Preservation Officers (NCSHPO) to participate if more than one State would be affected.

Representatives of the BLM, the Council, and the NCSHPO have been meeting to develop a BLM national programmatic agreement. In addition the BLM has held information meetings and briefings with representatives of regulated industries, cultural resource professional and trade associations, and a Native American association devoted to protecting traditional cultural and religious practice.

As envisioned, the programmatic agreement would apply to most of the BLM's planning, administrative, and management actions that have potential to affect historic properties and other cultural properties, on BLM-administered public lands, in areas off the public lands affected by BLM decisions, and in areas subject to development of subsurface minerals under BLM jurisdiction or control. The agreement would allow the BLM to meet its responsibilities under Sections 106, 110(f), and 111(a) of the NHPA by

applying BLM-specific procedures and mechanisms in place of the Council's general regulations (36 CFR part 800). It would permit the BLM to plan projects, review land use applications, and undertake management activities of a routine, non-controversial nature without case-by-case review from the SHPO or the Council.

The BLM, the Council, and the NCSHPO have jointly prepared a draft agreement for discussion and public comment. Principal features of the draft agreement are:

- The BLM would establish an internal Preservation Board, consisting of a professionally qualified Preservation Officer reporting to the Director, professionally qualified Deputy Preservation Officers reporting to each of the 12 State Directors, and 3 representative line managers. The Board would advise the Director, State Directors, and field office managers on appropriate historic preservation policies and procedures, and oversee the uniform implementation of the policies and procedures.

- With the direct participation of the Council and SHPOs and with broad solicitation of public input, the Preservation Board would review, update, revise, and adapt to the purposes of the agreement the comprehensive "cultural resource management" policies and procedures contained in the BLM Manual (8100 Series), including enhancement of policies and procedures on Native American coordination and consultation.

- The Preservation Board, with the assistance of SHPOs and the Council, would develop and deliver a training program for BLM field office managers and cultural heritage personnel and others who may be involved in implementing the revised procedures, such as land use applicants and cultural resource consultants.

- Each State Director would meet with the appropriate SHPO(s) to develop protocols (a) to involve the SHPO(s) early in BLM planning, (b) to maximize the benefits of data sharing, (c) to explore new means for delivering benefits of historic preservation to the public, and (d) to guide BLM field office managers and cultural heritage staffs in applying the revised national BLM policies and procedures in ways adjusted to the individual State's cultural, historical, geographical, and administrative context.

- The Preservation Board would certify BLM offices as qualified to operate under the agreement, dependent on the availability of appropriate professional expertise, on managers' and

staffs' completion of training, on appropriate staff duty assignments, and on completion of signed BLM/SHPO protocols to regularize day-to-day working relationships.

- A significant aim in revising standards for project planning, review, and dispute resolution would be to integrate them more fully with other BLM responsibilities and procedures, especially those relating to long-range planning under the Federal Land Policy and Management Act and environmental review under the National Environmental Policy Act.

- Enhanced cooperation and communication among the BLM, the SHPOs, and the Council would feature early and continuing SHPO and Council involvement with BLM's activities, rather than having historic preservation considerations come toward the end of decision making when options are few.

- The BLM Preservation Board would regularly monitor and report actions under the agreement to the SHPOs, the Council, and the BLM Directorate. The SHPO and the Council would join the Preservation Board in carrying out field reviews of selected BLM State programs and field offices.

The agreement would not take effect directly upon signing. Rather, the BLM would be obligated to establish the Preservation Board and, in cooperation with the Council and each affected SHPO, to revise the BLM Manuals and Handbooks; to develop BLM/SHPO protocols; to train field managers and staffs; and to certify offices qualified to operate under the revised procedures, before there could be a change in the way Section 106 compliance is conducted. Individual BLM States would come under the new procedures one at a time over the course of a year or more.

Once in effect, the agreement would not diminish the nature of public participation and Native American involvement currently available in BLM's Section 106 compliance process. To the contrary, the effectiveness should be enhanced as a result of incorporating guidance on public participation and tribal involvement directly in the revised BLM Manual procedures that will substitute for the standard Section 106 procedures.

A draft of the agreement, dated November 3, 1996, is available for examination. It may be obtained from Dr. John G. Douglas, Preservation Officer, Cultural Heritage Staff, Bureau of Land Management (240), 1849 C Street, N.W., Washington, D.C. 20240, telephone (202) 452-0327. The final text of the agreement will be subject to consideration of public comments and

internal review among the signing parties.

Tom Walker,

*Deputy Assistant Director, Renewable Resources and Planning.*

[FR Doc. 96-31759 Filed 12-13-96; 8:45 am]

BILLING CODE 4310-84-P

**Bodie Bowl Area Legislative Withdrawal and Routine Maintenance to Bishop Resource Management Plan, Public Notification; California**

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of legislative withdrawal.

**SUMMARY:** On October 31, 1994, the Bodie Protection Act of 1994 (Title X, Pub. L. 103-433; 108 Stat. 4509) withdrew approximately 7,560 acres of Federal lands from location and entry under the United States mining laws (30 U.S.C. Ch. 2 (1988)), the operation of the Mineral Leasing Act (30 U.S.C. 181 (1988)) or the Geothermal Steam Act of 1970 (30 U.S.C. 100 (1988)), and disposal of mineral materials under the Act of July 31, 1947, commonly known as the Materials Act of 1947 (30 U.S.C. 601 (1988)) for the protection of the Bodie Bowl area. This legislative withdrawal will remain in effect until terminated or modified by another Act of Congress. Additional non-Federal lands may be withdrawn under this legislative withdrawal, but only after they have been acquired by BLM and title has been accepted on behalf of the United States. Up to approximately 9,000 acres of land may be withdrawn under this legislative withdrawal. This is also notice of routine maintenance to the Bishop Resource Management Plan (RMP) to make minor adjustments to the boundary of the Bodie Bowl Area of Critical Environmental Concern (ACEC) so that the ACEC encompasses the same area as the Bodie Bowl area Legislative Withdrawal.

**EFFECTIVE DATE:** This legislative withdrawal was effective October 31, 1994, the date of enactment of the Bodie Protection Act of 1994. The routine maintenance to the Bishop RMP is effective on December 16, 1996.

**FOR FURTHER INFORMATION CONTACT:** Duane Marti, BLM California State Office (CA-931.4), 2135 Butano Drive, Sacramento, California 95825-0451; 916-979-2858.

**SUPPLEMENTARY INFORMATION:** In the Bodie Protection Act of 1994 (Title X, Pub. L. 103-433; 108 Stat. 4509), Congress found that: (1) the historic Bodie gold mining district was the site of the largest and best preserved

authentic ghost town in the western United States, (2) the Bodie Bowl area contained important natural, historical, and aesthetic resources, (3) Bodie was designated as a National Historic Landmark in 1961 and a California State Historic Park in 1962, is listed on the National Register of Historic Places, and is included in the Federal Historic American Building Survey, (4) the town of Bodie and the Bodie Bowl area are threatened by proposals to explore and extract minerals, which could threaten the resources described above, and (5) the California State Legislature, in 1990, requested the President and Congress to direct the Secretary of the Interior to protect the ghost town character, ambience, historic buildings, and scenic attributes of the town of Bodie and nearby areas. Pursuant to section 1004 of the Bodie Protection Act of 1994, Congress directed the Secretary of the Interior to publish a legal description of the Bodie Bowl area in the Federal Register.

1. Therefore, pursuant to the Bodie Protection Act of 1994 (Title X, Pub. L. 103-433, 108 Stat. 4509), on October 31, 1994, subject to valid existing rights, on October 31, 1994, the following described Federal lands were withdrawn from location and entry under the United States mining laws (30 U.S.C. Ch. 2 (1988)), the operation of the Mineral Leasing Act (30 U.S.C. 181 (1988)) or the Geothermal Steam Act of 1970 (30 U.S.C. 100 (1988)), and disposal of mineral materials under the Act of July 31, 1947, commonly known as the Materials Act of 1947 (30 U.S.C. 601(1988)) for the protection of the Bodie Bowl area:

Mount Diablo Meridian

T. 4 N., R. 26 E.,

Sec. 1, SE $\frac{1}{4}$ NE $\frac{1}{4}$ , S $\frac{1}{2}$ SW $\frac{1}{4}$ , and SE $\frac{1}{4}$ ;

Sec. 11, NE $\frac{1}{4}$ NE $\frac{1}{4}$ ;

Sec. 12, N $\frac{1}{2}$ , N $\frac{1}{2}$ SW $\frac{1}{4}$ , SE $\frac{1}{4}$ SW $\frac{1}{4}$ , and SE $\frac{1}{4}$ ;

Sec. 13, NE $\frac{1}{4}$ NE $\frac{1}{4}$ ;

T. 4 N., R. 27 E.,

Sec. 3, lot 11;

Sec. 4, S $\frac{1}{2}$ N $\frac{1}{2}$  and S $\frac{1}{2}$ ;

Sec. 5, S $\frac{1}{2}$ ;

Sec. 6, lots 5 to 7, inclusive, E $\frac{1}{2}$ SW $\frac{1}{4}$ , and SE $\frac{1}{4}$ ;

Sec. 7, lots 1 to 4, inclusive, E $\frac{1}{2}$ , and E $\frac{1}{2}$ W $\frac{1}{2}$ ;

Sec. 8, N $\frac{1}{2}$ , SW $\frac{1}{4}$ , N $\frac{1}{2}$ SE $\frac{1}{4}$ , and SW $\frac{1}{4}$ SE $\frac{1}{4}$ ;

Sec. 9, all Federal land in section;

Sec. 10, lots 2, 3, 7, and 8, and W $\frac{1}{2}$ ;

Sec. 11, W $\frac{1}{2}$ NW $\frac{1}{4}$ ;

Sec. 14, SW $\frac{1}{4}$ NE $\frac{1}{4}$ , W $\frac{1}{2}$ NW $\frac{1}{4}$ ,

SE $\frac{1}{4}$ NW $\frac{1}{4}$ , SW $\frac{1}{4}$ , and NW $\frac{1}{2}$ SE $\frac{1}{4}$ ;

Sec. 15, lots 1 to 8, inclusive, and W $\frac{1}{2}$ ;

Sec. 16, all Federal land in section;

Sec. 17, W $\frac{1}{2}$ NE $\frac{1}{4}$ , W $\frac{1}{2}$ , and all Federal land in SE $\frac{1}{4}$ SE $\frac{1}{4}$ ;

Sec. 18, lot 1, NE $\frac{1}{4}$ , E $\frac{1}{2}$ NW $\frac{1}{4}$ , and NE $\frac{1}{4}$ SE $\frac{1}{4}$ ;

Sec. 20, lots 1, 2, 3, and 8, and all Federal land in N $\frac{1}{2}$ ;

Sec. 21, lots 1, 3, 4, and 5, and all Federal land in N $\frac{1}{2}$ ;

Sec. 22, lots 1 to 4, inclusive, lots 7 and 8, and NW $\frac{1}{4}$ ; and

Sec. 23, N $\frac{1}{2}$ NW $\frac{1}{4}$  and SW $\frac{1}{4}$ NW $\frac{1}{4}$ .

The areas described aggregate approximately 7,560 acres in Mono County.

2. As identified in the *Bishop Resource Management Plan Record of Decision* (ROD), approved on March 25, 1993, the following described non-Federal lands, except for those lands owned by the State of California, are desirable for acquisition to facilitate protection of the Bodie Bowl area. In the event, any of these non-Federal lands, except for those lands owned by the State of California, return to public ownership by donation, purchase, or exchange, they would also become subject to this legislative withdrawal, only upon acceptance of title by BLM on behalf of the United States, pursuant to standards and regulations promulgated by the U. S. Department of Justice.

The following described non-Federal lands are located within the boundary of the Bodie Bowl area:

Mount Diablo Meridian

T. 4 N., R. 27 E.,

Sec. 9, all non-Federal lands;

Sec. 10, all non-Federal lands;

Sec. 11, W $\frac{1}{2}$ SW $\frac{1}{4}$  and SE $\frac{1}{4}$ SW $\frac{1}{4}$ ;

Sec. 14, NW $\frac{1}{4}$ NE $\frac{1}{4}$  and NE $\frac{1}{4}$ NW $\frac{1}{4}$ ;

Sec. 16, all non-Federal lands;

Sec. 17, all non-Federal lands;

Sec. 20, all non-Federal lands; and

Sec. 21, all non-Federal lands.

The areas described aggregate approximately 1,440 acres in Mono County.

3. This legislative withdrawal will remain in effect until terminated or modified by another Act of Congress.

4. The legal description of the Bodie Bowl ACEC, as described in the ROD, is corrected to conform to the legal descriptions in paragraphs 1 and 2 above.

Dated: December 3, 1996.

David McInay,

*Chief, Branch of Lands.*

[FR Doc. 96-31758 Filed 12-13-96; 8:45 am]

BILLING CODE 4310-40-P

**Bureau of Reclamation**

**Interim South Delta Program, Central Valley, California, INT-DES 96-35**

**AGENCY:** Bureau of Reclamation (Interior).

**ACTION:** Notice to extend the review and comment period and to hold an additional public hearing on the draft

environmental impact report/draft environmental impact statement.

**SUMMARY:** On August 14, 1996, the Bureau of Reclamation (Reclamation) and the California Department of Water Resources (DWR) released a joint draft environmental impact report/draft environmental impact statement (DEIR/DEIS) for the Interim South Delta Program (ISDP). The review and comment period was to end on December 6, 1996. Reclamation and DWR are extending the review and comment period to allow more extensive review by interested parties. Also, an additional public hearing has been scheduled.

**DATES:** The review and comment period has been extended to January 31, 1997. The additional public hearing will be held on January 22, 1997, from 7:00 p.m. to 9:30 p.m.

**ADDRESSES:** The public hearing will be held at the Tracy Inn, 30 West 11th Street, Tracy, California. Requests for copies of either the Executive Summary or the entire DEIR/DEIS should be sent to Ms. Judy Fong, Department of Water Resources, 1416 Ninth Street, Room 215-28, Sacramento, CA 95814; Telephone: (916) 653-3496; Fax: (916) 653-6077. Written comments on the DEIR/DEIS should be addressed to Mr. Stephen Roberts, Department of Water Resources, 1416 Ninth Street, Room 215-20A, Sacramento, CA 95814; Telephone: (916) 653-2118.

Copies of the DEIR/DEIS are also available for public inspection and review at the following locations:

- Bureau of Reclamation, Regional Director, Attn: MP-152, 2800 Cottage Way, Sacramento, CA 95825-1898; Telephone: (916) 979-2482
- Bureau of Reclamation, Central California Area Office, Attn: CC-102, 7794 Folsom Dam Road, Folsom CA 95630; Telephone: (916) 989-7255
- The Resources Building—Water Information Center, 1416 Ninth Street, Sacramento, CA 95610-7632; Telephone: (916) 653-2118
- Department of Water Resources, Delta Field Division, West Kelso Road, Byron, CA
- Department of Fish and Game, Bay-Delta Division Headquarters, 4001 North Wilson Way, Stockton, CA

Copies of the DEIR/DEIS are also available for inspections at the following public libraries:

- Natural Resources Library, U.S. Department of the Interior, 1849 C Street NW, Main Interior Building, Washington DC 20240-0001
- Library, Bureau of Reclamation, 6th Avenue and Kipling, Room 167,

Building 67, Denver Federal Center, Denver, CO 80225-0007

- Sacramento Main Library, 8th and I Street, Sacramento, CA 95814
- Stockton Main Library, 605 N. El Dorado Street, Stockton, CA 95205
- San Joaquin Delta College, Goleman Library, 5151 Pacific Avenue, Stockton, CA 95205
- Tracy Public Library, 20 E. Eaton Avenue, Tracy, CA 95376

**FOR FURTHER INFORMATION CONTACT:** For additional information, please contact Mr. Alan R. Candlish, Study Manager, CC-102, Bureau of Reclamation, 7794 Folsom Dam Road, Folsom CA 95630, Telephone: (916) 989-7255; Mr. Stephen Roberts at (916) 653-2118; or Lee Kerin, DWR, (916) 654-6515.

**SUPPLEMENTARY INFORMATION:** The ISDP facilities are designed to improve water levels and circulation in the south Delta channels to benefit local agriculture and fish habitat and to allow the State Water Project (SWP) to increase winter water diversions into Clifton Court Forebay (Forebay). The Forebay is adjacent to the SWP's Harvey O. Banks Delta Pumping Plant, where water is pumped into the California Aqueduct. The proposed project would enable the Banks plant to take advantage of high winter flows and expand pumping from 6,700 to 10,300 cubic feet per second. These surplus flows could then be stored in reservoirs south of the Delta for delivery later in the year.

The basic components of the program are:

- Three permanent flow control structures in the south Delta, one on Middle River ½ mile upstream of the confluence of Middle River, Trapper Slough, and North Canal; one on Old River ½ mile upstream of the Delta-Mendota Canal intake; and one on Grant Line Canal ½ mile east of Old River.
- A fish control structure on Old River ½ mile downstream of the confluence with San Joaquin River;
- A new intake structure at the north end of Clifton Court Forebay; and
- Dredging of approximately 5 miles of Old River, north of the forebay.

Dated: December 9, 1996.

Roger K. Patterson,

*Regional Director.*

[FR Doc. 96-31862 Filed 12-13-96; 8:45 am]

BILLING CODE 4310-94-P

## DEPARTMENT OF JUSTICE

### Notice of Lodging of Consent Judgment Under the Clean Water Act

In accordance both with a court order dated November 19, 1996, and

Department Policy, 28 C.F.R. § 50.7, notice is hereby given that a proposed Consent Decree in *United States v. The Telluride Company*, Civil No. 93-K-2181 (D. Colo.), was lodged with the United States District Court for the District of Colorado on October 15, 1996.

The November 19, 1996, Court order required, among other things, that the proposed Consent Decree be published in the Federal Register in each of three consecutive weeks. This is the second of the three publications.

The proposed Consent Decree concerns alleged violations of section 301(a) of the Clean Water Act, 33 U.S.C. § 1311(a), resulting from the defendants' unauthorized filling of over 46 acres of alpine wetlands as part of their mountain resort development near Telluride, San Miguel County, Colorado. As part of the proposed Consent Decree, defendants will be required to pay a penalty of \$1.1 million dollars and to implement a 16-acre restoration project to the satisfaction of the U.S. Environmental Protection Agency. Defendants have also agreed to abide by a site-wide management plan for the continued protection and preservation of the remaining wetlands that they own. The proposed Consent Decree preserves the United States' right to appeal an earlier ruling of the Court. If the appeal is successful, defendants will be obligated to perform an additional 15-acres of wetland restoration along the San Miguel River and pay an additional penalty of \$50,000.

The Clerk of the United States District Court will receive written comments relating to the proposed Consent Decree until January 22, 1997. Comments should be addressed to James R. Manspeaker, Clerk of the District Court, United States Courthouse, 1929 Stout Street, Denver, CO 80294. Please send a copy of any comments to Robert H. Foster, U.S. Department of Justice, Environmental Defense Section, 999 18th Street, Suite 945, Denver, CO 80202. The comments should refer to *United States v. The Telluride Company* Civil No. 93-K-2181 (D. Colo.), and should also make reference to DJ # 90-5-1-4-293.

The proposed Consent Judgment may be examined at three (3) locations: (1) the Clerk's Office, United States District Court for the District of Colorado, 1929 Stout Street, Denver, CO 80295, (2) the Clerk's Office, San Miguel County Courthouse, 305 West Colorado, Telluride, CO 81435 and (3) the Clerk's Office, United States District Court for the District of Colorado, 402 Rood

Avenue, Room 301, Grand Junction, CO 81501.

Letitia J. Grishaw,

Chief, Environmental Defense Section,  
Environment & Natural Resources Division.

[FR Doc. 96-30992 Filed 12-13-96; 8:45 am]

BILLING CODE 4410-15-M

## Office of Justice Programs

### Office of Juvenile Justice and Delinquency Prevention; Agency Information Collection Activities: Proposed Collection; Comment Request

**ACTION:** Notice of information collection under review; survey of juvenile probation.

The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted until February 14, 1997.

Request written comments and suggestions from the public and affected agencies concerning the proposed collection of information. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

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

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

(4) Minimize the burden of the collection of information on those who are to respond, including 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.

Comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time should be directed to Joseph Moone (phone number and address listed below). If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Joseph Moone, 202-307-5929, Office of Juvenile Justice and Delinquency Prevention, Office of

Justice Programs, U.S. Department of Justice, Room 782, 633 Indiana Avenue, NW, Washington, DC 20531.

Overview of this information collection:

(1) Type of Information Collection: New data collection.

(2) Title of the Form/Collection: Survey of Juvenile Probation.

(3) Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: Office of Juvenile Justice and Delinquency Prevention, Office of Justice Program, United States Department of Justice.

(4) Affected public who will be asked or required to respond, as well as a brief abstract: Primary: State and Local juvenile probation offices. Other: None. This data collection will gather basic information on the number of juveniles on probation and the number of juvenile probation officers who monitor their progress.

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond: 1800 respondents at 1.5 hours per response.

(6) An estimate of the total public burden (in hours) associated with the collection: 2,700 biennial hours.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW, Washington, DC 20530.

Dated: December 10, 1996.

Robert B. Briggs,

Department Clearance Officer, United States  
Department of Justice.

[FR Doc. 96-31810 Filed 12-13-96; 8:45 am]

BILLING CODE 4410-18-M

## NATIONAL CAPITAL PLANNING COMMISSION

### Office of the Executive Director; Notice of Agency Recordkeeping/Reporting Requirements Under Emergency Review by the Office of Management and Budget

**AGENCY:** National Capital Planning Commission.

**SUMMARY:** The National Capital Planning Commission has submitted the following emergency processing public information collection request (ICR) to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995 (Pub. L. 104-13 44 U.S.C. Chapter 35).

OMB approval has been requested by February 28, 1997.

**DATES:** Written comments and questions should be submitted on or before February 18, 1997.

**ADDRESSES:** Direct all comments and questions about the ICR listed below to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer, Office of Management and Budget, Room 10325, Washington, DC 20503 (202) 395-7316.

*Agency:* National Capital Planning Commission.

*Title:* Monumental Core Framework Public Survey.

*Type of Request:* New collection.

*OMB Number:* 3215-0006.

*Frequency:* 1.

*Affected Public:* U.S. citizens.

*Number of Respondents:* 9,500.

*Estimated Time per Respondent:* 15 minutes.

*Total burden hours:* 2,375.

**FOR FURTHER INFORMATION CONTACT:** A copy of this individual ICR, with applicable supporting documentation, may be obtained by calling the National Capital Planning Commission Clearance Officer, Ann Marie Maloney at (202) 482-7200.

**SUPPLEMENTARY INFORMATION:** This voluntary survey is to collect public opinion about a proposed long-range plan for the National Capital, as part of NCPC's responsibility to plan for the physical development of the National Capital pursuant to the National Capital Planning Act (40 U.S.C. 71). This information will be used to guide the Commission's adoption of the final plan so that the plan will reflect the priorities and concerns of the public.

Sandra H. Shapiro,

General Counsel, National Capital Planning Commission.

[FR Doc. 96-31838 Filed 12-13-96; 8:45 am]

BILLING CODE 7502-02-M

## NUCLEAR REGULATORY COMMISSION

[Docket No. 50-607]

### Notice of Application for Facility Operating License; McClellan Air Force Base Nuclear Radiation Center, Department of the Air Force

Notice is hereby given that the U.S. Nuclear Regulatory Commission (the Commission) has received an application from the Department of the Air Force dated October 23, 1996, filed pursuant to Section 104c of the Atomic Energy Act of 1954, as amended (the Act), for the necessary license to operate

a TRIGA nuclear reactor. The reactor is located at McClellan Air Force Base, Sacramento, California. It is proposed for operation at a steady state power level of 2 megawatts and with pulse maximum reactivity insertions of \$1.75 for educational training and research.

A copy of the application is available for public inspection at the Commission's Public Document Room, the Gelman Building, at 2120 L Street, NW., Washington, DC 20037.

Dated at Rockville, Maryland, this 9th day of December 1996.

For the Nuclear Regulatory Commission.  
Seymour H. Weiss,

*Director, Non-Power Reactors and Decommissioning Project Directorate, Division of Reactor Program Management, Office of Nuclear Reactor Regulation.*

[FR Doc. 96-31812 Filed 12-13-96; 8:45 am]

BILLING CODE 7590-01-P

**[Docket Nos. 50-266 and 50-301]**

**Wisconsin Electric Power Company; Point Beach Nuclear Plant, Environmental Assessment and Finding of No Significant Impact**

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from certain requirements of its regulations to Facility Operating License Nos. DPR-24 and DPR-27, issued to Wisconsin Electric Power Company, (the licensee), for operation of Point Beach Nuclear Plant, Unit Nos. 1 and 2, located in Manitowoc County, Wisconsin.

**Environmental Assessment**

*Identification of the Proposed Action*

The proposed action would allow the licensee to utilize the American Society of Mechanical Engineers Boiler and Pressure Vessel Code (ASME Code) Case N-514, "Low Temperature Overpressure Protection," to determine its low temperature overpressure protection (LTOP) setpoints and is in accordance with the licensee's application for exemption dated July 1, 1996, as supplemented November 18, 1996. The proposed action requests an exemption from certain requirements of 10 CFR 50.60, "Acceptance Criteria for Fracture Prevention Measures for Lightwater Nuclear Power Reactors for Normal Operation," to allow application of an alternate methodology to determine the LTOP setpoints for Point Beach Nuclear Plant, Unit Nos. 1 and 2. The proposed alternate methodology is consistent with guidelines developed by the ASME Working Group to define pressure limits during LTOP events that avoid certain

unnecessary operational restrictions, provide adequate margins against failure of the reactor pressure vessel, and reduce the potential for unnecessary activation of pressure-relieving devices used for LTOP. These guidelines have been incorporated into Code Case N-514, "Low Temperature Overpressure Protection," which has been approved by the ASME Code Committee. The content of Code Case N-514 has been incorporated into Appendix G of Section XI of the ASME Code and published in the 1993 Addenda to Section XI. However, 10 CFR 50.55a, "Codes and Standards," and Regulatory Guide 1.147, "Inservice Inspection Code Case Acceptability" have not been updated to reflect the acceptability of Code Case N-514.

The philosophy used to develop Code Case N-514 guidelines is to ensure that the LTOP limits are still below the pressure/temperature (P/T) limits for normal operation but allow the pressure that may occur with activation of pressure-relieving devices to exceed the P/T limits, provided acceptable margins are maintained during these events. This philosophy protects the pressure vessel from LTOP events and still maintains the Technical Specifications P/T limits applicable for normal heatup and cooldown in accordance with 10 CFR Part 50, Appendix G, and Sections III and XI of the ASME Code.

*The Need for the Proposed Action*

Pursuant to 10 CFR 50.60, all lightwater nuclear power reactors must meet the fracture toughness requirements for the reactor coolant pressure boundary as set forth in 10 CFR Part 50, Appendix G, which defines P/T limits during any condition of normal operation including anticipated operational occurrences and system hydrostatic tests, to which the pressure boundary may be subjected over its service lifetime. It is specified in 10 CFR 50.60(b) that alternatives to the described requirements in 10 CFR Part 50, Appendix G, may be used when an exemption is granted by the Commission pursuant to 10 CFR 50.12.

To prevent transients that would produce excursions exceeding the 10 CFR Part 50, Appendix G, P/T limits while the reactor is operating at low temperatures, the licensee installed an LTOP system. The LTOP system includes pressure-relieving devices in the form of power-operated relief valves (PORVs) that are set at a pressure below the LTOP enabling temperature that would prevent the pressure in the reactor vessel from exceeding the P/T limits of 10 CFR Part 50, Appendix G. To prevent these valves from lifting as

a result of normal operating pressure surges (e.g., reactor coolant pump starting or stopping) with the reactor coolant system in a water solid condition, the operating pressure must be maintained below the PORV setpoint. The licensee's current LTOP analysis indicates that using this 10 CFR Part 50, Appendix G, safety margin to determine the PORV setpoint requires operation of the plant in a narrow range of pressure that could result in the lifting of the PORVs during normal heatup and cooldown operation. Using Code Case N-514 would allow the licensee to operate without a restriction on the number of operating reactor coolant pumps in the determination of the LTOP setpoint analysis. Therefore, the licensee proposed that in determining the PORV setpoint for LTOP events for Point Beach, the allowable pressure be determined using the safety margins developed in an alternate methodology in lieu of the safety margins required by 10 CFR Part 50, Appendix G. The alternate methodology is consistent with ASME Code Case N-514. The content of Code Case N-514 was incorporated into Appendix G of Section XI of the ASME Code and published in the 1993 Addenda to Section XI.

An exemption from 10 CFR 50.60 is required to use the alternate methodology for calculating the maximum allowable pressure for LTOP considerations. By application dated July 1, 1996, as supplemented November 18, 1996, the licensee requested an exemption from 10 CFR 50.60 to allow it to utilize the alternate methodology of Code Case N-514 to compute its LTOP setpoints.

*Environmental Impacts of the Proposed Action*

Appendix G of the ASME Code requires that the P/T limits be calculated (a) using a safety factor of 2 on the principal membrane (pressure) stresses, (b) assuming a flaw at the surface with a depth of one-quarter ( $1/4$ ) of the vessel wall thickness and a length of 6 times its depth, and (c) using a conservative fracture toughness curve that is based on the lower bound of static, dynamic, and crack arrest fracture toughness tests on material similar to the Point Beach reactor vessel material.

In determining the PORV setpoint for LTOP events, the licensee proposed the use of safety margins based on an alternate methodology consistent with the proposed ASME Code Case N-514 which allows determination of the setpoint for LTOP events such that the maximum pressure in the vessel will not exceed 110 percent of the P/T limits of the existing ASME Appendix G. This

results in a safety factor of 1.8 on pressure. All other factors, including assumed flaw size and fracture toughness, remain the same. Although this methodology would reduce the safety factor on pressure, it was demonstrated in the Bases of ASME Code Case N-514 that due to the isothermal nature of LTOP events, the margins with respect to toughness for LTOP transients is within the range provided by ASME, Section XI, Appendix G, for normal heatup and cooldown in the low temperature range. Thus, applying Code Case N-514 will satisfy the underlying purpose of 10 CFR 50.60 for fracture toughness requirements. Further, by relieving the operational restrictions, the potential for undesirable lifting of the PORV would be reduced, thereby improving plant safety.

The change will not increase the probability or consequences of accidents, no changes are being made in the types of any effluents that may be released offsite, and there is no significant increase in the allowable individual or cumulative occupational radiation exposure. Accordingly, the Commission concludes that there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential nonradiological impacts, the proposed action does involve features located entirely within the restricted area as defined in 10 CFR Part 20. It does not affect nonradiological plant effluents and has no other environmental impact. Accordingly, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed action.

#### *Alternatives to the Proposed Action*

Since the Commission has concluded there is no measurable environmental impact associated with the proposed action, any alternatives with equal or greater environmental impact need not be evaluated. As an alternative to the proposed action, the staff considered denial of the proposed action. Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

#### *Alternative Use of Resources*

This action does not involve the use of any resources not previously considered in the Final Environmental Statement for Point Beach Nuclear Plant, Unit Nos. 1 and 2.

#### *Agencies and Persons Consulted*

In accordance with its stated policy, on November 29, 1996, the staff consulted with the Wisconsin State official, Ms. Sarah Jenkins, of the Public Service Commission of Wisconsin, regarding the environmental impact of the proposed action. The State official had no comments.

#### *Finding of No Significant Impact*

Based upon the environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letters dated July 1 and November 18, 1996, which are available for public inspection at the Commission's Public Document Room, The Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Joseph P. Mann Library, 1516 Sixteenth Street, Two Rivers, Wisconsin 54241.

Dated at Rockville, Maryland, this 10th day of December 1996.

For the Nuclear Regulatory Commission,  
Linda L. Gundrum,  
*Project Manager, Project Directorate III-1,  
Division of Reactor Projects—III/IV, Office of  
Nuclear Reactor Regulation.*

[FR Doc. 96-31813 Filed 12-13-96; 8:45 am]

BILLING CODE 7590-01-P

[Docket Nos. 50-266, 50-301, 72-5, 72-7, 72-13, 72-1007]

#### **All Users of VSC-24 Dry Storage Casks; Receipt of Petition for Director's Decision Under 10 CFR 2.206**

Notice is hereby given that by a Petition filed pursuant to 10 CFR 2.206 on September 30, 1996, Citizens' Utility Board (Petitioner) requested that the NRC (1) order Wisconsin Electric Power Company (WEPCO) to retain 24 empty and available spaces in the Point Beach Nuclear Plant spent fuel pool to accommodate retrieval of spent fuel from a VSC-24 cask until such time as WEPCO has other options available to remove spent fuel from the cask and (2) prohibit loading of any VSC-24 casks until the certificate of compliance, the safety analysis report, and the safety evaluation report are amended to contain operating controls and limits to prevent hazardous conditions. As part of the first request, the Petitioner asked that the NRC take immediate action to

issue an order preventing offloading during the refueling outage which was scheduled to begin October 6, 1996.

The Petition has been referred to the Office of Nuclear Reactor Regulation (NRR). By letters dated October 11, 1996, and December 10, 1996, the Director of NRR denied the Petitioner's request for immediate action. As provided by 10 CFR 2.206, further action will be taken within a reasonable time.

A copy of the Petition is available for inspection at the Commission's Public Document Room at 2120 L Street, NW., Washington, DC.

Dated at Rockville, Maryland, this 10th day of December 1996.

For the Nuclear Regulatory Commission,  
Frank J. Miraglia,  
*Acting Director, Office of Nuclear Reactor  
Regulation.*  
[FR Doc. 96-31811 Filed 12-13-96; 8:45 am]  
BILLING CODE 7590-01-P

#### **OFFICE OF PERSONNEL MANAGEMENT**

#### **Submission for OMB Review; Comment Request Review of a New Information Collection; Standard Form 2817**

**AGENCY:** Office of Personnel Management.

**ACTION:** Notice.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995 (Public Law 104-13, May 22, 1995), this notice announces that the Office of Personnel Management is submitting to the Office of Management and Budget a request for clearance of a new information collection. SF 2817, Federal Employees' Group Life Insurance Election, is used to enroll or change elections under the Federal Employee's Group Life Insurance Program. This form is proposed for clearance because Federal employees and retirees can now assign (give up ownership of) their insurance coverage. Assignees may now use the SF 2817 to make election changes to decrease the employee's or retiree's coverage. Since assignees are members of the public, OMB clearance is now required for this form. We are clearing this form for assignees only.

We estimate 100 forms are completed annually by assignees. Each form takes approximately 15 minutes to complete. The annual estimated burden is 25 hours.

For copies of this proposal, contact Jim Farron on (202) 418-3208, or E-mail to [jmfarron@mail.opm.gov](mailto:jmfarron@mail.opm.gov)

**DATES:** Comments on this proposal should be received on or before January 15, 1997.

**ADDRESSES:** Send or deliver comments to—

Laura Lawrence, Program Analyst,  
Insurance Operations Division,  
Retirement and Insurance Service,  
U.S. Office of Personnel Management,  
1900 E Street, NW, Room 3415,  
Washington, DC 20415-0001

and

Joseph Lackey, OPM Desk Officer,  
Office of Information and Regulatory  
Affairs, Office of Management and  
Budget, New Executive Office  
Building, Room 10235, Washington,  
DC 20503.

**FOR FURTHER INFORMATION CONTACT:**

Mary Beth Smith-Toomey, Management  
Services Division, (202) 606-0623.

Office of Personnel Management

Lorraine A. Green,

*Deputy Director.*

[FR Doc. 96-31742 Filed 12-13-96; 8:45 am]

**BILLING CODE 6325-01-M**

**Submission for OMB Review;  
Comment Request for Review of a  
Revised Information Collection:  
Standard Form 3112**

**AGENCY:** Office of Personnel  
Management.

**ACTION:** Notice.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995 (Public Law 104-13, May 22, 1995), this notice announces that the Office of Personnel Management has submitted to the Office of Management and Budget a request for review of a revised information collection. Standard Form 3112, CSRS/FERS Documentation in Support of Disability Retirement Application, collects information from applicants for disability retirement so that OPM can determine whether to approve a disability retirement. The applicant will only complete Standard Forms 3112A and 3112C. Standard Forms: 3112B, 3112D, and 3112E will be completed by the immediate supervisor and the employing agency of the applicant.

Approximately 12,100 Standard Form 3112, SF 3112A and SF 3112C will be completed annually. The SF 3112A requires approximately 30 minutes to complete and the SF 3112C requires approximately 60 minutes to complete. The annual burden is 12,775 hours.

For copies of this proposal, contact Jim Farron on (202) 418-3208, or E-mail to [jmfarron@mail.opm.gov](mailto:jmfarron@mail.opm.gov)

**DATES:** Comments on this proposal should be received on or before January 15, 1997.

**ADDRESS:** Send or deliver comments to—

Lorraine E. Dettman, Chief, Operations  
Support Division, Retirement and  
Insurance Service, U.S. Office of  
Personnel Management, 1900 E Street,  
NW, Room 3349 Washington, DC  
20415

and

Joseph Lackey, OPM Desk Officer,  
Office of Information & Regulatory  
Affairs, Office of Management &  
Budget, New Executive Office  
Building, NW, Room 10235,  
Washington, DC 20503.

**FOR INFORMATION REGARDING**

**ADMINISTRATIVE COORDINATION—CONTACT:**  
Mary Beth Smith-Toomey, Management  
Services Division, (202) 606-0623.

U.S. Office of Personnel Management.

Lorraine A. Green,

*Deputy Director.*

[FR Doc. 96-31743 Filed 12-13-96; 8:45 am]

**BILLING CODE 6325-01-M**

**SECURITIES AND EXCHANGE  
COMMISSION**

**Issuer Delisting; Notice of Application  
To Withdraw From Listing and  
Registration; (CAM Designs, Inc.,  
Class A Common Stock, \$0.001 Par  
Value, Units (Consisting of two Shares  
of Class A Common Stock and one  
Class A Warrant); Redeemable Class A  
Warrants Expiring July 23, 2000) File  
No. 1-13886**

December 10, 1996.

CAM Design, Inc. ("Company") has filed an application with the Securities and Exchange Commission ("Commission"), pursuant to Section 12(d) of the Securities Exchange Act of 1934 ("Act") and Rule 12dd2-2(d) promulgated thereunder, to withdraw the above specified securities ("Securities") from listing and registration on the Pacific Stock Exchange, Inc. ("PSE").

The reasons alleged in the application for withdrawing the Securities from listing and registration includes the following:

According to the Company, the Common Stock and the Warrants are also listed on the NASDAQ Stock Market and the Units are also listed on the NASD Electronic Bulletin Board, whereas trading in the Securities on the Exchange has been limited; and the Company seeks to reduce its expenses; and in light of the foregoing, the

Company deems it to be in its best interests from listing and registration on the Exchange.

Any interested person may, on or before January 1, 1997, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549, facts bearing upon whether the application has been made in accordance with the rules of the exchanges and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of  
Market Regulation, pursuant to delegated  
authority.

Jonathan G. Katz,

*Secretary.*

[FR Doc. 96-31784 Filed 12-13-96; 8:45 am]

**BILLING CODE 8010-01-M**

**Sunshine Act Meeting**

**"FEDERAL REGISTER" CITATION OF  
PREVIOUS ANNOUNCEMENT:** [61FR 64933,  
December 9, 1996].

**STATUS:** Closed Meeting.

**PLACE:** 450 Fifth Street, N.W.,  
Washington, D.C.

**DATE PREVIOUSLY ANNOUNCED:** December  
9, 1996.

**CHANGE IN THE MEETING:** Cancellation.

The closed meeting scheduled for  
Thursday, December 12, 1996, at 10:00 a.m.,  
has been cancelled.

At times, changes in Commission  
priorities require alterations in the  
scheduling of meeting items. For further  
information and to ascertain what, if  
any, matters have been added, deleted  
or postponed, please contact: The Office  
of the Secretary (202) 942-7070.

Dated: December 12, 1996.

Jonathan G. Katz,

*Secretary.*

[FR Doc. 96-31959 Filed 12-12-96; 11:29  
am]

**BILLING CODE 8010-01-M**

**Agency Meetings**

Notice is hereby given, pursuant to  
the provisions of the Government in the  
Sunshine Act, Pub. L. 94-409, that the  
Securities and Exchange Commission  
will hold the following meetings during  
the week of December 16, 1996.

An open meeting will be held on  
Wednesday, December 18, 1996, at 10

a.m. A closed meeting will be held on Friday, December 20, 1996, at 10 a.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c) (4), (8), (9)(A) and (10) and 17 CFR 200.402(a) (4), (8), (9)(i) and (10), permit consideration of the scheduled matters at the closed meeting.

Commissioner Johnson, as duty officer, voted to consider the items listed for the closed meeting in a closed session.

The subject matter of the open meeting scheduled for Wednesday, December 18, 1996, at 10 a.m., will be:

(1) Consideration of whether to adopt a new anti-manipulation regulation, Regulation M, and Rules 100 through 105 thereunder, governing securities offerings. The new regulations would simplify, modify, and in some cases, eliminate provisions that otherwise restrict the activities of issuers, underwriters, and others participating in a securities offering. Regulation M would be adopted under various provisions of the Securities Act of 1933 and the Securities Exchange Act of 1934 ("Exchange Act"), among other statutory provisions, and would replace Rules 10b-6, 10b-6A, 10b-7, 10b-8, and 10b-21 under the Exchange Act. The Commission also will consider related amendments to Items 502(d) and 508 of Regulations S-B and S-K, and to Rules 10b-18 and 17a-2 under the Exchange Act. Technical amendments to various rules and schedules to reflect the adoption of Regulation M also will be considered. For further information, contact M. Blair Corkran or Alan Reed at (202) 942-0772.

(2) Consideration of whether to adopt an amendment to Rule 13e-4 under the Securities Exchange Act of 1934 and to issue a class exemption from Rule 10b-13, and a temporary class exemption from Rule 10b-6, under the Securities Exchange Act of 1934 to eliminate the record date requirement from paragraph (h)(5) of Rule 13e-4 and to permit continuous odd-lot tender offers by issuers. For further information, please contact Lauren C. Mullen at (202) 942-0772.

(3) Consideration of whether to propose for public comment rules 2a51-1, 2a51-2, 2a51-3, 3c-1, 3c-5, 3c-6 and 3c-7 under the Investment Company Act of 1940. The rules would implement certain provisions of the National Securities Markets Improvement Act of 1996 (the "1996 Act") relating to private investment companies. The 1996 Act, among other things, amended section 3(c)(1) of the Investment Company Act (the existing exclusion from Investment Company Act regulation used by private investment companies) and added section 3(c)(7) to create a new exclusion from regulation under the Act for private investment companies

that consist solely of highly sophisticated "qualified purchasers" owning or investing on a discretionary basis a specified amount of "investments" ("section 3(c)(7) funds"). The new rules would: (i) define the term "investments" for purposes of the qualified purchaser definition; (ii) define the term "beneficial owner" for purposes of the provisions that permit an existing private investment company to convert into a section 3(c)(7) fund or to be treated as a qualified purchaser; (iii) address certain interpretative issues under section 3(c)(7); (iv) address certain interpretative issues under section 3(c)(1) resulting from changes made by the 1996 Act; (v) address investments in private investment companies by certain "knowledgeable employees"; and (vi) address transfers of securities issued by private investment companies when the transfer was caused by legal separation, divorce, death, and certain other involuntary events. For further information, please contact Kenneth J. Berman at (202) 942-0690.

(4) Consideration of whether to propose for public comment new rules and rule amendments under the Investment Advisers Act of 1940 ("Advisers Act") to implement provisions of the Investment Advisers Supervision Coordination Act (Title III of the National Securities Markets Improvement Act of 1996) ("Coordination Act") that reallocate regulatory responsibilities for investment advisers between the Commission and the states. The proposed rules would establish the process by which certain advisers would withdraw from Commission registration, exempt certain advisers from the Coordination Act's prohibition on Commission registration, and define certain terms. The Commission is also proposing amendments to several rules under the Advisers Act that would reflect the changes made by the Coordination Act. The proposed rules and rule amendments are intended to clarify provisions of the Coordination Act and thereby assist investment advisers in ascertaining their regulatory status after the effective date of the Coordination Act, April 9, 1997. For further information, please contact Robert E. Plaze at (202) 942-0716.

The subject matter of the closed meeting scheduled for Friday, December 20, 1996, at 10:00 a.m., will be:

Injunction and settlement of injunctive actions.

Institution and settlement of administrative proceedings of an enforcement nature.

Formal order of investigation.

Opinion.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain, what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary at (202) 942-7070.

Dated: December 11, 1996.

Jonathan G. Katz,  
Secretary.

[FR Doc. 96-31892 Filed 12-13-96; 8:58 am]

BILLING CODE 8010-01-M

[Release No. 34-38034; File No. SR-CHX-96-29]

### Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Chicago Stock Exchange, Incorporated Relating to Approval of Applicants to Membership

December 10, 1996.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. § 78s(b)(1), notice is hereby given that on December 6, 1996, the Chicago Stock Exchange, Incorporated ("CHX" 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 self-regulatory organization.<sup>1</sup> The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

#### I. Self-Regulatory Organizations Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Article I, Rule 5 and Rule 6 of its rules relating to approval procedures for applicants to membership. The specific criteria are set forth below.

#### *Chicago Stock Exchange, Incorporated Rules*

Additions are italicized; deletions [bracketed]

#### Article I

#### Procedure of Application Application

**RULE 5.** (a) Each application for membership shall be made in writing and be filed with the Secretary together with the names of two sponsors who shall be responsible individuals who have known the applicant sufficiently

<sup>1</sup> The proposal was originally filed with the Commission on November 6, 1996. The CHX subsequently submitted Amendment No. 1 to the filing. Amendment No. 1 amends Rule 6 of Article I to change the vote required by the Executive Committee to approve an applicant to membership. Currently, CHX rules require the affirmative vote of not less than two-thirds of the members of the Executive Committee present at the time of the vote. Amendment No. 1 changes the requirement to an affirmative vote of a majority of the Executive Committee present at the time of the vote. Letter from David T. Rusoff, Foley & Lardner to Karl J. Varner, Division of Market Regulation, SEC, dated December 6, 1996.

well and over a long enough period of time that they can unqualifiedly endorse the character and integrity of the applicant from their personal knowledge of him and of his business connections. All applicants shall be investigated by the staff to determine if the applicant meets the requirements for membership [before submission to the Executive Committee for consideration].

#### Staff [Recommendation] Determination

(b) If the staff [recommends] *determines* that the applicant is not [be elected] *qualified for election* to membership, the applicant shall be sent a statement of reasons therefor and may, within 15 days of the receipt thereof, file a request with the Executive Committee that it consider his or her application together with a written statement indicating why in his or her opinion the staff [recommendation] *determination* is in error or insufficient to preclude his or its election to membership.

#### Notice and Posting

(c) If the staff [recommends] *preliminary determines* that the applicant *is qualified for* [be elected to] membership or if the applicant files a request with the Executive Committee pursuant to paragraph (b), the name of the applicant, the sponsors' names and the name of the member or member organization from which the membership is to be transferred shall be posted upon the bulletin board on the Floor of the Exchange for ten business days and notice thereof mailed to all the members.

#### Posting and Voting on Membership

Rule 6. During the posting period for a membership application pursuant to Rule 5 of this Article, any member may file an objection to the election of the applicant to membership with the Chairman of the Executive Committee. The applicant shall be sent a statement of reasons for such objection and may, within 10 business days of the receipt thereof, file a written response thereto with the Executive Committee. *If the staff made a preliminary determination that the applicant is qualified for membership, if no objections were filed during the posting period, and if no material information that adversely reflects upon the applicant comes to the attention of the staff before the expiration of the posting period, the membership transfer shall automatically become effective at the opening of business on the first business day after the expiration of the posting period. If all three of these conditions are not present for a particular*

*applicant, [A] at the expiration of the posting period[,] staff shall so notify the applicant of such fact and the Executive Committee shall consider the posted application and vote upon the applicant for membership. The affirmative votes for [not less than two-thirds] a majority of the members of the Executive Committee present at the time of voting shall be required to elect. These [T] transfers shall become effective upon election to membership.*

In the event the applicant does not receive such [two-thirds] *majority* vote, he, *she* or it shall have the right to a hearing before the Executive Committee, conducted in accordance with procedures set forth in a notice of such hearing to be given to the applicant. Following the hearing, the Executive Committee shall again vote upon the applicant, a [two-thirds] *majority* vote of the members of the Executive Committee present at the time of voting being required to elect. [The applicant may petition the Board of Governors for review of any adverse determination made by the Executive Committee following a hearing, a two-thirds vote of the members of the Board present at the time of voting being required to elect.] The decision of the Executive Committee shall be final.

#### 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 self-regulatory organization 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 self-regulatory organization 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

Rules 5 and 6 of Article I of the Exchange's rules govern the application and approval process for applicants to Exchange membership. Once an application for membership has been submitted in writing to the Exchange, the rules require the staff to investigate the applicant's qualifications to determine if such applicant meets the requirements for membership. If the staff recommends that the applicant not

be admitted to membership, the applicant may appeal such staff recommendation to the Executive Committee. If the staff recommends that an applicant be elected to membership, the applicant then must go through a 10 business day posting period before membership may be transferred. The purpose of the 10 business day posting period is to allow any member to file an objection to the election of the applicant to membership. At the expiration of the posting period, the Executive Committee then must consider the applicant and vote upon the applicant for membership. These transfers become effective upon election to membership.

Because the Securities Exchange Act of 1934 requires the CHX to approve an applicant to become a member of the Exchange if such applicant meets the requirements of the Act and the Exchange's rules for becoming a member, the Executive Committee has limited discretion in approving a qualified applicant to become a member.

As a result, the purpose of the proposed rule change is to limit the role of the Executive Committee during the approval process to situations where an objection is raised, or material adverse information is received, during the posting period, or where the staff does not recommend an applicant for membership and the applicant decides to appeal. Under Rules 5 and 6 of Article I, as proposed to be amended, if the staff recommends an applicant for membership and if no objections are received, or material adverse information is received, during the subsequent posting period, the membership transfer would become effective at the beginning of the next business day following completion of the posting without any action taken by the Executive Committee. If the staff did not recommend an applicant for membership, or an objection was raised or material adverse information is received during the posting period, the existing procedure would come into play where the Executive Committee would hear an appeal, in the former situation, or would make a determination relating to the objection and either approve or disapprove the applicant in the latter situation.

This new procedure would eliminate the requirement that the Executive Committee perform the pro forma role of approving each membership transfer. At the same time, it would allow the Executive Committee to make a determination if there is some information brought to the Exchange's attention during the posting period

which was not known to the staff at the time of its investigation.

## 2. Basis

The proposed rule change is consistent with Section 6(b)(5) of the Act in that it is designed to promote just and equitable principles of trade, to remove impediments and to perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

### *(B) Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose a burden on competition.

### *(C) Self-Regulatory Organization's Statement of Comments on the Proposed Rule Change Received From Members, Participants or Others*

No written comments were solicited or received.

## III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference room. Copies are also available for

inspection and copying at principal office of the Chicago Stock Exchange. All submissions should refer to file number SR-CHX-96-29 and should be submitted by January 6, 1997.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30-3(a)(12).

Margaret H. McFarland,

*Deputy Secretary.*

[FR Doc. 96-31785 Filed 12-13-96; 8:45 am]

BILLING CODE 8010-01-M

## DEPARTMENT OF STATE

[Public Notice No. 2476]

### Additional Information for the Iran and Libya Sanctions Act

This notice provides additional information about the Iran and Libya Sanctions Act of 1996 (P.L. 104-172—"the Act").

#### Enactment and Delegation

The Act, signed by the President on August 5, 1996, does not replace or supersede existing sanctions against Iran or Libya. The Iranian Assets Control Regulations (31 C.F.R. Part 535), the Iranian Transactions Regulations (31 C.F.R. Part 560), and the Libyan Sanctions Regulations (31 C.F.R. Part 550) remain in effect and will continue to be administered by the Office of Foreign Assets Control at the U.S. Department of the Treasury.

On November 21, 1996, the President delegated to the Secretary of State responsibilities in the following sections of the Act, in some cases to be exercised in consultation with other agencies: Sections 4, 5, 6(1), 6(2), 9, and 10 (see, 61 Fed. Reg. 64249 (Dec. 4, 1996)). The Office of Economic Sanctions Policy will administer the Act for the Department of State.

Public inquiries regarding the Act may be sent to: Iran and Libya Sanctions Act Unit, Office of Economic Sanctions Policy, Room 3329, U.S. Department of State, 2201 C Street N.W., Washington, DC 20520; Attn.: John Finkbeiner, Telephone: (202) 647-7299.

#### Investment Definition

Section 14(9) INVESTMENT—The term "investment" means any of the following activities if such activity is undertaken pursuant to an agreement, or pursuant to the exercise of rights under such an agreement, that is entered into with the Government of Iran or a nongovernmental entity in Iran, or with the Government of Libya or a nongovernmental entity in Libya, on or after the date of enactment of the Act:

(A) The entry into a contract that includes responsibility for the development of petroleum resources located in Iran or Libya (as the case may be), or the entry into a contract providing for the general supervision and guarantee of another person's performance of such a contract.

(B) The purchase of a share of ownership, including an equity interest, in that development.

(C) The entry into a contract providing for the participation in royalties, earnings, or profits in that development without regard to the form of the participation.

The term "investment" does not include the entry into, performance, or financing of a contract to sell or purchase goods, services, or technology.

#### Timing of Investment

In order for a contract or the purchase of a share of ownership to be considered under the definition of investment it must be undertaken "pursuant to an agreement \* \* \* that is entered into with the Government of Iran or a nongovernmental entity in Iran, or with the Government of Libya or a nongovernmental entity in Libya on or after the date of enactment of the Act." The House Ways and Means Committee Report states that "Companies may perform existing contracts, and complete existing investments, such as subcontracts, farm-in arrangements, and the like in connection with contracts entered into prior to the date of enactment." The term "agreement" includes, inter alia, option contracts and contracts subject to extension.

#### What is "Responsibility for the Development of Petroleum Resources?"

Section 14(4) defines "development" as "the exploration for, or the extraction, refining, or transportation by pipeline of, petroleum resources." Therefore, the entry into a contract that includes responsibility for those activities could be considered an investment.

The investment definition specifically excludes contracts for the sale or purchase of goods, services or technology.

The definitions contained in Section 16 of the Export Administration Act (whose provisions are being carried out under the authority of the International Emergency Economic Powers Act) will be used for the terms "goods" and "technology." The term "good" is defined as "any article, natural or manmade substance, material, supply or manufactured product, including inspection and test equipment, and excluding technical data. "Technology" means "the information know-how (whether in tangible form, such as models, prototypes, drawings, sketches,

diagrams, blueprints, or manuals, or in intangible form, such as training or technical services) that can be used to design, produce, manufacture, utilize, or reconstruct goods, including software and technical data, but not the goods themselves."

With respect to the definition of "services", the House Ways and Means Committee Report states that the term investment is meant to include "entry into a contract for the provision of management services entailing overall responsibility for the development of Iranian or Libyan petroleum resources or entailing general supervision and guarantee of another person's performance of such a contract." General concepts of investment can be used to determine whether a contract for such management services is an "investment" rather than a "service contract." In making such a determination, factors such as whether capital is put at risk by the person involved, whether the person receives a share in the income or profits of the development (bearing in mind that the entry into a contract providing for such participation already falls within the definition of investment), whether the person receives an equity stake in the petroleum resources (bearing in mind that the purchase of a share of ownership in the development of petroleum resources already falls within the definition), whether compensation is based on the investment's performance, whether the person receives a share in the assets of the enterprise upon dissolution, can all be considered.

Any contract that includes overall responsibility for the development of petroleum resources could be captured by the definition, regardless of the parties involved, as long as the contract is entered into pursuant to an agreement with the Government of Iran, a nongovernmental entity in Iran, the Government of Libya, or a nongovernmental entity in Libya.

#### Parents and Subsidiaries

Section 5(c) states that sanctions will be imposed on:

- (1) any person the President determines has carried out [sanctionable activities]; and
- (2) any person the President determines—
  - (A) is a successor entity to the person referred to in paragraph (1);
  - (B) is a parent or subsidiary of the person referred to in paragraph (1) if that parent or subsidiary, with actual knowledge, engaged in the activities referred to in paragraph (1); or
  - (C) is an affiliate of the person referred to in paragraph (1) if that affiliate, with actual knowledge, engaged in the activities referred to in paragraph (1) and if that affiliate is

controlled in fact by the person referred to in paragraph (1).

For parents of sanctioned persons, the term "engaged in" refers to facilitation and authorization of the entry into a contract that falls within the definition of investment. For subsidiaries and affiliates, it refers to actual participation in the implementation of the contract—for example, if the contract provided for certain elements to be carried out by subsidiary companies.

Dated: December 11, 1996.

Robert M. Maxim,

*Acting, Deputy Assistant Secretary, Energy, Sanctions, and Commodities.*

[FR Doc. 96-31853 Filed 12-13-96; 8:45 am]

BILLING CODE 4710-07-M

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### OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

#### Trade Policy Staff Committee (TPSC); Request for Comments Concerning Compliance With Telecommunications Trade Agreements

**AGENCY:** Office of the United States Trade Representative.

**ACTION:** Notice of request for public comments.

**SUMMARY:** This notice seeks advice on the operation and effectiveness of the telecommunications trade agreements with Japan, Korea, Taiwan, Mexico, and Canada through written submissions due January 24, 1997. The review will conclude March 31, 1997. The review, conducted pursuant to Section 1377 of the Omnibus Trade and Competitiveness Act of 1988, must determine whether the above countries are not in compliance with the terms of such agreements or otherwise deny "mutually advantageous market opportunities" to U.S. products and services within the context of those agreements.

Specifically, USTR seeks information on:

Whether Japan, Korea, Taiwan, Canada, and Mexico have carried out their commitments under telecommunications agreements with the United States;

Whether levels of trade conform with the levels that would be expected based on these agreements; and

The underlying competitiveness of U.S. providers of telecom products or services.

**DATES:** Submissions must be received on or before January 24, 1997.

**ADDRESSES:** Comments must be submitted to the Executive Secretary, Trade Policy Staff Committee, Office of

the United States Trade Representative, 600 17th Street, N.W., Washington, D.C. 20506.

**FOR FURTHER INFORMATION CONTACT:** Jim McGlinchey (202-395-5656), Office of Industry or Laura Sherman (202-395-3150), Office of the General Counsel, Office of the U.S. Trade Representative, 600 17th Street, NW, Washington, D.C. 20508.

**SUPPLEMENTARY INFORMATION:** Section 1377 of the Omnibus Trade and Competitiveness Act of 1988 requires the USTR to review annually the operation and effectiveness of all U.S. trade agreements regarding telecommunications products and services. The United States has telecommunications agreements with Japan, Canada, Mexico, Korea and Taiwan.

#### Japan

The United States has two telecommunications procurement agreements with the Government of Japan. The first, the Nippon Telegraph and Telephone (NTT) agreement, is designed to ensure that the government-owned, major telecommunications provider in Japan employs open, non-discriminatory and transparent procedures in procuring telecommunications products. In 1994, as part of the Framework discussions with Japan, NTT agreed to improve its procurement procedures to provide greater transparency and more timely notice to foreign suppliers. The improved measures are intended to increase reliance on international standards and to improve the impartiality of the process by requiring transparent and non-discriminatory selection criteria and by reducing single-tender sourcing.

The second procurement agreement is the 1994 U.S.-Japan Public Sector Procurement Agreement on Telecommunications Products and Services. Under this agreement, Japan introduced procedures addressing: enhanced participation by foreign suppliers in pre-solicitation development and specification-drafting for large-scale telecommunications procurements; transparent and non-discriminatory award criteria that include greatest overall value for procurement decisions; decreased sole sourcing; and the establishing of an effective bid protest mechanism.

The U.S. recently met with Japan to review implementation of the two procurement agreements. Under both agreements, foreign share increased slightly, but in both cases there may have been an evasion or disregard of the

procurement procedures and a consequent lack of bidding opportunities for U.S. suppliers in the Japanese telecom market. In both segments of the Japanese public sector (NTT and non-NTT), market share of foreign suppliers continues to be lower than expected, given the competitiveness of the U.S. telecommunications industry in the global market. NTT and the Government of Japan do not appear to be procuring telecom equipment and services with the degree of openness and non-discrimination contemplated in the improved measures.

Specifically, NTT may be applying a non-transparent and discriminatory selection criteria for its procurement; not covering the more lucrative contracts under the open procedures but instead treating such equipment as follow-on procurement to prior contracts; and not relying on de facto international standards as envisioned in the agreement.

With respect to the non-NTT public sector procurement agreement, the U.S. Trade Representative is concerned that Ministries in Japan and other covered entities may not be following the procedures. Data supplied by the Government of Japan for the recent implementation review show that only 16 Ministries, or 14% of covered entities, reported any telecom purchases for Japan's fiscal year 1995. Only 4 entities from the whole Japanese central and provincial government reported purchasing telecom products or services from foreign suppliers. In addition, the Ministry of Post and Telecommunications, the largest public purchaser of telecom equipment other than NTT, actually increased its reliance on single-tendering.

The above facts raise concerns about the operation and effectiveness of these procurement agreements. Accordingly, the U.S. Trade Representative seeks information regarding any concrete difficulties that U.S.

telecommunications product suppliers and service providers are encountering in Japan generally and specifically under the terms of the two Framework telecom procurement agreements. Specifically, we seek any evidence of problems with purchasing procedures of NTT and the Government of Japan, sales efforts firms would undertake if such problems were removed, and any other relevant information.

#### *Additional U.S.-Japan*

*Telecommunications Trade Agreements:* The United States has a number of additional telecommunications trade agreements with Japan, including a series of agreements on: international

value-added network services (IVANS) (1990-91); open procurement of all satellites, except for government research and development (R&D) satellites (1990); network channel terminating equipment (NCTE) (1990); cellular and third-party radio systems (1989) and cellular radio systems (1995).

#### Mexico and Canada

Several chapters of the North American Free Trade Agreement (NAFTA) contain market liberalization commitments on telecommunications. In addition to general principles in the services and investment chapters, Chapter 13 on telecommunications contains provisions applicable to equipment approval processes and associated telecommunications standards issues as well as private networks and enhanced or value-added telecommunications services. NAFTA also requires tariff reductions for telecommunications equipment.

As a result of the March 31, 1996 review, the U.S. Trade Representative determined that Mexico was not in compliance with its NAFTA telecom obligations, due to Mexico's delay in implementing procedures for acceptance of test data for product safety requirements for telecom terminals. Through the Telecommunications Standards Subcommittee, Canada and the United States obtained Mexican agreement on the procedures Mexico would adopt to conform to its NAFTA obligations. But these procedures are not yet in effect.

#### Korea

The United States has agreements with Korea to address barriers to U.S. telecom goods and services suppliers in the areas of protection of intellectual property rights (IPR), type approval of telecom equipment, transparent standard-setting processes and non-discriminatory access to the government-owned Korea Telecom's procurement of telecom network and commodity products.

In 1990, Korea agreed to an MOU on the liberalization of government procurement practices for telecommunications. In 1991, Korea committed to permit value-added services to be provided by international value-added network service operators. In February 1992 as a result of market-opening trade negotiations with the United States initiated under the 1988 Trade Act, Korea broadened these commitments to include non-discriminatory access to the telecom procurement of the government-owned Korea Telecom; open and transparent standards-setting processes and mutual

recognition of test data for equipment attached to the public network; equipment approval based on the minimal network harm standard; accelerated tariff reductions on imported telecommunications equipment; commitments to liberalize the provision of value-added services between the U.S. and Korea; and reduced and streamlined regulation of intracorporate communications.

As a result of the 1993 and 1995 reviews, the United States reached agreement with Korea on improved access to the procurement by the government-owned Korea Telecom (KT), particularly with respect to its procurements of network and commodity products. The 1995 agreement also contained commitments limiting type approval of telecom equipment to the network harm standard. In April of 1996, Korea agreed to elaborate on the 1992 provisions on non-discriminatory access to KT's procurement and non-discriminatory equipment approval, particularly with respect to enhanced intellectual property protection and non-discriminatory technical specifications.

The 1996 review revealed, however, a number of additional market access barriers in Korea. Due to restrictive Korean Government policies and practices, the U.S. Trade Representative determined that there was a lack of mutually advantageous market opportunities for foreign suppliers of telecom products and services to Korea. Market access barriers include Korean Government interference with procurement by private telecommunications services suppliers, lack of liberalization of foreign investment in telecom service providers, discriminatory and non-transparent licensing and regulation of telecom service providers, ineffective competition policies for service providers, high tariffs on telecommunications and information technology products and discriminatory customs procedures for such products.

As a result, in July 1996, the U.S. Trade Representative identified Korea as a "Priority Foreign Country" under Section 1374 of the Omnibus Trade and Competitiveness Act of 1988. The U.S. Trade Representative announced at that time that she did not intend to use the maximum one-year period provided under the statute to address U.S. concerns. Under the statute, the U.S. Trade Representative is authorized to take appropriate steps, including trade action, if U.S. concerns are not addressed within the statutory time frame.

## Taiwan

In July 1996, the Office of the U.S. Trade Representative and the American Institute in Taiwan concluded with their Taiwanese counterparts an agreement on the licensing and provision of wireless services through the establishment of a competitive, transparent and fair wireless market in Taiwan.

Specifically, the Directorate General of Telecommunications (DGT) and the Taipei Economic and Cultural Representative Office confirmed that: the telecommunication regulatory function and telecommunications service provider function have been entirely separated; DGT would initiate procure to remove the profit cap and draft a new formula for tariff schedules; interconnection agreements between wireless operators and Chunghwa Telecom Co. ("CHT") would be cost-based, transparent, unbundled and non-discriminatory and the terms of such agreements publicly available; DGT would not permit cross-subsidization between CHT's fixed-line and wireless operations; DGT would relax the debt/equity ratio for wireless bidders and not restrict a bidder from obtaining all three regional licenses, subject to the policy that an island-wide licensee is not eligible for a regional license; and DGT would remove unauthorized spectrum users. DGT also agreed to review foreign ownership limitations.

*Public Comment: Requirements for Submissions*

Interested persons are invited to submit written comments on the operation and effectiveness of the telecommunications trade agreements with Japan, Korea, Taiwan, Mexico, and Canada.

Comments must be filed on or before January 24, 1997. Comments must be in English and provided in 15 copies to: Gloria Blue, Executive Secretary, Trade Policy Staff Committee, Office of the U.S. Trade Representative, 600 17th Street, NW, Washington, D.C. 20508.

Comments will be open to public inspection, except confidential business information exempt from public inspection. Confidential business information must be clearly marked "BUSINESS CONFIDENTIAL" in a contrasting color ink at the top of each page on each of 15 copies, and must be accompanied by a nonconfidential summary of the confidential information. The nonconfidential

summary shall be placed in the file that is open to public inspection.

Federick L. Montgomery,  
*Chairman, Trade Policy Staff Committee.*  
[FR Doc. 96-31762 Filed 12-13-96; 8:45 am]  
BILLING CODE 3910-01-M

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

**Extension of Public Comment Period Regarding Draft Environmental Impact Statement for Proposed Development at Lambert-St. Louis International Airport, St. Louis, MO**

**AGENCY:** Federal Aviation Administration, Central Region, Kansas City, Missouri.

**ACTION:** Notice of extension of comment period.

**SUMMARY:** The Federal Aviation Administration (FAA) announces that it has extended the public comment period regarding the Draft Environmental Impact Statement (EIS) for a proposed new parallel runway and associated proposed development at Lambert-St. Louis International Airport. A revised and updated list of references has been provided to reviewers of the Draft EIS and placed in copies of the Draft EIS located at city halls and libraries.

**DATES:** The comment period, which was scheduled to end December 18, 1996, has been extended an additional thirty (30) days. In order to be considered, written comments must be received on or before January 17, 1997.

**ADDRESS:** Send comments to Ms. Mo Keane, Federal Aviation Administration, Airports Division, ACE 615B, 601 E. 12th Street, Kansas City, MO 64106-2808.

Issued in Kansas City, Missouri on December 5, 1996.

George A. Hendon,  
*Manager, Airports Division.*

[FR Doc. 96-31872 Filed 12-13-96; 8:45 am]  
BILLING CODE 4910-13-M

**[Summary Notice No. PE-96-59]**

**Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued**

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of petitions for exemption received and of dispositions of prior petitions.

**SUMMARY:** Pursuant to FAA's rulemaking provisions governing the application,

processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

**DATES:** Comments on petitions received must identify the petition docket number involved and must be received on or before January 6, 1997.

**ADDRESSES:** Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rule Docket (AGC-200), Petition Docket No. \_\_\_\_\_, 800 Independence Avenue, SW., Washington, DC 20591.

Comments may also be sent electronically to the following internet address: nprmcmts@faa.dot.gov.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC-200), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-3132.

**FOR FURTHER INFORMATION CONTACT:** Fred Haynes (202) 267-3939 or Angela Anderson (202) 267-9681 Office of Rulemaking (ARM-1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, D.C., on December 11, 1996.

Donald P. Byrne,  
*Assistant Chief Counsel for Regulations.*

## Dispositions of Petitions

*Docket No.: 12227*  
*Petitioner:* National Business Aircraft Association, Inc.

*Sections of the FAR Affected:* 14 CFR 91.119, 91.409, 91.501(a), 91.503 through 91.535, and 91.515(a)(1)

*Description of Relief Sought/Disposition:* To permit National Business Aircraft Association, Inc. members to use inspection programs required for large turbojet or turbo-propeller-powered aircraft for their small civil airplanes and helicopters.

*GRANT, September 30, 1996, Exemption No. 1637S.*

*Docket No.:* 25053

*Petitioner:* Crew Pilot Training, Inc.

*Sections of the FAR Affected:* 14 CFR 61.55(b)(2); 61.56(c)(1); 61.57 (c) and (d); 61.58 (c)(1) and (d); 61.63 (c)(2), and (d) (2) and (3); 61.65 (c), (e)(2) and (3), and (g); 61.67(d)(2); 61.157(d)(1) and (2), and (e) (1) and (2); 61.191(c); and appendix A to part 61.

*Description of Relief Sought/*

*Disposition:* To permit the petitioner to use FAA-approved simulators to meet certain flight experience requirements of part 61. *GRANT, October 31, 1996, Exemption No. 6539.*

*Docket No.:* 26897

*Petitioner:* Northwest Aerospace Training Corporation

*Sections of the FAR Affected:* 14 CFR 121.411 (a)(2), (a)(3), and (b)(2); 121.413 (b), (c) and (d); and appendix H to part 121

*Description of Relief Sought/*

*Disposition:* To allow certain Northwest Aerospace Training Corporation instructors listed in the petitioner's FAA-approved curriculum to serve as instructors or check airmen in simulators when under contract with part 121 certificate holders who contract with the petitioner, without these persons having received ground and flight training in accordance with a training program approved under subpart N of part 121. Additionally, this exemption as amended permits the petitioner's instructors who serve in advanced simulators, without being employed by the certificate holder for 1 year, to receive applicable training in accordance with the provisions of this exemption. *GRANT, October 31, 1996, Exemption No. 5538C.*

*Docket No.:* 26957

*Petitioner:* C.A.E., Inc.

*Sections of the FAR Affected:* 14 CFR 61.55(b)(2); 61.56(c)(1); 61.57 (c) and (d); 61.58 (c)(1) and (d); 61.63 (c)(2), and (d) (2) and (3); 61.65 (c), (e) (2) and (3), and (g); 61.67(d)(2); 61.157 (d)(1) and (2), and (e) (1) and (2); 61.191(c); and appendix A to part 61.

*Description of Relief Sought/*

*Disposition:* To allow the petitioner to use Federal Aviation Administration (FAA)-approved simulators to meet certain flight experience requirements of part 61. However, due to recent changes in the Federal Aviation Regulations (FAR), the FAA has determined that it is necessary to amend the petitioner's exemption. *GRANT, October 31, 1996, Exemption No. 5555B.*

*Docket No.:* 27011

*Petitioner:* United Airlines, Inc.

*Sections of the FAR Affected:* 14 CFR 61.55(b)(2); 61.56(c)(1); 61.57 (c) and

(d); 61.58 (c)(1) and (d); 61.63 (c)(2), and (d) (2) and (3); 61.65 (c), (e) (2) and (3), and (g); 61.67(d)(2); 61.157 (d)(1) and (2), and (e) (1) and (2); 61.191(c); and appendix A to part 61.

*Description of Relief Sought/*

*Disposition:* To allow the petitioner to use Federal Aviation Administration (FAA)-approved simulators to meet certain flight experience requirements of part 61. However, due to recent changes in the Federal Aviation Regulations (FAR), the FAA has determined that it is necessary to amend the petitioner's exemption. *GRANT, October 31, 1996, Exemption No. 5572B.*

*Docket No.:* 27086

*Petitioner:* Bombardier, Inc.

*Sections of the FAR Affected:* 14 CFR 61.55(b)(2); 61.56(c)(1); 61.57 (c) and (d); 61.58 (c)(1) and (d); 61.63 (c)(2), and (d) (2) and (3); 61.65 (c), (e) (2) and (3), and (g); 61.67(d)(2); 61.157 (d) (1) and (2), and (e) (1) and (2); 61.191(c); and appendix A to part 61.

*Description of Relief Sought/*

*Disposition:* To allow the petitioner to use Federal Aviation Administration (FAA)-approved simulators to meet certain flight experience requirements of part 61. However, due to recent changes in the Federal Aviation Regulations (FAR), the FAA has determined that it is necessary to amend the petitioner's exemption. *GRANT, October 31, 1996, Exemption No. 5617B.*

*Docket No.:* 28513

*Petitioner:* Evergreen International Aviation, Inc.

*Section of the FAR Affected:* 14 CFR 135.180(a)

*Description of Relief Sought/*

*Disposition:* To permit the petitioner, subject to certain conditions and limitations, to operate certain airplanes in Angola, Africa in direct support of United Nations peacekeeping efforts, without being equipped with approved traffic alert and collision avoidance system (TCAS) equipment. *GRANT, October 25, 1996, Exemption No. 6467B.*

*Docket No.:* 28660

*Petitioner:* The Collings Foundation

*Sections of the FAR Affected:* 14 CFR 91.315, 91.319(a), 119.5(g) and 119.21(a)

*Description of Relief Sought/*

*Disposition:* To permit the petitioner to operate its former military Boeing B-17 airplane, that holds a limited airworthiness certificate, and its Consolidated B-24 airplane, that holds an experimental airworthiness certificate, for the purpose of carrying passengers on local flights in return for receiving donations. *GRANT, November 8, 1996, Exemption No. 6540.*

*Docket No.:* 28673

*Petitioner:* EAA Aviation Foundation, Inc. and Experimental Aircraft Association, Inc.

*Sections of the FAR Affected:* 14 CFR 91.315, 119.5(g) and 119.21(a)

*Description of Relief Sought/*

*Disposition:* To allow EAA to operate its former military Boeing B-17 airplane, that holds a limited airworthiness certificate, for the purpose of carrying passengers on local flights in return for receiving compensation. *GRANT, November 8, 1996, Exemption No. 6541.*

*Docket No.:* 28688

*Petitioner:* Eagle Broadcasting Network, Inc.

*Sections of the FAR Affected:* 14 CFR 135.143(c)(2)

*Description of Relief Sought/*

*Disposition:* To allow the petitioner to operate certain aircraft without a TSO-C112 (Mode S) Transponder installed. *GRANT, October 31, 1996, Exemption No. 6535.*

*Docket No.:* 28703

*Petitioner:* Brookville Air Park

*Sections of the FAR Affected:* 14 CFR 135.143(c)

*Description of Relief Sought/*

*Disposition:* To permit the petitioner to operate its Cessna 421 (Registration No. N8AV, serial No. 421B0663) aircraft under part 135 without a TSO-C112 (Mode S) transponder installed. *GRANT, October 25, 1996, Exemption No. 6538.*

[FR Doc. 96-31863 Filed 12-13-96; 8:45 am]  
BILLING CODE 4910-13-M

### Availability of Solicitation for Center of Excellence (COE) in Airworthiness Assurance

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of availability.

**SUMMARY:** The FAA is soliciting competitive proposals from academic institutions to form an airworthiness assurance Center of Excellence (COE). A COE is that entity at a college or university designated as the principal focus for long-term research in selected areas of aviation technology. Centers of Excellence are designated through an evaluation and award procedure established pursuant to Title IX of Public Law 101-508, the FAA Research Engineering and Development Authorization Act of 1990. The FAA will provide long-term funding to establish and operate the COE in support of airworthiness assurance. The grant recipient is required to match FAA funds with non-Federal funding over the term of the grant.

**DATES:** The closing date for submitting final proposals is February 15, 1997.

**ADDRESSES:** Solicitation packages may be obtained by contacting Ms. Patricia Watts, Office of Research and Technology Applications, AAR-201, Building 270, Atlantic City International Airport, New Jersey 08405, phone number (609) 485-5043, facsimile number (609) 485-6509. Before final proposal submission, the proposal may be discussed with the Centers of Excellence Program Manager.

**SUPPLEMENTARY INFORMATION:** The FAA intends to award a 50-50 cost share cooperative agreement to establish a Center of Excellence in Airworthiness Assurance to a qualified college or university, or to a team of such institutions. The cooperative agreement will be awarded in 3 year increments up to a maximum of 10 years. It is the FAA's intent to fund a minimum of \$1.5 million over the first three years. It is also the intent of the FAA to award a single-source indefinite delivery indefinite quantity (IDIQ) contract to the winner of the competition, under which orders may be placed for developmental products.

The FAA has identified a need for a Center of Excellence in airworthiness assurance. The Center will conduct research which includes the entire spectrum (i.e. basic research through engineering development, prototyping and testing) within the scope of Airworthiness Assurance. This scope includes, but is not limited to, the following five functional areas:

1. Maintenance, Inspection, and Repair;
2. Crashworthiness;
3. Propulsion and Fuel Systems Safety Technologies;
4. Landing Gear Systems Performance and Safety; and/or
5. Advanced Materials.

The FAA intends to provide long-term funding to establish and operate a prestigious partnership with academia, industry and government. To this end, the FAA encourages offerors to team with organizations that compliment their expertise from academia, industry, state/local government and other governmental agencies. The successful offeror is required to match FAA grant funds with non-federal funding over the term of the cooperative agreement. Matching funds are not required for any orders placed under the IDIQ contract. Separate cost-sharing contracts may be awarded when deemed appropriate.

#### Eligibility

Colleges and universities are eligible for cooperative agreements to establish a Center of Excellence in airworthiness assurance. Individuals are not eligible for a COE designation and do not qualify for grants under this program. The FAA is seeking to ensure an equitable geographical distribution of funds and to encourage the inclusion of minority institutions.

#### Matching Funds Requirement

A Center of Excellence receives funding annually in the form of single or multiple continuing research grants over a three-year period. The federal government provides 50 percent of the cost to establish and operate a Center of Excellence. The institution must show a continuing source of non-Federal matching funds available for the remaining research and operational expenses at the Center. Once the COE is established, a fiscal report declaring the sources and amount of funding and expenditures must be submitted for review every six (6) months to The Office of Research and Technology Applications at the FAA Technical Center. A full review and grant close-out takes place at the conclusion of each three-year phase.

The Center of Excellence and the FAA shall agree upon the maximum expected costs in each fiscal year. Any cost incurred in excess of the maximum costs agreed upon with the agency shall be the sole obligation of the Center of Excellence.

The Center of Excellence is expected to account for funds granted and matched, utilized to establish, operate, and conduct the specified research activities of the Center of Excellence.

#### Maintenance of Effort and Center Operations

The Center of Excellence is required to maintain its aggregate expenditures from all other sources for establishing and operating the Center of Excellence and related research activities at or above the average level of such expenditures in its two (2) fiscal years preceding November 5, 1990. The establishment of a Center of Excellence is intended to augment the level of aviation research activities at the institution.

The Center of Excellence shall maintain a close working relationship with the corresponding agency research program office. This relationship shall extend to participation in conferences, meetings, joint research efforts, and submission of significant activity

reports to the FAA on a routine basis. The COE shall prepare quarterly and semi-annual reports, and a fully inclusive annual report on research projects and fiscal expenditures, and shall host an on-site review of all research activities.

The FAA may require the COE to hold an annual joint symposium with the agency on topics relating to the status and results of the designated technology area. Researchers at the COE may serve as consultants by providing technical advice to the sponsoring agency program office. They may also be asked to participate on major planning and investigative committees related to airworthiness assurance.

#### Selection Criteria

The COE will be selected primarily on technical merit and the ability of the team to meet the following criteria mandated by the enabling legislation, Public law 101-508:

- The extent to which the needs of the State in which the applicant is located are representative of the needs of the region for improved air transportation services and facilities.
- The demonstrated research and extension resources available to the applicant for carrying out the intent of the legislation.
- The capability of the applicant to provide leadership in making national and regional contributions to the solution of both long-range and immediate air transportation problems.
- The extent to which the applicant has an established air transportation program.
- The demonstrated ability of the applicant to disseminate results of air transportation research and educational programs through a statewide or region-wide continuing education program.
- The research projects that the applicant proposes to carry out under the grant.

#### Award Date

The final selection of the Center of Excellence in Airworthiness Assurance will be announced within this fiscal year, which ends September 30, 1997.

Issued in Atlantic County, New Jersey on December 4, 1996.

Patricia Watts,  
Program Manager, FAA Centers of Excellence  
Program Office, AAR-201.

[FR Doc. 96-31864 Filed 12-13-96; 8:45 am]

BILLING CODE 4910-13-M

**Notice of Intent To Rule on Application To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Baton Rouge Metropolitan Airport, Baton Rouge, LA**

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of intent to rule on application.

**SUMMARY:** The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Baton Rouge Metropolitan Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101-508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158). **DATES:** Comments must be received on or before January 15, 1997.

**ADDRESSES:** Comments on this application may be mailed or delivered in triplicate copies to the FAA at the following address: Mr. Ben Guttery, Federal Aviation Administration, Southwest Region, Airports Division, Planning and Programming Branch, ASW-610D, Fort Worth, TX 76193-0610.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Anthony J. Marino, Director of Aviation, at the following address: Mr. Anthony J. Marino, Director of Aviation, Baton Rouge Metropolitan Airport, Suite 213, Ryan Terminal Building, Baton Rouge, LA 70807.

Air carriers and foreign air carriers may submit copies of the written comments previously provided to the Airport under Section 158.23 of Part 158.

**FOR FURTHER INFORMATION CONTACT:** Mr. Ben Guttery, Federal Aviation Administration, Southwest Region, Airports Division, Planning and Programming Branch, ASW-610D, Fort Worth, TX 76193-0610, (817) 222-5614.

The application may be reviewed in person at this same location.

**SUPPLEMENTARY INFORMATION:** The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Baton Rouge Metropolitan Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101-508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On November 26, 1996, the FAA determined that the application to

impose and use the revenue from a PFC submitted by the Airport was substantially complete within the requirements of Section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than March 26, 1997.

The following is a brief overview of the application.

*Level of the proposed PFC:* \$3.00  
*Proposed charge effective date:* June 1, 1997

*Proposed charge expiration date:* May 30, 2008

*Total estimated PFC revenue:* \$10,157,206.00

*PFC application number:* 97-04-C-00-BTR

*Brief description of proposed project:* Project To Impose and Use PFC's Terminal Building Renovation/Expansion

*Proposed class or classes of air carriers to be exempted from collecting PFC's:* All Air Taxi/Commercial operators (ATCO).

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA regional Airports office located at: Federal Aviation Administration, Southwest Region, Airports Division, Planning and Programming Branch, ASW-610D, 2601 Meacham Boulevard, Fort Worth, TX 76137-4298.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at Baton Rouge Metropolitan Airport.

Issued in Fort Worth, Texas on November 27, 1996.

Naomi L. Saunders,  
*Manager, Airports Division.*

[FR Doc. 96-31870 Filed 12-13-96; 8:45 am]

**BILLING CODE 4910-13-M**

**Surface Transportation Board**

[STB Docket No. AB-337 (Sub-No. 5X)]

**Dakota, Minnesota & Eastern Railroad Corporation—Abandonment Exemption—in Wabasha and Olmsted Counties, MN**

**AGENCY:** Surface Transportation Board.

**ACTION:** Notice of exemption.

**SUMMARY:** The Board, under 49 U.S.C. 10502, exempts from the prior approval requirements of 49 U.S.C. 10903 the abandonment by Dakota, Minnesota & Eastern Railroad Corporation of its 13.03-mile Plainview Branch Line located between milepost 3.07, at Plainview Junction, and milepost 16.1,

at Plainview, in Olmsted and Wabasha Counties, MN, subject to labor protective conditions and a public use condition.

**DATES:** Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on January 15, 1997. Formal expressions of intent to file an OFA<sup>1</sup> under 49 CFR 1152.27(c)(2) and requests for interim trail use/rail banking under 49 CFR 1152.29 must be filed by December 26, 1996; petitions to stay must be filed by December 31, 1996; and petitions to reopen must be filed by January 10, 1997.

**ADDRESSES:** Send pleadings referring to STB Docket No. AB-337 (Sub-No. 5X) to: (1) Office of the Secretary, Case Control Branch, Surface Transportation Board, 1201 Constitution Avenue, N.W., Washington, DC 20423, and (2) Kevin V. Schieffer, Schieffer, Cutler & Donahoe, P.C., 431 North Phillips Avenue, Suite 300, Sioux Falls, SD 57104.

**FOR FURTHER INFORMATION CONTACT:** Joseph H. Dettmar, (202) 927-5660. [TDD for the hearing impaired: (202) 927-5721.]

**SUPPLEMENTARY INFORMATION:** Additional information is contained in the Board's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: DC News & Data, Inc., Room 2229, 1201 Constitution Avenue, N.W., Washington, DC 20423. Telephone: (202) 289-4357/4359. [Assistance for the hearing impaired is available through TDD services (202) 927-5721.]

Decided: December 9, 1996.

By the Board, Chairman Morgan, Vice Chairman Simmons, and Commissioner Owen.

Vernon A. Williams,  
*Secretary.*

[FR Doc. 96-31832 Filed 12-13-96; 8:45 am]

**BILLING CODE 4915-00-P**

**DEPARTMENT OF THE TREASURY**

**Bureau of the Public Debt; 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

<sup>1</sup> See *Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C.2d 164 (1987).

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 Bureau of the Public Debt within the Department of the Treasury is soliciting comments concerning the Application for Relief on Account of Loss, Theft, or Destruction of United States Savings and Retirement Securities and Supplemental Statement Concerning United States Securities.

**DATES:** Written comments should be received on or before February 14, 1997, to be assured of consideration.

**ADDRESSES:** Direct all written comments to Bureau of the Public Debt, Vicki S. Thorpe, 200 Third Street, Parkersburg, WV 26106-1328.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the form and instructions should be directed to Vicki S. Thorpe, Bureau of the Public Debt, 200 Third Street, Parkersburg, WV 26106-1328, (304) 480-6553.

**SUPPLEMENTARY INFORMATION:**

*Titles:* Application For Relief on Account of Loss, Theft or Destruction of United States Savings and Retirement Securities and Supplemental Statement Concerning United States Securities.

*OMB Number:* 1535-0013.

*Form Numbers:* PD F 1048 and PD F 2243.

*Abstract:* The information is requested to issue owners substitute securities or payment in lieu of lost, stolen or destroyed securities.

*Current Actions:* None.

*Type of Review:* Extension.

*Affected Public:* Individuals or households.

*Estimated Number of Respondents:* 80,000.

*Estimated Time Per Respondent:* 25 minutes.

*Estimated Total Annual Burden Hours:* 32,000.

**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.

Dated: December 10, 1996.

Vicki S. Thorpe,

*Manager, Graphics, Printing, and Records Branch.*

[FR Doc. 96-31824 Filed 12-13-96; 8:45 am]

**BILLING CODE 4810-39-P**

**Bureau of the Public Debt; 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 Bureau of the Public Debt within the Department of the Treasury is soliciting comments concerning the Description of United States Savings Bonds/Notes and Description of United States Savings Bonds Series HH/H.

**DATES:** Written comments should be received on or before February 14, 1997, to be assured of consideration.

**ADDRESSES:** Direct all written comments to Bureau of the Public Debt, Vicki S. Thorpe, 200 Third Street, Parkersburg, WV 26106-1328.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the form and instructions should be directed to Vicki S. Thorpe, Bureau of the Public Debt, 200 Third Street, Parkersburg, WV 26106-1328, (304) 480-6553.

**SUPPLEMENTARY INFORMATION:**

*Titles:* Description of United States Savings Bonds/Notes and Description of United States Savings Bonds Series HH/H.

*OMB Number:* 1535-0064.

*Form Numbers:* PD F 1980 and PD F 2490.

*Abstract:* The information is requested to establish the owner of savings bonds.

*Current Actions:* None.

*Type of Review:* Extension.

*Affected Public:* Individuals or households.

*Estimated Number of Respondents:* 19,000.

*Estimated Time Per Respondent:* 6 minutes.

*Estimated Total Annual Burden Hours:* 1,900.

**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.

Dated: December 10, 1996.

Vicki S. Thorpe,

*Manager, Graphics, Printing and Records Branch.*

[FR Doc. 96-31825 Filed 12-13-96; 8:45 am]

**BILLING CODE 4810-39-P**

**Bureau of the Public Debt; 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 Bureau of the Public Debt within the Department of the Treasury is soliciting comments concerning the Application By Voluntary Guardian of Incapacitated Owner of United States Savings Bonds/Notes.

**DATES:** Written comments should be received on or before February 14, 1997, to be assured of consideration.

**ADDRESSES:** Direct all written comments to Bureau of the Public Debt, Vicki S. Thorpe, 200 Third Street, Parkersburg, WV 26106-1328.

**FOR FURTHER INFORMATION CONTACT:**

Requests for additional information or copies of the form and instructions should be directed to Vicki S. Thorpe, Bureau of the Public Debt, 200 Third Street, Parkersburg, WV 26106-1328, (304) 480-6553.

**SUPPLEMENTARY INFORMATION:**

*Title:* Application by Voluntary Guardian of Incapacitated Owner of United States Savings Bonds/Notes.

*OMB Number:* 1535-0036.

*Form Number:* PD F 2513.

*Abstract:* The information is requested to establish the right of a voluntary guardian to act on behalf of an incompetent bond owner.

*Current Actions:* None.

*Type of Review:* Extension.

*Affected Public:* Individuals or households.

*Estimated Number of Respondents:* 7,650.

*Estimated Time Per Respondent:* 20 minutes.

*Estimated Total Annual Burden Hours:* 2,600.

**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.

Dated: December 10, 1996.

Vicki S. Thorpe,

*Manager, Graphics, Printing and Records Branch.*

[FR Doc. 96-31826 Filed 12-13-96; 8:45 am]

BILLING CODE 4810-39-P

**Bureau of the Public Debt; 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 Bureau of the Public Debt within the Department of the Treasury is soliciting comments concerning the Application For Payment of United States Savings Bonds/Notes and/or Related Checks in an Amount Not Exceeding \$1,000 By The Survivor of a Deceased Owner Whose Estate is Not Being Administered.

**DATES:** Written comments should be received on or before February 14, 1997, to be assured of consideration.

**ADDRESSES:** Direct all written comments to Bureau of the Public Debt, Vicki S. Thorpe, 200 Third Street, Parkersburg, WV 26106-1328.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the form and instructions should be directed to Vicki S. Thorpe, Bureau of the Public Debt, 200 Third Street, Parkersburg, WV 26106-1328, (304) 480-6553.

**SUPPLEMENTARY INFORMATION:**

*Title:* Application for Payment of United States Savings Bonds/Notes and/or Related Checks in an Amount Not Exceeding \$1,000 by the Survivor of a Deceased Owner Whose Estate Is Not Being Administered.

*OMB Number:* 1535-0035.

*Form Number:* PD F 4881.

*Abstract:* The information is requested from the survivors of deceased bond owners to apply for proceeds from bonds, or related checks.

*Current Actions:* None.

*Type of Review:* Extension.

*Affected Public:* Individuals or households.

*Estimated Number of Respondents:* 3,965.

*Estimated Time Per Respondent:* 10 minutes.

*Estimated Total Annual Burden Hours:* 991.

**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.

Dated: December 10, 1996.

Vicki S. Thorpe,

*Manager, Graphics, Printing and Records Branch.*

[FR Doc. 96-31827 Filed 12-13-96; 8:45 am]

BILLING CODE 4810-39-P

**Fiscal Service**

[Dept. Circ. 570, 1996 Rev., Supp. No. 3]

**Surety Companies Acceptable on Federal Bonds; American International Insurance Company of Puerto Rico**

A Certificate of Authority as an acceptable surety on Federal Bonds is hereby issued to the following company under Sections 9304 to 9308, Title 31, of the United States Code. Federal bond-approving officers should annotate their reference copies of the Treasury Circular 570, 1996 Revision, on page 34283 to reflect this addition:

*American International Insurance Company of Puerto Rico*

*Business Address:* P.O. Box 10181, San Juan, PR 00908. *Phone:* (787) 767-6400. *Underwriting Limitation b/:* \$1,346,000. *Surety Licenses c/:* PR, VI. *Incorporated In:* Puerto Rico.

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 (<http://www.ustreas.gov/treasury/bureaus/finman/c570.html>) or through our computerized public bulletin board system (FMS Inside Line) at (202) 874-6817/6872/6953/7034/8608. A hard copy may be purchased from the Government Printing Office (GPO), Washington, DC, telephone (202) 512-0132. When ordering the Circular from

GPO, use the following stock number:  
048-000-00499-7.

Questions concerning this Notice may be directed to the U.S. Department of the Treasury, Financial Management Service, Funds Management Division, Surety Bond Branch, 3700 East-West Highway, Room 6F04, Hyattsville, MD 20782, telephone (202) 874-6905.

Dated: December 5, 1996.

Charles F. Schwan III,

*Director, Funds Management Division,  
Financial Management Service.*

[FR Doc. 96-31858 Filed 12-13-96; 8:45 am]

**BILLING CODE 4810-35-M**

# Corrections

Federal Register

Vol. 61, No. 242

Monday, December 16, 1996

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

## DEPARTMENT OF COMMERCE

[Docket No. 960828234-6331-03]

RIN 0690-AA25

### Guidelines for Empowerment Contracting

#### Correction

In notice document 96-30839 beginning on page 64321 in the issue of Wednesday, December 4, 1996, the document heading should read as set forth above.

BILLING CODE 1505-01-D

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

15 CFR Part 902

50 CFR Part 679

[Docket No. 960717195-6280-02; I.D. 070196E]

RIN 0648-AI95

### Fisheries of the Exclusive Economic Zone Off Alaska; North Pacific Fisheries Research Plan; Interim Groundfish Observer Program

#### Correction

In the issue of Thursday, December 5, 1996, on page 64569, in the second column, the document heading should read as set forth above.

## DEPARTMENT OF DEFENSE

### 48 CFR Part 249

[DFARS Case 96-D320]

### Defense Federal Acquisition Regulation Supplement; Notice of Termination

#### Correction

In rule document 96-31099 beginning on page 64636 in the issue of Friday, December 6, 1996, make the following correction:

#### 249.7003 [Corrected]

On page 64637, in the first column, in section 249.7003(c), in the first line "25.249-7002" should read "252.249-7002".

BILLING CODE 1505-01-D

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 69

[AD-FRL-5645-1]

### Final Conditional Special Exemption From Requirements of the Clean Air Act for the Territory of American Samoa, the Commonwealth of the Northern Mariana Islands, and the Territory of Guam

#### Correction

In rule document 96-28432 beginning on page 58284 in the issue of Wednesday, November 13, 1996, make the following corrections:

#### § 69.13, 69.22 and 69.32 [Corrected]

1. "March 14, 2003" is corrected to read "January 13, 2003" in the following sections:

- a. On page 58289, in the third column, in § 69.13(a)(2), in the second and sixth lines from the bottom.
- b. On page 58290, in the third column, in § 69.13(d)(3), in the first line.
- c. On page 58291, in the 2d column, in § 69.22(a)(2), in the 20th and 25th lines.
- d. On page 58293, in the 1st column, in § 69.32(a)(2), in the 9th line and beginning in the 13th line.
- e. On page 58294, in the second column, in § 69.32(e)(3), in the first line.

2. "March 15, 1999" should read "January 13, 1999" in the following sections:

a. On page 58290, in the first column, in § 69.13(b), in the ninth line.

b. On page 58290, in the third column, in § 69.13(c) and (d)(1), in the fifth and second lines respectively.

c. On page 58291, in the second column, in § 69.22(b), beginning in the last line.

d. On page 58292, in the first column, in § 69.22(c)(1), in the last line; and in the second column, in paragraph (d), in the fifth line.

e. On page 58293, in the first column, in § 69.32(b), in the ninth line.

f. On page 58294, in the first column, in § 69.32(c)(3), (d) and (e)(1), in the sixth, fifth and fourth lines respectively.

#### § 69.22 [Corrected]

3. On page 58292, in the first column, in § 69.22(c)(2), in the last line; and in the second column, in paragraph (e)(1), in the third line from the bottom "March 14, 2000" should read "January 13, 2000".

4. On page 58292, in the second column, in § 69.22(c)(2), in the second line "March 14, 2002" should read "January 14, 2002".

#### § 69.32 [Corrected]

5. On page 58293, in the third column, in § 69.32(c)(2), in the eighth line "March 16, 1998" should read "January 13, 1998".

6. On page 58294, in the first column, in § 69.32(c)(3), beginning in the fourth line "March 16, 1998" should read "January 13, 1998"; and in the tenth line "March 14, 2001" should read "January 15, 2001".

BILLING CODE 1505-01-D

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

[NM-038-1110-00; NMNM 95103]

### Proposed Withdrawal and Opportunity for Public Meeting; Ladrones Mountain Area of Critical Environmental Concern, New Mexico

#### Correction

In notice document 96-30579 beginning on page 63860 in the issue of Monday, December 2, 1996, make the following correction:

On page 63860, in the third column, in the land description, in the thirteenth line, after "N<sup>1</sup>/<sub>2</sub>" insert a coma.

BILLING CODE 1505-01-D

# Federal Register

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Monday  
December 16, 1996

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## Part II

# Reader Aids

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Cumulative List of Public Laws  
104th Congress, Second Session

### CUMULATIVE LIST OF PUBLIC LAWS

This is a cumulative list of public laws for the 104th Congress, Second Session. Other cumulative lists (1993–1996) are available online at <http://www.nara.gov/nara/fedreg/fedreg.html>. Comments may be addressed to the Director, Office of the Federal Register, Washington, DC 20408, or send e-mail to [info@nara.fedreg.gov](mailto:info@nara.fedreg.gov).

The List of Public Laws will resume when bills are enacted into public law during the first session of the One Hundred Fifth Congress, which convenes at noon on Tuesday, January 7, 1997. The text of laws may be ordered in individual pamphlet form (referred to as “slip laws”) from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–2470). The text will also be made available on the Internet from GPO Access at [http://www.access.gpo.gov/su\\_docs](http://www.access.gpo.gov/su_docs). Some laws are not yet available online or for purchase.

Public Law	Title	Approved	110 Stat.
104–90 .....	Making further continuing appropriations for the fiscal year 1996, and for other purposes .....	Jan. 4, 1996 .....	3
104–91 .....	To require the Secretary of Commerce to convey to the Commonwealth of Massachusetts the National Marine Fisheries Service laboratory located on Emerson Avenue in Gloucester, Massachusetts.	Jan. 6, 1996 .....	7
104–92 <sup>1</sup> .....	Making appropriations for certain activities for the fiscal year 1996, and for other purposes .....	Jan. 6, 1996 .....	16
104–94 <sup>1</sup> .....	Making further continuing appropriations for the fiscal year 1996, and for other purposes .....	Jan. 6, 1996 .....	25
104–99 .....	The Balanced Budget Downpayment Act, I .....	Jan. 26, 1996 .....	26
104–100 .....	To designate the United States Post Office building located at 24 Corliss Street, Providence, Rhode Island, as the “Harry Kizirian Post Office Building”.	Feb. 1, 1996 .....	48
104–101 .....	To designate the Federal building located at 1550 Dewey Avenue, Baker City, Oregon, as the “David J. Wheeler Federal Building”.	Feb. 1, 1996 .....	49
104–102 .....	Saddleback Mountain-Arizona Settlement Act of 1995 .....	Feb. 6, 1996 .....	50
104–103 .....	To guarantee the timely payment of social security benefits in March 1996 .....	Feb. 8, 1996 .....	55
104–104 .....	Telecommunications Act of 1996 .....	Feb. 8, 1996 .....	56
104–105 .....	Farm Credit System Reform Act of 1996 .....	Feb. 10, 1996 .....	162
104–106 .....	National Defense Authorization Act for Fiscal Year 1996 .....	Feb. 10, 1996 .....	186
104–107 .....	Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1996 .....	Feb. 12, 1996 .....	704
104–108 .....	To designate the Federal building located at 1221 Nevin Avenue in Richmond, California, as the “Frank Hagel Federal Building”.	Feb. 12, 1996 .....	762
104–109 .....	To make certain technical corrections in laws relating to Native Americans, and for other purposes.	Feb. 12, 1996 .....	763
104–110 .....	To amend title 38, United States Code, to extend the authority of the Secretary of Veterans Affairs to carry out certain programs and activities, to require certain reports from the Secretary of Veterans Affairs, and for other purposes.	Feb. 13, 1996 .....	768
104–111 .....	To award a congressional gold medal to Ruth and Billy Graham .....	Feb. 13, 1996 .....	772
104–112 .....	To designate the United States courthouse located at 197 South Main Street in Wilkes-Barre, Pennsylvania, as the “Max Rosenn United States Courthouse”.	Mar. 5, 1996 .....	774
104–113 .....	National Technology Transfer and Advancement Act of 1995 .....	Mar. 7, 1996 .....	775
104–114 .....	Cuban Liberty and Democratic Solidarity (LIBERTAD) Act of 1996 .....	Mar. 12, 1996 .....	785
104–115 .....	To guarantee the continuing full investment of Social Security and other Federal funds in obligations of the United States.	Mar. 12, 1996 .....	825
104–116 .....	Making further continuing appropriations for the fiscal year 1996, and for other purposes .....	Mar. 15, 1996 .....	826
104–117 .....	To provide that members of the Armed Forces performing services for the peacekeeping efforts in Bosnia and Herzegovina, Croatia, and Macedonia shall be entitled to tax benefits in the same manner as if such services were performed in a combat zone, and for other purposes.	Mar. 20, 1996 .....	827
104–118 .....	Making further continuing appropriations for the fiscal year 1996, and for other purposes .....	Mar. 22, 1996 .....	829
104–119 .....	Land Disposal Program Flexibility Act of 1996 .....	Mar. 26, 1996 .....	830
104–120 .....	Housing Opportunity Program Extension Act of 1996 .....	Mar. 28, 1996 .....	834
104–121 .....	Contract with America Advancement Act of 1996 .....	Mar. 29, 1996 .....	847
104–122 .....	Making further continuing appropriations for the fiscal year 1996, and for other purposes .....	Mar. 29, 1996 .....	876
104–123 .....	Greens Creek Land Exchange Act of 1995 .....	Apr. 1, 1996 .....	879
104–124 .....	To amend the Federal Food, Drug, and Cosmetic Act to repeal the saccharin notice requirement.	Apr. 1, 1996 .....	882
104–125 .....	To grant the consent of the Congress to certain additional powers conferred upon the Bi-State Development Agency by the States of Missouri and Illinois.	Apr. 1, 1996 .....	883
104–126 .....	Granting the consent of Congress to the Vermont-New Hampshire Interstate Public Water Supply Compact.	Apr. 1, 1996 .....	884
104–127 .....	Federal Agriculture Improvement and Reform Act of 1996 .....	Apr. 4, 1996 .....	888
104–128 .....	Federal Tea Tasters Repeal Act of 1996 .....	Apr. 9, 1996 .....	1198
104–129 .....	Waiving certain enrollment requirements with respect to two bills of the One Hundred Fourth Congress.	Apr. 9, 1996 .....	1199
104–130 .....	Line Item Veto Act .....	Apr. 9, 1996 .....	1200
104–131 .....	Making further continuing appropriations for the fiscal year 1996, and for other purposes .....	Apr. 24, 1996 .....	1213
104–132 .....	Antiterrorism and Effective Death Penalty Act of 1996 .....	Apr. 24, 1996 .....	1214
104–133 .....	To amend the Indian Self-Determination and Education Assistance Act to extend for two months the authority for promulgating regulations under the Act.	Apr. 25, 1996 .....	1320
104–134 .....	Omnibus Consolidated Rescissions and Appropriations Act of 1996 .....	Apr. 26, 1996 .....	1321
104–135 .....	To designate the Federal Justice Building in Miami, Florida, as the “James Lawrence King Federal Justice Building”.	Apr. 30, 1996 .....	1322
104–136 .....	To designate the Federal building and United States courthouse located at 125 Market Street in Youngstown, Ohio, as the “Thomas D. Lambros Federal Building and United States Courthouse”.	Apr. 30, 1996 .....	1323
104–137 .....	To designate the United States Post Office-Courthouse located at South 6th and Rogers Avenue, Fort Smith, Arkansas, as the “Judge Isaac C. Parker Federal Building”.	Apr. 30, 1996 .....	1324
104–138 .....	To designate the United States Customs Administrative Building at the Ysleta/Zaragosa Port of Entry located at 797 South Zaragosa Road in El Paso, Texas, as the “Timothy C. McCaghren Customs Administrative Building”.	Apr. 30, 1996 .....	1325

Public Law	Title	Approved	110 Stat.
104-139	To redesignate the Federal building located at 345 Middlefield Road in Menlo Park, California, and known as the Earth Sciences and Library Building, as the "Vincent E. McKelvey Federal Building".	Apr. 30, 1996	1326
104-140	Making corrections to Public Law 104-134	May 2, 1996	1327
104-141	To amend section 326 of the Higher Education Act of 1965 to permit continued participation by Historically Black Graduate Professional Schools in the grant program authorized by that section.	May 6, 1996	1328
104-142	Mercury-Containing and Rechargeable Battery Management Act	May 13, 1996	1329
104-143	Trinity River Basin Fish and Wildlife Management Reauthorization Act of 1995	May 15, 1996	1338
104-144	To grant the consent of Congress to an amendment of the Historic Chattahoochee Compact between the States of Alabama and Georgia.	May 16, 1996	1342
104-145	Megan's Law	May 17, 1996	1345
104-146	Ryan White CARE Act Amendments of 1996	May 20, 1996	1346
104-147	To amend the Water Resources Research Act of 1984 to extend the authorizations of appropriations through fiscal year 2000, and for other purposes.	May 24, 1996	1375
104-148	To authorize the Secretary of the Interior to acquire property in the town of East Hampton, Suffolk County, New York, for inclusion in the Amagansett National Wildlife Refuge.	May 24, 1996	1378
104-149	Healthy Meals for Children Act	May 29, 1996	1379
104-150	Coastal Zone Protection Act of 1996	June 3, 1996	1380
104-151	To designate the United States courthouse in Washington, District of Columbia, as the "E. Barrett Prettyman United States Courthouse".	July 1, 1996	1383
104-152	Anti-Car Theft Improvements Act of 1996	July 2, 1996	1384
104-153	Anticounterfeiting Consumer Protection Act of 1996	July 2, 1996	1386
104-154	To designate the bridge, estimated to be completed in the year 2000, that replaces the bridge on Missouri highway 74 spanning from East Cape Girardeau, Illinois, to Cape Girardeau, Missouri, as the "Bill Emerson Memorial Bridge", and for other purposes.	July 2, 1996	1391
104-155	Church Arson Prevention Act of 1996	July 3, 1996	1392
104-156	Single Audit Act Amendments of 1996	July 5, 1996	1396
104-157	To designate the United States Post Office building located at 102 South McLean, Lincoln, Illinois, as the "Edward Madigan Post Office Building".	July 9, 1996	1405
104-158	To provide for the exchange of certain lands in Gilpin County, Colorado	July 9, 1996	1406
104-159	To provide that the United States Post Office building that is to be located at 7436 South Exchange Avenue, Chicago, Illinois, shall be known and designated as the "Charles A. Hayes Post Office Building".	July 9, 1996	1411
104-160	To designate the Federal building and United States courthouse located at 235 North Washington Avenue in Scranton, Pennsylvania, as the "William J. Nealon Federal Building and United States Courthouse".	July 9, 1996	1412
104-161	To provide for the distribution within the United States of the United States Information Agency film entitled "Fragile Ring of Life".	July 18, 1996	1413
104-162	To authorize the extension of nondiscriminatory treatment (most-favored-nation treatment) to the products of Bulgaria.	July 18, 1996	1414
104-163	National Children's Island Act of 1995	July 19, 1996	1416
104-164	To amend the Foreign Assistance Act of 1961 and the Arms Export Control Act to make improvements to certain defense and security assistance provisions under those Acts, to authorize the transfer of naval vessels to certain foreign countries, and for other purposes.	July 21, 1996	1421
104-165	To authorize the Secretary of Agriculture to convey lands to the city of Rolla, Missouri	July 24, 1996	1443
104-166	To amend the Public Health Service Act to provide for the conduct of expanded studies and the establishment of innovative programs with respect to traumatic brain injury, and for other purposes.	July 29, 1996	1445
104-167	Entitled the "Mollie Beattie Wilderness Area Act"	July 29, 1996	1451
104-168	Taxpayer Bill of Rights 2	July 30, 1996	1452
104-169	National Gambling Impact Study Commission Act	Aug. 3, 1996	1482
104-170	Food Quality Protection Act of 1996	Aug. 3, 1996	1489
104-171	To authorize the extension of nondiscriminatory treatment (most-favored-nation treatment) to the products of Romania.	Aug. 3, 1996	1539
104-172	Iran and Libya Sanctions Act of 1996	Aug. 5, 1996	1541
104-173	To provide for the extension of certain hydroelectric projects located in the State of West Virginia.	Aug. 6, 1996	1552
104-174	To authorize minors who are under the child labor provisions of the Fair Labor Standards Act of 1938 and who are under 18 years of age to load materials into balers and compactors that meet appropriate American National Standards Institute design safety standards.	Aug. 6, 1996	1553
104-175	To authorize a circuit judge who has taken part in an in banc hearing of a case to continue to participate in that case after taking senior status, and for other purposes.	Aug. 6, 1996	1556
104-176	Granting the consent of Congress to the compact to provide for joint natural resource management and enforcement of laws and regulations pertaining to natural resources and boating at the Jennings Randolph Lake Project lying in Garrett County, Maryland and Mineral County, West Virginia, entered into between the States of West Virginia and Maryland.	Aug. 6, 1996	1557
104-177	Federal Employee Representation Improvement Act of 1996	Aug. 6, 1996	1563
104-178	To amend title 18, United States Code, to repeal the provision relating to Federal employees contracting or trading with Indians.	Aug. 6, 1996	1565
104-179	Office of Government Ethics Authorization Act of 1996	Aug. 6, 1996	1566
104-180	Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 1997.	Aug. 6, 1996	1569
104-181	Granting the consent of Congress to the Mutual Aid Agreement between the city of Bristol, Virginia, and the city of Bristol, Tennessee.	Aug. 6, 1996	1609
104-182	Safe Drinking Water Act Amendments of 1996	Aug. 6, 1996	1613
104-183	Developmental Disabilities Assistance and Bill of Rights Act Amendments of 1996	Aug. 6, 1996	1694
104-184	District of Columbia Water and Sewer Authority Act of 1996	Aug. 6, 1996	1696
104-185	Federal Oil and Gas Royalty Simplification and Fairness Act of 1996	Aug. 13, 1996	1700
104-186	House of Representatives Administrative Reform Technical Corrections Act	Aug. 20, 1996	1718

Public Law	Title	Approved	110 Stat.
104-187	To redesignate the United States Post Office building located at 245 Centereach Mall on the Middle Country Road in Centereach, New York, as the "Rose Y. Caracappa United States Post Office Building".	Aug. 20, 1996	1754
104-188	Small Business Job Protection Act of 1996	Aug. 20, 1996	1755
104-189	To redesignate the Dunning Post Office in Chicago, Illinois, as the "Roger P. McAuliffe Post Office".	Aug. 20, 1996	1931
104-190	To authorize the Agency for International Development to offer voluntary separation incentive payments to employees of that agency.	Aug. 20, 1996	1932
104-191	Health Insurance Portability and Accountability Act of 1996	Aug. 21, 1996	1936
104-192	War Crimes Act of 1996	Aug. 21, 1996	2104
104-193	Personal Responsibility and Work Opportunity Reconciliation Act of 1996	Aug. 22, 1996	2105
104-194	District of Columbia Appropriations Act, 1997	Sept. 9, 1996	2356
104-195	To amend the Impact Aid program to provide for a hold-harmless with respect to amounts for payments relating to the Federal acquisition of real property, and for other purposes.	Sept. 16, 1996	2379
104-196	Military Construction Appropriations Act, 1997	Sept. 16, 1996	2385
104-197	Legislative Branch Appropriations Act, 1997	Sept. 16, 1996	2394
104-198	To confer jurisdiction of the United States Court of Federal Claims with respect to land claims of Pueblo of Isleta Indian Tribe.	Sept. 18, 1996	2418
104-199	Defense of Marriage Act	Sept. 21, 1996	2419
104-200	To make technical corrections in the Federal Oil and Gas Royalty Management Act of 1982	Sept. 22, 1996	2421
104-201	National Defense Authorization Act for Fiscal Year 1997	Sept. 23, 1996	2422
104-202	To name the Department of Veterans Affairs medical center in Jackson, Mississippi, as the "G.V. (Sonny) Montgomery Department of Veterans Affairs Medical Center".	Sept. 24, 1996	2871
104-203	To extend nondiscriminatory treatment (most-favored-nation treatment) to the products of Cambodia, and for other purposes.	Sept. 25, 1996	2872
104-204	Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1997.	Sept. 26, 1996	2874
104-205	Department of Transportation and Related Agencies Appropriations Act, 1997	Sept. 30, 1996	2951
104-206	Energy and Water Development Appropriations Act, 1997	Sept. 30, 1996	2984
104-207	Waiving certain enrollment requirements with respect to any bill or joint resolution of the One Hundred Fourth Congress making general or continuing appropriations for fiscal year 1997.	Sept. 30, 1996	3008
104-208	Omnibus Consolidated Appropriations Act, 1997	Sept. 30, 1996	3009
104-209	To authorize the Secretary of the Interior to acquire certain interests in the Waihee Marsh for inclusion in the Oahu National Wildlife Refuge Complex.	Oct. 1, 1996	3010
104-210	To encourage the donation of food and grocery products to nonprofit organizations for distribution to needy individuals by giving the Model Good Samaritan Food Donation Act the full force and effect of law.	Oct. 1, 1996	3011
104-211	To amend Public Law 103-93 to provide additional lands within the State of Utah for the Goshute Indian Reservation, and for other purposes.	Oct. 1, 1996	3013
104-212	To revise the boundary of the North Platte National Wildlife Refuge, to expand the Pettaquamscutt Cove National Wildlife Refuge, and for other purposes.	Oct. 1, 1996	3014
104-213	Carbon Hill National Fish Hatchery Conveyance Act	Oct. 1, 1996	3016
104-214	To amend title 18, United States Code, with respect to witness retaliation, witness tampering and jury tampering.	Oct. 1, 1996	3017
104-215	Crawford National Fish Hatchery Conveyance Act	Oct. 1, 1996	3018
104-216	Federal Trade Commission Reauthorization Act of 1996	Oct. 1, 1996	3019
104-217	Carjacking Correction Act of 1996	Oct. 1, 1996	3020
104-218	To confer honorary citizenship of the United States on Agnes Gonxha Bojaxhiu, also known as Mother Teresa.	Oct. 1, 1996	3021
104-219	To clarify the rules governing removal of cases to Federal court, and for other purposes	Oct. 1, 1996	3022
104-220	To repeal a redundant venue provision, and for other purposes	Oct. 1, 1996	3023
104-221	To designate the United States Courthouse under construction at 1030 Southwest 3rd Avenue, Portland, Oregon, as the "Mark O. Hatfield United States Courthouse", and for other purposes.	Oct. 1, 1996	3024
104-222	To authorize construction of the Smithsonian Institution National Air and Space Museum Dulles Center at Washington Dulles International Airport, and for other purposes.	Oct. 1, 1996	3025
104-223	Crow Creek Sioux Tribe Infrastructure Development Trust Fund Act of 1996	Oct. 1, 1996	3026
104-224	To repeal an unnecessary medical device reporting requirement	Oct. 2, 1996	3031
104-225	To designate the Federal building located at the corner of Patton Avenue and Otis Street, and the United States courthouse located on Otis Street, in Asheville, North Carolina, as the "Veach-Baley Federal Complex".	Oct. 2, 1996	3032
104-226	To repeal the Medicare and Medicaid Coverage Data Bank	Oct. 2, 1996	3033
104-227	Antarctic Science, Tourism, and Conservation Act of 1996	Oct. 2, 1996	3034
104-228	To designate the Federal building located at 1655 Woodson Road in Overland, Missouri, as the "Sammy L. Davis Federal Building".	Oct. 2, 1996	3045
104-229	To designate the Federal building and the United States courthouse to be constructed at a site on 18th Street between Dodge and Douglas Streets in Omaha, Nebraska, as the "Roman L. Hruska Federal Building and United States Courthouse".	Oct. 2, 1996	3046
104-230	To designate the United States courthouse under construction at 611 North Florida Avenue in Tampa, Florida, as the "Sam M. Gibbons United States Courthouse".	Oct. 2, 1996	3047
104-231	Electronic Freedom of Information Act Amendments of 1996	Oct. 2, 1996	3048
104-232	Parole Commission Phaseout Act of 1996	Oct. 2, 1996	3055
104-233	To reauthorize the Indian Environmental General Assistance Program Act of 1992, and for other purposes.	Oct. 2, 1996	3057
104-234	To amend the United States-Israel Free Trade Area Implementation Act of 1985 to provide the President with additional proclamation authority with respect to articles of the West Bank or Gaza Strip or a qualifying industrial zone.	Oct. 2, 1996	3058
104-235	Child Abuse Prevention and Treatment Act Amendments of 1996	Oct. 3, 1996	3063
104-236	Pam Lychner Sexual Offender Tracking and Identification Act of 1996	Oct. 3, 1996	3093
104-237	Comprehensive Methamphetamine Control Act of 1996	Oct. 3, 1996	3099
104-238	Federal Law Enforcement Dependents Assistance Act of 1996	Oct. 3, 1996	3114
104-239	Maritime Security Act of 1996	Oct. 8, 1996	3118

Public Law	Title	Approved	110 Stat.
104-240 .....	To permit a county-operated health insuring organization to qualify as an organization exempt from certain requirements otherwise applicable to health insuring organizations under the Medicaid program notwithstanding that the organization enrolls Medicaid beneficiaries residing in another county.	Oct. 8, 1996 .....	3140
104-241 .....	To extend the deadline under the Federal Power Act applicable to the construction of three hydroelectric projects in the State of Arkansas.	Oct. 9, 1996 .....	3141
104-242 .....	To extend the time for construction of certain FERC licensed hydro projects .....	Oct. 9, 1996 .....	3142
104-243 .....	To extend the deadline under the Federal Power Act applicable to the construction of a hydroelectric project in the State of Ohio.	Oct. 9, 1996 .....	3143
104-244 .....	To authorize extension of time limitation for a FERC-issued hydroelectric license .....	Oct. 9, 1996 .....	3144
104-245 .....	To reinstate the permit for, and extend the deadline under the Federal Power Act applicable to the construction of, a hydroelectric project in Oregon, and for other purposes.	Oct. 9, 1996 .....	3145
104-246 .....	To provide for the extension of a hydroelectric project located in the State of West Virginia .....	Oct. 9, 1996 .....	3146
104-247 .....	To authorize the extension of time limitation for the FERC-issued hydroelectric license for the Mt. Hope Waterpower Project.	Oct. 9, 1996 .....	3147
104-248 .....	To amend title XIX of the Social Security Act to make certain technical corrections relating to physicians' services.	Oct. 9, 1996 .....	3148
104-249 .....	To extend the deadline under the Federal Power Act applicable to the construction of a hydroelectric project in Kentucky, and for other purposes.	Oct. 9, 1996 .....	3150
104-250 .....	Animal Drug Availability Act of 1996 .....	Oct. 9, 1996 .....	3151
104-251 .....	Railroad Unemployment Insurance Amendments Act of 1996 .....	Oct. 9, 1996 .....	3161
104-252 .....	To extend the deadline for commencement of construction of a hydroelectric project in the State of Illinois.	Oct. 9, 1996 .....	3166
104-253 .....	To increase the amount authorized to be appropriated to the Department of the Interior for the Tensas River National Wildlife Refuge, and for other purposes.	Oct. 9, 1996 .....	3167
104-254 .....	To extend the deadline under the Federal Power Act applicable to the construction of certain hydroelectric projects in the State of Pennsylvania.	Oct. 9, 1996 .....	3168
104-255 .....	To designate the building located at 8302 FM 327, Elmendorf, Texas, which houses operations of the United States Postal Service, as the "Amos F. Longoria Post Office Building".	Oct. 9, 1996 .....	3169
104-256 .....	To extend the deadline under the Federal Power Act applicable to the construction of 2 hydroelectric projects in North Carolina, and for other purposes.	Oct. 9, 1996 .....	3170
104-257 .....	To reinstate the license for, and extend the deadline under the Federal Power Act applicable to the construction of, a hydroelectric project in Ohio, and for other purposes.	Oct. 9, 1996 .....	3171
104-258 .....	To extend the deadline for commencement of construction of a hydroelectric project in the State of Kentucky.	Oct. 9, 1996 .....	3172
104-259 .....	To extend the authorization of the Uranium Mill Tailings Radiation Control Act of 1978, and for other purposes.	Oct. 9, 1996 .....	3173
104-260 .....	To amend the Clean Air Act to provide that traffic signal synchronization projects are exempt from certain requirements of Environmental Protection Agency Rules.	Oct. 9, 1996 .....	3175
104-261 .....	To accept the request of the Prairie Island Indian Community to revoke their charter of incorporation issued under the Indian Reorganization Act.	Oct. 9, 1996 .....	3176
104-262 .....	Veterans' Health Care Eligibility Reform Act of 1996 .....	Oct. 9, 1996 .....	3177
104-263 .....	Veterans' Compensation Cost-of-Living Adjustment Act of 1996 .....	Oct. 9, 1996 .....	3212
104-264 .....	Federal Aviation Reauthorization Act of 1996 .....	Oct. 9, 1996 .....	3213
104-265 .....	Walhalla National Fish Hatchery Conveyance Act .....	Oct. 9, 1996 .....	3288
104-266 .....	Reclamation Recycling and Water Conservation Act of 1996 .....	Oct. 9, 1996 .....	3290
104-267 .....	To waive temporarily the Medicaid enrollment composition rule for certain health maintenance organizations.	Oct. 9, 1996 .....	3298
104-268 .....	To designate the United States Post Office building located at 351 West Washington Street in Camden, Arkansas, as the "David H. Pryor Post Office Building".	Oct. 9, 1996 .....	3299
104-269 .....	To make available certain Voice of America and Radio Marti multilingual computer readable text and voice recordings.	Oct. 9, 1996 .....	3300
104-270 .....	To provide for a study of the recommendations of the Joint Federal-State Commission on Policies and Programs Affecting Alaska Natives.	Oct. 9, 1996 .....	3301
104-271 .....	Hydrogen Future Act of 1996 .....	Oct. 9, 1996 .....	3304
104-272 .....	Professional Boxing Safety Act of 1996 .....	Oct. 9, 1996 .....	3309
104-273 .....	Helium Privatization Act of 1996 .....	Oct. 9, 1996 .....	3315
104-274 .....	To authorize appropriations for the National Historical Publications and Records Commission for fiscal years 1998, 1999, 2000, and 2001.	Oct. 9, 1996 .....	3321
104-275 .....	Veterans' Benefits Improvements Act of 1996 .....	Oct. 9, 1996 .....	3322
104-276 .....	To direct the Secretary of the Interior to convey certain property containing a fish and wildlife facility to the State of Wyoming, and for other purposes.	Oct. 9, 1996 .....	3352
104-277 .....	To provide that the United States Post Office and Courthouse building located at 9 East Broad Street, Cookeville, Tennessee, shall be known and designated as the "L. Clure Morton United States Post Office and Courthouse".	Oct. 9, 1996 .....	3354
104-278 .....	National Museum of the American Indian Act Amendments of 1996 .....	Oct. 9, 1996 .....	3355
104-279 .....	To authorize the Capitol Guide Service to accept voluntary services .....	Oct. 9, 1996 .....	3358
104-280 .....	To provide for the extension of certain authority for the Marshal of the Supreme Court and the Supreme Court Police.	Oct. 9, 1996 .....	3359
104-281 .....	To designate the United States Post Office building located in Brewer, Maine, as the "Joshua Lawrence Chamberlain Post Office Building", and for other purposes.	Oct. 9, 1996 .....	3360
104-282 .....	To commend Operation Sail for its advancement of brotherhood among nations, its continuing commemoration of the history of the United States, and its nurturing of young cadets through training in seamanship.	Oct. 9, 1996 .....	3361
104-283 .....	National Marine Sanctuaries Preservation Act .....	Oct. 11, 1996 .....	3363
104-284 .....	Propane Education and Research Act of 1996 .....	Oct. 11, 1996 .....	3370
104-285 .....	To reauthorize the National Film Preservation Board, and for other purposes .....	Oct. 11, 1996 .....	3377
104-286 .....	To amend the Central Utah Project Completion Act to direct the Secretary of the Interior to allow for prepayment of repayment contracts between the United States and the Central Utah Water Conservancy District dated December 28, 1965, and November 26, 1985, and for other purposes.	Oct. 11, 1996 .....	3387

Public Law	Title	Approved	110 Stat.
104-287	To codify without substantive change laws related to transportation and to improve the United States Code.	Oct. 11, 1996	3388
104-288	United States National Tourism Organization Act of 1996	Oct. 11, 1996	3402
104-289	Savings in Construction Act of 1996	Oct. 11, 1996	3411
104-290	National Securities Markets Improvement Act of 1996	Oct. 11, 1996	3416
104-291	To amend title 49, United States Code, to authorize appropriations for fiscal years 1997, 1998, and 1999 for the National Transportation Safety Board, and for other purposes.	Oct. 11, 1996	3452
104-292	False Statements Accountability Act of 1996	Oct. 11, 1996	3459
104-293	Intelligence Authorization Act for Fiscal Year 1997	Oct. 11, 1996	3461
104-294	Economic Espionage Act of 1996	Oct. 11, 1996	3488
104-295	Miscellaneous Trade and Technical Corrections Act of 1996	Oct. 11, 1996	3514
104-296	Appointing the day for the convening of the first session of the One Hundred Fifth Congress and the day for the counting in Congress of the electoral votes for President and Vice President cast in December 1996.	Oct. 11, 1996	3558
104-297	Sustainable Fisheries Act	Oct. 11, 1996	3559
104-298	Water Desalination Act of 1996	Oct. 11, 1996	3622
104-299	Health Centers Consolidation Act of 1996	Oct. 11, 1996	3626
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104-301	Navajo-Hopi Land Dispute Settlement Act of 1996	Oct. 11, 1996	3649
104-302	To extend the authorized period of stay within the United States for certain nurses	Oct. 11, 1996	3656
104-303	Water Resources Development Act of 1996	Oct. 12, 1996	3658
104-304	Accountable Pipeline Safety and Partnership Act of 1996	Oct. 12, 1996	3793
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104-306	To extend certain programs under the Energy Policy and Conservation Act through September 30, 1997.	Oct. 14, 1996	3810
104-307	Wildfire Suppression Aircraft Transfer Act of 1996	Oct. 14, 1996	3811
104-308	To enhance fairness in compensating owners of patents used by the United States	Oct. 19, 1996	3814
104-309	To express the sense of the Congress that United States Government agencies in possession of records about individuals who are alleged to have committed Nazi war crimes should make these records public.	Oct. 19, 1996	3815
104-310	To modify the boundaries of the Talladega National Forest, Alabama	Oct. 19, 1996	3817
104-311	To amend the Wild and Scenic Rivers Act by designating the Wekiva River, Seminole Creek, and Rock Springs Run in the State of Florida for study and potential addition to the National Wild and Scenic Rivers System.	Oct. 19, 1996	3818
104-312	To authorize appropriations for a mining institute or institutes to develop domestic technological capabilities for the recovery of minerals from the Nation's seabed, and for other purposes.	Oct. 19, 1996	3819
104-313	Indian Health Care Improvement Technical Corrections Act of 1996	Oct. 19, 1996	3820
104-314	To designate 51.7 miles of the Clarion River, located in Pennsylvania, as a component of the National Wild and Scenic Rivers System.	Oct. 19, 1996	3823
104-315	To amend title XIX of the Social Security Act to repeal the requirement for annual resident review for nursing facilities under the Medicaid program and to require resident reviews for mentally ill or mentally retarded residents when there is a significant change in physical or mental condition.	Oct. 19, 1996	3824
104-316	General Accounting Office Act of 1996	Oct. 19, 1996	3826
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104-323	Cache La Poudre River Corridor Act	Oct. 19, 1996	3889
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104-329	United States Commemorative Coin Act of 1996	Oct. 20, 1996	4005
104-330	Native American Housing Assistance and Self-Determination Act of 1996	Oct. 26, 1996	4016
104-331	Presidential and Executive Office Accountability Act	Oct. 26, 1996	4053
104-332	National Invasive Species Act of 1996	Oct. 26, 1996	4073
104-333	Omnibus Parks and Public Lands Management Act of 1996	Nov. 12, 1996	4093

<sup>1</sup>Public Laws 104-93 and 104-95 thru 104-98 were printed in the Cumulative List of Public Laws for the 104th Congress, First Session.

**Final Rule**

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Monday  
December 16, 1996

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**Part III**

**Environmental  
Protection Agency**

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**40 CFR Part 435  
Oil and Gas Extraction Point Source  
Category; Final Effluent Limitations  
Guidelines and Standards for the Coastal  
Subcategory; Final Rule**

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 435**

[FRL-5648-4]

RIN 2040-AB72

**Final Effluent Limitations Guidelines and Standards for the Coastal Subcategory of the Oil and Gas Extraction Point Source Category**

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

**ACTION:** Final rule.

**SUMMARY:** This Clean Water Act (CWA) regulation limits the discharge of pollutants into waters of the United States and the introduction of pollutants into publicly-owned treatment works by existing and new facilities in the coastal subcategory of the oil and gas extraction point source category.

This regulation establishes effluent limitations guidelines and new source performance standards (NSPS) for direct dischargers based on "best practicable control technology currently available" (BPT), "best conventional pollutant control technology" (BCT), "best available technology economically achievable" (BAT), and "best available demonstrated control technology" (BADCT) for new sources. The regulation also establishes "pretreatment standards for new sources" (PSNS) and "pretreatment standards for existing sources" (PSES) discharging their wastewaters to publicly-owned-treatment works (POTWs). In essence, this final rule codifies the current permit requirements for coastal oil and gas dischargers—except that it also requires zero discharge of offshore produced water for discharges to the main passes of the Mississippi River, applies to discharges not currently authorized by permits, and establishes limitations in Cook Inlet, Alaska which are equal to those previously established for the offshore subcategory. The major wastestreams being limited are produced water, drilling fluids, and drill cuttings. These limitations are expected to reduce discharges of conventional pollutants by 2,780,000 pounds per year, nonconventional pollutants by 1,490,000,000 pounds per year, and toxic pollutants by 228,000 pounds per year, assuming a baseline of current permit requirements. The statutory term "toxic pollutant" refers to a substance identified as belonging to one of the 65 families of chemicals listed in the CWA as toxic.

**DATES:** The regulation shall become effective January 15, 1997, except for § 435.45 NSPS which become effective December 16, 1996.

The compliance dates for the guidelines and standards established with this rule are different. The compliance date for PSES is January 15, 1997. The compliance date for NSPS and PSNS is the date the new source begins operation. Deadlines for compliance with BPT, BCT, and BAT are established in NPDES permits.

In accordance with 40 CFR part 23, this regulation shall be considered issued for the purposes of judicial review at 1 pm Eastern time on January 15, 1997. Under section 509(b)(1) of the CWA, judicial review of this regulation can be had only by filing a petition for review in the United States Court of Appeals within 120 days after the regulation is considered issued for purposes of judicial review. Under section 509(b)(2) of the CWA, the requirements in this regulation may not be challenged later in civil or criminal proceedings brought by EPA to enforce these requirements.

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

**ADDRESSES:** For additional engineering information contact Mr. Ronald P. Jordan, Office of Water, Engineering and Analysis Division (4303), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460, (202) 260-7115. For additional information on the economic impact analyses contact Dr. Matthew Clark, Office of Water, Engineering and Analysis Division (4303), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460, (202) 260-7192.

The complete public record for this rulemaking, including EPA's responses to comments received during rulemaking, is available for review at EPA's Water Docket; Room M2616, 401 M Street SW, Washington, DC 20460. For access to Docket materials call (202) 260-3027. The Docket staff requests that interested parties call, between 9 am and 3:30 pm, for an appointment before visiting the docket. The EPA regulations at 40 CFR part 2 provide that a reasonable fee may be charged for copying.

EPA notes that many documents in the record supporting these final rules have been claimed as confidential business information (CBI) and, therefore, are not included in the record that is available to the public in the

Water Docket. To support the rulemaking, EPA is presenting certain information in aggregated form or is masking facility identities to preserve confidentiality claims. Further, the Agency has withheld from disclosure some data not claimed as confidential business information because release of this information could indirectly reveal information claimed to be confidential.

**FOR FURTHER INFORMATION CONTACT:** Charles E. White, Office of Water, Engineering and Analysis Division (4303), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460, (202) 260-5411.

**SUPPLEMENTARY INFORMATION:**

Regulated Entities

As described in the proposed rule (60 FR 9428, February 17, 1995), EPA has clarified the definition of the Coastal Subcategory in the Coastal Guidelines. This definition is used to describe the regulated entities. Regulated categories and entities include:

Category	Examples of regulated entities
Industry .....	Facilities engaged in field exploration, drilling, production, and well treatment in the oil and gas industry that are in areas defined as "coastal" or that discharge into areas defined as "coastal."

The term "coastal" refers to a location in or on a water of the United States landward of the inner boundary of the territorial seas. Note that all inland bays and wetlands are included in this definition. In addition, any location in Texas or Louisiana between the Chapman Line and the inner boundary of the territorial seas is defined as "coastal." The Chapman Line is defined by points of latitude and longitude within the states of Texas and Louisiana which are stated in the rule.

The preceding table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that EPA is now aware could potentially be regulated by this action. Other types of entities not listed in the table could also be regulated. To determine whether your facility is regulated by this action, you should carefully examine the applicability criteria § 435.10 and § 435.40 in the Regulatory Text section of the rule. If you have questions regarding the applicability of this action to a particular entity, consult the person

listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

#### Alternative Baseline for Impact and Benefits Analyses

Subsequent to the issuance of general permits requiring zero discharge for coastal facilities along the Gulf of Mexico, EPA received individual permit applications from Texas dischargers seeking to discharge produced water. Additionally, the U.S. Department of Energy has provided the State of Louisiana with comments and analyses suggesting a change to the Louisiana state law requiring zero discharge of produced water to open bays by January 1997. Promulgation of this rule requiring zero discharge in these areas would generally preclude issuance of permits allowing discharge. Therefore, in addition to calculating the costs, economic impacts, and pollutant removals incremental to current permit limits, EPA has calculated an alternative estimate of these factors using an "alternative baseline." This "alternative baseline" assumes that zero discharge would no longer apply to Texas dischargers seeking individual permits and Louisiana open bay dischargers. Under this alternative baseline, this rule would reduce discharges of conventional pollutants by 11,300,000 pounds per year, nonconventional pollutants by 4,590,000,000 pounds per year, and toxic pollutants by 880,000 pounds per year.

#### Overview

The preamble describes the legal authority, background, technical and economic basis, and other aspects of the final regulation. The definitions, acronyms, and abbreviations used in this notice are defined in appendix A to the preamble. The regulatory text for amendments to 40 CFR part 435, that implements this rulemaking, follows the preamble.

#### Organization of This Document

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  - XI. Related Acts of Congress, Executive Orders, and Agency Initiatives
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    - G. Implementation for NPDES Permit Writers
  - XV. Background Documents
- Appendix A to the Preamble—Abbreviations, Acronyms, and Other Terms Used in This Document

##### I. Legal Authority

This final regulation establishes effluent limitations guidelines and standards for the Coastal Subcategory of the Oil and Gas Extraction Point Source Category under sections 301, 304, 306, 307, 308, and 501 of the Clean Water Act (CWA), 33 U.S.C. sections 1311, 1314, 1316, 1317, 1318, and 1361. The regulation is also being promulgated pursuant to a Consent Decree entered in *NRDC et al. v. Reilly*, (D D.C. No. 89–

2980, January 31, 1992) and is consistent with EPA's latest Effluent Guidelines Plan under section 304(m) of the CWA. (See 61 FR 52582, October 7, 1996).

##### II. Purpose and Summary of This Rulemaking

###### A. Purpose of This Rulemaking

This final rule establishes effluent limitations guidelines and standards for the control of the discharge of pollutants for the Coastal Subcategory of the Oil and Gas Extraction Point Source Category. The discharge limitations promulgated today apply to discharges from the coastal oil and gas industry. The processes and operations which comprise the coastal oil and gas subcategory (Standard Industrial Classification (SIC) Major Group 13) are currently regulated under 40 CFR part 435, subpart D. These regulations apply to those facilities engaged in field exploration, development drilling, production, and well treatment in the oil and gas industry that are in areas defined as "coastal." The term "coastal" refers to a location in or on a water of the United States landward of the inner boundary of the territorial seas. In addition, any location in Texas or Louisiana between the Chapman Line and the inner boundary of the territorial seas is defined as "coastal." The Chapman Line is defined by points of latitude and longitude within the states of Texas and Louisiana which are stated in the rule. The final rule promulgated today is referred to as the Coastal Guidelines throughout this preamble.

This preamble highlights key aspects of the Coastal Guidelines. The technology descriptions and economic analyses discussed later in this notice are presented in abbreviated form. More detailed descriptions are included in the *Development Document for Final Effluent Limitations Guidelines and Standards for the Coastal Subcategory of the Oil and Gas Extraction Point Source Category*, referred to hereafter as the "Coastal Development Document." EPA's economic impact assessment is presented in detail in the *Economic Impact Analysis of Final Effluent Limitations Guidelines and Standards for the Coastal Subcategory of the Oil and Gas Extraction Point Source Category* (hereinafter, "EIA"), included in the rulemaking record. EPA's complete environmental benefits analysis is presented in the *Water Quality Benefits Analysis of Final Effluent Limitations Guidelines and Standards for the Coastal Subcategory*

of the Oil and Gas Extraction Point Source Category (hereinafter, WQBA), included in the rulemaking record.

### B. Summary of the Final Coastal Guidelines

This rule establishes regulations based on "best practicable control technology currently available" (BPT) for one wastestream where BPT did not previously exist, "best conventional pollutant control technology" (BCT), "new source performance standards" (NSPS), "best available technology economically achievable" (BAT), "pretreatment standards for existing sources" (PSES), and "pretreatment standards for new sources" (PSNS).

Drilling fluids, drill cuttings, and dewatering effluent are limited under BCT, BAT, NSPS, PSES, and PSNS. BCT limitations are zero discharge, except for Cook Inlet, Alaska. In Cook Inlet, BCT limitations prohibit discharge of free oil. For both BAT and NSPS, EPA is establishing zero discharge limitations for drilling fluids, drill cuttings, and dewatering effluent except for Cook Inlet. In Cook Inlet, discharge limitations include no discharge of free oil, no discharge of diesel oil, 1 mg/kg mercury and 3 mg/kg cadmium limitations on the stock barite, and a toxicity limitation of 30,000 ppm SPP. For both PSES and PSNS, EPA is establishing zero discharge limitations in all coastal subcategory locations.

Produced water and treatment, workover, and completion fluids are limited under BCT, BAT, NSPS, PSES, and PSNS. For BCT, EPA is establishing limitations on the concentration of oil and grease in produced water and treatment, workover, and completion fluids equal to current BPT limits. The Daily Maximum limitation for oil and grease is 72 mg/l and the Monthly Average limitation is 48 mg/l. For BAT and NSPS, EPA is establishing zero discharge limitations, except for Cook Inlet, Alaska. In Cook Inlet, the Daily Maximum limitation for oil and grease is 42 mg/l and the Monthly Average limitation is 29 mg/l. For both PSES and PSNS, EPA is establishing zero discharge limitations.

For produced sand, EPA is establishing zero discharge limitations under BPT, BCT, BAT, NSPS, PSNS, and PSES.

Deck drainage is limited under BCT, BAT, NSPS, PSES, and PSNS. For BCT, BAT, and NSPS, EPA is establishing discharge limitations of no free oil. For PSES and PSNS, EPA is establishing zero discharge limitations.

Domestic waste is limited under BCT, BAT, and NSPS. For BCT, EPA is establishing no discharge of floating

solids or garbage as limitations. For BAT, EPA is establishing no discharge of foam as the limitation. For NSPS, EPA is establishing no discharge of floating solids, foam, or garbage as limitations. There are no PSES and PSNS for domestic waste under the Coastal Guidelines.

Sanitary waste is limited under BCT and NSPS. For BCT and NSPS, sanitary waste effluents from facilities continuously manned by ten or more persons would contain a minimum residual chlorine content of 1 mg/l, with the chlorine level maintained as close to this concentration as possible. Facilities continuously manned by nine or fewer persons or only intermittently manned by any number of persons must not discharge floating solids. EPA is establishing no BAT, PSES, or PSNS regulations for sanitary waste under the Coastal Guidelines.

### III. Background

The objective of the Clean Water Act is to "restore and maintain the chemical, physical, and biological integrity of the Nation's waters". To that end, it is the national goal that the discharge of pollutants to the nation's waters be eliminated. CWA section 101.

#### A. Definitions of Guidelines and Standards

To assist in achieving the objective of the CWA, EPA issues effluent limitations guidelines, pretreatment standards, and new source performance standards for industrial dischargers. These guidelines and standards are summarized below:

##### 1. Best Practicable Control Technology Currently Available (BPT)—Sec. 304(b)(1) of the CWA

BPT effluent limitations guidelines apply to discharges of conventional, toxic, and nonconventional pollutants from existing sources. BPT guidelines are generally based on the average of the best existing performance by plants in a category or subcategory. In establishing BPT, EPA considers the cost of achieving effluent reductions in relation to the effluent reduction benefits, the age of equipment and facilities, the processes employed, process changes required, engineering aspects of the control technologies, non-water quality environmental impacts (including energy requirements), and other factors as the Administrator deems appropriate. CWA section 304(b)(1)(B). Where existing performance is uniformly inadequate, BPT may be transferred from a different subcategory or category.

##### 2. Best Conventional Pollutant Control Technology (BCT)—Sec. 304(b)(4) of the CWA

The 1977 amendments to the CWA established BCT as an additional level of control for discharges of conventional pollutants from existing industrial point sources. In addition to other factors specified in section 304(b)(4)(B), the CWA requires that BCT limitations be established in light of a two part "cost-reasonableness" test. EPA published a methodology for the development of BCT limitations which became effective August 22, 1986 (51 FR 24974, July 9, 1986).

Section 304(a)(4) designates the following as conventional pollutants: biochemical oxygen demanding pollutants (measured as BOD<sub>5</sub>), total suspended solids (TSS), fecal coliform, pH, and any additional pollutants defined by the Administrator as conventional. The Administrator designated oil and grease as an additional conventional pollutant on July 30, 1979 (44 FR 44501).

##### 3. Best Available Technology Economically Achievable (BAT)—Sec. 304(b)(2) of the CWA

In general, BAT effluent limitations guidelines represent the best existing economically achievable performance of facilities in the industrial subcategory or category. The CWA establishes BAT as a principal national means of controlling the direct discharge of toxic and nonconventional pollutants. The factors considered in assessing BAT include the age of equipment and facilities involved, the process employed, potential process changes, non-water quality environmental impacts, including energy requirements, and such factors as the Administrator deems appropriate. The Agency retains considerable discretion in assigning the weight to be accorded these factors. An additional statutory factor considered in setting BAT is economic achievability across the subcategory. Generally, the achievability is determined on the basis of total costs to the industrial subcategory and their effect on the overall industry financial health. As with BPT, BAT may be transferred from a different subcategory or category. BAT may be based upon process changes or internal controls, even when these technologies are not common industry practice.

##### 4. Best Available Demonstrated Control Technology For New Sources (BADCT)—Sec. 306 of the CWA

NSPS are based on the best available demonstrated treatment technology and

apply to all pollutants (conventional, nonconventional, and toxic). New facilities have the opportunity to install the best and most efficient production processes and wastewater treatment technologies. Under NSPS, EPA is to consider the best demonstrated process changes, in-plant controls, and end-of-process control and treatment technologies that reduce pollution to the maximum extent feasible. In establishing NSPS, EPA is directed to take into consideration the cost of achieving the effluent reduction and any non-water quality environmental impacts and energy requirements.

5. Pretreatment Standards for Existing Sources (PSES)—Sec. 307(b) of the CWA

PSES are designed to prevent the discharge of pollutants that pass through, interfere with, or are otherwise incompatible with the operation of publicly-owned treatment works (POTW). The CWA authorizes EPA to establish pretreatment standards for pollutants that pass through POTWs or interfere with treatment processes or sludge disposal methods at POTWs. Pretreatment standards are technology-based and analogous to BAT effluent limitations guidelines.

The General Pretreatment Regulations, which set forth the framework for the implementation of categorical pretreatment standards, are found at 40 CFR part 403. Those regulations contain a definition of pass-through that addresses localized rather than national instances of pass-through and establish pretreatment standards that apply to all non-domestic dischargers. See 52 FR 1586, January 14, 1987.

6. Pretreatment Standards for New Sources (PSNS)—Sec. 307(b) of the CWA

Like PSES, PSNS are designed to prevent the discharges of pollutants that pass through, interfere with, or are otherwise incompatible with the operation of POTWs. PSNS are to be issued at the same time as NSPS. New indirect dischargers have the opportunity to incorporate into their facilities the best available demonstrated technologies. EPA considers the same factors in promulgating PSNS as it considers in promulgating NSPS.

B. Requirements for Promulgating, Reviewing, and Revising Guidelines and Standards

Section 304(m) of the CWA requires EPA to establish schedules for (i) reviewing and revising existing effluent limitations guidelines and standards and (ii) promulgating new effluent guidelines. On January 2, 1990, EPA published an Effluent Guidelines Plan (55 FR 80), in which schedules were established for developing new and revised guidelines for several industry categories, including the coastal oil and gas industry. Natural Resources Defense Council, Inc., challenged the Effluent Guidelines Plan in a suit filed in the U.S. District Court for the District of Columbia, (NRDC *et al.* v. Reilly, Civ. No. 89-2980). On January 31, 1992, the Court entered a consent decree (the "304(m) Decree"), which establishes schedules for, among other things, EPA's proposal and promulgation of effluent guidelines for a number of point source categories, including the Coastal

Oil and Gas Industry. The most recent proposed Effluent Guidelines Plan was published in the Federal Register on October 7, 1996 (61 FR 52582).

C. History of the Rulemaking

EPA promulgated BPT effluent limitations guidelines for all subcategories under the oil and gas point source category on April 13, 1979 (44 FR 22069). Since then, EPA published a notice of information and request for comments on the coastal subcategory on November 8, 1989 (54 FR 46919) and published the proposed Coastal Guidelines on February 17, 1995 (60 FR 9428).

IV. Description of the Industry

Coastal oil and gas activities include field exploration, drilling, production, and well treatment. Coastal activities are located on waters of the United States inland of the inner boundary of the territorial seas. These water bodies include inland lakes, bays and sounds, as well as saline, brackish, and freshwater wetland areas. Although the definition includes waters of the U.S. even in all inland states, EPA knows of no existing operations other than those in certain states bordering the coast. The definition also includes certain wells in Texas and Louisiana between the "Chapman Line" and the inner boundary of the territorial seas as coastal. Thus, at this time, the coastal oil and gas operations are located only in coastal states. Table 1 summarizes the number of producing wells and annual drilling activities for the coastal subcategory.

TABLE 1.—PROFILE OF COASTAL OIL AND GAS INDUSTRY

Coastal location	Region	Number of producing wells (1992)	Number of production facilities (1992)	Annual drilling activity (wells)
Gulf of Mexico .....	Texas and Louisiana .....	4675	853	686
	Alabama and Florida .....	56	<sup>1</sup> ND	7
Alaska .....	Cook Inlet .....	237	8	9
	North Slope .....	2085	12	161
California .....	Long Beach Harbor .....	586	4	7
Total .....	.....	7639	877	870

<sup>1</sup> Not determined.

The primary wastewater sources from the exploration and development phases of the coastal oil and gas extraction industry include the following:

- Drilling fluids
- Drill cuttings
- Sanitary wastes
- Deck drainage
- Domestic wastes

The primary wastewater sources from the production phase of the industry include the following:

- Produced water
- Produced sand
- Well treatment, workover, and completion fluids
- Deck drainage
- Domestic wastes
- Sanitary wastes

Drilling fluids and drill cuttings are the most significant waste streams from exploratory and development operations in terms of volume and pollutants. Produced water is the largest waste stream from production activities in terms of volumes discharged and quantity of pollutants.

Discharges from coastal oil and gas operations in states along the Gulf of

Mexico, California, and Alaska are regulated by general and individual NPDES permits based on BPT, State Water Quality Standards, and on Best Professional Judgment (BPJ) of BCT and BAT levels of control.

A more detailed description of the industry is included in the Coastal Development Document, contained in the record for this rule.

## V. Major Changes to the Database for the Final Regulation

This section describes several of the most significant changes which have occurred since proposal to the methodology and data base used to calculate compliance costs, pollutant reductions, and non-water quality environmental impacts. Other changes and issues are discussed in other sections of the preamble, the Development Document, the Economic Impact Analysis, the environmental benefits analysis documents, and the record for this rule.

### A. Drilling Fluids and Drill Cuttings

The compliance costs and pollutant removals presented in the Development Document for the proposed rule have been revised to reflect information received from coastal industry operators in response to the proposal. As in the analysis for the proposal, drilling waste compliance cost and pollutant reductions calculations apply only to operations in Cook Inlet, Alaska because the rest of the coastal subcategory is already attaining zero discharge. Since proposal, the industry profile in Cook Inlet has changed, increasing the total waste volume on which costs and removals are based by about 15 percent. In addition, industry-supplied information resulted in changes to particular cost items within the zero discharge analysis.

#### 1. Drilling Projections

EPA's profile of future drilling activity in Cook Inlet is based on information submitted by Cook Inlet operators. In the Development Document for the proposal, EPA identified one operator in the analysis which had recently canceled plans to drill six new wells. This information about the cancellation was received too late to allow for revision of the analysis prior to proposal. EPA has since proposal confirmed that the operator does not intend to drill these wells and they are not included in the revised cost and pollutant reductions analyses for the final rule. EPA received other information in comments on the proposal updating the drilling plans for other operators in Cook Inlet. Compared

to the profile used for the proposal, the total number of new wells at existing platforms anticipated during the seven years following promulgation increased by four and the total number of platforms with drilling schedules decreased by two.

#### 2. Engineering Costs

As was done for the proposal, EPA evaluated two disposal technologies for complying with a zero discharge limitation for drilling fluids and drill cuttings: 1) transport to shore for land disposal; and 2) grinding of the drilling wastes followed by injection in a dedicated disposal well. At proposal, compliance costs were based on an assumption that both land disposal and downhole injection were available technologies for all drilling locations in Cook Inlet. Costs for both compliance technologies were developed for each operator and the lowest cost compliance scenario was selected as the likely cost of the proposed rule. As a result, costs for two operators were based on disposal by injection. In response to comments disputing the feasibility of injecting drilling wastes into the geologic formations present in Cook Inlet, EPA reviewed information in the record and sought additional information on this issue from industry and State and Federal authorities. Based on the limited data available to date, EPA believes that the information in the record indicates that certain sites in Cook Inlet may not be able to inject sufficient volumes of drilling wastes to enable compliance with zero discharge as EPA has defined the technology. See the Development Document and section VII of the preamble for additional information. For the final rule, EPA has based zero discharge compliance costs for all operators on disposal of the drilling wastes at landfills. This is because EPA is unable at this time, with the limited data available, to estimate the degree to which injection would be available in Cook Inlet.

The costing methodologies for the landfill and injection scenarios in the final rule are based, in general, on the costing methodologies presented in the proposal. However, EPA improved the database and sought additional confirmatory data in response to comments on the proposal. Engineering costs have been adjusted from 1992 dollars to 1995 dollars to better reflect the current cost of compliance with zero discharge. Certain changes resulting from EPA's reevaluation of costing assumptions have led to a revision in the cost of landfilling drilling wastes.

In response to comments, EPA reevaluated certain assumptions related

to the use of supply boats and barges in transporting drilling wastes to shore for disposal at landfills. These comments led to a reassessment of platform storage space and boat capacities and resulted in an increase in the number of boat trips required to haul the drilling wastes.

As discussed at proposal, the sole land disposal site for drilling wastes in Cook Inlet (referred herein as the Kustatan landfill) is a private facility owned by two of the operators. While no regulatory obstacles would prohibit disposing of the wastes from other operators at the Kustatan landfill, since it is a private facility its availability for use by third parties cannot be assured. As a result, EPA's analysis considers the Kustatan landfill to be available for use by only two of the operators in the region. Since no other land disposal facilities in Alaska are believed available to the remaining Cook Inlet operators, the analysis for the proposal based land disposal costs for these operators on transporting the drilling wastes to a disposal facility in Idaho. In the preamble for the proposed rule, EPA discussed the availability of another disposal facility located in Oregon and stated that costs using this facility were expected to be "close to or less than the costs of using the Idaho facility." (See 60 FR 9442) Further review of these facilities has shown that savings would in fact be realized using the Oregon facility and it is the disposal site used in the final cost analysis. EPA also revised costing estimates to address industry comments regarding specific fees associated with disposal at the Kustatan landfill.

### B. Produced Water

#### 1. Industry Profile

a. Gulf of Mexico. For the analyses performed for the proposed rule, EPA used information provided by industry sources and state regulatory authorities to construct a profile of production facilities currently discharging in coastal areas of the Gulf of Mexico. Under regulations issued by the State of Louisiana, many facilities are required to cease discharges of produced water. Based on the data available to EPA at proposal, EPA estimated that there would be 216 production facilities discharging in the Gulf of Mexico by July 1996 (the original date scheduled for promulgating final Coastal Guidelines). Shortly before the proposal was published, EPA's Region 6 published final NPDES General Permits regulating produced water and produced sand discharges to coastal waters in Louisiana and Texas (60 FR

2387; January 9, 1995). These permits prohibited the discharge of any produced water derived from coastal waters of Louisiana and Texas. Because much of the industry covered by the proposed Coastal Guidelines is also covered by these General Permits, the industry profile used in the cost and economic analyses for the proposed rule overstates the number of facilities that would be incrementally affected by the final Coastal Guidelines. This discrepancy was noted at proposal. In the preamble for the proposed Coastal Guidelines, EPA stated that due to the close proximity (one month) of the timing of the publication of the Region 6 General Permits and the proposed guidelines, the costs and impacts of the proposed Coastal Guidelines was being presented in the preamble as if the General Permits were not final. EPA presented preliminary results of how the costs and impacts of the Coastal Guidelines would be reduced when the General Permits became effective and stated that the regulatory effects of the General Permits would be incorporated in the analysis conducted for the final guidelines. See 60 FR 9430.

The main difference between the general permits and the Coastal Guidelines is that the permits cover wastes generated by onshore Stripper Subcategory wells that are not covered under the Coastal Guidelines and the Louisiana permit does not cover produced water derived from Offshore Subcategory wells that is discharged into a major deltaic pass of the Mississippi River, or to the Atchafalaya River below Morgan City including Wax Lake Outlet. Since proposal, EPA has worked with industry sources and State regulatory authorities to identify those facilities whose discharges are covered by the Coastal Guidelines, but are not covered by General Permits. No facilities discharging Offshore Subcategory produced water into the Atchafalaya River were identified. Six production facilities with a total of eight outfalls were identified as discharging produced water derived from Offshore Subcategory wells into the major deltaic passes of the Mississippi River.

As discussed in the Supplementary Information section of this preamble, subsequent to the issuance of the general permits requiring zero discharge in the Gulf of Mexico region, EPA received individual permit applications from Texas dischargers seeking to discharge produced water. Additionally, the U.S. Department of Energy (DOE) has provided the State of Louisiana with comments and analyses suggesting a change in the Louisiana state law

requiring zero discharge of produced water to open bays by January 1997.

Because promulgation of this rule requiring zero discharge in these areas would preclude issuance of permits allowing discharge, EPA also calculated an alternative estimate of the costs, economic impacts, and pollutant removals under an "alternative baseline." This "alternative baseline" assumes that zero discharge under the general permits would no longer apply to Texas dischargers seeking individual permits and Louisiana open bay dischargers. To do this, EPA reviewed the list of facilities requesting an individual permit in Texas, 82 as of the date of this writing, and identified the number of facilities discharging to open bays using information developed by the State of Louisiana for the DOE study of open bays. EPA obtained all available information about these facilities from the states and EPA's Coastal Questionnaire and used this information to develop estimates of the technological availability, costs and economic achievability, non-water quality environmental impacts, and pollutant removals achieved by zero discharge.

b. Cook Inlet. EPA updated the profile of Cook Inlet production facilities with current hydrocarbon and water production rates to address information submitted by industry in comments. The profile was also updated with current waterflood rates for use in estimating compliance costs under the produced water zero discharge option. The most notable changes to the Cook Inlet production profile include one platform which resumed oil production and ceased waterflooding; two platforms that resumed waterflooding; and one platform substantially reduced its waterflood rate. Production and waterflood levels for the remaining Cook Inlet facilities have not changed significantly since 1993. These profile changes are discussed in detail in the Development Document and the record for the final rule.

## 2. Engineering Costs

a. Gulf of Mexico. Engineering costs have been adjusted from 1992 dollars to 1995 dollars to better reflect the current cost of compliance with zero discharge. Other than the adjustment to 1995 dollars, no significant changes were made to compliance cost estimates for the improved gas flotation option. The more significant changes to the cost estimates for the zero discharge option are discussed below.

Total labor costs in the final analysis are nearly double the labor costs estimated at proposal. The labor burden

associated with operating additional BAT/NSPS control technologies is unchanged from the analysis for the proposed rule, but the labor rate has been revised upward based on data from Bureau of Labor Statistics. Additional O&M costs were added to reflect the costs of replacing the filter cartridges used to remove solids from the produced water prior to injection.

O&M costs for injection pretreatment chemicals were revised based on new data provided by the industry, in combination with the data used at proposal. Chemicals are already added to the produced water at treatment facilities and source water in waterflooding operations at existing production locations. The treatment chemical costs included in EPA's analysis are costs added incremental to current chemical expenditures. In response to comments about the potential for solids buildup causing downhole problems in injection wells, EPA reviewed the workover data in the record. For the final rule, the frequency of backwashing injection wells was doubled—from biennial to once annually.

Pipeline costs have also been increased since proposal. While reviewing comments regarding pipeline costs, EPA detected a scale up error in the proposal analysis which led to underestimating costs.

In estimating costs, EPA also took into account facility-specific data and comments where it showed discharges were currently capable of meeting limits based on operation of improved gas flotation.

b. Cook Inlet. Other than to adjust costs to 1995 dollars, no significant changes were made to Cook Inlet compliance cost estimates for the limitations based on gas flotation. As at proposal, compliance with zero discharge for the Cook inlet facilities is based on the injection of produced water into production zones as part of the ongoing waterflood operations or into dedicated disposal wells where waterflooding operations do not exist.

In response to concerns raised in industry comments, capital costs for installation of a centrifuge to dewater filtration backwash solids were added to platforms assumed to inject produced water under the zero discharge scenario. Centrifuges would be used to concentrate the solids removed from the filtered produced water, thus allowing the liquid portion of the backwash to be injected. The dewatered solids would then be disposed of by transport to a landfill (as costed by EPA) or injected into a disposal well. This disposal cost

is included as a new O&M cost in the analysis for the final Coastal Guidelines.

O&M costs for treatment chemicals (e.g., scale inhibitors, corrosion inhibitors, biocides) were revised based on industry data. All locations that treat produced water prior to injection under the zero discharge scenario are assumed to incur costs for treatment chemicals. It should be noted that all facilities currently treating produced water for discharge already add some chemicals to enhance separation and provide protection of treatment equipment. Further, all facilities currently waterflooding seawater also add treatment chemicals prior to injection. The treatment chemical costs included in EPA's estimated compliance costs are incremental to current treatment facility and waterflooding chemical expenditures and therefore are considered to adequately address industry concerns about chemical addition costs resulting from injecting produced water into producing formations.

Information in the record indicates that injection well workover costs were underestimated at proposal. Workover costs for the final analysis were increased based on comments from Cook Inlet operators and a comparison to cost data for workovers in the Gulf of Mexico.

### 3. Pollutant Reduction Estimates

Similar to the February 1995 proposal, pollutant removals for the different produced water regulatory options of the final rule were determined by comparing the estimated effluent levels of pollutants after treatment by the BAT/NSPS treatment system (improved performance of gas flotation or reinjection) versus the effluent levels of pollutants associated with a typical BPT treatment (gravity separation or gas flotation).

In the proposal, EPA characterized BPT treatment in the Gulf of Mexico using data collected from ten coastal oil and gas facilities located in Louisiana and Texas. Comments received subsequent to the proposal stated that the facilities included in the database do not adequately represent the quality of produced water which has undergone BPT-level treatment and, as a result, overestimate the pollutant reductions associated with the BAT/NSPS control options. Several comments also disputed the presence of certain pollutants included in EPA's BPT characterization.

In response to these comments, EPA reassessed the characterization of BPT-level effluent quality. Certain pollutants

were dropped for the final analysis because they are believed to have been measured as a result of laboratory contamination or are otherwise not expected to be present in produced water. In comparison to the total mass of pollutants removed by the technologies evaluated in the BAT/NSPS options, excluding these pollutants had negligible effect on the reductions estimates. The pollutants excluded from the final analysis and the reasons for the exclusion are discussed in the Development Document, the Response to Comments Document, and the record.

Upon review of the data used at proposal, EPA determined that three of the facilities making up the Ten Facility dataset should be excluded from the BPT characterization for the final rule. These facilities had high levels of oil and grease, in excess of that allowed to be discharged under the BPT effluent limitations guidelines, and therefore the pollutant levels at these facilities are not considered representative of produced water which has been treated to a level which would allow discharge to surface waters. (Produced water from these facilities is disposed of through downhole injection.) EPA believes it is appropriate to continue using the effluent data collected from the remaining seven facilities to represent BPT-level pollutant concentrations, even though not all of these facilities actually discharge their produced water, since the treatment technology at these facilities is typical of that used at the majority of coastal facilities and the oil and grease content of the effluent for these facilities was lower than that required to meet the existing BPT effluent limitations. Total oil and grease measurements at these seven facilities range from 8 mg/l to 43 mg/l. When averaged together, the average oil and grease concentration for the seven facilities is 26.6 mg/l, in contrast to an average of 53 mg/l when using data from all ten facilities. EPA notes that this revised calculation of the oil and grease concentration in BPT-level effluent for the coastal subcategory (26.6 mg/l) compares favorably to the BPT-level effluent data (25 mg/l) collected previously for the offshore subcategory. (See Section IX of the *Development Document for Effluent Limitations Guidelines and Standards for the Offshore Subcategory of the Oil and Gas Extraction Point Source Category*, EPA 821-R-93-003, January 1993.) The technology basis used to develop BPT limitations for the coastal subcategory is identical to the basis used to develop the offshore subcategory BPT

limitations. (See the *Development Document for Interim Final Effluent Limitations Guidelines and Proposed New Source Performance Standards for the Oil and Gas Extraction Point Source Category*, EPA 440/1-76/055a, September 1976.)

EPA also took into account facility-specific data and comments where it showed discharges were currently capable of meeting limits based on operation of improved gas flotation in assessing pollutant reductions estimates.

### VI. Summary of the Most Significant Regulatory Changes From Proposal

This section briefly identifies the most significant changes from proposal. More detailed discussion of these changes, and identification and discussion of other issues are included in other sections of this notice, the Coastal Development Document, the Economic Impact Analysis, and the record for this rule. The most significant changes from proposal occurred with regards to: (1) Drilling fluids, drill cuttings, and dewatering effluent and (2) produced water and treatment, workover, and completion fluids.

For drilling fluids, drill cuttings, and dewatering effluent, EPA proposed three options for both BAT and NSPS limitations. The three options were: (1) Zero discharge of drilling fluids, drill cuttings, and dewatering effluent except for Cook Inlet, where discharge limitations include no discharge of free oil, no discharge of diesel oil, 1 mg/kg mercury and 3 mg/kg cadmium limitations on the stock barite, and a toxicity limitation of 30,000 ppm SPP; (2) Zero discharge of drilling fluids, drill cuttings, and dewatering effluent except for Cook Inlet, where discharge limitations include no discharge of free oil, no discharge of diesel oil, both 1 mg/kg mercury and 3 mg/kg cadmium limitations on the stock barite, and a toxicity limitation more stringent than 30,000 ppm SPP; and (3) Zero discharge everywhere. For both BAT and NSPS, option (1) has been selected for the final rule.

For produced water and treatment, workover, and completion fluids, EPA proposed zero discharge everywhere for NSPS. For the final rule, NSPS limitations are zero discharge except for Cook Inlet, Alaska. In Cook Inlet, the Daily Maximum limitation for oil and grease is 42 mg/l and the Monthly Average limitation is 29 mg/l.

## VII. Basis for the Final Regulation

### A. Drilling Fluids, Drill Cuttings, and Dewatering Effluent

#### 1. Waste Characterization

Drilling fluids and drill cuttings are typically discharged in bulk during episodes that occur intermittently during well drilling and at the end of the drilling phase.

There are currently no drilling fluid or drill cuttings discharges in any coastal area except for Alaska's Cook Inlet. Zero discharge is generally met by a combination of landfilling and injection. On Alaska's North Slope, while all drilling fluids and most drill cuttings are injected, some cuttings are cleaned and used as fill material in the construction of drill pads and roads. These fill materials require a fill permit issued pursuant to section 404 of the CWA.

In Cook Inlet, operators do not currently practice zero discharge, except for a small volume of drilling fluids and cuttings wastes (approximately one percent) which are not discharged because they do not meet current permit limits. Generally, drilling fluids and cuttings volumes average approximately 14,000 barrels (bbl) per new well drilled in Cook Inlet. (NOTE: The barrel is a standard oil and gas measurement and is equal in volume to 42 gallons). Based on industry projections given to EPA, an average of 89,000 bbls drilling fluids and cuttings are generated each year (bpy) in the Inlet. Pollutants present in these wastes include chromium, copper, lead, nickel, selenium, silver, beryllium and arsenic among the toxic metals. Toxic organics present include naphthalene, fluorene, and phenanthrene. Total Suspended Solids (TSS) make up the bulk of the pollutant loadings, part of which is comprised of the above mentioned toxic pollutants. TSS concentrations are very high due to the nature of the wastes.

Operators use solids control equipment to remove drill cuttings from the drilling fluid systems which allows drilling fluids to be recycled and reduces the total amount of drilling wastes generated. Depending on the solids control system and the method of waste storage and disposal onsite, a small wastestream, termed "dewatering effluent" may be segregated from the drilling fluids and cuttings. Dewatering effluent may be discharged from reserve pits or tanks which store drilling wastes for reuse or disposal. Dewatering effluent may also be generated in enhanced solids control systems. Enhanced solids control systems, also known as closed-loop solids control

operations, remove solids from the drilling fluid at greater efficiencies than conventional solids removal systems. Increased solids removal efficiency minimizes the buildup of drilled solids in the drilling fluid system, and allows a greater percentage of drilling fluid to be recycled. Smaller volumes of new or freshly made fluids are required as a result. An added benefit of the closed-loop technology is that the amount of waste drilling fluids can be significantly reduced. The installation of reserve pits is unnecessary in closed-loop systems for this reason.

EPA's general permits for drilling operations in Texas and Louisiana (58 FR 49126, September 21, 1993) have limitations for the discharge of dewatering effluent, while other parts of the nation generally treat dewatering effluent as part of the drilling fluids wastestream. However, results from the 1993 Coastal Oil and Gas Questionnaire show that few operators discharge dewatering effluent as a separate wastestream. Additionally, contacts with industry indicate that the volume of dewatering effluent from reserve pits is small and growing smaller since the use of pits is phasing out due to state permit conditions, environmental or land owner concern, and the expanding use of closed-loop systems. EPA site visits to drilling operations, where these closed-loop systems were in place, showed that none of the dewatering effluent is discharged. Instead, it is either recycled, or sent with other drilling wastes to commercial disposal. Operators at these facilities explained that it is less expensive to send this wastestream along with drilling fluids and drill cuttings for onshore disposal rather than to treat for discharge.

#### 2. Selection of Pollutant Parameters

a. Pollutants Regulated. EPA is establishing BAT, BCT, NSPS, PSES, and PSNS limitations that would require zero discharge of drilling fluids, drill cuttings, and dewatering effluent, except for BAT, BCT, and NSPS in Cook Inlet, Alaska. Where zero discharge is required, EPA would be controlling all pollutants in the wastestream.

For BAT and NSPS in Cook Inlet, discharge limitations for drilling fluids, drill cuttings, and dewatering effluent include no discharge of free oil, no discharge of diesel oil, 1 mg/kg mercury and 3 mg/kg cadmium limitations on the stock barite, and a toxicity limitation of 30,000 ppm SPP.

As presented in the Coastal Development Document, the prohibitions on the discharge of free oil and diesel oil would effectively remove toxic, nonconventional, and

conventional pollutants. Diesel oil and free oil are considered, under BAT and NSPS, to be "indicators" for the control of specific toxic pollutants present in the complex hydrocarbon mixtures used in drilling fluid systems. Free oil is also an indicator for toxic pollutants present in crude oil. These pollutants include benzene, toluene, ethylbenzene, naphthalene, phenanthrene, and phenol. Additionally, diesel oil may contain from 20 to 60 percent by volume polynuclear aromatic hydrocarbons (PAHs) which constitute the more toxic components of petroleum products. Control of diesel oil would also result in the control of nonconventional pollutants under BAT and NSPS. Diesel oil contains a number of nonconventional pollutants, including PAHs such as methylnaphthalene, methylphenanthrene, and other alkylated forms of the listed organic toxic pollutants.

EPA is establishing BCT limitations for drilling fluids, drill cuttings, and dewatering effluent that prohibit the discharge of free oil (using the static sheen test) for Cook Inlet. The prohibition on the discharge of free oil would effectively reduce or eliminate the oil and grease in these discharges. EPA is limiting free oil under BCT as a surrogate for oil and grease in recognition of the complex nature of the oils present in drilling fluids, including crude oil from the formation being drilled.

For Cook Inlet, prohibiting the discharge of diesel oil and free oil eliminates discharges of the above listed constituents, to the extent that these constituents are present in either of these two parameters, and reduces the level of oil and grease present in the discharged drilling fluids and cuttings. Also, limitations on cadmium and mercury content in barite will control toxic and nonconventional pollutants in drilling waste discharges. This limitation directly controls the levels of cadmium and mercury, and indirectly controls the levels of other toxic pollutant metals. Control of other toxic pollutant metals occurs because cleaner barite that meets the mercury and cadmium limits has been shown to have reduced concentrations of other metals. Evaluation of the relationship between cadmium and mercury and the trace metals in barite shows a correlation between the concentration of mercury with the concentration of arsenic, chromium, copper, lead, molybdenum, sodium, tin, titanium and zinc; and the concentration of cadmium with the concentration of arsenic, boron, calcium, sodium, tin, titanium, and

zinc. (See the Coastal Development Document).

Toxicity of drilling fluids, drill cuttings, and dewatering effluent is being regulated as a nonconventional pollutant that controls certain toxic and nonconventional pollutants. It was shown, during EPA's development of the Offshore Guidelines, that control of toxicity encourages the use of less toxic, water-based drilling fluids, and where absolutely necessary, the use of less mineral oil added to a drilling fluid (and the pollutants, such as the PAH's, identified as constituents of mineral oil). A toxicity limitation thus encourages the use of low-toxicity drilling fluids and the use of low-toxicity drilling fluid additives.

b. Pollutants Not Regulated. Where zero discharge is required, all pollutants are controlled. In Cook Inlet, EPA has determined that it is not technically feasible to specifically control each of the toxic constituents of drilling fluids and cuttings that are controlled by the limits on the pollutants established in this regulation.

EPA has determined that certain of the toxic and nonconventional pollutants are not controlled by the limitations on diesel oil, free oil, toxicity, and mercury and cadmium in stock barite. EPA exercised its discretion not to regulate these pollutants because EPA did not detect these pollutants in more than a very few of the samples from EPA's field sampling program and does not believe them to be found throughout the industry; the pollutants when found are present in trace amounts not likely to cause toxic effects; and due to the large number and variation in additives or specialty chemicals that are only used intermittently and at a variety of drilling locations, it is not feasible to set limitations on specific compounds contained in additives or specialty chemicals. See the Coastal Development Document for further discussion.

### 3. Control and Treatment Technologies

a. Current Practice. BPT effluent limitations guidelines for coastal drilling fluids and drill cuttings prohibit the discharge of free oil (using the visual sheen test). However, because of either EPA general and individual permits, state requirements, or operational preference, no drilling fluids and cuttings discharges are occurring in the coastal waters of the Gulf coast states or California. The only coastal operators disposing of drilling fluids and drill cuttings by discharge are located in Cook Inlet. In Cook Inlet, neither diesel nor mineral-oil-based drilling fluids or resultant cuttings may be discharged to

surface waters. Compliance with the BPT limitations may be achieved either by product substitution (substituting a water-based fluid for an oil-based fluid), recycle and/or reuse of the drilling fluid, onshore disposal of the drilling fluids and cuttings at an approved facility, or disposal by injection where feasible. On Alaska's North Slope, all drilling fluids and most drill cuttings are injected, though some cuttings are cleaned for use as fill material for the construction of drilling pads and roads. This fill activity is regulated under section 404 of the CWA.

NPDES permits issued by EPA for Cook Inlet drilling operations have also included BAT limitations based on "best professional judgement" (BPJ). The permit requirements allow discharges of drilling fluids and drill cuttings provided certain limitations are met including a prohibition on the discharges of free oil and diesel oil, as well as limitations on mercury, cadmium, toxicity and oil content. Operators in Cook Inlet typically employ the following waste management practices to meet those permit limitations:

- \* Product substitution—to meet prohibitions on free oil and diesel oil discharges, as well as the toxicity and/or clean barite limitations,

- \* Onshore treatment and/or disposal of drilling fluids and drill cuttings that do not meet the toxicity limitations,

- \* Waste minimization—enhanced solids control to reduce the overall volume of drilling fluids and drill cuttings, and

- \* Conservation and recycling/reuse of drilling fluids.

Refer to the Coastal Development Document for a detailed discussion of each of these waste management techniques.

b. Additional Technologies Considered. EPA has evaluated an additional method for drilling fluid, drill cuttings, and dewatering effluent control and treatment in order to achieve zero discharge: namely, grinding and injection of drilling wastes. This process involves the grinding of the drilling fluids, drill cuttings, and dewatering effluent into a slurry that can be injected into a dedicated disposal well. The grinding system consists of a vibrating or rotating ball mill which pulverizes the cuttings and creates an injectable slurry. This comparatively contemporary technology has been successfully demonstrated on the North Slope, and has been used to a limited degree on the Gulf Coast. While injection has been demonstrated in other parts of the U.S., injection has

not been demonstrated in Cook Inlet. EPA believes that the ability to inject is related to the subsurface conditions of the receiving formations. While the geology of the formations in areas other than Cook Inlet have been favorable to injection of drilling fluids and drill cuttings, the record indicates that geology amenable to grinding and injection does not appear to occur throughout Cook Inlet.

In addition to grinding and injection, EPA has investigated the feasibility of onshore disposal for this wastestream. For the coastal subcategory drilling activities, in areas other than Cook Inlet, current permits require zero discharge of drilling fluids and cuttings or, in the case of the North Slope, zero discharge of drilling fluids, and drill cuttings except where drill cuttings are reused as a fill material. The fill activity is regulated under section 404 of the CWA. On-land disposal or downhole injection sites are available in these areas and are being utilized to comply with the zero discharge requirement.

With respect to onshore disposal capacity, on-land disposal sites are available to two of the Cook Inlet operators. These two operators jointly own an oil and gas landfill disposal site on the west side of the Inlet. Unfortunately, no on-land oil and gas waste disposal facilities are available in Alaska to the other Cook Inlet operators who plan to drill after promulgation of this rule. Therefore, EPA has estimated the costs for disposing of drilling wastes at an on-land oil and gas waste disposal site in Oregon.

Also with regard to zero discharge, EPA received information from operators concerned that compliance with zero discharge could significantly interfere with drilling operations. EPA has investigated the significant logistical difficulties and operational problems presented by storing and transporting drilling wastes in the Cook Inlet, due to the space constraints, combined with the extensive tidal fluctuations, strong currents, and ice formation during winter months. Also, EPA has taken into consideration supplementary costs incurred by additional winter transportation and storage of drilling wastes in its cost evaluation of the zero discharge option as described below.

In addition to zero discharge, EPA considered allowing the discharge of the drilling fluids, drill cuttings, and dewatering effluent in Cook Inlet providing the discharge met certain limitations. These limitations would prohibit the discharge of diesel oil and free oil using the static sheen test, limit cadmium and mercury in the stock barite used in fluid compositions, and

limit toxicity at either 30,000 ppm (SPP) or a more stringent toxicity in range of 100,000 ppm (SPP) to 1 million ppm (SPP). (The measure of toxicity is a 96 hour test that estimates the concentration of suspended particulate phase (SPP) from a drilling fluid that is lethal to 50 percent of the tested organisms. See 40 CFR part 435, subpart A, appendix 2). Drilling fluids and drill cuttings not meeting these limitations would not be allowed to be discharged, and therefore, would have to be injected or sent to shore for disposal.

As discussed above, one option at proposal would have retained the offshore limitations but required a more stringent toxicity limit. At proposal, EPA based the more stringent toxicity limitations, in part, on the volume of drilling wastes that could be injected or disposed of onshore without interfering with ongoing drilling operations. The more stringent toxicity limit would have been based on (1) the volume of drilling wastes that could be subjected to zero discharge without interfering with ongoing drilling operations and (2) a specified level of toxicity selected such that no more than this volume of waste, determined in the previous step, would exceed the specified level of toxicity. However, as pointed out in comments on the proposal and confirmed with further investigation, there are a number of problems with the database that would be used to establish a more stringent toxicity limitation. Many of the records in the database do not have either a waste volume identified or indicate whether the drilling fluids were discharged. Where waste volumes are reported, the methods used to determine these volumes are not consistent and they are not documented. It is also unclear whether the volumes and fluid systems reported for any given well represent a complete record of the drilling activity associated with the well. For these reasons, EPA rejected the option of developing a more stringent toxicity limitation for the final rule.

#### 4. BAT and NSPS Options

For final consideration, EPA developed two options for the BAT and NSPS level of control for drilling fluids and drill cuttings. Limitations for the dewatering effluent are the same as those for drilling fluids and drill cuttings.

Option 1 would require zero discharge of drilling fluids, drill cuttings, and dewatering effluent for all coastal drilling operations except those located in Cook Inlet. Allowable discharge limitations for drilling fluids and cuttings in Cook Inlet would require compliance with a toxicity value of no

less than 30,000 ppm (SPP); no discharge of free oil (as determined by the static sheen test); no discharge of diesel oil and 1 mg/kg of mercury and 3 mg/kg of cadmium in the stock barite. Limitations for Cook Inlet are identical to the limitations applicable to offshore discharges in Alaska. Option 1 was developed taking into consideration that Cook Inlet operations are unique to the industry due to a combination of geology available for grinding and injection, climate, transportation logistics, and structural and space limitations that interfere with drilling operations.

Option 2 would prohibit the discharge of drilling fluids, drill cuttings, and dewatering effluent from all coastal oil and gas drilling operations. In Cook Inlet, this option uses onshore disposal as a basis for complying with zero discharge of drilling fluids and drill cuttings. Outside of Cook Inlet, this option uses a combination of grinding and injection and onshore disposal as a basis for complying with zero discharge of drilling fluids and drill cuttings.

a. Costs. Operators would not incur any costs under Option 1 because the requirements reflect current practice.

Costs to comply with Option 2 (zero discharge all) are attributed only to Cook Inlet operators (North Slope operators are beneficially reusing a portion of their drill cuttings and all other coastal operators are already practicing zero discharge). Costs to comply with this option are estimated to be approximately \$8,200,000 annually for the Cook Inlet operators. The basis for this cost analysis is that drilling fluids and drill cuttings generated in Cook Inlet would be hauled to shore for disposal. Costs for land disposal include water vessel transportation, storage prior to transport to the disposal facility, truck transportation to the disposal facility, and landfill disposal costs. While it was evaluated, grinding and injection is not used in the cost basis for Cook Inlet because, as mentioned earlier, geology amenable to grinding and injection does not appear to occur throughout Cook Inlet.

To determine the volume of drilling wastes requiring disposal, EPA obtained the projected drilling schedules for the Cook Inlet operators using information from the 1993 Coastal Oil and Gas Questionnaire and contacts with industry. Using information about the volume of drilling fluids and drill cuttings generated per well, and the projected amount of drilling over the seven years following scheduled promulgation, EPA estimates that the total amount of drilling fluids and drill cuttings annually generated from these

drilling operations will be approximately 89,000 barrels.

EPA also considered the logistical difficulties of transporting drilling wastes in Cook Inlet as part of EPA's costing analysis of the options. To achieve zero discharge, platforms would transport drilling wastes to the eastern side of Cook Inlet by supply boat, then: (1) Transfer the wastes to barges for transport to an existing landfill facility on the west side of the Inlet or (2) load these wastes onto trucks for transport to landfill disposal in Oregon. During periods of extensive ice floes, the drilling wastes are stored on the east side of the Inlet for extended periods of time.

For new sources, EPA expects that the costs of complying with NSPS would be equal to or less than those for existing sources. Note that, due to the high cost of installing new sources and the low expectation of return, EPA does not expect new sources to be installed in Cook Inlet independent of any new environmental regulations.

EPA also analyzed non-water quality environmental impacts for BAT and NSPS. These impacts are discussed in Section IX of the preamble.

b. BAT and NSPS Option Selection. For both BAT and NSPS control of drilling fluids, drill cuttings and dewatering effluent, EPA is establishing zero discharge limitations, except for Cook Inlet. In Cook Inlet, discharge limitations include no discharge of free oil, no discharge of diesel oil, both 1 mg/kg mercury and 3 mg/kg cadmium limitations on the stock barite, and a toxicity limitation of 30,000 ppm SPP. BAT limitations for dewatering effluent are applicable prospectively. BAT limitations in this rule are not applicable to discharges of dewatering effluent from reserve pits which as of the effective date of this rule no longer receive drilling fluids and drill cuttings. Limitations on such discharges shall be determined by the NPDES permit issuing authority.

With regard to coastal facilities outside of Cook Inlet, zero discharge is technically and economically achievable and has acceptable non-water quality environmental impacts because it reflects current industry practices under existing permit requirements.

With regard to coastal facilities in Cook Inlet, EPA rejected zero discharge in large part because the technology of grinding and injection has not been demonstrated to be available throughout Cook Inlet. Drilling fluids and drill cuttings cannot be injected into producing formations, as is sometimes the case for produced water, because

they would interfere with hydrocarbon recovery. Thus, operators must have available different formation zones with appropriate characteristics (e.g., porosity and permeability) for injection of drilling fluids and drill cuttings. See the Coastal Development Document for discussion of geologic characteristics for the injection of these drilling wastes. Unlike the coastal region along the Gulf of Mexico or the North Slope of Alaska, where the subsurface geology is relatively porous and formations for injection are readily available, the geology in Cook Inlet is highly fragmented and information in the record indicates that formations for injection may be not available throughout Cook Inlet. EPA reviewed information where attempts to grind and inject drilling fluids and drill cuttings failed in the Cook Inlet area. For example, one operator attempted to operate a grinding and injection well in the Kenai gas field failed due to downhole mechanical failure of the injection well (1992/1993). There, the well experienced abnormal pressure on the well annulus, necessitating shutdown of the disposal operation. The operator also attempted annular pumping of drilling fluids and drill cuttings in two production wells in the Ivan River Field (onshore on the west side of Cook Inlet) where the annuli of both wells plugged during injection. Another operator, attempting to pump drilling waste into the annuli of exploration wells, lost the integrity of the well.

Because not all of the drilling fluids and drill cuttings can be injected, much of the waste would have to be land disposed. All but two of the operators would likely have to transport their drilling fluids and drill cuttings to a disposal facility out of state; the two other operators privately own the only drilling waste land disposal facility near Cook Inlet. (EPA is unaware of any other onshore disposal facilities coming into existence, as Cook Inlet is a fairly mature field nearing the end of its useful life. All but one of the existing platforms were installed in the 1960s. The newest platform began production in 1987, but production from the facility has remained well below expectations.) Land disposal is a problem for Cook Inlet operators, analogous to those faced by offshore operators in Alaska, because the climate and safety conditions that exist during parts of the year in Cook Inlet make transportation of drilling fluids and drill cuttings particularly difficult and hazardous. The harsh climate, snow, ice, and poor visibility from fog and snow often restrict land

and sea transportation. Also, the extensive tidal fluctuations (frequently in excess of 30 feet), strong currents, and ice formation during winter months in the Inlet impose severe logistical difficulties for storing and transporting the drilling wastes. Moreover, the limited storage space on platforms and transportation-related difficulties and delays associated with a zero discharge limitation for all drilling wastes would impose severe operational constraints on drilling activities. Thus, for purposes for BAT and NSPS, EPA does not believe that land disposal of all drilling wastes is generally available for Cook Inlet operators.

There are non-water quality environmental impacts associated with such transportation and land disposal. For BAT, EPA estimates that zero discharge would result in 5,200 Barrel of Oil Equivalents (BOE) of fuel being used annually, resulting in 36 tons or 72,000 pounds of air emissions to move the waste from Cook Inlet to Oregon and sites near Cook Inlet. While EPA believes the non-water quality environmental impacts—in and of themselves—are not unacceptable, by comparison with the operational constraints discussed above and pollutants removed by zero discharge, 4,300 pounds of toxic pollutants annually, these non-water quality environmental impacts weigh against requiring zero discharge in Cook Inlet.

Again, for NSPS control of drilling fluids, drill cuttings, and dewatering effluent, EPA is establishing zero discharge limitations, except for Cook Inlet. In Cook Inlet, discharge limitations include no discharge of free oil, no discharge of diesel oil, both 1 mg/kg mercury and 3 mg/kg cadmium limitations on the stock barite, and a toxicity limitation of 30,000 ppm SPP. Both inside and outside of Cook Inlet, these NSPS limitations are technically and economically achievable and has acceptable non-water quality environmental impacts because they reflect current practice. With regard to the potential for a barrier to entry, NSPS are equal to BAT limitations. BAT limitations have been demonstrated to be economically achievable for existing structures. Design and construction of pollution control equipment on new production facilities is generally less expensive than retrofitting existing facilities. Therefore, while the NSPS are equal to BAT limitations, it is less costly for new structures to meet these requirements and these costs would not inhibit development of new sources.

## 5. BCT

a. BCT Cost Test Methodology. EPA establishes BCT limitations based on a methodology which became effective August 22, 1986 (51 FR 24974, July 9, 1986). This methodology compares the costs of conventional pollutant removal under BCT with the cost of conventional pollutant removal at a publicly owned treatment works (POTW). A description of this methodology is contained in the preamble to the proposed rule (60 FR 9428, 9444) and the Coastal Development Document. If all options fail either of the two tests, then BCT limitations must be set at a level equal to BPT limitations.

b. BCT Costs Test Calculations and Options Selection. (i) Coastal Subcategory Except for Cook Inlet. Because all operators throughout the coastal subcategory, except in Cook Inlet, are currently practicing zero discharge of drilling fluids and drill cuttings and dewatering effluent, zero discharge was the only option considered. There is zero cost for this limitation. Thus, EPA determined that zero discharge passes the BCT cost tests and is the appropriate BCT limitation for this wastestream. BCT limitations for dewatering effluent are applicable prospectively. BCT limitations in this rule are not applicable to discharges of dewatering effluent from reserve pits which as of the effective date of this rule no longer receive drilling fluids and drill cuttings. Limitations on such discharges shall be determined by the NPDES permit issuing authority.

(ii) Cook Inlet. EPA considered two BCT options for Cook Inlet: BPT limitations (no free oil) or zero discharge. BCT limits in the final rule are established equal to BPT. Although zero discharge was determined to be not available in Cook Inlet, the BCT cost test was calculated to show whether such a limitation would have passed the cost test. EPA determined that zero discharge limitations would not have passed the BCT cost test. Costs, pollutant reductions, and the results of the BCT cost test are presented in detail in the Coastal Development Document. BCT limitations for dewatering effluent are applicable prospectively. BCT limitations in this rule are not applicable to discharges of dewatering effluent from reserve pits which as of the effective date of this rule no longer receive drilling fluids and drill cuttings. Limitations on such discharges shall be determined by the NPDES permit issuing authority.

## 6. PSES and PSNS

Section 307 of the CWA authorizes EPA to develop pretreatment standards for existing sources (PSES) and new sources (PSNS). Pretreatment standards are designed to prevent the discharge of pollutants that pass through, interfere with, or are otherwise incompatible with the operation of POTWs. The pretreatment standards for existing sources are to be technology based and analogous to the best available technology economically achievable (BAT) for direct dischargers. The pretreatment standards for new sources are to be technology-based and analogous to the best available demonstrated control technology used to determine NSPS for direct dischargers. New indirect discharging facilities, like new direct discharging facilities, have the opportunity to incorporate the best available demonstrated technologies, including process changes, and in-plant controls, and end-of-pipe treatment technologies. EPA determines which pollutants to regulate in PSES and PSNS on the basis of whether or not they pass through, interfere with, or are incompatible with the operation of POTWs.

Based on comments, the 1993 Coastal Oil and Gas Questionnaire, and other information reviewed as part of this rulemaking, EPA has not identified any existing coastal oil and gas facilities which discharge drilling fluids, drill cuttings, or dewatering effluent to POTW's, nor are any new facilities projected to direct these wastes in such manner. However, due to the high solids content of drilling fluids and drill cuttings, EPA is establishing pretreatment standards for existing and new sources equal to zero discharge because these wastes would interfere with POTW operations. For further discussion, see the Coastal Development Document. For PSNS, zero discharge would not cause a barrier to entry, as further discussed in the Economic Impact Analysis.

### *B. Produced Water and Treatment, Workover, and Completion Fluids*

At proposal, produced water was discussed and analyzed separately from treatment, workover, and completion fluids (TWC). However, EPA also proposed that discharge limitations for TWC be set equal to discharge limitations for produced water. As stated at that time, based on responses to the 1993 Coastal Oil and Gas Questionnaire and EPA's Region 10 Discharge Monitoring Reports, the typical industry practice is to combine produced water with treatment,

workover, and completion fluids for purposes of wastewater treatment. Because the treatment technologies for these wastestreams are linked, EPA has combined these wastestreams in the final rule for purposes of discussion.

#### 1. Waste Characterization

Produced water is brought to the surface during the oil and gas extraction process and can include: formation water extracted along with oil and gas; injection water used for secondary oil recovery that has broken through the formation and mixed with the extracted hydrocarbons; and various well treatment chemicals added during the production and oil/water separation processes. Produced water is the highest volume waste in the coastal oil and gas industry. Depending on the age of a well and site-specific formation characteristics, the produced water can constitute between 2 percent and 98 percent of the gross fluid production at a particular well. Generally, in the early production phase of a well the produced water volume is relatively small and the hydrocarbon production makes up the bulk of the fluid. Over time, the formation approaches hydrocarbon depletion and the produced water volume usually exceeds the hydrocarbon production. Based on information received in the 1993 Coastal Oil and Gas Questionnaire, the average produced water rate from a well is approximately 1180 barrels per day (bpd) in Cook Inlet and 270 bpd in the Gulf Coast. EPA estimates under current permit requirements that 119 million barrels per year (bpy) of produced water are discharged to surface waters by the coastal oil and gas industry.

As part of this rulemaking, EPA has embarked upon a systematic effluent sampling program to identify and quantify the pollutants present in produced water, with an emphasis toward the identification of listed toxic pollutants. Details of EPA's data collection activities are presented in the Coastal Development Document. The information collected has confirmed the presence of a number of organic and metal toxic pollutants in produced water.

Pollutants contained in produced water discharges from facilities in the coastal oil and gas industry with treatment systems able to meet BPT permit limits were identified as part of EPA's sampling effort. A summary of the data from these sampling activities is contained in the Coastal Development Document. EPA's sampling data and the industry-supplied Cook Inlet Study identified many organic toxic pollutants and 12 of the 13 metal toxic pollutants

as being present in BPT treated discharges of produced water following some treatment for oil and grease (oil) removal. The toxic organics most often present in significant amounts were benzene, naphthalene, phenol, toluene, and ethylbenzene. In addition to the toxic pollutants, EPA identified total suspended solids, oil and grease, and a number of nonconventional pollutants including barium, chlorides, ammonia, magnesium, strontium and iron present in produced water.

TWC fluids are primarily generated during production. Well treatment and workover fluids are inserted downhole in a producing well to increase a well's productivity or to allow safe maintenance of the well. Completion fluids are inserted downhole after a well has been drilled, and serve to clean the wellbore and maintain pressure prior to production. In most operations, these fluids resurface with the production fluids once production is initiated and can be reused, discharged, or injected in a disposal well.

According to results obtained in the 1993 Coastal Oil and Gas Questionnaire, EPA estimates that approximately 275,000 bbls (205,000 and 70,000 bpy of treatment/workover and completion fluids respectively) of TWC fluids are discharged annually from coastal oil and gas operations in Texas and Louisiana under current permit requirements.

The composition of the discharges is highly dependent on the fluid's purpose, but they generally consist of acids (in the case of treatment) or weighted brines (for workover or completion). The principal pollutant in these fluids is oil and grease ranging in concentration from 15 to 722 mg/l. Total suspended solids, another major constituent in these fluids, is present in concentrations ranging from 65 to 1600 mg/l. Prominent toxic metals that exist in these wastes include chromium, copper, lead, and zinc. Priority organics are also present including acetone, benzene, ethylbenzene, xylene, toluene, and naphthalene.

Under current permit requirements, EPA estimates that approximately 314,000 pounds of priority pollutants and 3,700,000 pounds of conventional pollutants are being discharged annually into the coastal subcategory. In addition, approximately 2.55 million pounds of nonconventionals are being discharged including boron, calcium, cobalt, iron, manganese, molybdenum, tin, vanadium, and yttrium.

#### 2. Selection of Pollutant Parameters

a. Pollutants Regulated. Where zero discharge is required, all pollutants

found in produced water and treatment, workover, and completion fluid discharges are controlled. Where discharges are allowed, *i.e.*, Cook Inlet, EPA is regulating oil and grease under BAT as an indicator pollutant controlling the discharge of toxic and nonconventional pollutants. Operationally, oil and grease is measured by EPA's method for Total Oil and Grease. Oil and grease is limited for produced water under BCT as a conventional pollutant. BCT limits for treatment, workover, and completion fluids prohibit the discharge of "free oil" as a surrogate for control over the conventional pollutant "oil and grease." No discharge of "free oil" is determined by the static sheen test. EPA is prohibiting discharge of "free oil" as a surrogate for control over the conventional pollutant "oil and grease" in recognition of the complex nature of the oils present in drilling fluids, including crude oil from the formation being drilled. Oil and grease is limited under NSPS as both a conventional pollutant and as an indicator pollutant controlling the discharge of toxic and nonconventional pollutants.

It has been shown (see the Coastal Development Document) that oil and grease serves as an indicator for toxic pollutants in the produced water wastestream, including phenol, naphthalene, ethylbenzene, and toluene. During its development of the Offshore Guidelines, EPA showed that gas flotation technology (the technology basis for the oil and grease limitations) removes both metals and organic compounds, resulting in lower concentration levels in the discharge for the above toxic pollutants (see Section IX of the Offshore Development Document).

b. Pollutants Not Regulated. For Cook Inlet, EPA evaluated the feasibility of regulating separately each of the constituents present in produced water and treatment, workover, and completion fluids during the development of the Offshore Guidelines. Based on that analysis, EPA determined for the Coastal Guidelines that it is not feasible to regulate each pollutant individually for reasons that include the following: (1) The variable nature of the number of constituents in the produced water and treatment, workover, and completion fluids, (2) the impracticality of measuring a large number of analytes, many of them at or just above trace levels, (3) use of technologies for removal of oil which are effective in removing many of the specific pollutants, and (4) many of the organic pollutants are directly associated with oil and grease because they are

constituents of oil, and thus, are directly controlled by the oil and grease limitation. See the Coastal Development Document for more details.

### 3. Control and Treatment Technologies

a. Current Practice. With regards to produced water, information collected by EPA through the 1993 Coastal Oil and Gas Questionnaire as well as industry contacts indicate that no coastal oil and gas facilities are discharging in Alabama, Alaska's North Slope, California, Florida, or Mississippi. This is due to a combination of factors including operational preference, waterflooding, and/or state and federal requirements. The Louisiana Department of Environmental Quality issued regulations in 1992 (LAC:33, IX, 7.708) which prohibit discharges of produced water to fresh water areas characterized as "upland" after July 1, 1992. The Louisiana regulation defines "upland" as "any land not normally inundated with water and that would not, under normal circumstances, be characterized as swamp of fresh, intermediate, brackish or saline marsh". The regulation does, however, allow discharges of produced water to a major deltaic pass of the Mississippi River or to the Atchafalaya River below Morgan City. The same regulation also requires that discharges inland of the inner boundary of the Territorial Seas into intermediate, brackish or saline waters must either cease discharges or comply with a specific set of effluent limitations. These requirements must be met within a certain time frame, as required in the regulations, but, no later than January 1997.

In addition, EPA issued general NPDES permits (60 FR 2387, January 9, 1995) for production wastes that prohibit discharges of produced water in coastal areas of Texas and Louisiana. The permits do not, however, apply to produced water derived from the offshore subcategory which is discharged into a main pass of the Mississippi River or Atchafalaya River below Morgan City. Along with the general permits, EPA issued an Administrative Order allowing until January 1997 to comply with the zero discharge requirement. Thus, although many coastal oil and gas operators are currently discharging produced water, current permit requirements and administrative orders indicate that the only facilities projected to be discharging by January 1997 would be those in Cook Inlet, Alaska, and six facilities discharging to a major deltaic pass of the Mississippi River.

Subsequent to EPA's issuance of the final coastal production permits, 82 facilities (as of the date of this writing) in Texas have applied to EPA Region 6 for individual NPDES permits authorizing discharge of produced water. Additionally, the U.S. Department of Energy has provided the State of Louisiana with comments and analyses suggesting a change in the Louisiana state law requiring zero discharge of produced water to open bays by January 1997.

The current BPT regulations established for the coastal subcategory limit the oil and grease content in the discharged produced water. Existing technologies for the removal of oil and grease include gravity separation, gas flotation, heat and/or chemical addition to assist oil-water separation, and filtration. Methods for the discharge or disposal of produced water from facilities in the coastal subcategory include free fall discharge to surface waters, discharge below the water surface, use of channels to convey the discharge to water bodies, and injection via regulated Class II Underground Injection Control (UIC) wells into underground formations. As an alternative, a number of production sites transport produced water by pipeline, truck or barge to shore facilities for disposal in UIC Class II wells. At times, this transport consists of the gross fluid produced and the oil-water separation takes place at the off-site facility.

While sampling data has indicated quantifiable reductions of naphthalene, lead, and ethylbenzene by BPT treatment (*i.e.*, by oil-water separation technology), this data also demonstrates the presence of significant levels of toxic pollutants remaining in the treated effluent.

With regard to treatment, workover, and completion fluids, current requirements for the control of discharges from these fluids include BPT limitations prohibiting free oil. EPA's final general permits applicable to discharges from coastal oil and gas drilling operations in Texas and Louisiana further prohibit discharges of treatment, workover and completion fluids to freshwater areas. Methods for treatment and discharge or disposal include:

- \* Treatment and disposal along with the produced water
- \* Neutralization for pH control and discharge to surface waters
- \* Onshore disposal and/or treatment and discharge in coastal or offshore areas.

In addition, these fluids may in some cases be reused.

### b. Additional Technologies.

In developing the regulation, EPA evaluated several treatment technologies for application to the produced water and treatment, workover, and completion fluid wastestreams. These technologies were considered for implementation at the coastal production sites and at the shore facilities where much of the produced water is currently treated for subsequent discharge to coastal subcategory waters.

(1) Improved Gas Flotation.

Gas flotation is a treatment process that separates low-density solids and/or liquid particles (e.g., oil and grease) from liquid (e.g., water) by introducing small gas (usually air) bubbles into wastewater. As minute gas bubbles are released into the wastewater, suspended solids or liquid particles are captured by these bubbles, causing them to rise to the surface where they are skimmed off.

EPA considered as an option using gas flotation technology with chemical addition as a basis for improving BPT-level performance. This option would require all coastal discharges of produced water to comply with oil and grease limitations of 29 mg/l monthly average and a daily maximum of 42 mg/l. The technology basis for these limitations is improved operating performance of gas flotation technology. EPA has determined that gas flotation systems could be improved to increase removal efficiencies—i.e., the amount of pollutants removed. Specific mechanisms include proper sizing of the gas flotation unit to improve hydraulic loading (water flow rate through the equipment), adjustment and closer monitoring of engineering parameters such as recycle rate and shear forces that can affect oil droplet size (the smaller the oil droplet, the more difficult the removal), additional maintenance of process equipment, and the addition of chemicals to the gas flotation unit. (See Offshore Development Document Section IX.)

The addition of chemicals can be a particularly effective means of increasing the amount of pollutants removed. Because the performance of gas flotation is highly dependent on "bubble-particle interaction," chemicals that enhance that interaction will increase pollutant removal.

Gas flotation is a technology which has been used for many years in treating produced water. This technology formed the basis for the BPT regulations EPA promulgated in 1979. In developing final effluent limitations guidelines and standards for the offshore subcategory (58 FR 12454; March 4, 1993), EPA evaluated comments and data submitted by the industry which strongly urged EPA to

select improved gas flotation technology as the basis for BAT limits and NSPS, based on data presented by the Offshore Operators Committee's (OOC's) 83 Platform Composite Study. Industry further noted that chemical additives would improve the amount of oil and grease in produced water that could be removed. EPA thoroughly reviewed these comments and additional data, and agreed with industry that improved gas flotation was the appropriate technology for setting BAT limits and NSPS in the offshore subcategory.

In establishing BAT limits and NSPS for produced water in the Offshore Subcategory, EPA evaluated the effluent data from the platforms in the 83 Platform Composite Study identified as using improved gas flotation (e.g., use of gravity separators and chemical additives). First, EPA modeled the offshore platform with "median" oil and grease effluent values—i.e., 50 percent of the platforms in the database had oil and grease effluent values above (and 50 percent below) the median of the effluent values measured at the median platform. Based on the oil and grease measured at the median platform after improved gas flotation treatment, and allowing for average "within-platform" variability, EPA set a daily maximum limit on oil and grease at 42 mg/l, and a 30-day average of 29 mg/l as the BAT limits and NSPS. (See 58 FR 12462, March 4, 1993.)

Since there are fewer operational constraints for coastal facilities than there are for offshore facilities, the BAT and NSPS limitations developed for the offshore subcategory, based on improved gas flotation technology, are technologically achievable in the coastal subcategory.

(2) Injection. EPA also considered using injection technology as a basis for setting a zero discharge requirement under this rule. With the exception of Cook Inlet, injection of produced water is widely practiced by facilities in the coastal subcategory. Independent of this rule, all coastal facilities in Alabama, California, Florida, and the North Slope of Alaska are currently practicing zero discharge and, as of January 1, 1997, EPA estimates that at least 80% to 99.9% of all coastal facilities in Louisiana and Texas will be practicing zero discharge. The 80% estimate is based on subtracting the sum of the 6 facilities discharging into a major deltaic pass of the Mississippi, the 82 facilities discharging to Louisiana open bays, and the 82 facilities associated with individual permit applicants in Texas from the 853 total coastal facilities estimated to exist along the Gulf of Mexico. The 99.9% estimate is based on

subtracting the number of facilities discharging into a major deltaic pass of the Mississippi from the total number of coastal facilities along the Gulf of Mexico. Additionally, using a combination of Coastal Survey information and counts of facilities known to be discharging, EPA estimated that 62% of coastal facilities along the Gulf of Mexico were practicing zero discharge in 1994. For the onshore subcategory, injection is the predominant technology used to comply with the zero discharge 1979 BPT limitation. Injection technology for produced water consists of injecting produced water, under pressure, into Class II UIC wells into underground formations. This option results in no discharge of produced water to surface waters.

4. Other Technologies

Other technologies considered but rejected are discussed in the Coastal Development Document.

5. Options Considered

EPA considered several options in developing BCT, BAT, NSPS, PSES and PSNS limitations for discharges of produced water and treatment, workover, and completion fluids by coastal facilities or in coastal locations. The bases for these options were gas flotation, improved gas flotation, injection, or a combination of injection and improved gas flotation. As proposed, implementation of limitations on discharges of offshore wastes into the coastal subcategory is accomplished by the addition of language describing the applicability of subcategory limitations when crossing subcategory boundaries and modification of the applicability language for the offshore subcategory. Limitations for the Agricultural and Wildlife Water Use Subcategory and the reserved status of the Stripper Subcategory are not affected by changes in the applicability language.

The three options selected for final consideration in developing BAT and NSPS for control of produced water are listed below with limitations associated with the options allowing discharges:

*Option 1—(Zero Discharge; Except Major Deltaic Pass and Cook Inlet Based On Improved Gas Flotation):* With the exception of facilities in Cook Inlet and facilities discharging offshore produced water into the coastal subcategory waters of a major deltaic pass of the Mississippi River or the Atchafalaya River below Morgan City, all coastal oil and gas facilities and all facilities discharging offshore produced water into coastal locations would be prohibited from discharging produced water and treatment, workover, and completion fluids. Coastal facilities in Cook Inlet and facilities

discharging offshore produced water into a major deltaic pass would be required to comply with oil and grease limitations of 29 mg/l monthly average and 42 mg/l daily maximum based on improved performance of gas flotation.

*Option 2—(Zero Discharge; Except Cook Inlet Based On Improved Gas Flotation):* With the exception of coastal facilities in Cook Inlet, all coastal oil and gas facilities would be prohibited from discharging produced water and treatment, workover, and completion fluids. Discharges of offshore produced water and treatment, workover, and completion fluids would be prohibited when the wastes are disposed in coastal locations. Coastal facilities in Cook Inlet would be required to comply with oil and grease limitations of 29 mg/l monthly average and 42 mg/l daily maximum based on improved performance of gas flotation.

*Option 3—(Zero Discharge All):* For all coastal facilities, this option would prohibit discharges of produced water and treatment, workover, and completion fluids based on injection. Further, discharges of offshore produced water and treatment, workover, and completion fluids would be prohibited in coastal locations.

For BCT, BPT and currently applicable permit limitations were considered in addition to the three previously mentioned options for BAT and NSPS. For produced water, BPT limitations include limitations on oil and grease of 48 mg/l for Monthly Average and 72 mg/l for Daily Maximum. For treatment, workover, and completion fluids, BPT limitations include no discharge of free oil and current permits, where applicable, prohibit the discharge of these fluids into fresh waters of Texas and Louisiana.

For PSES and PSNS, the only option considered is zero discharge.

With regard to options presented at proposal: (1) Options for treatment, workover, and completion fluids have been incorporated into the options for produced water and (2) one option was added. The option that considers allowing the discharge of offshore produced water into a major deltaic pass of the Mississippi River was included in response to comments. In response to comments, specific alternatives have been developed and examined carefully for facilities currently discharging offshore produced water into a major deltaic pass of the Mississippi River or the Atchafalaya River below Morgan City. EPA has identified six facilities with eight outfalls discharging offshore produced water into a major deltaic pass of the Mississippi River and no facilities discharging offshore produced water into the Atchafalaya River below Morgan City.

The specific alternatives discussed above have been developed for Cook

Inlet to account for the different operational practices, geological situations, and economic considerations that exist in Cook Inlet.

#### 4. BAT and NSPS Options

EPA is selecting "Option 2—Zero discharge; Except Cook Inlet Based On Improved Gas Flotation" for the BAT and NSPS level of control for produced water.

##### a. Rationale for Selection of BAT

##### (1) Coastal Subcategory (except Cook Inlet)

EPA is establishing zero discharge as BAT for the coastal subcategory (except for Cook Inlet) because it is technically available, economically achievable and reflects the appropriate level of BAT control.

Zero discharge of produced water is technically available. Zero Discharge of produced water has been required of onshore facilities since EPA promulgated BPT regulations for the onshore subcategory of the oil and gas industry in 1979. 40 CFR part 435, subpart C (44 FR 22069; April 13, 1979). With the exception of Cook Inlet, injection of produced water is widely practiced by facilities in the coastal subcategory. Independent of this rule, all coastal facilities in Alabama, California, Florida, and the North Slope of Alaska are currently practicing zero discharge and, as of January 1, 1997, EPA estimates that at least 80% to 99.9% of all coastal facilities in Louisiana and Texas will be practicing zero discharge. The 80% estimate is based on subtracting the sum of the 6 facilities discharging into a major deltaic pass of the Mississippi, the 82 facilities discharging to Louisiana open bays, and the 82 facilities associated with individual permit applicants in Texas from the 853 total coastal facilities estimated to exist along the Gulf of Mexico. The 99.9% estimate is based on subtracting the number of facilities discharging into a major deltaic pass of the Mississippi from the total number of coastal facilities along the Gulf of Mexico. Additionally, using a combination of Coastal Survey information and counts of facilities known to be discharging, EPA estimated that 62% of coastal facilities along the Gulf of Mexico were practicing zero discharge in 1994. Some coastal operators have voluntarily upgraded to zero discharge technologies while other coastal operators have been subject to consent decrees requiring zero discharge in citizen suits filed by environmental groups. Zero discharge is available to coastal facilities in the Gulf of Mexico region because formations appropriate for injection are available.

In response to comments that operators discharging offshore produced water into a major deltaic pass of the Mississippi should not be subject to zero discharge, EPA closely examined these facilities. However, EPA has identified no basis for providing these facilities with limitations other than those established for the coastal subcategory outside of Cook Inlet. Injection has been widely demonstrated in practice as available to coastal facilities in states along the Gulf Coast, including facilities discharging coastal produced water that are near these facilities discharging offshore produced water.

Zero discharge for the coastal subcategory, except Cook Inlet, is economically achievable. As discussed below, EPA conducted the economic analysis under two baselines, the current regulatory requirements baseline and an alternative baseline. Under the current requirements baseline, the only facilities outside of Cook Inlet that are incurring costs as a result of this rule are those discharging wastes from the offshore subcategory into a "major deltaic pass." Under the alternative baseline, facilities outside of Cook Inlet that are incurring costs as a result of this rule includes those discharging wastes from the offshore subcategory into a "major deltaic pass," individual permit applicants in Texas, and Louisiana open bay dischargers.

No closures are projected for the six facilities discharging to a major deltaic pass. Major pass facilities incur costs and impacts under both the current requirements and the alternative baselines. For major pass operations, the lifetime production loss is expected to be up to 3.4 million total BOE, which is 0.6 percent of estimated lifetime production from these facilities. While these losses may be significant for these dischargers, in context of the coastal subcategory as a whole, this production loss represents 0.3 percent of the coastal production along the Gulf of Mexico. Employment losses in both Cook Inlet and along the Gulf Coast are acceptable, see section VIII. Considering this small percentage loss of BOE and profitability, coupled with the determination of no closures, EPA believes that zero discharge is economically achievable under the CWA.

For individual permit applicants in Texas and Louisiana open bay dischargers, a total of up to 94 wells may be first year shut-ins under zero discharge. Individual permit applicants in Texas and Louisiana open bay dischargers are considered to have financial impacts only under the alternative baseline. These wells are

approximately 2 percent of all Gulf of Mexico coastal wells. EPA estimates related production losses would be approximately 12.8 million BOE. This represents less than one percent of all Gulf coastal production, most of which is in compliance with zero discharge requirements. A maximum of 1 firm among the Louisiana open bay dischargers and 3 firms among the individual permit applicants from Texas could fail as a result of the proposed regulatory options. However, EPA's modeling tends to overestimate economic impacts and firm failures, since these models project that some currently operating firms have already failed. These potential failures represent less than one percent of all Gulf of Mexico coastal firms. EPA also did a facility level analysis, conducted in response to facility-level information received from Texas very late in the rulemaking, that shows fewer wells are baseline failures and fewer wells fail due to the costs of this rule because wells combine efforts for treatment and production. EPA views the small percentage loss of BOE and profitability, coupled with the determination of a small number of firm closures, to meet the definition of economic achievability under the CWA.

The non-water quality environmental impacts of zero discharge, discussed in section IX, are acceptable.

#### (2) Cook Inlet

EPA is establishing BAT limitations based on improved gas flotation, rather than zero discharge. EPA rejects zero discharge of produced water because zero discharge is not economically achievable in Cook Inlet.

EPA considered Cook Inlet separately from other areas in the coastal subcategory because Cook Inlet is geographically isolated from other areas in the coastal subcategory, zero discharge of produced water would have disproportionately adverse economic impact in Cook Inlet.

Unlike states along the Gulf Coast, only the production formation is generally available for injection of produced water. Because of this, zero discharge would require the additional costs associated with piping produced water from existing production facilities to existing waterflood injection sites.

EPA's economic analysis shows a disproportionate impact of zero discharge on Cook Inlet as compared with the rest of the coastal subcategory. EPA projects that zero discharge requirements for Cook Inlet would close 1 of the 13 existing production platforms and result in the loss of 108 jobs in the oil and gas industry in Cook Inlet. In addition, there are severe

economic impacts on two additional platforms that were projected to fail at proposal. These disproportionate impacts are demonstrated by a loss in net present value in Cook Inlet of 18.5 percent as compared to only 1.4 percent in the Gulf coast under the current requirements baseline. In addition, there are disproportionate impacts in Cook Inlet with regard to employment, where Cook Inlet already suffers from unemployment higher than the national average and higher than the rest of the coastal subcategory. The most recently reported (1991) unemployment rate in Cook Inlet is 12.7 percent, as compared with the unemployment rate in the Gulf coast of 6.2 to 6.4 percent and the national unemployment rate of about 5.2 percent). The loss of 108 jobs that would occur in Cook Inlet from zero discharge would raise the unemployment level in Cook Inlet 0.5 percent, to 13.2 percent. Thus, zero discharge would worsen the serious unemployment situation that exists in Cook Inlet. Because Cook Inlet is economically and geographically isolated and the economic effects of zero discharge in Cook Inlet are significant and disproportionately worse than they are in the rest of the subcategory, EPA rejects zero discharge in Cook Inlet as not economically achievable.

Limitations based on improved gas flotation are technically and economically achievable for Cook Inlet facilities. These limitations are a Daily Maximum of 42 mg/l and a Monthly Average of 29 mg/l for oil and grease. Improved gas flotation technology has been demonstrated in the offshore subcategory where the wastestreams and physical constraints are similar. No platform closures are expected as a result of establishing these limitations. EPA expects the production loss over the productive lifetime of these platforms to be approximately 2.4 million BOE, which is 0.5 percent of the estimated lifetime production for the Inlet.

The non-water quality environmental impacts of these limitations, discussed in section IX, are acceptable.

#### (3) Pollutant Reductions for the Selected Option

Assuming the current regulatory requirements baseline, the selected BAT option for produced water and treatment, workover, and completion fluids is expected to reduce discharges of conventional pollutants by 2,780,000 lbs. per year, nonconventional pollutants by 1,490,000,000 lbs. per year, and toxic pollutants by 228,000 lbs. per year.

Assuming the alternative baseline, the selected BAT option for produced water

and treatment, workover, and completion fluids is expected to reduce discharges of conventional pollutants by 11,300,000 lbs. per year, nonconventional pollutants by 4,590,000,000 lbs. per year, and toxic pollutants by 880,000 lbs. per year.

b. Rationale for Selection of NSPS  
For NSPS control of produced water and treatment, workover, and completion fluid discharges from new sources, EPA is establishing the limitations associated with "Option 2—Zero Discharge; Except Cook Inlet Based On Improved Gas Flotation." Option 2 is economically achievable for the reasons discussed in the economic impact analysis and in Section VIII, below. The selected option for NSPS is equal to the selected BAT option for produced water and treatment, workover, and completion fluids. The BAT option has been demonstrated to be technologically available and economically achievable for existing structures. Design and construction of pollution control equipment on new production facilities is generally less expensive than retrofitting existing facilities. Therefore, while the NSPS requirements are equal to the BAT requirement, it is less costly for new structures to meet these requirements and these costs would not inhibit development of new sources.

In addition, as discussed in Section IX, EPA has determined the non-water quality environmental impacts to be acceptable for the selected NSPS option for produced water and treatment, workover, and completion fluids.

Zero discharge for Cook Inlet is rejected because of uncertainties regarding the availability of geologic formations suitable for receiving injected produced water. Information in the record indicates that a potential new source in Cook Inlet could be unable to inject adequate produced water volumes near the new source. As a result, the new source would be faced with piping the produced water to a location where suitable geology would be available. Based on information available in the record, EPA projects that no new sources will be developed in Cook Inlet. Nevertheless, EPA assessed the costs and economic impacts incurred by a model new source facility under the zero discharge scenario should conditions and future information lead to development of new sources in Cook Inlet. For the modeled scenario, EPA based costs on injecting produced water near the new source facility. However, because of the uncertainties regarding availability of formations suitable for injection, it is possible that a new source structure would incur some

unknown cost for piping the produced water to a suitable injection location. Since the location and availability of formations for any new source in Cook Inlet are unknown, the maximum cost associated with piping produced water from the wellhead to the nearest injection well cannot be estimated.

#### 5. BCT Methodology and Options Selection

The methodology to determine the appropriate technology option for BCT limitations is previously described in the proposal and the Coastal Development Document.

EPA evaluated the options listed in section VII.B.5 according to the BCT cost reasonableness tests. The pollutant parameters used in this analysis were total suspended solids and oil and grease. All options fail the BCT cost reasonableness test. Thus, EPA establishes BCT limitations for produced water equal to BPT. Limitations for treatment, workover, and completion fluids are established as zero discharge for fresh water in Texas and Louisiana and no free oil everywhere else. This option reflects current permit requirements. Costs for this option are zero, thus this option passes the BCT cost test. A more detailed description of the BCT cost test for produced water and treatment, workover, and completion fluids is described in the Coastal Development Document. There are no non-water quality environmental impacts associated with the BCT limitations because it is equal to existing BPT requirements.

#### 6. PSES and PSNS Options Selection

Based on the 1993 Coastal Oil and Gas Questionnaire and other information reviewed as part of this rulemaking, EPA has not identified any existing coastal oil and gas facilities which discharge produced water or treatment, workover, and completion fluids to POTWs, nor are any new facilities projected to direct their produced water discharge in such manner. However, because EPA is establishing a limitation requiring zero discharge for existing facilities, there is the potential that some facilities may consider discharging to POTWs in order to circumvent the BAT and/or NSPS limitations. Pretreatment standards for produced water and treatment, workover, and completion fluids are appropriate because EPA has identified the presence of a number of toxic and nonconventional pollutants, many of which are incompatible with the biological removal processes at POTWs and would result in pass through or

interference. Large concentrations of dissolved solids in the form of various salts in the produced water cause the discharge to POTWs to be incompatible with the biological treatment processes because these "brines" can be lethal to the organisms present in the POTW biological treatment systems. (See the Coastal Development Document for detailed information on produced water characterization.)

EPA is establishing pretreatment standards for existing and new sources (PSES and PSNS, respectively) that prohibit the discharge of produced water and treatment, workover, and completion fluids. Since zero discharge to POTWs is the current practice in the coastal oil and gas extraction industry, zero discharge is economically and technologically achievable for PSES, and has no non-water quality environmental impacts. The cost projections for both PSES and PSNS are considered to be zero since no existing sources discharge to POTWs and there are no known plans for new sources to be installed in locations amenable to sewer hookup. Design and construction of pollution control equipment on new production facilities is generally less expensive than retrofitting existing facilities. Therefore, while the PSNS requirements are equal to the PSES requirement, it is less costly for new structures to meet these requirements and these costs would not inhibit development of new sources. Non-water quality environmental impacts would be similar to those for new sources, which EPA has found to be acceptable. Thus, EPA has determined that pretreatment standards for new sources that are equal to NSPS are economically achievable and technologically available for PSNS and that the non-water quality environmental impacts are acceptable.

#### C. Produced Sand

##### 1. Waste Characterization

Produced sand consists primarily of the slurried particles that surface from hydraulic fracturing and the accumulated formation sands and other particles (including scale) generated during production. Produced sand is generated during oil and gas production by the movement of sand particles in producing reservoirs into the wellbore. The generation of produced sand usually occurs in reservoirs comprised of geologically young, unconsolidated sand formations. The produced sand wastestream is considered a solid and consists primarily of sand and clay with varying amounts of mineral scale and corrosion products. This waste stream may also include sludges generated in

the produced water treatment system, such as tank bottoms from oil/water separators and solids removed in filtration.

Produced sand is carried from the reservoir to the surface by the fluids produced from the well. The well fluids stream consists of hydrocarbons (oil or gas), water, and sand. At the surface, the production fluids are processed to segregate the specific components. The produced sand drops out of the fluids stream during the separation process and accumulates at low points in equipment. Produced sand is removed primarily during tank cleanouts. Because of its association with the hydrocarbon stream during extraction, produced sand is generally contaminated with crude oil or gas condensate.

Additional discussion of produced sand is presented in the Coastal Development Document.

##### 2. Selection of Pollutant Parameters

As proposed, EPA is establishing control of all pollutants present in produced sand by prohibiting discharge of this wastestream.

##### 3. Control and Treatment Technologies

No effluent limitations guidelines have been promulgated for discharges of produced sand in the coastal subcategory. The final NPDES permits for Texas, Louisiana, and the existing state NPDES permits for Alabama contain a zero discharge limit for produced sand.

Data from the 1993 Coastal Oil and Gas Questionnaire indicate that the predominant disposal method for produced sand is landfarming, with underground injection, landfilling, and onsite storage also taking place to some degree. Because of the cost of sand cleaning, in conjunction with the difficulties associated with cleaning some sand sufficiently to meet existing permit discharge limitations, operators use onshore (onsite or offsite) or downhole disposal. In fact, only one operator was identified in the 1993 Coastal Oil and Gas Questionnaire as discharging produced sand in the Gulf of Mexico, but this operator also stated that it planned to cease its discharge in the near future. Cook Inlet operators submitted information stating that no produced sand discharges are occurring in this area. No comments on the proposed guidelines contained contrary information.

##### 4. Options Considered and Rationale for Options Selection

EPA has selected zero discharge for control of produced sand. Because

current practice for the coastal subcategory is zero discharge, allowing the discharge of produced sand would not represent BAT level control. As stated above, EPA's Coastal Oil and Gas Questionnaire identified only one discharger of produced sand in the coastal subcategory and that discharger reported an intent to cease discharging. As stated above, the Region 6 NPDES permits published January 9, 1995 prohibit all discharges of produced sand in coastal waters of Louisiana and Texas. Because the industry practice is zero discharge, the zero discharge limitation will result in no increased cost to the industry.

EPA is establishing BPT, BCT, BAT and NSPS equal to zero discharge for produced sand. Zero discharge is established as BPT because it reflects the average of the best existing performance by facilities in the coastal subcategory. Since BCT is established as equal to BPT, there is no cost of BCT incremental to BPT. Therefore, this option passes the BCT cost reasonableness tests. EPA has determined that zero discharge reflects the BAT level of control because, as it is widely practiced throughout the industry, it is both economically achievable and technologically available. The selected option for NSPS is equal to the selected BAT option for produced sand. Design and construction of pollution control equipment on new production facilities is generally less expensive than retrofitting existing facilities. Therefore, while the NSPS requirements are equal to the BAT requirement, it is less costly for new structures to meet these requirements and these costs would not inhibit development of new sources. Zero discharge will have no economic impacts on the industry. As zero discharge reflects current practice, there are no incremental non-water quality environmental impacts from this option.

The technology basis for compliance with PSES and PSNS is the same as that for BAT and NSPS. EPA is establishing pretreatment standards for produced sands equal to zero discharge because, like drilling fluids and drill cuttings, their high solids content would interfere with POTW operations. Because EPA is not aware of any coastal operators discharging produced sand to POTWs, this requirement is not expected to result in operators incurring costs. Zero discharge for PSNS would not cause a barrier to entry for the same reasons as discussed above for NSPS. There are no additional non-water quality environmental impacts associated with this requirement because it reflects current practice.

#### *D. Deck Drainage*

##### 1. Waste Characterization

Deck drainage consists of contaminated site and equipment runoff due to storm events and wastewater resulting from spills, drip pans, or washdown/cleaning operations, including washwater used to clean working areas. Deck drainage is generated during both the drilling and production phases of oil and gas operations. Currently, approximately 11.5 million barrels per year of deck drainage are discharged by facilities in the coastal subcategory. EPA estimates that 112,000 pounds of oil and grease are discharged in this wastestream annually. In addition to oil, various other chemicals used in drilling and production operations may be present in deck drainage. Limited treated effluent data are available for this wastestream, however, EPA has identified the presence of organic and metal toxic pollutants in deck drainage. EPA's analytical data for deck drainage comes from the data acquired during the development of the Offshore Guidelines. EPA conducted a three facility sampling program (described in Section V of the Offshore Development Document) during which samples were taken of untreated deck drainage. Eight of the toxic metals were detected, most notably lead (ranging in concentration from 25—352 ug/l) and zinc (ranging in concentration from 2970—6980 ug/l). Priority organics were also present including benzene, xylene, naphthalene and toluene. Other nonconventional pollutants found in deck drainage include aluminum, barium, iron, manganese, magnesium and titanium.

The content and concentrations of pollutants in deck drainage can also depend on chemicals used and stored at the oil and gas facility. An additional study on deck drainage from Cook Inlet platforms, reviewed during development of the Offshore Guidelines and this rule, showed that discharges from this wastestream may also include paraffins, sodium hydroxide, ethylene glycol, methanol and isopropyl alcohol.

##### 2. Selection of Pollutant Parameters

EPA has selected free oil as the pollutant parameter for control of deck drainage. The specific conventional, toxic and nonconventional pollutants found to be present in deck drainage are those primarily associated with oil, with the conventional pollutant oil and grease being the primary constituent. In addition, other chemicals used in the drilling and production activities and stored on the structures have the potential to be found in deck drainage.

EPA believes that an oil and grease limitation together with incorporation of site specific Best Management Practices, as required under the stormwater program and as discussed below, will control the pollutants in this wastestream.

The specific conventional, toxic, and nonconventional pollutants controlled by the prohibition on the discharges of free oil are the conventional pollutant oil and grease and the constituents of oil that are toxic and nonconventional. Free oil is also an indicator for toxic pollutants present in crude oil. These pollutants include benzene, toluene, ethylbenzene, naphthalene, phenanthrene, and phenol. EPA has determined that it is not technically feasible to control these toxic pollutants specifically, and that the limitation on free oil in deck drainage reflects control of these toxic pollutants at the BAT and BADCT (NSPS) levels.

##### 3. Control and Treatment Technologies

a. Current Practice. BPT limitations for deck drainage prohibit the discharge of free oil. All equipment and deck space exposed to stormwater or washwater are surrounded with berms or collars. These berms capture the deck drainage where it flows through a drainage system leading to a sump tank. Initial oil/water separation takes place in the sump tank which is generally located beneath the deck floor or underground at land-based operations. Effluent from the sump tank may be directed to a skim pile, where additional oil/water separation occurs. (The skim pile is essentially a vertical bottomless pipe with internal baffles to collect the separated oil.)

The deck drainage treatment system is a gravity flow process, and the treatment tanks generally do not require a power source for operation. Thus, deck drainage generated at operations located in powerless, remote situations, (such as satellite wellheads) can be effectively treated.

It is sometimes difficult to obtain an appropriate sample of deck drainage effluent, due to a submerged location. This precludes the use of the static sheen test for this wastestream. Thus, free oil is measured by the visual sheen test. Deck drainage treatment is discussed in more detail in the Coastal Development Document.

b. Additional Technologies Considered. At proposal, EPA considered commingling deck drainage with produced water or drilling fluids and requiring best management practices. Deck drainage could in some circumstances be commingled with either produced water or drill fluids and

thus, could become subject to the limitations imposed on these major wastestreams. EPA also considered requiring best management practices (BMPs) on either a site-specific basis or as part of the Coastal Guidelines. However, for the final rule, both of these proposed options have been rejected. The commingling of deck drainage with produced water or drilling fluids is not a demonstrated technology, as discussed below. Promulgating BMPs in this rule would be redundant to the requirements of the "Final National Pollutant Discharge Elimination System Storm Water Multi-Sector General Permit for Industrial Activities" (60 FR 50804, September 29, 1995).

With regard to commingling with produced water, the 1993 Coastal Oil and Gas Questionnaire as well as the industry site visits reveal that deck drainage is sometimes commingled with produced waters prior to discharge or injection. Because of this practice, EPA investigated an option requiring capture of the "first flush", or most contaminated portion of, deck drainage. Depending on whether the deck drainage is generated from drilling or production (actual hydrocarbon extraction) operations, this first flush would be subject to the same limitations as would be imposed on either produced water or drilling fluids and drill cuttings based on the assumption that these two wastestreams could be commingled.

EPA has rejected the first flush option for control of deck drainage for several reasons primarily relating to whether this option is technically available to operators throughout the coastal subcategory. Deck drainage is currently captured by drains and flows via gravity to separation tanks below the deck floor. However, the problems associated with capture and treatment beyond gravity feed, power independent systems, are compounded by the possibilities of back-to-back storms which may cause first flush overflows from an already full 500 bbl tank. In addition, tanks the size of 500 barrels are too large to be placed under deck floors. Installation of a 500 bbl tank would require construction of additional platform space, and the installation of large pumps capable of pumping sudden and sometimes large flows from a drainage collection system up into the tank. The additional deck space would add significantly, especially for water-based facilities, to the cost of this option. Further, many coastal facilities are unmanned and have no power source available to them. Deck drainage can be channeled and treated without power under the BPT limitations.

Capturing deck drainage at drilling operations poses additional technical difficulties. Drilling operations on land may involve an area of approximately 350 square feet. A ring levee is typically excavated around the entire perimeter of a drilling operation to contain contaminated runoff. This ring levee may have a volume of 6,000 bbls, sufficient to contain 500 bbls of the first flush. However, collection of these 500 bbls when 6,000 bbls may be present in the ring levee would not effectively capture the first flush. Costs to install a separate collection system including pumps and tanks, would add significantly to the cost of this option.

While costs are significant, the technological difficulties involved with adequately capturing deck drainage at coastal facilities are the principal reason why this option was not selected for the final rule.

EPA's final rule does not include best management practices (BMPs) for this wastestream. EPA believes that current industry practices, in conjunction with the requirements included in the previously mentioned general permit for stormwater, are sufficient to minimize the introduction of contaminants from this wastestream to the extent possible. These stormwater requirements require an oil and gas operator to develop and implement a site-specific storm water pollution prevention plan consisting of a set of BMPs depending on specific sources of pollutants at each site.

#### 4. Options Selection

For BAT and NSPS, EPA is establishing a limitation of no free oil. Since free oil discharges are already prohibited under BPT, there are no incremental compliance costs, pollutant removals, or non-water quality environmental impacts associated with this control option. Since this preferred option limits free oil equal to existing BPT standards, it is technologically available and economically achievable.

EPA is establishing BCT limitations as no free oil. Since "no free oil" is the BPT limitation, there is no incremental cost and this option passes the BCT Cost Tests.

EPA is establishing PSES and PSNS limits for deck drainage as zero discharge. EPA believes that zero discharge for PSES and PSNS is appropriate because slugs of deck drainage would be expected to interfere with biological treatment processes at POTWs. This is discussed further in the Coastal Development Document.

#### E. Domestic Wastes

Domestic wastes result from laundries, galleys, showers, and other

similar activities. Detergents are often part of this wastestream. Waste flows may vary from zero for intermittently manned facilities to several thousand gallons per day for large facilities.

The conventional pollutant of concern in domestic waste is floating solids. The BPT limitations for domestic wastes prohibit discharges of floating solids. To comply with this limit, operators grind the waste prior to discharge. As proposed, EPA is establishing BCT and NSPS limitations as no floating solids. In addition, EPA is establishing BAT and NSPS limitations to prohibit discharges of foam. Foam is a nonconventional pollutant and its limitation is intended to control discharges that include detergents.

As proposed, EPA is establishing discharges limitations for garbage as included in U.S. Coast Guard regulations at 33 CFR part 151. These regulations implement Annex V of the International Treaty to Prevent Pollution from Ships (MARPOL) and the Act to Prevent Pollution from Ships, 33 U.S.C. 1901 et seq. (The definition of "garbage" is included in 33 CFR 151.05).

The pollutant limitations described above for domestic wastes are all technologically available and economically achievable and reflect the BCT, BAT and NSPS levels of control.

These limitations are technologically available because, under the Coast Guard regulations, discharges of garbage, including plastics, from vessels and fixed and floating platforms engaged in the exploration, exploitation and associated offshore processing of seabed mineral resources are prohibited with one exception. Victual waste (not including plastics) may be discharged from fixed or floating platforms located beyond 12 nautical miles from nearest land, if such waste is passed through a screen with openings no greater than 25 millimeters (approximately one inch) in diameter. Because vessels and fixed and floating platforms must comply with these limits, EPA believes that all coastal facilities are able to comply with this limit. While not all coastal facilities are located on platforms, compliance with a no garbage standard should be as achievable, if not more so, for shallow water or land based facilities that have access to garbage collection services. Further, the final drilling permits issued by Region 6 for coastal Texas and Louisiana incorporates these Coast Guard regulations.

No discharge of visible foam is required by the NPDES permit for Cook Inlet drilling. No discharge of floating solids is included in the Region 10 BPT general permit for Cook Inlet, the Region

10 drilling permit, and the Region 6 general permits for coastal operators.

These limitations are economically achievable because these BCT, BAT and NSPS limitations for domestic waste are already included in either existing NPDES permits or Coast Guard regulations, and therefore these limitations will not result in any additional compliance cost. Also, these limits and standards will have no additional non-water quality environmental impacts. There are no incremental costs associated with the BCT limitations; therefore, they pass the BCT cost reasonableness tests.

Pretreatment standards are not being developed for domestic wastes because domestic wastes are compatible with POTWs.

#### F. Sanitary Wastes

Sanitary wastes from coastal oil and gas facilities are comprised of human body wastes from toilets and urinals. The volume of these wastes vary widely with time, occupancy, and site characteristics. A larger facility, such as an offshore platform, typically discharges about 35 gallons of sanitary waste daily. Sanitary discharges from coastal facilities would be expected to be less than this value since the manning levels at most coastal facilities is less than that at offshore locations.

The existing BPT limitation for facilities continuously manned by 10 or more people requires sanitary effluent to have a minimum residual chlorine content of 1 mg/l, with the chlorine concentration to remain as close to this level as possible. Facilities intermittently manned or continuously manned by fewer than 10 people must comply with a BPT prohibition on the discharge of floating solids. EPA Regions 6 and 4 general permits for coastal facilities also limit the discharge of TSS, fecal coliform count, BOD and floating solids. The EPA Region 10 general permit for Cook Inlet also requires limitations for these same parameters in addition to requirements for foam and free oil.

EPA considered zero discharge of sanitary wastes based on off-site disposal to municipal treatment facilities or injection with other oil and gas wastes. Off-site disposal would require pump out operations that, while available to certain land facilities, are not easily available to remote or water-based operations. Because sanitary wastes are not accepted for injection into Class II wells, zero discharge based on Class II injection was rejected for sanitary wastes.

EPA is establishing BCT and NSPS as equal to BPT limits for sanitary waste

discharges. Sanitary waste effluents from facilities continuously manned by ten (10) or more persons must contain a minimum residual chlorine content of 1 mg/l, with the chlorine level maintained as close to this concentration as possible. Coastal facilities continuously manned by nine or fewer persons or only intermittently manned by any number of persons must comply with a prohibition on the discharge of floating solids.

Since there are no increased control requirements beyond those already required by BPT effluent guidelines, there are no incremental compliance costs or non-water quality environmental impacts associated with BCT and NSPS limitations for sanitary wastes. Since there are no incremental costs associated with the BCT limit, it passes the BCT cost tests.

EPA is not establishing BAT effluent limitations for the sanitary waste stream because no toxic or nonconventional pollutants of concern have been identified in these wastes.

Pretreatment standards are not being developed for sanitary wastes because they are compatible with POTWs.

### VIII. Economic Analysis

#### A. Introduction

This section describes the capital investment and annualized costs of compliance with the Coastal Guidelines, and the potential impacts of these compliance costs on current and future operators of coastal oil and gas facilities. EPA's economic impact assessment is presented in detail in the *Economic Impact Analysis of Final Effluent Limitations Guidelines and Standards for the Coastal Oil and Gas Subcategory of the Oil and Gas Extraction Point Source Category* (hereinafter, "EIA"), included in the rulemaking record. The EIA estimates the economic effect of compliance costs on federal and state revenues, balance of trade considerations, and inflation. In addition, EPA has conducted a Regulatory Flexibility Analysis, which estimates effects on small entities, and a cost-effectiveness analysis of all evaluated options for (1) produced water and treatment, workover, and completion fluids and (2) drilling fluids, drill cuttings and dewatering effluent. Except where otherwise noted, only the results for selected options are presented here. For all other wastestreams, EPA selected options that would generate no costs to industry.

#### B. Economic Impact Methodology

This section (and, in more detail, the EIA) evaluates several measures of

economic impacts that result from compliance costs. The economic analysis in the EIA has six major components: (1) An assessment of the number of facilities that could be affected by this rule; (2) an estimate of the annual aggregate (pre-tax) cost for these facilities to comply with the rule using facility-level capital and O&M costs; (3) use of an economic model to evaluate impacts on the production and economic life of coastal facilities; (4) an evaluation of impacts on firms' financial health, future oil and gas production, Federal and State revenues, balance of trade, employment and other secondary effects; (5) an analysis of compliance cost impacts on new sources; and (6) an analysis of the effects on small entities.

Some of the economic impacts reported in this section are provided in terms of present value (PV) or net present value (NPV). The NPV of project worth is the total stream of production revenues minus all costs and taxes over a period of years discounted back to present value at the firm or industry borrowing rate, here 7 percent or 8 percent, depending on the region under consideration.

All costs are reported in 1995 dollars, with the exception of cost-effectiveness results, which, by convention, are reported in 1981 dollars. Any costs not originally in 1995 dollars have been inflated or deflated using the Engineering News Record Construction Cost Index, unless otherwise noted in the EIA (see EIA for details). Oil and gas prices reported by individual operators are used where available. The impacts reported in this analysis are based on the assumption that these oil prices will remain constant in real terms over the time frame of the analysis. This assumption may overestimate economic impacts, at least over the next several years, given industry and government forecasts showing small real price increases. Price increases would tend to alleviate the economic impacts caused by increased compliance costs.

The economic methodology is nearly identical to the methodology used at proposal. Changes include adjustments to costs (noted in Section V above), minor refinements to the financial models to more precisely reflect tax code and accounting practices, and a change in the baseline to which the costs of the rule are compared. The revision to the analytical baseline represents a significant departure from the 1995 proposal analysis, although it is consistent with EPA's stated intent at proposal to more fully incorporate the effects of recent permit requirements in the analyses for the final rule (see 60 FR 9430). At proposal, the Region 6 General

Permits requiring zero discharge of produced water in Texas and Louisiana were not yet issued. These permits apply to all coastal oil and gas operations in Louisiana and Texas with the exception of certain operations discharging offshore produced water into coastal waters of the Mississippi major deltaic passes (Major Pass dischargers). Therefore, at proposal, EPA counted compliance costs for facilities currently covered by these permits as costs of the Coastal Guidelines.

For the final rule cost analysis, EPA has based costs on the Region 6 General Permits. As a result, EPA considers facilities' Region 6 permit compliance costs to be part of the current regulatory requirements baseline against which the incremental costs attributable to the Coastal Guidelines are measured. Only those facilities not covered by the permits are considered to incur costs as a result of this rule. The current regulatory requirements baseline analysis also considers the effects of the revised guidelines on Cook Inlet operators, for whom information on drilling plans and production has been updated.

In response to comments, the Agency also has considered the effects of the Coastal Guidelines relative to an alternative baseline, which is based on the assumption that Louisiana Open Bay dischargers and dischargers who have applied for individual permits in Texas might continue to discharge under individual permits in the absence of this rule. This alternative baseline analysis estimates effects on these dischargers as well as the Major Pass and Cook Inlet operators. Specific effects on the Louisiana Open Bay dischargers and Texas Individual Permit applicants are also described as a separate part of this alternative analysis. Data for many of these dischargers were gathered for 1992 in the 1993 Coastal Oil and Gas Questionnaire. To EPA's knowledge, responses to the questionnaire provide the most recent and complete set of cost, revenue, and production data available to date for Louisiana Open Bay and Texas Individual Permit operations. The Texas Railroad Commission submitted data to EPA less than one week before the date of this rule, which, because of insufficient time remaining, could not be fully analyzed.

To model Cook Inlet and Major Pass operations, EPA used a financial model similar to the one used to model Cook Inlet in the EIA for the proposed rule. This model uses platforms and/or facilities (rather than wells) as the relevant analytical units. Information for the model was provided by the affected

operators, vendors, and publicly available documents, including information from the SEC, the Bureau of the Census, and the Bureau of Labor Statistics. In this model, the capital and operating costs for pollution control are added to (pre-compliance) baseline capital and operating costs to create a post-compliance financial scenario that evaluates the incremental effects of compliance costs for various options. When operating costs exceed revenues, EPA assumes that the well or facility ceases operation. EPA's model then calculates lifetime production in barrels of oil equivalent (BOE) and associated lifetime revenue (comprised of net income, taxes, and royalties). The net impacts of the rule are the changes in production and revenue from baseline to post-compliance estimates. These changes are the primary impacts of the rule; these in turn affect employment, firm financial health and balance of trade.

*C. Summary of Costs and Economic Impacts*

1. Overview of Economic Impact Analysis

The EIA focuses first on the costs and economic impacts of the rule, assuming current permit requirements to be the baseline to which the rule is compared. The analysis addresses costs and economic impacts of the BAT and NSPS requirements for drilling fluids, drill cuttings and dewatering effluent (Cook Inlet only), and for produced water and treatment, workover and completion (TWC) wastes combined (Cook Inlet and Major Passes). EPA's analyses are restricted to specific areas of the Louisiana Gulf of Mexico coast and Cook Inlet, Alaska; current permit requirements are for zero discharge in all other coastal areas. As noted in Section VII, no significant costs will be incurred for BAT and NSPS for other wastestreams, for which EPA is setting limits equal to current practice. Similarly, BPT requirements established by this rule are based on current practice and thus are expected to impose negligible additional costs. All options for BCT requirements other than BPT failed the BCT cost test. As a result, BCT is established equal to BPT, with no incremental costs. PSES and PSNS requirements, as noted in Section VII, are expected to have negligible impacts for coastal oil and gas producers, who do not discharge to POTWs.

2. Total Costs and Impacts of the Regulation

This section presents the total costs and impacts of the BAT limitations and

NSPS established by this rule under the current regulatory requirements baseline. Results for the alternative baseline are presented below in Section VIII(C)(4).

EPA estimates that there are six facilities (permits), associated with eight outfalls, that are not covered by the Region 6 permit and that are discharging offshore produced water into one of the major passes of the Mississippi River. There are also 13 platforms that discharge produced water and may discharge drilling wastes into Cook Inlet. Additionally, up to 684 existing wells and 45 new wells per year generating TWC wastes (which are not covered by the General Permits for produced water) would be affected by BAT and NSPS requirements, respectively.

The six Major Pass facilities discharge some combination of coastal and offshore produced water. EPA's evaluation of the costs and impacts of BAT options addresses only the offshore portion of these costs, because zero discharge of coastal waters is required by the Region 6 produced water permit.

Under the current regulatory requirements baseline, BAT limitations for drilling fluids, drill cuttings and dewatering effluent (zero discharge-Gulf; offshore limits-Cook Inlet) are current practice, and thus have no incremental cost. BAT limits for produced water and TWC fluids (zero discharge, except for Cook Inlet, where operators would have to meet oil and grease limits based on improved gas flotation) affect Major Pass dischargers and Cook Inlet dischargers and have total annual compliance costs of \$15.6 million (Table 2). The only NSPS costs incurred under this rule are \$600,000 annually for TWC fluids for new wells drilled in the Gulf of Mexico.

TABLE 2.—COSTS OF SELECTED BAT AND NSPS OPTIONS: CURRENT REGULATIONS BASELINE (1995)

Wastestream	Annualized compliance costs (\$ million/yr)	
	BAT	NSPS
Produced Water/TWC Option 2 (BAT only) ..	15.6	.....
Drilling Fluids and Cuttings (BAT only) ...	0.00	0.00
Treatment, Workover & Completion Fluids (NSPS only) .....	0.00	0.6

a. Impacts from Best Available Technology (BAT). No firms are expected to fail as a result of this rule under the Current Regulatory

Requirements baseline. Implementation of this rule is expected to cause a reduction in national employment of 127 jobs annually, which result from delays and reduction in oil production. EPA estimates that these BAT limitations could reduce the NPV of affected projects' worth by up to \$63.7 million (\$51.8 million from Major Pass facilities and \$11.9 million from Cook Inlet), equivalent to annual impacts of \$9.1 million per year, or 1.4 percent of all coastal production's net worth. A change in project NPV considers the effects of both compliance costs and foregone oil and gas revenues on an oil and gas production project's, and ultimately, on a producing company's net worth. As a firm's net worth declines, its financial position becomes more tenuous and the risk of failure increases (see EIA for detailed description). Also, the BAT limitations result in \$6.1 million in lost state taxes, \$8.4 million in lost royalties and \$20.3 million in lost federal tax revenues (all in present value). This represents 0.3 percent (taxes) and 0.2 percent (royalties) of the present value of all coastal oil and gas revenues received by states (and individuals) and 0.9 percent of federal tax revenues from all coastal facilities.

Table 3 summarizes the BAT impacts discussed above for produced water/TWC (the BAT impacts for drilling fluid and drill cuttings are negligible).

TABLE 3.—SUMMARY OF PRESENT VALUE IMPACTS OF SELECTED BAT OPTIONS

Impact	PV impacts (\$ million)	Percent of coastal industry (percent)
Project NPV lost	63.7	1.4
Federal tax losses .....	20.3	0.9
State tax losses .....	6.1	0.3
Lost royalties .....	8.4	0.2
Total losses	98.5	.....

Production losses under the selected BAT options are expected to total at most 5.8 million barrels of oil equivalent (BOE) over the lifetime of the wells and platforms (average post-compliance lifetime is 10 years in Major Pass and 12 years in Cook Inlet operations). In Cook Inlet, EPA expects the production loss over the productive lifetimes of the platforms to be approximately 2.4 million BOE, which is 0.5 percent of the estimated lifetime production for Cook Inlet. For Major Pass operations, the lifetime production loss is expected to be up to 3.4 million

total BOE, which is 0.6 percent of estimated lifetime production from these facilities. For the two regions combined, the loss in production is 0.5 percent of total nondiscounted lifetime production in Cook Inlet and the Major Passes, or 0.2 percent of all Coastal oil and gas production. These losses result only from shortened economic lifetimes; no platforms or treatment facilities are expected to shut-in immediately due to the selected options.

The rule is not likely to have a significant affect on energy prices, international trade, or inflation, and it would have a minimal and indeterminate impact on national-level employment. On average, the Major Pass facilities shut in 0.4 years earlier than they would without the rule (in 9.9 years instead of 10.3 years). In Cook Inlet, platforms shut in an average of 0.4 years earlier (in 12.3 years instead of 12.7 years). These impacts would have a minor effect on regional employment because ample time is still available for workers to find alternative employment, an effort they would need to undertake within a similar time frame without the rule. Based on the predicted economic impacts, EPA finds that the costs of the BAT limitations are economically achievable for the coastal oil and gas industry.

b. Impacts from NSPS. EPA does not expect compliance with any of the selected NSPS options to have a measurable impact on oil and gas income, royalties or taxes. EPA estimates no costs for the NSPS requirement for produced water in the Gulf of Mexico, because NSPS are the same as BAT and therefore are economically achievable and pose no barrier to entry. EPA also estimates no cost for the NSPS requirement for drilling wastes in the Gulf, because zero discharge represents the current BAT requirements. Therefore, NSPS is economically achievable and poses no barrier to entry. In the major passes, EPA estimates zero cost for NSPS also because EPA has determined that no new sources are planned that will discharge produced water. Costs of NSPS for TWC are associated only with 45 new source wells per year projected in the Gulf coastal region. Total annual NSPS compliance costs for TWC limits are \$0.6 million.

In Cook Inlet, NSPS requirements for produced water/TWC are equivalent to BAT requirements, and are therefore economically achievable and pose no barriers to entry. Costs for designing in compliance equipment to new structures are typically less than those for retrofitting the same equipment to existing operations. Based on

discussions with industry and on EPA's assessment of economic conditions given present oil prices and production trends from Cook Inlet's aging fields, the Agency expects no new facility (platform) construction in Cook Inlet. Therefore, EPA estimates NSPS costs at zero for Cook Inlet for all wastestreams. However, if potential revenue did support the construction of a new facility in Cook Inlet, NSPS produced water compliance costs would increase total capital costs by an estimated 2.3 percent. This would not influence a decision to build, as profits in Cook Inlet have a "hurdle rate" of somewhere around 20 to 25 percent. The hurdle rate is the estimated rate of return needed to interest an investor in undertaking an investment. It is particularly high in high-risk ventures such as Cook Inlet oil production. A 2.3 percent increase in capital costs would not alter the profit margin sufficiently to discourage construction of a facility. NSPS requirements for drilling waste are also the same as BAT requirements and, further, add no costs and thus are economically achievable and pose no barriers to entry. As noted above, EPA rejected zero discharge of drilling fluids, drill cuttings and dewatering effluent for BAT in Cook Inlet primarily for technological reasons; these reasons also apply to NSPS.

### 3. Economic Impacts of Rejected Options

EPA has determined that zero discharge of all wastestreams is both economically achievable and technically feasible in the coastal Gulf of Mexico. As stated in Section VII, EPA rejected BAT and NSPS limitations requiring zero discharge of produced water in Cook Inlet on the basis that this option was not economically achievable, nor was the combination of zero discharge of produced water and zero discharge of drilling wastes. The economic analysis related to these decisions for Cook Inlet is presented in the following section.

a. Produced Water. EPA rejected zero discharge of produced water in Cook Inlet base on a finding that it was not economically achievable, as discussed in Section VII(B)(4)(a)(2) above.

b. Drilling Fluids and Drill Cuttings. In establishing BAT limitations and NSPS for drilling fluids, drill cuttings and dewatering effluent in Cook Inlet, EPA rejected zero discharge primarily due to uncertainty regarding the technical feasibility of reinjection of drilling fluids, drill cuttings and dewatering effluent throughout the Inlet, as well as the operational problems and non-water quality

environmental impacts resulting from land disposal in the area. Zero discharge of these wastes may be particularly costly in Cook Inlet because of the lack of suitable geological formations for injecting drilling wastes (see Section VII). EPA estimated the annualized costs of zero discharge of drilling fluids, drill cuttings and dewatering effluent to be \$9.2 million, based on transporting some of these wastes to out-of-state landfills. EPA further determined that the combined impact of zero discharge of drilling fluids, drill cuttings and dewatering effluent and zero discharge of produced water in Cook Inlet would result in 4 of 13 platforms closing, which EPA considers to indicate economically unachievability.

#### 4. Alternative Analytical Baseline

In response to comments from the Railroad Commission of Texas (RRC), on behalf of certain Texas dischargers who have applied for individual permits, and from the U.S. Department of Energy (DOE), on behalf of dischargers to open bays in Louisiana, EPA considered what the impacts of the Coastal Guidelines would be if EPA Region 6 (Texas) or the State of Louisiana were to grant individual permits to these dischargers allowing discharge of produced water. The RRC identified dischargers in Texas who have applied for individual permits (74 applicants for 82 facilities at the time of this analysis) and DOE identified 82 discharging facilities (outfalls) in Louisiana open bays operating under 37 permits.

EPA estimated effects on Texas Individual Permit applicants and Louisiana Open Bay operators at both the well level and at the facility level (unlike Cook Inlet and Major Pass operators, who were analyzed only at the facility or platform level). The well-level analysis tends to overestimate impacts, as each well is assumed to bear costs that are often shared by several wells served by a facility. Cost-sharing allows lower costs per well and allows more productive wells to support less productive ones as long as net present value is maximized. Many of the facilities identified by RRC and DOE were already included in EPA's Coastal Oil and Gas Questionnaire database. Costs and impacts to the remaining facilities were modeled based on operators' reported discharges and oil and gas production.

EPA addressed the effects of zero discharge for combined discharges of produced water and TWC in this analysis of Texas Individual Permit applicants and Louisiana Open Bay operators. BAT for other wastestreams is addressed by Region 6 permits. Section

VIII(C)(4)(a) addresses the effects of zero discharge only on the Texas Individual Permit applicants and Louisiana Open Bay facilities. Section VIII(C)(4)(b) assesses the combined effects on these Texas and Louisiana facilities together with costs and impacts to Major Pass and Cook Inlet dischargers. The impacts on Major Pass dischargers under the alternative baseline includes estimated compliance costs for zero discharge of produced water from coastal wells. Including coastal produced water increases Major Pass dischargers' costs by approximately 20 percent.

a. Produced Water BAT Impacts: Texas Individual Permits and Louisiana Open Bays. Relative to the alternative baseline, EPA estimates total annualized compliance costs for the Texas Individual Permit and Louisiana Open Bay dischargers to attain zero discharge of produced water to be \$34.2 million. EPA estimates related production losses would be approximately 12.8 million non-discounted BOE compared to the baseline. This represents less than one percent of all Gulf coastal production, most of which is already in compliance with zero discharge requirements. These losses are associated with declines in project NPV of up to \$126.7 million, or 3.4 percent of Gulf Coastal projects' NPV.

Production losses result from both first-year shut-ins and shortened economic lifetimes. In the well-level analysis, a range of 284 to 400 baseline shut-ins are estimated to take place before compliance costs are incurred, and up to 94 to 119 wells may be first year post-compliance shut-ins under the selected options. These baseline and first-year shut-ins are likely to be overestimates that result from EPA's well-level modeling approach, which EPA addresses in sensitivity analyses below and in Chapter 10 of the EIA. The 94 to 119 first year shut-in wells constitute approximately 1 to 2 percent of all Gulf coastal wells. Based on a screening analysis, EPA identified up to four potential firm failures, which represent less than one percent of all Gulf of Mexico coastal firms. These results are derived from an analysis based on well-level impacts, a conservative approach that exaggerates both baseline and post-compliance well shut-ins.

The BAT requirements could result in a present value loss of up to \$36.7 million in federal tax revenues, or up to \$5.2 million, on average, annually (1.9 percent of federal revenues from Gulf coastal production). Losses to state income and severance tax revenues could total \$19.8 million, or \$2.8 million annually (0.9 percent of

revenues from Gulf coastal production). The states (and individuals) could also lose royalties with an estimated present value of \$25.1 million, or \$3.6 million annually (0.5 percent of revenues from Gulf coastal production). These impacts of the Coastal Guidelines are acceptable when compared to total federal and state tax revenues and royalties collected from all Gulf coastal operators.

The impacts of the rule on Louisiana Open Bay dischargers and Texas Individual Permit applicants are not expected to affect energy prices, international trade or inflation, and would have a minimal impact on national-level employment. Total national employment losses would be expected to be 231 full-time equivalents (FTEs), which is approximately 2 percent of total Gulf of Mexico coastal oil and gas employment. EPA finds that, under the assumptions of the alternative baseline, while the economic impacts of the Coastal rule are significant to some individual operators, they are economically achievable when compared to the Coastal industry as a whole.

In response to late comments from the state of Texas, EPA has also conducted a sensitivity analysis at the facility level for each and every well identified as a baseline or first year shut-in among the Texas individual permit applicants group, based on actual facility level production and costs as reported by the operators of these wells. EPA's alternative analysis shows that, in fact, when these wells are treated as components of an entire facility, that is, where total facility production revenues must exceed facility operating costs in order to keep operating, most of these wells do remain open in the baseline and do not shut in as a result of compliance. Many of the wells do not produce much produced water (which generates compliance costs). The production from those wells that do shut-in simply cannot support, on a facility basis, the annual operations and maintenance costs reported by the operators. In this alternative analysis, the one (first year) post-compliance well shut-in that was identified in EPA's original well-level analysis does not shut-in during the first year.

The facility level analysis shows 8 baseline shut-in wells (all in Texas) with the Coastal rule causing 16 first year shut-ins only among Louisiana Open Bay producers (compared to a total of 94 first year shut-ins for both states in the well level analysis). The firm failure analysis does not change. EPA concludes that its facility level analysis indicates that the effect on Texas and Louisiana operators of the

coastal rule will be even less significant than reported in the well-level analysis (see Chapter 10 of EIA).

TABLE 4.—ECONOMIC IMPACTS OF PRODUCED WATER/TWC ZERO DISCHARGE BAT OPTIONS ON TEXAS INDIVIDUAL PERMIT APPLICANTS AND LOUISIANA OPEN BAY DISCHARGERS

Impact	Present value (\$ million)	Percent of Gulf Coastal subcategory (percent)
Project NPV lost	126.7	3.4
Federal tax losses .....	36.7	1.9
State taxes .....	19.8	0.9
Lost Royalties ...	25.1	0.5
Total losses	208.4	1.6

b. BAT and NSPS Impacts: Alternative Baseline Analysis. The analysis of the alternative baseline includes all of the financial impacts from the current regulatory requirements baseline and adds the impacts of compliance costs on Louisiana Open Bay dischargers, Texas Individual Permit applicants and the coastal portion of the Major Pass dischargers. For all of these facilities—Major Passes, Cook Inlet, Texas Individual Permit applicants and Louisiana Open Bay dischargers—the total annual BAT and NSPS compliance costs, including produced water, TWC, and drilling fluids, drill cuttings and dewatering effluent options are \$52.9 million relative to the alternative baseline (Table 5). Under the alternative baseline, produced water compliance costs for Major Pass facilities increase by approximately 20 percent, compared to the current regulatory requirements baseline, to account for the costs of zero discharge of their coastal share of produced water.

TABLE 5.—TOTAL COSTS OF BAT AND NSPS OPTIONS (\$1995)—ALTERNATIVE BASELINE

Wastestream	Annualized compliance costs (\$ million/yr)	
	BAT	NSPS
Produced Water/TWC Option 2 (BAT) .....	52.3	0.00
Drilling fluids, drill cuttings and dewatering effluent ..	0.00	0.00
Treatment Workover and Completion fluids (NSPS) .....	0.00	0.6

Relative to the alternative baseline, production losses associated with the selected BAT options are expected to be approximately 18.6 million barrels of oil equivalent (BOE) over the lifetime of the affected wells, facilities, and platforms. This is approximately 0.6 percent of total lifetime nondiscounted production in the coastal Gulf and Cook Inlet regions combined. Only 3 firms in Texas and one in Louisiana would be potential failures, and a maximum of 94 wells (2% of total coastal wells) would shut in. Most of these wells would shut in only a few years without the rule. Declines in the net present value of project worth would be approximately \$200 million or \$28 million annually discounted over 10 years (4.4 percent of total coastal NPV). BAT requirements could result in a present value loss of \$60 million in federal tax revenues, or \$8.5 million annually (2.5 percent of federal tax revenue from coastal operations). State income and severance tax revenues losses associated with BAT requirements would be approximately \$26.6 million or \$3.8 million annually (1.1 percent of all state tax revenue from coastal operations). The states and other individuals could also lose royalties totaling an estimated present value of \$33.6 million, or \$4.8 million annually (0.6 percent of coastal royalties).

The Coastal rule is not expected to affect energy prices, international trade or inflation, and would have a minimal impact on national-level employment. National level employment losses would be expected to be approximately 375 full-time equivalents (FTEs, or annual jobs) Table 6 summarizes the impacts discussed above.

NSPS compliance costs are the same as under the current regulatory requirements baseline, for reasons explained above. Based on the impacts predicted, EPA finds that the costs of the BAT limitations and NSPS are economically achievable relative to the alternative baseline for the Coastal Oil and Gas Industry.

TABLE 6.—SUMMARY OF IMPACTS OF SELECTED BAT OPTIONS: ALTERNATIVE BASELINE

Impact	Present value (\$million)	Percent of coastal subcategory (percent)
Project NPV lost	200	4.4
Federal tax losses .....	60	2.5
State taxes .....	26.6	1.1
Lost Royalties ...	33.6	0.6
Total losses	319.5	2.1

D. Cost-Effectiveness Analysis

In addition to the foregoing analyses, EPA has conducted cost-effectiveness analyses for all options considered by the Agency. Results of these analyses are presented in *Cost-Effectiveness Analysis for Final Effluent Limitations Guidelines and Standards for the Coastal Subcategory of the Oil and Gas Extraction Point Source Category*, which is included in the rulemaking record. Cost-effectiveness evaluates the relative efficiency of options in removing toxic pollutants. Costs evaluated include direct compliance costs, such as capital expenditures and operations and maintenance costs.

Cost-effectiveness results are expressed in terms of the incremental and average costs per “pound-equivalent” removed. A pound-equivalent is a measure that addresses differences in the toxicity of pollutants removed. Total pound-equivalents are derived by taking the number of pounds of a pollutant removed and multiplying this number by a toxic weighting factor. EPA calculates the toxic weighting factor using ambient water quality criteria and toxicity values. The toxic weighting factors are then standardized by relating them to a particular pollutant, in this case copper. EPA’s standard procedure is to rank the options considered for each waste stream in order of increasing pounds-equivalent (PE) removed. The Agency calculates incremental cost-effectiveness as the ratio of the incremental annual costs to the incremental pounds-equivalent removed under each option, compared to the previous (less effective) option. Average cost-effectiveness is calculated for each option as a ratio of total costs to total pounds-equivalent removed. EPA reports annual costs for all cost-effectiveness analyses in 1981 dollars, to enable limited comparisons of the cost-effectiveness among regulated industries.

At proposal, EPA solicited comment regarding the inclusion of indirect costs (e.g., oil and gas production-related losses) in its analysis of cost-effectiveness. With previous effluent guidelines, EPA has not included indirect costs associated with control technology options in cost-effectiveness analyses. While the primary purpose of the cost-effectiveness analysis is to compare the removal efficiencies of technology options for a given rule, a secondary use has been to benchmark the removal efficiency of a rule’s selected option in comparison to other effluent guidelines. Including additional costs that were not considered in other rules makes such comparisons less

meaningful. In response to comment, however, in this rule, EPA addresses cost-effectiveness in two separate analyses: first, EPA conducts the conventional analysis, considering only direct capital and operations and maintenance costs; and, second, EPA evaluates the cost of lost oil/gas production in addition to direct

compliance costs. The two approaches are compared in Tables 9 and 10. Table 7 presents the cost-effectiveness of different options considered for produced water/TWC and drilling wastes, for the current regulatory requirements baseline. Table 8 provides the produced water/TWC cost-effectiveness results for the alternative

baseline (the cost-effectiveness of drilling waste options is the same in both baselines). Table 7 shows that all considered options for produced water/TWC wastes, including zero discharge (with an incremental cost-effectiveness ratio of \$42 per pound-equivalent) are cost-effective.

TABLE 7.—COST-EFFECTIVENESS OF ALL OPTIONS: CURRENT REGULATORY BASELINE

Option	Total annual		Incremental		Average C-E (\$/Lb-Eq)	Incremental C-E (\$/Lb-Eq)
	Lb-Eq removed	Cost (\$1981)	Lb-Eq removed	Cost (\$1981)		
Produced Water/TWC:						
Option 1: Zero Discharge, Gulf/Discharge Limits, Major Pass & Cook Inlet .....	489,305	2,386,206	489,305	2,386,206	5	5
Option 2: Zero Discharge, Gulf/Discharge Limits, Cook Inlet .....	712,335	10,081,484	223,030	7,695,278	14	35
Option 3: Zero Discharge, All .....	1,213,725	30,935,664	501,390	20,854,180	25	42
Drilling fluid/cuttings:						
Option 1: Current limits .....	0	0	0	0	0	0
Option 2: Zero Discharge All .....	8,536	5,969,728	8,536	5,969,728	699	699

Table 8 shows that the cost-effectiveness analysis for produced water using the alternative baseline versus the current regulatory requirements baseline does not significantly change the outcome. Significant additional pounds of toxics are removed to offset the increased costs associated with using the alternative baseline.

TABLE 8.—COST-EFFECTIVENESS OF PRODUCED WATER/TWC OPTIONS: ALTERNATIVE BASELINE

Produced water/TWC option	Total annual		Incremental		Average C-E (\$/Lb-Eq)	Incremental C-E (\$/Lb-Eq)
	Lb-Eq removed	Cost (\$1981)	Lb-Eq removed	Cost (\$1981)		
Option 1: Zero Discharge, Gulf/Discharge Limits, Major Pass & Cook Inlet .....	1,091,754	24,502,620	1,091,754	24,502,620	22	22
Option 2: Zero Discharge, Gulf/Discharge Limits, Cook Inlet .....	1,314,784	33,781,413	223,030	9,278,983	26	42
Option 3: Zero Discharge, All .....	1,816,174	54,635,592	501,390	20,854,180	30	42

Tables 9 and 10 present the cost-effectiveness of selected produced water options, under both baselines, with and without the inclusion of production losses, respectively. Incremental and average cost-effectiveness for zero discharge of produced water under both baselines, not including production loss costs (i.e., EPA's standard analysis) are shown in Table 9; cost-effectiveness

results for zero discharge, including the value of production losses are shown in Table 10. The inclusion of production losses has a relatively minor effect on the selected options' cost-effectiveness. In fact, the costs shown, including production losses (Table 10), are somewhat less than those in Table 9. This is because, in order to avoid double counting, EPA assumed no compliance

costs associated with baseline and first year shut-ins and dry wells. These facilities would not incur compliance costs if they immediately shut in. Eliminating these facilities from the database used for compliance cost analysis results in lower total compliance costs, even though the value of their lost production is factored in.

TABLE 9.—COST-EFFECTIVENESS OF SELECTED OPTIONS—DIRECT COMPLIANCE COSTS ONLY

Wastestream	Lb-Eq removed	Cost (\$1981)	Average cost-effectiveness (\$/Lb-Eq)	Incremental cost-effectiveness (\$/Lb-Eq)
Produced Water/TWC:				
Current Requirements Baseline .....	712,335	10,081,484	14	35
Alternative Baseline .....	1,314,784	33,781,413	26	42

TABLE 10.—COST-EFFECTIVENESS OF SELECTED OPTIONS—COMPLIANCE COSTS AND PRODUCTION LOSSES

Wastestream	Lb-Eq removed	Cost (\$1981)	Average cost-effectiveness (\$/Lb-Eq)	Incremental cost-effectiveness (\$/Lb-Eq)
Produced Water/TWC:				
Current Requirements Baseline .....	712,335	9,494,585	13	31
Alternative Baseline .....	1,314,784	29,817,756	23	37

Based on the cost-effectiveness results shown in Tables 7 through 10, EPA has determined that the selected options are cost-effective.

IX. Non-Water Quality Environmental Impacts

The elimination or reduction of one form of pollution has the potential to aggravate other environmental problems. Under sections 304(b) and 306 of the CWA, EPA is required to consider these non-water quality environmental impacts (including energy requirements) in developing effluent limitations guidelines and NSPS. In compliance with these provisions, EPA has evaluated the effect of these regulations on air pollution, solid waste generation and management, consumptive water use, and energy consumption. Because the technology basis for the limitation on drilling fluids and drill cuttings requires transporting the wastes to shore for treatment and/or disposal, adequate onshore disposal capacity for this waste is critical in assessing the options. Safety, impacts of marine traffic on coastal waterways, and other factors related to implementation were also considered. EPA evaluated the non-water quality environmental impacts on a regional basis. Although not specifically detailed in the discussion below, the non-water quality environmental impacts that would be associated with requirements on future drilling and production activities in regions other than the Gulf of Mexico, California, and Alaska are considered acceptable because they would be considered to be similar to the impacts determined to be acceptable in the Gulf of Mexico, California, and Alaska. The non-water quality environmental impacts associated with requirements for drilling wastes and produced water are discussed below. The limitations and standards being promulgated for the remaining wastestreams covered by this rule will result in no significant increases in non-water quality environmental impacts.

A. Drilling Fluids, and Cuttings

The non-water quality environmental impacts quantified for the drilling

fluids, drill cuttings, and dewatering effluent control options are limited to the wastes generated in Cook Inlet. All other coastal areas are currently achieving zero discharge of these wastes and thus the control options cause no additional impacts. The control technology basis for compliance with the drilling waste options considered is a combination of product substitution and transportation of drilling wastes to shore for treatment and/or disposal. It is possible that in certain areas compliance with a zero discharge limitation for a portion of the drilling wastes would be achieved of by grinding followed by injection in disposal wells. However, EPA is unable to determine the degree to which this may be possible. The non-water quality environmental impacts associated with the treatment and control of these wastes from new wells at existing sources are summarized in Table 10. No new sources are expected to be developed in Cook inlet. Therefore, no non-water quality environmental impacts are expected to result from the NSPS requirements for drilling wastes.

EPA's methodology for calculating non-water quality environmental impacts is generally unchanged from the proposal. (See the preamble for the proposed rule at 60 FR 9467.) Certain assumptions related to waste handling and disposal which affect fuel use and air emissions have been updated. These changes are summarized in Section V of the preamble and presented in more detail in the Coastal Development Document and the record for the final rule.

TABLE 10.—NON-WATER QUALITY ENVIRONMENTAL IMPACTS FOR DRILLING WASTE CONTROL OPTIONS

Options	Energy consumption (BOE/year)	Air emissions (tons/year)
Option 1: Zero discharge all except Cook Inlet .....	0	0

TABLE 10.—NON-WATER QUALITY ENVIRONMENTAL IMPACTS FOR DRILLING WASTE CONTROL OPTIONS—Continued

Options	Energy consumption (BOE/year)	Air emissions (tons/year)
Option 2: Zero discharge all .....	5,200	36

B. Produced Water and Treatment, Workover and Completion Fluids

The energy requirements and air emissions calculated for produced water control options considered for existing sources are presented in Table 11. These non-water quality environmental impacts have been updated since proposal to address changes in the industry profile which have affected the volume of produced water requiring treatment and/or disposal. The technology bases used to quantify these impacts are improved gas flotation and subsurface injection. Detailed discussions of the additional equipment required to comply with the control options are included in the Coastal Development Document and the record for the final rule. EPA's estimates of the non-water quality environmental impacts calculated using the alternative baseline are presented in the Coastal Development Document.

Non-water quality environmental impacts from produced water and treatment, workover, and completion fluids NSPS accrue only from injection of TWC fluids. This is because for produced water, NSPS reflects current requirements, except for main pass dischargers. Thus, in the absence of NSPS, dischargers would have to meet BAT, which is zero discharge. There are no non-water quality environmental impacts for produced water and TWC fluids NSPS in Cook Inlet. There are no non-water quality environmental impacts for produced water in the main passes of the Mississippi River or Atchafalaya River, because no new sources are projected in these locations. Elsewhere in the Gulf, where new

sources are projected, existing general permits allow discharge of TWC fluids. Thus, EPA estimated the non-water quality environmental impacts resulting from injection of TWC fluids at new sources. These impacts are an increase in total air emissions by two tons per year and approximately 190 BOE per year in additional fuel use. These air emissions represent a small portion of the total emissions from coastal oil and gas activities along the Gulf Coast.

TABLE 11.—NON-WATER QUALITY ENVIRONMENTAL IMPACTS FOR PRODUCED WATER AND TWC FLUIDS CONTROL OPTIONS FOR EXISTING SOURCES

Options	Energy consumption (BOE/year)	Air emissions (tons/year)
Option 1: Zero Discharge; Except Major Deltaic Pass and Cook Inlet Based On Improved Gas Flotation .....	4,800	43
Option 2: Zero Discharge; Except Cook Inlet Based On Improved Gas Flotation	93,700	1,110
Option 3: Zero Discharge All .....	188,000	1,260

X. Environmental Benefits Analysis

A. Introduction

This section describes results of EPA's environmental benefits analysis. EPA's complete environmental benefits analysis is presented in the *Water Quality Benefits Analysis of Final Effluent Limitation Guidelines and Standards for the Coastal Subcategory of the Oil and Gas Extraction Point Source Category* EPA-821-R-96-024 (hereinafter, WQBA), included in the rulemaking record. The WQBA evaluates the effect of current discharges on the coastal environment and the benefits of the Coastal Guidelines. Two baselines, the current requirements baseline and the alternative baseline that are discussed in the preamble above, are used in this analysis. In addition, this analysis parallels the option selection discussion by distinguishing between Cook Inlet and all other coastal locations. For purposes of the WQBA, only the two main wastestreams (i.e., produced water and drilling fluids and drill cuttings) are evaluated. The analysis was limited to these wastestreams because: (1) Treatment, workover, and completion

fluids are conservatively considered to be a component of the produced water wastestream and (2) regulatory options considered for the other wastestreams reflect current permit requirements where applicable or current practice.

The WQBA examines potential impacts from current produced water discharges in both geographic areas, and from drilling fluids and drill cuttings discharges in Cook Inlet. The effects of produced water for other coastal areas (i.e., Florida, Alabama, Mississippi, California and North Slope, Alaska), and drilling fluids and drill cutting discharges in addition to the above coastal areas in Louisiana and Texas are not evaluated because they are prohibited by state authorities and existing NPDES permits, and EPA has issued no individual permits allowing these discharges.

Under the current requirements baseline, this rule will require major deltaic pass dischargers of offshore wastes (Major Pass facilities) to meet zero discharge of produced water, and Cook Inlet dischargers to meet new oil and grease limits for the discharge of produced water and current limits for the discharge of drilling fluids and drill cuttings. Under the alternative baseline, EPA investigated the impacts of produced water discharges by Texas individual permit applicants and Louisiana Open Bay dischargers on the coastal environment, and the benefits of zero discharge. Two types of benefits are analyzed: quantified (including non-monetized and monetized benefits), and non-quantified benefits.

Coastal waters have diverse ecosystems which: act as spawning grounds, nurseries and habitats for important estuarine and marine species (finfish and shellfish); support highly valuable commercial and recreational fisheries; and provide vital habitat for seabirds, shore birds and terrestrial wildlife. A majority of commercial and recreational shellfish (oysters, shrimps, and crabs) and many finfishes spend significant portion of their life in bays and estuaries. Total 1994 value of commercial fisheries (including both finfish and shellfish) \$336 million for Louisiana and \$207 million for Texas, for total of \$543 million. The 1995 value of Cook Inlet commercial fisheries (finfish, and shellfish) was \$51 million. The estimated Cook Inlet recreational fishery is valued at \$28 million per year (in 1995 dollars). In addition, personal use and subsistence fisheries provide a food source to the Gulf of Mexico coastal residents and a food source and cultural values to Alaskan residents and Alaskan native populations. Coastal areas also serve as vital habitats for

numerous federally designated endangered and threatened species (including 32 in coastal areas of Louisiana and Texas), and migrating waterfowl.

The coastal waters along the Gulf of Mexico are generally shallow, where tidal action has limited effect, and dilution and dispersion are more limited than offshore waters. Additionally, pollutants can migrate much more readily into sediments, where they may have long residence times. Consequently, these receiving environments are highly sensitive to pollutant discharges compared to open offshore areas. Many of the pollutants in coastal oil and gas discharges are either conventional pollutants, aquatic toxicants, human carcinogens, or human systemic toxicants. The aquatic impact of these pollutants on biota include acute toxicity; chronic toxicity; effects on reproductive functions; physical destruction of spawning and feeding habitats; and loss of prey organisms. In addition, many of these pollutants are persistent, resistant to biodegradation and accumulate in sediments and aquatic organisms. Chemical contamination of coastal water, sediment and biota may also directly or indirectly impact local aquatic and terrestrial wildlife and humans consuming exposed biota.

The five major passes of the Mississippi River receiving produced water from offshore operations differ physically in depth, river flows and sediment types. Compared to the narrower, more energetic passes with hard packed sand, flows in shallower, wider passes are of slower velocity, resulting in more organic bottom deposits and thus supporting more organic life. All these passes are important nursery grounds for both saltwater and freshwater organisms and support recreational and commercial fishery. The deltaic region of the Mississippi River ranks in the top 10% for productivity of all United States wetland estuaries. This region also includes the Delta National Wildlife Refuge (NWR) and the Pass a Loutre State Fish and Game Preserve (SFGP), which in turn support one of the largest wading bird rookeries in the United States and hundreds of thousands of wintering waterfowl. Three major passes receiving offshore produced water are connected to this region. Raphael Pass winds directly through Delta NWR, while Emeline Pass establishes the northern border of this refuge. North Pass is included as part of the northern border of Pass a Loutre SFGP.

Compared to the Gulf of Mexico region, Cook Inlet is an extremely

dynamic tidal estuarine system and its physical characteristics influence the fate and transport of contaminants in its waters. Water movement in Cook Inlet is dominated by the tidal cycle and strongly influenced by the freshwater inputs from rivers and precipitation.

Benefits of Coastal Guidelines include elimination or reduction of toxic, conventional, and nonconventional pollutants, and elimination or reduction of impacts on human health and aquatic life. Potential benefits may ultimately

include reduction of discharge-related aquatic habitat degradation; improved recreational fisheries; improved subsistence and personal use fisheries (potentially important to low-income anglers and Alaska's Native anglers, etc.); improved commercial fisheries; improved aesthetic quality of waters; improved recreational opportunities; and decreased harm to threatened or endangered species in the Gulf of Mexico and Cook Inlet.

Under the current requirements baseline, the Coastal Guidelines would eliminate total of about 1.5 billion pounds of pollutants to the coastal receiving waters of states adjacent to the Gulf of Mexico and to Alaskan waters. Under the alternative baseline, the Coastal Guidelines would eliminate total of 4.6 billion pounds of conventional, toxic and nonconventional pollutants (including Gulf of Mexico and Cook Inlet) (see Table 12).

TABLE 12.—POLLUTANTS REMOVED BY CURRENT PERMIT REQUIREMENTS AND ALTERNATIVE BASELINES

Pollutants removed by coastal guidelines (lbs/year)	Removals under the current requirements baseline <sup>1</sup>				Additional removals under the alternative baseline		
	Produced water		Drilling fluids and cuttings  Cook Inlet	Total (lbs/year)	Produced water		Total (lbs/year) <sup>2</sup>
	Major deltaic passes	Cook Inlet			Louisiana open bay dischargers	Texas permit applicants	
Conventional .....	1,855,319	855,054	0	2,710,373	7,072,298	1,453,081	11,235,752
Toxic Organics .....	108,018	70,367	0	178,385	450,458	92,551	721,394
Toxic Metals .....	33,877	14,755	0	48,632	90,535	18,602	157,769
Nonconventional .....	1,490,602,961	560,011	0	1,491,162,972	2,571,382,167	528,318,780	4,590,863,919
<b>Total Pollutants (lbs/year) .....</b>	<b>1,492,600,175</b>	<b>1,500,187</b>	<b>0</b>	<b>1,494,100,362</b>	<b>2,578,995,458</b>	<b>529,883,014</b>	<b>4,602,978,834</b>

<sup>1</sup> Under the current permit requirements baseline, removals (excluding TWC effluent) would result from: zero discharge for Major Pass facilities, discharge limits for Cook Inlet produced water, and current limits for Cook Inlet drilling fluids and drill cuttings.

<sup>2</sup> Under the alternative baseline, removals (Excluding TWC effluent) would result from zero discharge of produced water for Louisiana open bay and Texas individual permit applicants, in addition to those removals already presented under the baseline for current permit requirements.

**B. Quantitative Estimate of Benefits.**

**(1) Current Requirements Baseline**

(a) Quantified Non-Monetized Benefits—Gulf of Mexico. The benefits associated with zero discharge of produced water under the current requirements baseline include only non-monetized benefits (i.e., (i) review of case studies of environmental impacts of produced water that document adverse chemical and biological impacts resulting from current discharges into the Gulf of Mexico coastal area; (ii) modeled water quality benefits expressed as elimination in exceedances of human health or aquatic life state water quality standards for major deltaic pass facilities; and (iii) projected individual cancer risk reduction from consumption of seafood contaminated with Ra<sup>226</sup> and Ra<sup>228</sup> based on modeled levels for major deltaic pass dischargers. EPA could not estimate the potential number of cancer cases avoided and monetize benefits for these facilities, however, because the exposed angler population could not be determined for major pass facilities alone.

(i) Documented Case Studies. A comprehensive review of available data identified 25 study sites (12 in Louisiana and 13 in Texas) that

examined impacts of produced water discharges on the coastal environment. The detailed description and complete references for these studies are presented in the WQBA included in the rulemaking record. The majority of evaluated study sites are in water depths less than 3 meters, and include variable environments (i.e., wetlands, salt marshes, and fresh or brackish marshes), and both relatively low and high energy areas. The documented impacts show elevated hydrocarbons and metals in water column and sediments, and reveal impacts on biota (i.e., depressed community structure such as abundance or diversity) from the produced water discharge between 800 to 1000 meters in dead-end canals and effluent dominated creeks or bayous. The salinity effects are typically detected up to 300 meters from the discharge, and up to 800 meters in dead-end canals. A benthic dead zone (no benthic fauna) is documented up to 15 meters and severely depressed benthic communities are noted to 150 to 400 meters from produced water outfalls.

(ii) Projected Water Quality Benefits—Major Deltaic Pass Facilities. EPA evaluated the effects of toxic pollutants in current produced water discharges on receiving water quality. Of the 49 toxic

and nonconventional produced water pollutants (representing subcategory-wide produced water discharge), plume dispersion modeling was performed to project in-stream concentrations of 11 toxic pollutants with specified water quality standards in Louisiana. (There are no specified water quality standards for the other 38 pollutants). Pollutant concentrations were projected at the edge of state-prescribed mixing zones for acute and chronic aquatic, and human health standards for Louisiana. Site-specific cases (including ambient water depth and operational data) were developed for five (of six) major deltaic pass facilities/dischargers. (The effects of current discharges for one discharger was not evaluated because of the lack of site-specific ambient data.)

Of the six major deltaic pass dischargers, all five that were evaluated are projected to have discharges that exceed applicable human health or aquatic life water quality standards. Five dischargers are modeled to exceed the human health standard for benzene and the acute standard for copper. One discharger is modeled to exceed the acute aquatic life standard for toluene, and another to exceed the chronic aquatic life standards for copper and nickel. The final guideline's zero

discharge requirement would eliminate all projected exceedances.

EPA recognizes that in the absence of this rule, the permit issuing authority (the State of Louisiana or EPA in Texas) would be required to develop water quality-based effluent limits at the permitting stage. This rule would eliminate the need to develop such limits at the permitting stage for the pollutants of concern. It may also lessen the possibility that the state will in the future have to develop a Total Maximum Daily Load for the pollutants under § 303(d) of the CWA.

EPA recognizes that in the absence of this rule, the permit issuing authority (the State of Louisiana or EPA in Texas) would be required to develop water quality-based effluent limits at the permitting stage. This rule would eliminate the need to develop such limits at the permitting stage for the pollutants of concern. It may also lessen the possibility that the state will in the future have to develop a Total Maximum Daily Load for the pollutants under section 303(d) of the CWA.

In response to late comments, EPA reevaluated its use of the water quality model CORMIX to assess discharges to Major Deltaic Passes. In these areas, LADEQ regulations allow the use of other appropriate models in addition to the Complete Mix Balance Model (CMBM) specified in regulations. EPA used CORMIX because it is technically superior to the CMBM as discussed in the record. Nevertheless a sensitivity analysis was conducted using the CMBM. Use of CMBM still resulted in two of the outfalls exceeding criteria. One of these outfalls was the largest Major Deltaic Pass discharger with exceedances for benzene.

(iii) Projected Individual Cancer Risk Reduction Benefits—Major Deltaic Pass Dischargers. Upper bound individual cancer risks from consuming fish contaminated with  $Ra^{226}$  and  $Ra^{228}$  from current produced water discharges are estimated for recreational and subsistence anglers. To estimate  $Ra^{226}$  and  $Ra^{228}$  levels in seafood, EPA uses modeled effluent data, *i.e.*, current subcategory-wide produced water concentrations of  $Ra^{226}$  and  $Ra^{228}$ , plume dispersion modeling at site-specific discharge rates and water depths for five (of six) major deltaic pass facilities/dischargers with site-specific ambient data to support modeling. [Using the estimated  $Ra^{226}$  and  $Ra^{228}$  concentrations in seafood, EPA estimates individual cancer risks assuming two different consumption rates of 147.3 g/day for subsistence anglers and 15 g/day for recreational anglers]. In addition, all individual

cancer risks are adjusted by factors of 0.2 and 0.75 to account for ingestion of seafood from locations which are not contaminated with the  $Ra^{226}$  and  $Ra^{228}$  in coastal produced water discharges].

Projected individual cancer risks for 5 evaluated major deltaic pass facilities range from  $2.4 \times 10^{-5}$  to  $6.3 \times 10^{-4}$  for subsistence anglers and from  $1.0 \times 10^{-6}$  to  $2.8 \times 10^{-5}$  for recreational anglers. The Coastal Guidelines' zero discharge requirement for produced water will eliminate these estimated cancer risks over time.

EPA could not estimate the potential number of cancer cases avoided and monetize benefits for these facilities, however, because the exposed angler population could not be determined for major pass facilities alone.

#### (b) Quantitative Non-Monetized Benefits—Cook Inlet.

EPA analyzed non-monetized quantitative benefits associated with the Coastal Guidelines for produced water in Cook Inlet. These benefits include modeled water quality benefits expressed as reduction of mixing zone needed for produced water discharges to meet Alaska state water quality standards. (Effects of current drilling fluids and drill cuttings discharge are also evaluated, however, because this rule does not require a change in current practice no benefits are projected.)

#### Produced Water

EPA evaluated the effects of toxic pollutants in current produced water discharges on receiving water quality and the benefits of the final Coastal Guidelines. Site-specific plume dispersion modeling is performed to project in-stream concentration of 16 toxic and nonconventional pollutants at the edge of mixing zones from eight facilities constituting all of Cook Inlet produced water dischargers. The in-stream concentrations are then compared to the Alaska's state limitations. Unlike the Gulf of Mexico, Alaska state requirements do not have spatially-defined mixing zones. (Alaska determines the extent of mixing zone needed to achieve compliance with water quality standards and evaluates the reasonableness of this calculated mixing zone). The water quality assessment for Cook Inlet therefore determines the spatial extent of mixing zones needed for each evaluated outfall to meet all state standards at current discharge and at the final BAT. For the eight outfalls modeled, the distance from each facility where all standards are met ranges from within 100 meters to 3,500 meters at current level, and from within 100 meters to 1,000 meters for the final BAT.

## 2. Alternative Baseline

Under the alternative baseline, EPA investigated the impacts that Louisiana Open Bay dischargers and Texas individual permit applicants have on the coastal environment and projected the benefits associated with zero discharge of produced water for these dischargers. The projected quantified benefits include both: (a) Non-monetized benefits (*i.e.*, (i) reviewed a case study of environmental effects of Louisiana open bay produced water dischargers; (ii) modeled water quality benefits expressed as elimination in exceedances of human health or aquatic life state water quality standards; and (iii) projected individual cancer risk reduction from consumption of seafood contaminated with  $Ra^{226}$  and  $Ra^{228}$  based on modeled levels; and (b) monetized benefits (*i.e.*, (i) estimated avoidance of projected cancer cases (from consumption of seafood contaminated with  $Ra^{226}$  and  $Ra^{228}$  based on modeled levels) from Louisiana open bay and Texas permit applicant dischargers); and (ii) estimated ecological benefits of a zero discharge requirement for produced water open bay dischargers in Louisiana and permit applicants in Texas.

#### (a) Quantified Non-Monetized Benefits for Louisiana Open Bay and Texas Individual Permit Dischargers.

(i) The United States Department of Energy (DOE) conducted a study entitled *Risk Assessment for Produced Water Discharges to Louisiana Open Bays*, March, 1996 (hereafter, "DOE study"), included in the rulemaking record. This study evaluated potential human health and environmental risks from discharges of produced water to Louisiana open bays. The DOE study concluded that: "human health risks from radium in produced water appear to be small", and "ecological risks from radium and other radio nuclides in produced water also appear to be small". The DOE study also concluded that: "intakes of chemical contaminants in fish caught near open bay produced water discharges are expected to pose a negligible toxic hazard or carcinogenic risk", that a "potential impacts to benthic biota and fish and crustaceans in the water column are possible within the 200 ft mixing zone", but a "permanent damage to populations of organisms and ecosystems are not expected because mixing zones represent relatively small volumes and animals are not expected to remain continuously in the plume".

EPA believes that the study shows that there are impacts from coastal discharges, particularly regarding the

whole effluent toxicity and sediment contamination. Whole effluent toxicity risk assessment of Louisiana open bay dischargers conducted by the DOE study indicate that at 50 and 200 feet mixing zones 23 percent and 18 percent of modeled effluents exceed their respective LC50 values for mysids and sheep head minnows, and 57 percent and 56 percent of modeled effluents exceed their survival and growth-inhibition NOEL values, respectively, for mysids and sheep head minnow at 200 feet mixing zone. A sediment toxicity in excess of sediment quality "Effect Range Low" (ERL) and "Effect Range Medium" (ERM) criteria for heavy metals and total and individual PAH's is also documented by the study. (The measured values above ERL value, but less than ERM value "represent a possible-effects range within which effects would occasionally occur". Concentrations at or above the ERM value "represent a probable effect range within which effect would frequently occur" (Long, E.R., D.D. Macdonald, S.L. Smith, F.D. Calder, 1995, "Incidence of Adverse Biological Effects Within Ranges of Chemical Concentrations in Marine and Estuarine Sediments", Environmental Management 19:81-97).) Metals, arsenic and nickel are measured in excess of ERL value up to 500 m and 1000 m from discharge, respectively. The total and individual PAH's in excess of ERL are measured up to 500 m from discharge. The total PAH's, high molecular weight PAH's, and individual PAHs are also measured near discharge.

(ii) Projected Water Quality Benefits. The effects of toxic pollutants in current produced water discharges on receiving water quality and benefits associated with the Coastal Guidelines are evaluated. Of the 49 produced water pollutants (representing subcategory-wide produced water discharge), plume dispersion modeling is performed to project in-stream concentrations of 11 toxic pollutants with specified state water quality standards in Louisiana and in Texas. (There are no specified water quality standards for the other 38 pollutants in Louisiana and in Texas). Pollutant concentrations are projected at the edge of state-prescribed mixing zones for acute and chronic aquatic water quality standards, and human health water quality standards for Louisiana and Texas.

Estimated flow-weighted average ambient water depth characteristic and operational data are used for 69 Louisiana's open bay outfalls, and 82 Texas individual permit applicants. A mean discharge rate of 4,780 bpd and flow-weighted mean depth of 1.73

meters are used for Louisiana open bay dischargers, and mean discharge rate of 827 bpd and flow-weighted mean water depth of 1.66 meters for Texas permit applicants.

Eighteen of the 69 evaluated Louisiana's open bay outfalls are projected to exceed: acute aquatic life standards for two pollutants (copper and toluene); chronic aquatic life standards for four pollutants (copper, nickel, lead, and toluene); and human health standards for one pollutant (benzene). These 18 outfalls represent 79 percent of Louisiana's open bay total daily discharge flow. In Texas, eighteen of the 82 evaluated individual permit applicants are projected to exceed the acute and chronic aquatic life standards for silver. These 18 applicants represent 84 percent of the total produced water flow for the 82 applicants. The final guideline's zero discharge requirement would eliminate all projected exceedances.

EPA recognizes that in the absence of this rule, the permit issuing authority (State of Louisiana or EPA in Texas) would be required to develop water quality-based effluent limits at the permitting stage. This rule would eliminate need to develop such limits at the permitting stage for the pollutants of concern. It may also lessen the possibility the state will in the future have to develop a Total Maximum Daily Load for the pollutants under section 303(d) of the CWA.

(iii) Projected Individual Cancer Risk Reduction Benefits. Upper bound individual cancer risks from consuming fish contaminated with Ra<sup>226</sup> and Ra<sup>228</sup> from current produced water discharges are estimated for recreational and subsistence anglers. To estimate Ra<sup>226</sup> and Ra<sup>228</sup> levels in seafood, EPA uses: modeled effluent data, *i.e.*, current subcategory-wide produced water concentrations of Ra<sup>226</sup> and Ra<sup>228</sup>; plume dispersion modeling at average outfall discharge rates and flow-weighted ambient average depths for 69 Louisiana open bay outfalls and 82 Texas individual permit applicant dischargers; and consumption rates as described in the section XII.B.1.(a)(iii) of this preamble.

Projected individual cancer risks from Louisiana open bay dischargers range from  $2.9 \times 10^{-4}$  to  $1.1 \times 10^{-3}$  for subsistence anglers and from  $1.3 \times 10^{-5}$  to  $4.8 \times 10^{-6}$  for recreational anglers. For Texas individual permit applicants, the projected individual cancer risks range from  $3.7 \times 10^{-5}$  to  $1.4 \times 10^{-4}$  for subsistence anglers and from  $1.6 \times 10^{-6}$  to  $6.1 \times 10^{-6}$  for recreational anglers. The Coastal Guidelines' zero discharge requirements for produced water will

eliminate these estimated cancer risks over time, resulting in projected elimination of 0.43 to 1.66 cancer cases per year for anglers consuming fish from the Louisiana open bay dischargers and Texas individual permit applicant dischargers (*i.e.*, 0.35 to 1.34 and 0.08 to 0.32 annual cancer cases in Louisiana and Texas, respectively)

(b) Quantified Monetized Benefits for Louisiana Open Bay and Texas Permit Applicant Dischargers.

(i) Projected Cancer Risk Reduction Benefits by Reducing Exposure to Radium in Produced Water. The projected avoidance of 0.43 to 1.66 cancer cases per year for anglers consuming fish from Louisiana open bay dischargers and Texas individual permit applicant dischargers will result in combined monetized benefits in \$1.1 to \$22.3 million per year (\$1995) range (including \$0.9 to \$18 million per year (\$1995) for Louisiana open bay dischargers and \$0.2 to \$4.3 million per year (\$1995) for Texas individual permit applicants).

The temporal dynamics of both impacts and benefits assessments is relevant to the human health risk assessment. For the assessments of cancer reduction benefits, the methodology is consistent with estimating costs for the rule, using a one-year "snap-shot" approach. Allocating the full value of annual benefits within one year following cessation of produced water discharges may appear to over-estimate potential annual benefits in cases where incomplete recovery has occurred. However, in such cases where impacts are incompletely recovered, a consideration of total impact would need to include any impacts expected to occur beyond that year. This analysis does not attempt to identify or allocate benefits on a yearly basis, but merely averages total benefits so that monetized benefits may be compared to costs that are developed using the same approach.

In response to late comments, EPA revised the population estimate of exposed individuals to reflect only coastal counties within 65 miles of the coast. The number of resident recreational anglers who only fish in state waters was adjusted by the proportion of state residents in coastal counties. EPA also received late comments to the effect that it should have used the monitoring data from the DOE study rather than EPA's modeled data. As is discussed further in the record, EPA continued to use the modeled effluent data rather than limited monitoring data to estimate risk. Although EPA modeling predicts radium concentrations significantly

higher than those measured in the DOE study, EPA believes it is not appropriate to use migratory fish species to represent tissue levels of all fish around platforms because EPA has information indicating that some resident species in coastal areas spend a significant amount of time in coastal waters.

(ii) Projected Ecological Benefits. A potential ecological benefit of zero discharge of produced water in Louisiana open bays and Texas individual permit applicants dischargers is projected from a Trinity Bay case study. Extrapolating from this case study is only applicable to shallow bay ecosystems contiguous with the Gulf of Mexico open bay discharge sites that are represented by the Louisiana open bay dischargers and the great majority of Texas individual permit applicant dischargers. This Trinity Bay study shows that sediment near the outfall (within 15 meters) were devoid of biota and that depressions in benthic abundance and species richness were not recovered until distances between 1.7 and 4 kilometers from the point of discharge. (Data on abundance of other species, such as waterfowl were not collected). Taking into account an integration of the severity of these impacts at different distances, the equivalent acreage affected in this case study ranges from 200 to 2,817 acres.

The analysis of this study is based on naphthalene concentration in sediment and extremely tight correlation between sediment naphthalene levels and benthic community structure parameters. In response to comments, EPA has adjusted the basis for projecting these effects because of the pre-BPT effluent quality of this study site and adjusted the acreage affected by the proportion between the Trinity Bay effluent naphthalene level (300 ppb) and current effluent naphthalene levels (184 ppb) to a 123 to 1,727 acres range.

EPA estimates that the total Louisiana and Texas open bay acreage affected by coastal oil and gas produced water discharges ranges from 6,918 acres to 97,438 acres (*i.e.*, 5,739 to 80,828 acres in Louisiana and 1,179 to 16,610 acres in Texas). EPA identifies numerous values for an acre of wetland but none are marginal estimates for Texas or Louisiana, and some did not subtract the cost of recreational use. There may be concern that the value of wetland recovery diminishes as the amount of recovered acreage increases and therefore these average values would overstate the relevant marginal values by an unknown amount. A literature review for wetland value estimates conducted for the Mineral Management Service (MMS), Department of Interior

in 1991, reports that different studies have estimated recreational and commercial wetland values for coastal Louisiana ranging from \$57 to \$940 per acre per year (with a median value of \$410 per acre per year) in 1990 dollars.

Using this range of values inflated to 1995 dollars, the estimated increase of Louisiana and Texas Bay recreational values from zero discharge of produced water ranges from \$0.48 million to \$106.8 million per year (*i.e.*, \$0.4 to \$88.6 million/year in Louisiana and \$0.08 to \$18.2 million/year in Texas).

These per acre estimates are consistent with the estimated average recreational value of the acreage of Galveston Bay, which ranges from \$336 to \$730 per acre. (\$1990) (The Galveston Bay estimates do not subtract the cost to recreational users of using the resource.) These estimates may not be marginal values as they are calculated from the total recreational value of Galveston Bay and total acreage of the Bay. As these studies use different estimation methods, cover different types of wetlands, marshes and coastal waters which may differ from those affected by this rule, and generally reflect average values rather than the social valuation of small (marginal) changes in acreage, EPA at proposal requested data on marginal values of wetlands, in particular in Louisiana and Texas. However, EPA did not receive any data on wetland values or any comments related to the values used in benefit analysis for the proposed rule.

In response to late comment, EPA performed a sensitivity analysis to assess the acreage affected based on the results of Trinity Bay study. EPA's approach uses a maximum observed species abundance and richness at 1677 and 3963 meters from the platform as a measure of background. This range is based on collecting species using two different sieve sizes. EPA believes that this is appropriate because a true measure of background cannot be determined since oil and gas facilities discharges have occurred in this water body for over 40 years. In late comments, some suggested that EPA instead use the average abundance of species richness beyond 686 meters as a background. Using this suggested approach substantially reduces the impacted area. More details are provided in the record.

The authors of the Trinity Bay study state that stations beyond 457 meters or further are unaffected by the platform. Based on the authors estimated impact area of 457 meters rather than EPA's estimated range of 1677–3963 meters, the estimated average impacted acreage would be 51 acres. Using this

methodology, the total monetized benefits are \$0.12–\$1.9 million (\$1995) based on wetland values of \$66–\$1087 (\$1995). EPA does not believe this is an appropriate impacted area because maximum species abundance and richness occurs between 1677 and 3963 meters. Furthermore sediment naphthalene levels, which can adversely effect aquatic species, are the lowest at 4,000 meters. Both stations beyond 4,000 meters have lower species abundance and richness. Both these stations are contaminated with naphthalene at levels that exceed Effect Range Median (ERM) for naphthalene. The ERM represents the concentrations at which adverse effects are frequently associated.

(iii) Total Monetized Benefits. EPA estimates that total monetized benefits (*i.e.* combining cancer risk reduction and ecological benefits) resulting from zero discharge of produced water for Louisiana open bay dischargers and Texas individual permit applicants dischargers range from approximately \$1.6 million to \$129.1 million per year (\$1995) (*i.e.*, \$1.3 to \$106.6 million/year in Louisiana and \$0.3 to \$22.5 million/year for Texas individual permit operators).

#### C. Description of Non-Quantified Benefits

The WQBA attempts to quantify the environmental effects, and whenever appropriate, to monetize specific environmental benefits that may result from the Coastal Guidelines. However, some of the potential benefits could not be quantified or monetized because of the lack of data, or because sufficient information to define the causal relationship between dischargers covered by the Coastal Guidelines and environmental effects is not available. This analysis includes: (1) An assessment of potential health risks to the Alaska's Native Populations from consumption of Cook Inlet's fish and shellfish and potential link between coastal oil and gas discharges and fish consumed by native populations; (2) effects on threatened or endangered species and migratory waterfowl, and potential benefits of the Coastal Guidelines on ecosystem health primarily for coastal areas of Gulf of Mexico and to a limited degree for Cook Inlet.

(1) An Assessment of Health Risks to Cook Inlet's Native Populations. EPA received comments from Native Americans concerned about coastal oil and gas discharges in Cook Inlet. The Chugachmuit Environmental Protection Consortium (CEPC) of Anchorage, Alaska raised concerns about the

impacts that oil and gas exploration and development activities in Cook Inlet and Kachemak Bay, Alaska have on the subsistence lifestyle of the Native Tribes of Port Graham and Nanwalek, and provided fish consumption data. EPA evaluated this data and all other data about the environmental impacts of coastal oil and gas discharges in Cook Inlet. EPA attempted to assess the potential health risks posed from the high subsistence use of Cook Inlet by native populations related to the discharges from coastal oil and gas facilities. Although sufficient information on the Cook Inlet's native population subsistence patterns exists, there is little fish tissue data with which to assess the risks from consumption of fish and shellfish from Cook Inlet. Two available studies provide some mussels tissue data, but no data on fish or other shellfish. One study investigated the occurrence of petroleum hydrocarbons, naturally occurring radioactive materials, and trace metals in water, sediments, and biota (mussels) in lower Cook Inlet. Very low levels of PAHs (including naphthalene) were found in mussel samples but the source of the PAHs could not be identified. The authors also found no anomalous trends evident from the mussels metals concentrations. Another Cook Inlet study, using caged mussels, found low levels of hydrocarbons in mussel tissue that were within a range of concentrations observed in organisms from unpolluted offshore environments. The study was conducted as part of environmental monitoring program to determine impacts of oil industry operations in Cook Inlet.

The mussel data may provide an upper bound of contaminant concentrations likely to be found in other shellfish. However, the data is insufficient to assess risk from consumption of fish. EPA cannot predict finfish contaminant concentrations based on mussel data because mussels have much higher bioaccumulation rates. Finfish tend to more rapidly metabolize and excrete contaminants (e.g., PAHs). In addition, mussels and shellfish in general represent only small portion (i.e., two to eight percent) of the fish and shellfish subsistence harvest for three Cook Inlet's native villages (i.e., Tyonek, Nanwalek and Port Graham). Finfish represent 74 to 80 percent of the harvest, (with salmon representing 57 to 97 percent of the finfish harvest). The finfish harvest data indicate consumption levels could be as high as 211 g/day, 238 g/day and 298 g/day (with salmon consumption levels of 121

gpd, 232 gpd, and 180 gpd) in Port Graham, Tyonek and Nanwalek, respectively. The shellfish harvest data indicate consumption levels of 6 g/day, 20 g/day, and 29 g/day in Tyonek, Port Graham, and Nanwalek, respectively. These consumption levels are higher than the subsistence consumption levels used in this WQBA for the Gulf of Mexico region. However, lacking the data on the concentration of pollutants in fish tissue, which represent up to 80 percent of the Cook Inlet's native population fish and shellfish intake rates, it is difficult to assess the human health risks from fish consumption, and to reasonably establish the link between coastal oil and gas discharges and human health effects from the discharges in Cook Inlet. EPA is, however, concerned about the potential for human health effects. Therefore, EPA will continue to monitor ongoing sediment, water quality and biological studies in Cook Inlet for applicability to future permit actions.

(2) Effects on Threatened and Endangered Species. The zero discharge of produced water may also have beneficial effects on 32 threatened and endangered species in coastal areas of Texas and Louisiana, including open bays and the major deltaic passes of the Mississippi River. Such threatened and endangered species include the Brown Pelican, Hawksbill Sea Turtle, Leatherback Sea Turtle, Ocelot, and others that use these areas as part of their habitat.

The control of produced water discharges by the Coastal Guidelines may also have beneficial effects on Cook Inlet biological resources. The Upper Cook Inlet serves as an important pathway for spawning fish and non-endangered mammals, provides critical habitat for seabirds, shorebirds, and migrating waterfowl, and at least four endangered cetacean species and endangered avian species which may occur as migrants in or near Cook Inlet.

XI. Related Acts of Congress, Executive Orders, and Agency Initiatives

#### A. Pollution Prevention Act

In the Pollution Prevention Act of 1990 (PPA) (42 U.S.C. 13101 *et seq.*, Pub. L. 101-508, November 5, 1990), Congress declared pollution prevention the national policy of the United States. The PPA declares that pollution should be prevented or reduced whenever feasible; pollution that cannot be prevented or reduced should be recycled or reused in an environmentally safe manner wherever feasible; pollution that cannot be recycled should be treated in an

environmentally safe manner wherever feasible; and disposal or release into the environment should be chosen only as a last resort.

Today's rules are consistent with the PPA. EPA developed these rules while focused on pollution-preventing technologies. The closed-loop recycle systems for drilling fluids and the achievement of zero discharge for produced water by injection form a substantial basis for this rule.

#### B. Paperwork Reduction Act

The Coastal Guidelines place no additional information collection or record-keeping burden on respondents. Therefore, an information collection request has not been prepared for submission to the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

#### C. Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities. EPA analyzed the potential impact of the rule on small entities under several scenarios. Under the most conservative scenario (i.e. the scenario that assumes the largest number of small entities potentially affected by the rule), EPA's analysis shows that most small entities are already in compliance or are already covered by permit requirements equivalent to the rule's discharge requirements. Thus, the rule will not have any adverse economic impact on them. Under this same scenario, approximately 58 out of 372 small entities might have to take some action to achieve compliance. Even a smaller number of entities (34) may experience costs greater than one percent of revenues. Based on this analysis, EPA believes that the economic impact of the rule will not be significant for a substantial number of small entities.

Under the Regulatory Flexibility Act, an agency is not required to prepare a regulatory flexibility analysis for a rule that the agency head certifies will not have a significant economic impact on a substantial number of small entities. While the Administrator has so certified today's rule, the Agency nonetheless prepared a regulatory flexibility assessment equivalent to that required by the Regulatory Flexibility Act as modified by the Small Business Regulatory Enforcement Fairness Act of 1996. The assessment for this rule is detailed in the Economic Impact Analysis. Although not required by the Regulatory Flexibility Act, EPA also

analyzed the indirect economic impact of the Coastal rule on small communities. Indirect impacts are those impacts felt by entities not subject to the rule. Some of the royalty losses caused by the rule may be felt at the local level. To determine the significance of this indirect impact, EPA assumes that 50 percent of the total royalty losses would be borne by local county and parish revenues. In the offshore rule, local governments were estimated to receive approximately 3 percent of royalties. As a result, EPA considers the 50 percent assumption a significant overestimation that nonetheless serves to underscore the limits of the rule's indirect impact on local communities. EPA determined that spreading royalty losses over the population of counties and parishes adjacent to affected coastal waters would result in a per capita cost of \$0.12, or 0.002 percent of per capita income in Texas counties, and a per capita cost of \$0.44 to \$1.30 in Louisiana, which represents 0.004 to 0.012 percent of per capita income in affected parishes under the regulatory requirements and alternative baselines, respectively. EPA thus concludes that the indirect impacts of the rule are not significant.

*D. Small Business Regulatory Enforcement Fairness Act of 1996 (Submission to Congress and the General Accounting Office)*

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

*E. Unfunded Mandates Reform Act*

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), P.L. 104-4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of \$100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to

identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

EPA has determined that this rule does not contain a Federal mandate that may result in expenditures of \$100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. While EPA does not believe the rule imposes significant or unique effects on small governments, under section 203 and 205 of the UMRA, EPA has consulted with state governments as described in Section XIII. The estimated annual cost of the Coastal Guidelines, presented in Section VIII of this preamble, is \$16.4 million when estimated using the current requirements baseline and \$50.6 million when estimated using the alternative baseline. Thus, today's rule is not subject to the requirements of sections 202 and 205 of the UMRA.

*F. Executive Order 12866 (OMB Review)*

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

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

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

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

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

Pursuant to the terms of Executive Order 12866, it has been determined that this rule is a "significant regulatory action" because of novel policy issues raised by the Department of Energy. As such, this action was submitted to OMB for review. Changes made in response to OMB suggestions or recommendations will be documented in the public record.

*G. Common Sense Initiative*

On August 19, 1994, the Administrator established the Common Sense Initiative (CSI) Council in accordance with the Federal Advisory Committee Act (5 U.S.C. Appendix 2, Section 9 (c)) requirements. A principal goal of the CSI includes developing recommendations for optimal approaches to multimedia controls for industrial sectors including Petroleum Refining, Metal Plating and Finishing, Printing, Electronics and Computers, Auto Manufacturing, and Iron and Steel Manufacturing.

The Coastal Guidelines were not among the rulemaking efforts included in the Common Sense Initiative. However, many oil and gas producers (mostly large companies) involved in coastal oil and gas extraction activities also have refineries. These companies are projected to incur costs associated with the requirements contained in this proposal, though these costs are not projected to have an economic impact at the firm level. The CSI objectives, described at proposal, have been incorporated into the Coastal Guidelines and the Agency intends to continue to pursue these objectives. The Agency particularly will focus on avenues for giving state and local authorities flexibility in implementing this rule, and giving the industry flexibility to develop innovative and cost effective compliance strategies. In developing this rule, EPA took advantage of several opportunities to gain the involvement of various stakeholders. Section XIII of this preamble references consultations with state and local governments and other parties including the industry. EPA has also coordinated among relevant program offices in developing this rule. Section XII describes related rulemakings that are being developed by

EPA's Office of Air Quality, Planning and Standards, Underground Injection Control Program, and Spill Prevention, Control and Countermeasure Program. EPA will be monitoring these related rulemakings to assess their collective costs to the industry. Section IX of the preamble describes the non-water quality environmental impacts this proposed rule would have on other media including air emissions and solid waste disposal.

## XII. Related Rulemakings

In addition to these Coastal Guidelines, EPA is in the process of developing other regulations that specifically affect the oil and gas industry. These other rulemakings are summarized below. EPA's offices are coordinating their efforts with the intent to monitor these related rulemakings to assess their collective costs to industry.

### A. National Emission Standards for Hazardous Air Pollutants

National emission standards for hazardous air pollutants are being developed for the oil and gas production industry by EPA's Office of Air Quality, Planning and Standards (OAQPS), under authority of section 112 (d) of the Clean Air Act as amended in 1990. Section 112 (d) of the Clean Air Act directs the EPA to promulgate regulations establishing hazardous air pollutant (HAP) emissions standards for each category of major and area sources that has been listed by EPA for regulation under section 112 (c). The 189 pollutants that are designated as HAP are listed in section 112 (d). For major sources, or facilities which emit 10 or more tons per year (TPY) of an individual HAP pollutant or 25 or more TPY of multiple HAPs, the air emission standards are based on "maximum achievable control technology" or MACT.

Major sources within the coastal oil and gas subcategory have been identified by OAQPS as stand alone glycol dehydrators, tank batteries, gas plants, and offshore production platforms. In most cases, OAQPS believes that, in order to be a major source, a coastal production facility must have glycol dehydrators located on-site. A production facility alone may not produce enough emissions to be classified as a major source.

EPA plans to propose MACT standards for the oil and gas industry by March 1997. OAQPS estimates that the total annual cost of these standards is \$16.5 million.

### B. Requirements for Injection Wells

The Safe Drinking Water Act (SDWA) charges EPA with protecting underground sources of drinking water (USDW). As part of this mandate, EPA developed the Underground Injection Control (UIC) program to regulate the underground injection of all fluids, including produced water. EPA first promulgated regulations concerning the construction, operation, and closure of Class II injection wells for the disposal of oil and gas industry wastes in 1980 (45 FR 42500, June, 24, 1980).

### C. Spill Prevention, Control, and Countermeasure

EPA's Oil Pollution Prevention regulation at 40 CFR part 112, which requires Spill Prevention, Control, and Countermeasure (SPCC) plans, was promulgated in 1973 under section 311 (j) of the CWA. The SPCC planning requirement applies to all oil extraction and production facilities that have an oil storage capacity above certain thresholds (*i.e.* an overall aboveground oil storage capacity greater than 1,320 gallons or greater than 660 in a single container, or an underground oil storage capacity of greater than 42,000 gallons) and are located such that a discharge could reasonably be expected to reach U.S. waters. EPA estimates that there are approximately 450,000 SPCC-regulated facilities. A preliminary estimate indicates that approximately 3,000 of these facilities may be either coastal or offshore facilities.

Under part 112, facility owners or operators are required to prepare and implement written SPCC plans that discuss conformance with procedures, methods, and equipment and other requirements to prevent discharges of oil and to contain such discharges.

On July 1, 1994, (59 FR 34070, July 1, 1994) EPA issued a final rule amending part 112 to require certain onshore facilities to prepare, submit to EPA, and implement plans to respond to a worst case discharge of oil to meet section 4202(a) of the Oil Pollution Act (OPA). EPA also intends to develop requirements in 1997 under section 4202(a) of OPA specifically for coastal facilities. (Note: Coastal and offshore facilities in the part 112 program are collectively referred to as "offshore". However, the intended OPA rulemaking specifically applies to facilities landward of the inner boundary of the territorial seas, and that are not onshore.) These regulations would, among other things, require that owners or operators of coastal facilities prepare and submit to the Federal government a

plan for responding to a worst case discharge of oil.

### D. Shore Protection Act Regulations

EPA, in conjunction with the Department of Transportation, has developed proposed regulations that would establish waste handling practices for vessels and waste transfer stations for the hauling and handling of municipal and commercial wastes. This rule would assure that wastes will not be deposited into coastal waters during loading, off loading, and transport. The proposal was signed by the Administrator on August 19, 1994 and published in the Federal Register on August 30 (59 FR 44798). Promulgation is planned for March 1997. While this regulation will apply to operators of supply vessels used by coastal oil and gas extraction facilities, it will not directly impact the ability of coastal oil and gas extraction facilities to comply with effluent limitations guidelines and standards.

## XIII. Summary of Public Participation

EPA encouraged full public participation in the development of the final Coastal Guidelines. Written comments were received on the 1989 Notice of Information and Request for Comments (54 FR 46919; November 8, 1989), industry trade associations and the Natural Resources Defense Council, Inc. participated in the development of EPA's questionnaire for the coastal oil and gas extraction industry, written comments were received on the proposed rule (60 FR 9428; February 17, 1995), and public meetings were held.

On July 19, 1994, EPA held a public meeting in New Orleans, Louisiana about the content and the status of the proposed regulation. The meeting was announced in the Federal Register (59 FR 31186; June 17, 1994), and information packages were distributed at the meeting. The public meeting also gave interested parties an opportunity to provide information, data, and ideas to EPA on key issues.

Additional public meetings were held on March 7, 1995 and March 21, 1995. The first of these meetings was held in New Orleans, Louisiana and the second in Seattle, Washington.

Meetings have been held with representatives from industry and environmental groups, as well as state and other federal agencies. These meetings are documented in the record.

EPA has formally assessed all comments and data received: at the July 19, 1994 public meeting, during the public comment period for the proposed rule, and as a result of the 1989 Notice of Information. Responses to these

comments are provided in the Comment Response Document for Final Effluent Guidelines and Standards for the Coastal Subcategory of the Oil and Gas Extraction Category, which is in the record. In addition, as time allowed, EPA considered late comments.

#### XIV. Regulatory Implementation

##### A. Toxicity Limitation for Drilling Fluids and Drill Cuttings

EPA is establishing a toxicity limitation for drilling fluids and drill cuttings. The toxicity limitation would apply to any periodic blowdown of drilling fluid as well as to bulk discharges of drilling fluids and drill cuttings systems. The reader is referred to the Offshore Guidelines at 58 FR 12454, 12502 (March 4, 1993) for an explanation of the regulatory implementation for the toxicity limit.

##### B. Diesel Prohibition for Drilling Fluids and Drill Cuttings

Cook Inlet's oil and gas extraction platforms are prohibited from discharging diesel oil and drilling fluids and drill cuttings contaminated with diesel oil. The reader is referred to the Offshore Guidelines (58 FR 12502) for a discussion on the implementation of this requirement.

##### C. Upset and Bypass Provisions

A recurring issue of concern has been whether industry guidelines should include provisions authorizing noncompliance with effluent limitations during periods of "upsets" or "bypasses". The reader is referred to the Offshore Guidelines (58 FR 12501) for a discussion on upset and bypass provisions.

##### D. Variances and Modifications

Once this regulation is in effect, the effluent limitations must be applied in all NPDES permits thereafter issued to discharges covered under this effluent limitations guideline subcategory. Under the CWA certain variances from BAT and BCT limitations are provided for. A section 301(n) (Fundamentally Different Factors) variance is applicable to the BAT and BCT and pretreatment limits in this rule. The reader is referred to the Offshore Guidelines (58 FR 12502) for a discussion on the applicability of variances.

##### E. Synthetic Drilling Fluids

During the Offshore Guidelines rulemaking and again after the Coastal Guidelines proposed rule, several industry commenters noted recent developments in formulating synthetic-based drilling fluids as substitutes for the traditional water-based and oil-

based drilling fluids. Synthetic-based drilling fluids or synthetic-based muds (SBM) represent a new technology which was developed in response to the oil-based drilling fluids discharge ban in the North Sea. They were first used in the North Sea in 1990, and the first well drilled in the Gulf of Mexico using SBM was completed in June 1992. Operators have claimed that compared to the discharge of water-based muds (WBM) and cuttings and barging/hauling of cuttings from oil-based muds (OBM), the use of the synthetics and on-site discharge of associated cuttings presents a pollution prevention opportunity.

In the proposed Coastal Guidelines, the EPA requested additional information on the use of synthetic fluids including well logs, toxicity, analytical methods testing and in-situ seabed and water column physical, chemical and biological testing. EPA received numerous comments documenting and supporting environmental and operational benefits achieved by SBMs. The commenters contended that in the absence of definitions for SBM, NPDES permit restrictions on discharges of oil-based drilling fluids and inverse emulsions were unintentionally providing barriers to the discharge of drill cuttings generated with SBM even though such cuttings generally pass the sheen and toxicity tests. Based on a review of these comments EPA has identified certain environmentally beneficial aspects of using SBM. Improved drilling operations allow for smaller diameter holes resulting in less drill wastes being generated. Increased solids removal in the closed loop solids systems leads to less discharge of drilling fluids. Lower toxicity of the drilling fluids, at least in the aqueous or suspended particulate phase, leads to a decrease in water column toxicity effects, and possibly a decrease in overall toxicity effects.

In considering use of these drilling fluids EPA is examining the use of the current sheen and toxicity tests applied to the discharge of cuttings associated with SBM. Although the existence and limited use of SBM were known at the start of the Coastal and completion of the Offshore rulemakings, sufficient information was not available to propose any limitations different from those contained in the Offshore rule at this final Coastal rule. Nevertheless, EPA will address the concerns related to the sheen and toxicity tests by additional data gathering in order to provide guidance to NPDES permit writers about the use of alternative tests where the discharge of drilling wastes is allowed. The alternative tests are a gas chromatography (GC) test and a benthic

toxicity test to verify the results of the static sheen and the suspended particulate phase (SPP) toxicity testing currently required. Other tests for bioaccumulation potential and biodegradation may be appropriate for use in evaluating site specific (water quality) effects and rates of recovery for sea floor areas covered by cuttings piles. Such tests are already applied to SBM cuttings discharges in the North Sea.

EPA recognizes the potential pollution prevention opportunities presented by this new technology. Until guidelines can be written for this wastestream, EPA is encouraging their further development by including definitions in this rule for "synthetic-based drilling fluid" and the "synthetic material" which comprises the SBM. Furthermore, one commenter claimed to achieve the environmental and performance benefits of a synthetic based drilling fluid with an enhanced mineral oil (EMO). Since the EMOs are not synthetic based materials and were stated to be different from previously used mineral oils, EPA is also providing a definition for EMOs. The definitions are as follows:

The term *drilling fluid* refers to the circulating fluid (mud) used in the rotary drilling of wells to clean and condition the hole and to counterbalance formation pressure. The four classes of drilling fluids are:

(a) A water-based drilling fluid has water as its continuous phase and the suspending medium for solids, whether or not oil is present.

(b) An oil-based drilling fluid has diesel oil, mineral oil, or some other oil, but neither a synthetic material nor enhanced mineral oil, as its continuous phase with water as the dispersed phase.

(c) An enhanced mineral oil-based drilling fluid has an enhanced mineral oil as its continuous phase with water as the dispersed phase.

(d) A synthetic-based drilling fluid has a synthetic material as its continuous phase with water as the dispersed phase.

EPA is also introducing definitions for the "synthetic material" and "enhanced mineral oil" which comprise the respective drilling fluids as follows:

The term *enhanced mineral oil* as applied to enhanced mineral oil-based drilling fluid means a petroleum distillate which has been highly purified and is distinguished from diesel oil and conventional mineral oil in having a lower polycyclic aromatic hydrocarbon (PAH) content. Typically, conventional mineral oils have a PAH content on the order of 0.35 weight percent expressed as phenanthrene, whereas enhanced mineral oils typically have a PAH content of 0.001 or lower weight percent PAH expressed as phenanthrene.

The term *synthetic material* as applied to synthetic-based drilling fluid means material

produced by the reaction of specific purified chemical feedstock, as opposed to the traditional base fluids such as diesel and mineral oil which are derived from crude oil solely through physical separation processes. Physical separation processes include fractionation and distillation and/or minor chemical reactions such as cracking and hydro processing. Since they are synthesized by the reaction of purified compounds, synthetic materials suitable for use in drilling fluids are typically free of polycyclic aromatic hydrocarbons (PAHs) but test sometimes report levels of PAH up to 0.001 weight percent PAH expressed as phenanthrene. Poly(alpha olefins) and vegetable esters are two examples of synthetic materials used by the oil and gas extraction industry in formulating drilling fluids. Poly(alpha olefins) are synthesized from the polymerization (dimerization, trimerization, tetramerization, and higher oligomerization) of purified straight-chain hydrocarbons such as C<sub>6</sub>-C<sub>14</sub> alpha olefins. Vegetable esters are synthesized from the acid-catalyzed esterification of vegetable fatty acids with various alcohols. The mention of these two synthetic fluid base materials is to provide examples, and is not meant to exclude other synthetic materials that are either in current use or may be used in the future. A synthetic-based drilling fluid may include a combination of synthetic materials.

Since the publication of the Offshore Guidelines in 1993, and publication of the proposed Coastal Guidelines in February 1995, data have been submitted to document the enhanced operational and environmental performance of synthetic fluids. The data for SBMs included: well logs, toxicity, analytical methods testing and in-situ seabed and water column physical, chemical and biological testing.

Impacts due to the discharge of drilling fluids and associated drill cuttings fall into two main categories: water column and sea floor. As detailed in the Coastal Development Document, these data and evidence presented in the literature show that use of SBM in place of WBM may reduce the adverse environmental impact in the water column because of (a) reduction in volume of muds discharged, (b) less dispersion of the muds and cuttings in the water, and (c) lower toxicity. In addition, the reduction in volume of wastes discharged may reduce the effects to the sea floor. Due to decreased washout (erosion), drilling of narrower gage holes, and lack of dispersion of the cuttings in the SBM, compared to WBM the quantities of muds and cuttings waste generated is reduced, reportedly in some cases by as much as 70 percent. The greatest reduction seen is for the drilling fluids. The SBM offer the opportunity for high recycle rates because unlike the WBM the cuttings do not disperse in the fluid and so less

dilution and additives are required to keep the necessary drilling fluid characteristics. In general the only SBM discharged is the amount adhered to the cuttings, which ranges from 7 to 12 percent based on dry cuttings weight. When WBM is used, the amount of drilling fluid discharged is often 5 or 6 times greater than discharged when drilling a similar hole with SBM. If the engineering aspects of the effectiveness of a drilling fluid are considered as a technology to reduce the levels of pollution, then SBM may be viewed as a control technology for conventional pollutants.

Sea floor effects can be separated into two types: Short-term burial effects and long-term toxic effects. The adverse impact caused by burial can be assumed to be directly proportional to the quantity of solids discharged, and will also depend on the dispersion of the settling solids. As discussed earlier the synthetics have been shown to create a lower volume of drilling wastes. Also, the cuttings which are coated with 7-12 percent synthetic material, tend to sink without drifting in the water column unlike the particulate matter of the WBM which tends to disperse and stay suspended longer. Therefore as compared to WBM one would expect the burial footprint from SBM cuttings discharge to be smaller and have less solids. The diminished dispersion of the SBM has been shown by relating barium concentrations on the sea floor.

In terms of the long-term toxic effects, studies have shown that changing the toxicity, biodegradation, and bioaccumulation of the oily or hydrophobic constituent of the cuttings has a large effect on the recovery of the benthic community. Most germane is a comparison of the recolonization of WBM cuttings piles compared to that of SBM cuttings piles. While WBM cuttings piles are said to recover "quickly" in the literature, data have not been found in any source which defines just how quickly. Thus, a comparison with the SBM recovery rates is not possible without additional study. The recovery of synthetics contaminated cuttings piles has been detailed in two instances known to EPA, one contaminated with a poly(alpha olefin) (PAO) and one contaminated with a vegetable ester. In both cases the PAO or vegetable ester organic contamination was found to either biodegrade or otherwise disperse to low concentrations at the eight month to one year evaluation times. At the one year to 16 months evaluation times, the cuttings piles were found to be in a natural state with a normal diversity and number of benthic organisms,

except at a few stations where there was either a dominant population of one organism or slightly elevated organic contamination. This is contrasted with the relatively large zone of impact and much slower rate of recovery of cuttings piles contaminated with oil from OBM.

While EPA recognizes the potential environmental benefits with the use of SBM over WBM, EPA has some concerns about the appropriateness of both the static sheen test used to determine compliance with the no free oil limitation and the toxicity test associated with the suspended particulate phase to determine compliance with the toxicity limitation. The sheen and toxicity tests were developed for use on WBM, which readily disperse in water, allowing components of the drilling fluid or contaminants to rise to the surface to give a sheen or partition to the suspended particulate phase (aqueous phase) and show toxicity. Conversely, the cuttings from SBM sink to the sea floor with little or no dispersion in the water. This is demonstrated in the laboratory toxicity test. When WBM drill associated cuttings are stirred in sea water as prescribed, the suspended particulate phase (SPP) becomes cloudy immediately and typically remains cloudy during the one-hour settling period. When stirring SBM or associated cuttings in sea water, the aqueous phase typically remains clear indicating little or no dispersion of drilling fluid, cuttings, or other components in the aqueous phase. For this reason, EPA believes it may be inappropriate to measure only the aquatic toxicity as part of the discharge requirement to judge the environmental effect of the discharge of these cuttings. The measurement of benthic toxicity may be appropriate for use in conjunction with the aquatic phase testing as a discharge requirement. Additional tests on bioaccumulation and biodegradation rates may be more useful for the evaluation of the synthetic material or SBM cuttings wastes with respect to environmental impact determinations.

In addition, previous commenters had identified the sheen test as giving false positive results due to discoloration which may occur when cuttings containing small amounts of some of the synthetic materials are discharged. Recently, these same commenters have endorsed the sheen test as viable when using the synthetic-based drilling fluids. In general, to pass the sheen test, the sample must be covered until below the surface of the water, at which point it can be released. Samples of synthetic-based drilling fluids may fail if stirred according to the test method.

Conversely, samples have been shown to pass the static sheen test following the addition of various levels of oil, crude oil, diesel oil, and mineral oil in a laboratory controlled evaluation. Results of this evaluation also showed that the sheen test appears to be more subjective and difficult to judge for the synthetics than for the water-based drilling fluids, due to the lack of dispersion of the synthetics in the aqueous phase which leads to the question of adequate stirring, and due to the formation of sheens (or discoloration) which are not iridescent.

There is also concern with the ability of the static sheen test to detect formation (crude) oil contamination on the cuttings when SBM is used. Since these compounds consist of lipophilic matrices, any oily (sheen producing) contaminants could dissolve in these matrices and be brought to the sea floor with no observed sheen surface effect. Thus the sheen test, which was developed to test for free oil contamination in the oil or water-based drilling wastes, which readily disperse in water, may not be appropriate. Formation oil contamination in certain synthetic fluids has been shown to be clearly identifiable by using gas chromatography (GC). Commenters have indicated that GC analysis with flame ionization detection (GC/FID) can be practically performed at a reasonable cost, and has in some instances been performed on offshore platforms. GC/FID as described in method 1663 in document EPA 821-R-92-008, "Methods for the Determination of Diesel, Mineral, and Crude Oils in Offshore Oil and Gas Industry Discharges," can be used to identify the presence or increase of n-alkane groups from crude oil contamination. Also contained in this document is high performance liquid chromatography (HPLC) method 1654A, and the combination of methods 1654A and 1663 can be used to differentiate diesel oil, mineral oil, crude oil, and synthetic material. Gas chromatography followed in series with mass spectroscopy (GC/MS) gives higher resolution and can also be used to identify the presence of PAHs, but is also more complicated and several times more expensive. Nonetheless, it may be beneficial to perform GC/MS analysis to identify the PAHs. Free oil is an indicator pollutant for PAHs. Several of the PAHs commonly found in crude oil are priority pollutants.

In the United Kingdom and Norway, discharge requirements of SBM drill cuttings follow the Oslo and Paris Commission (PARCOM) guidelines for a harmonized chemical notification

procedure. These guidelines require drilling fluids to undergo marine toxicity, bioaccumulation and biodegradation testing, and allow the regulatory authorities to calculate the maximum amount of the fluid which can be expected not to cause serious adverse environmental effects if lost or discharged to the sea. The marine toxicity test evaluates both water-borne and benthic organisms such as algae (*Skeletonema costatum*), zooplankton (*Acartia tonsa*), and amphipod crustacean sediment reworker (*Corophium volutator*). EPA believes that tests such as these (or some combination of these tests) may be more appropriate as the basis for both the environmental assessment and for discharge limitations for the cuttings associated with synthetic-based and EMO-based drilling fluids. Other static sediment toxicity tests, such as the ASTM E1367-92, may also be appropriate. Just recently detailed monitoring at several sites in the North Sea has begun to evaluate seven different mud systems and to compare the actual sea floor determinations with the laboratory determinations. While evaluations in the Gulf of Mexico may prove to be different from those in the North Sea due to the differences in physical parameters and sea life, EPA intends to follow these sea floor evaluations for early indications of appropriate laboratory and field evaluation methods.

The final rule incorporates clarifying definitions of drilling fluids for both the offshore and coastal subcategories to better differentiate between the types of drilling fluids. At this time, EPA's guidance to permit writers needing to write limits for SBMs on a best professional judgement (BPJ) basis is to use GC as a confirmation tool to assure the absence of free oil in addition to meeting the current no free oil (static sheen), toxicity, and barite limits on mercury and cadmium. Method 1663 as described in EPA 821-R-92-008 is recommended as a GC/FID method to identify an increase in n-alkanes due to crude oil contamination of the synthetic materials coating the cuttings to be discharged. Additional tests such as benthic toxicity conducted on the synthetic material prior to use or whole SBM prior to discharge, may be useful in controlling the discharge of cuttings contaminated with drilling fluid. One possible level of control is the use of the PARCOM protocol for 1000 ppm acute benthic toxicity for *Corophium volutator*, or similar protocol assessing a more appropriate local species as the indicator.

EPA intends to further evaluate the test methods for benthic toxicity and may determine an appropriate limitation if this additional test is warranted. In addition, test methods and results for bioaccumulation and biodegradation, as indications of the rate of recovery of the cuttings piles on the sea floor, will be evaluated. It is recognized that evaluations of such new testing protocols may be beyond the technical expertise of individual permit writers. Thus this effort will be coordinated as a continuing effluent guidelines effort. Results of this effort may lead to revision of the current effluent guidelines discharge limitations or may be useful in the revision or reissuance of permits only.

One commenter claimed the same environmental advantages over WBM as SBM with the use of enhanced mineral oil-based drilling fluids. EMO-based drilling fluids are similar to the SBMs with respect to dispersion in water and concerns with applicability of the current sheen and toxicity tests. However, while the mysid shrimp water column toxicity test may give comparable results for the EMOs and some synthetics, several research papers indicate that recovery of cuttings piles contaminated with low toxicity mineral oils may not be much better than those contaminated with diesel, whereas those contaminated by synthetic materials recover significantly faster. In the absence of data on EMO contaminated cuttings and data indicating the differences between low toxicity mineral oil and EMO, the application of limits on the discharge of SBM cuttings according to the mysid shrimp toxicity test and the static sheen test confirmed by GC test for no free oil, is not applicable to the discharge of EMO cuttings. If the tests of benthic toxicity, bioaccumulation, and biodegradation, which are indicative of rate of recovery of the cuttings pile, show that the performance of EMOs are acceptable, then they may be considered for discharge of associated drilling fluids and cuttings. Another complication with the use of EMO is that, since EMOs are not a specific product as the synthetics are, but an assortment of molecules conforming to the distillation cut, their gas chromatograph (GC) fingerprint is in certain cases less distinct than that of the synthetics. Contamination by formation oil, crude, or diesel, may be more difficult to detect in these EMOs.

#### G. Implementation for NPDES Permit Writers

EPA received numerous comments from operators in the Gulf of Mexico

coastal region claiming that they would need additional time to comply with the rule's zero discharge requirement for produced water. EPA recognizes that it may take some time for operators to determine the best and most cost effective mechanism of compliance and to implement that mechanism. EPA also recognizes that the NPDES permit issuing authority has discretion to use administrative orders to provide the requisite additional time to meet zero discharge.

In making the determination regarding the additional time that may be appropriate and interim requirements that will be placed on facilities until compliance is achieved, the permit issuing authority should consider several factors, including, but not limited to, the following. First, operators may wish to do engineering and structural analysis of existing pipes and wells in order to make use of existing infra-structure. Second, there are several options available to facilities on a per-well or per-facility basis to comply with the zero discharge requirement, including injection, sending produced water offsite to a centralized waste treatment facility, or shutting in individual wells. Third, the facility's preferred approach may take into consideration the projected productive life of individual wells and their relative effect on the overall facility costs and impacts in determining the most cost-effective mix of options. Fourth, the permit issuing authority has the discretion to consider the relative impact of the available options when determining an appropriate compliance schedule. Finally, in establishing any interim limitations on discharges, the permit issuing authority should consider water quality impacts.

#### XV. Background Documents

Major support for this regulation is detailed in two documents, each of which is supplemented by additional information and analyses in the rulemaking record. EPA's engineering foundation for the regulation is detailed in the "Development Document for Final Effluent Limitations Guidelines and Standards for the Coastal Subcategory of the Oil and Gas Extraction Point Source Category" EPA-821-R-96-023. EPA's economic analysis is presented in the "Economic Impact Analysis of Final Effluent Limitations Guidelines and Standards for the Coastal Subcategory of the Oil and Gas Extraction Point Source Category" EPA-821-R-96-022. Additionally, detailed responses to the public comments received on the proposed regulation and notices of data

availability are presented in the document entitled "Response to Public Comments on Effluent Limitations Guidelines and Standards for the Coastal Subcategory of the Oil and Gas Extraction Point Source Category," which is available in the public record. The public record for this rulemaking is available for review at EPA's Water Docket: 401 M Street, SW; Washington, DC. The room number is M2616 and the phone number is (202) 260-3027.

#### List of Subjects in 40 CFR Part 435

Environmental protection, Incorporation by reference, Oil and gas extraction, Pollution prevention, Waste treatment and disposal, Water pollution control.

Dated: October 31, 1996.

Carol M. Browner,  
*Administrator.*

#### Appendix A to the Preamble— Abbreviations, Acronyms, and Other Terms Used in This Document

Agency—U.S. Environmental Protection Agency

BADCT—The best available demonstrated control technology, for new sources under section 306 of the CWA.

BAT—The best available technology economically achievable, under section 304(b)(2)(B) of the CWA.

bbl—barrel, 42 U.S. gallons

bpd—barrels per day

bph—barrels per hour

bpy—barrels per year

BCT—Best conventional pollutant control technology under section 304(b)(4)(B).

BMPs—Best management practices under section 304(e) of the CWA.

BOD—Biochemical oxygen demand.

BOE—Barrels of oil equivalent

BPT—Best practicable control technology currently available, under section 304(b)(1) of the Clean Water Act.

CFR—Code of Federal Regulations

Clean Water Act—Federal Water Pollution Control Act (33 U.S.C. 1251 *et seq.*).

Coastal Development Document—Development Document for Final Effluent Limitations Guidelines and New Source Performance Standards for the Coastal Subcategory Of the Oil and Gas Extraction Point Source Category.

Conventional pollutants—Constituents of wastewater as determined by section 304(a)(4) of the Act, including, but not limited to, pollutants classified as biochemical oxygen demanding, suspended solids, oil and grease, fecal coliform, and pH.

CWA—Clean Water Act

Direct discharger—A facility that discharges or may discharge pollutants to waters of the United States.

DOE—U.S. Department of Energy

EIA—*Economic Impact Analysis of Final Effluent Limitations Guidelines and Standards for the Coastal Subcategory of the Oil and Gas Extraction Point Source Category*

EPA—U.S. Environmental Protection Agency  
Indirect discharger—A facility that introduces wastewater into a publicly owned treatment works.

LC50—The estimated concentration of a test material lethal to 50 percent of test organisms used in a specified type of toxicity test.

mg/l—milligrams per liter

Nonconventional pollutants—Pollutants that have not been designated as either conventional pollutants or toxic pollutants.

NORM—Naturally Occurring Radioactive Materials

NPDES—The National Pollutant Discharge Elimination System under section 402 of the CWA.

NPV—Net Present Value

NSPS—New source performance standards under section 306 of the CWA.

Offshore Guidelines—Final Effluent Limitations Guidelines and New Source Performance Standards for the Offshore Subcategory of the Oil and Gas Extraction Point Source Category

Offshore Development Document—Development Document for Effluent Limitations Guidelines and New Source Performance Standards for the Offshore Subcategory of the Oil and Gas Extraction Point Source Category

OMB—Office of Management and Budget

PAH—polynuclear aromatic hydrocarbons

POTW—Publicly Owned Treatment Works

ppm—parts per million

PSES—Pretreatment standards for existing sources of indirect discharges, under section 307(b) of the CWA.

PSNS—Pretreatment standards for new sources of indirect discharges, under sections 307 (b) and (c) of the CWA.

RRC—Railroad Commission of Texas

SIC—Standard Industrial Classification

SPP—Suspended particulate phase.

Toxic pollutants—A statutory term for the 65 pollutants and classes of pollutants designated under section 307(a) of the CWA.

TSS—Total Suspended Solids

UIC—Underground Injection Control program

U.S.C.—United States Code

For the reasons set forth in the preamble, 40 CFR part 435 is amended as follows:

#### **PART 435—OIL AND GAS EXTRACTION POINT SOURCE CATEGORY**

1. The authority citation for part 435 continues to read as follows:

Authority: (33 U.S.C. 1311, 1314, 1316, 1317, 1318 and 1361).

#### **Subpart A [Amended]**

2. Section 435.10 is revised to read as follows:

#### **§ 435.10 Applicability; description of the offshore subcategory**

The provisions of this subpart are applicable to those facilities engaged in

field exploration, drilling, well production, and well treatment in the oil and gas industry which are located in waters that are seaward of the inner boundary of the territorial seas ("offshore") as defined in section 502(g) of the Clean Water Act.

3. Section 435.11 is revised to read as follows:

**§ 435.11 Specialized definitions.**

For the purpose of this subpart:

(a) Except as provided below, the general definitions, abbreviations and methods of analysis set forth in 40 CFR part 401 shall apply to this subpart.

(b) The term *average of daily values for 30 consecutive days* shall be the average of the daily values obtained during any 30 consecutive day period.

(c) The term *daily values* as applied to produced water effluent limitations and NSPS shall refer to the daily measurements used to assess compliance with the maximum for any one day.

(d) The term *deck drainage* shall refer to any waste resulting from deck washings, spillage, rainwater, and runoff from gutters and drains including drip pans and work areas within facilities subject to this subpart. Within the definition of deck drainage for the purpose of this subpart, the term rainwater for those facilities located on land is limited to that precipitation runoff that reasonably has the potential to come into contact with process wastewater. Runoff not included in the deck drainage definition would be subject to control as storm water under 40 CFR 122.26. For structures located over water, all runoff is included in the deck drainage definition.

(e) The term *development facility* shall mean any fixed or mobile structure subject to this subpart that is engaged in the drilling of productive wells.

(f) The term *diesel oil* shall refer to the grade of distillate fuel oil, as specified in the American Society for Testing and Materials Standard Specification for Diesel Fuel Oils D975-91, that is typically used as the continuous phase in conventional oil-based drilling fluids. 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 Society for Testing and Materials, 1916 Race Street, Philadelphia, PA 19103. Copies may be inspected at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC. A copy may also be inspected at EPA's Water Docket; Room M2616, 401 M Street SW, Washington, DC 20460.

(g) The term *domestic waste* shall refer to materials discharged from sinks, showers, laundries, safety showers, eye-wash stations, hand-wash stations, fish cleaning stations, and galleys located within facilities subject to this subpart.

(h) The term *drill cuttings* shall refer to the particles generated by drilling into subsurface geologic formations and carried to the surface with the drilling fluid.

(i) The term *drilling fluid* refers to the circulating fluid (mud) used in the rotary drilling of wells to clean and condition the hole and to counterbalance formation pressure. The four classes of drilling fluids are:

(1) A water-based drilling fluid has water as the continuous phase and the suspending medium for solids, whether or not oil is present.

(2) An oil-based drilling fluid has diesel oil, mineral oil, or some other oil, but neither a synthetic material nor enhanced mineral oil, as its continuous phase with water as the dispersed phase.

(3) An enhanced mineral oil-based drilling fluid has an enhanced mineral oil as its continuous phase with water as the dispersed phase.

(4) A synthetic-based drilling fluid has a synthetic material as its continuous phase with water as the dispersed phase.

(j) The term *enhanced mineral oil* as applied to enhanced mineral oil-based drilling fluid means a petroleum distillate which has been highly purified and is distinguished from diesel oil and conventional mineral oil in having a lower polycyclic aromatic hydrocarbon (PAH) content. Typically, conventional mineral oils have a PAH content on the order of 0.35 weight percent expressed as phenanthrene, whereas enhanced mineral oils typically have a PAH content of 0.001 or lower weight percent PAH expressed as phenanthrene.

(k) The term *exploratory facility* shall mean any fixed or mobile structure subject to this subpart that is engaged in the drilling of wells to determine the nature of potential hydrocarbon reservoirs.

(l) The term *maximum* as applied to BAT effluent limitations and NSPS for drilling fluids and drill cuttings shall mean the maximum concentration allowed as measured in any single sample of the barite.

(m) The term *maximum for any one day* as applied to BPT, BCT and BAT effluent limitations and NSPS for oil and grease in produced water shall mean the maximum concentration allowed as measured by the average of four grab samples collected over a 24-

hour period that are analyzed separately. Alternatively, for BAT and NSPS the maximum concentration allowed may be determined on the basis of physical composition of the four grab samples prior to a single analysis.

(n) The term *minimum* as applied to BAT effluent limitations and NSPS for drilling fluids and drill cuttings shall mean the minimum 96-hour LC50 value allowed as measured in any single sample of the discharged waste stream. The term minimum as applied to BPT and BCT effluent limitations and NSPS for sanitary wastes shall mean the minimum concentration value allowed as measured in any single sample of the discharged waste stream.

(o) The term *M9IM* shall mean those offshore facilities continuously manned by nine (9) or fewer persons or only intermittently manned by any number of persons.

(p) The term *M10* shall mean those offshore facilities continuously manned by ten (10) or more persons.

(q) The term *new source* means any facility or activity of this subcategory that meets the definition of "new source" under 40 CFR 122.2 and meets the criteria for determination of new sources under 40 CFR 122.29(b) applied consistently with all of the following definitions:

(1) The term *water area* as used in the term "site" in 40 CFR 122.29 and 122.2 shall mean the water area and ocean floor beneath any exploratory, development, or production facility where such facility is conducting its exploratory, development or production activities.

(2) The term *significant site preparation work* as used in 40 CFR 122.29 shall mean the process of surveying, clearing or preparing an area of the ocean floor for the purpose of constructing or placing a development or production facility on or over the site. "New Source" does *not* include facilities covered by an existing NPDES permit immediately prior to the effective date of these guidelines pending EPA issuance of a new source NPDES permit.

(r) The term *no discharge of free oil* shall mean that waste streams may not be discharged when they would cause a film or sheen upon or a discoloration of the surface of the receiving water or fail the static sheen test defined in Appendix 1 to 40 CFR part 435, subpart A.

(s) The term *produced sand* shall refer to slurried particles used in hydraulic fracturing, the accumulated formation sands and scales particles generated during production.

Produced sand also includes desander discharge from the produced water waste stream, and blowdown of the water phase from the produced water treating system.

(t) The term *produced water* shall refer to the water (brine) brought up from the hydrocarbon-bearing strata during the extraction of oil and gas, and can include formation water, injection water, and any chemicals added downhole or during the oil/water separation process.

(u) The term *production facility* shall mean any fixed or mobile structure subject to this subpart that is either engaged in well completion or used for active recovery of hydrocarbons from producing formations.

(v) The term *sanitary waste* shall refer to human body waste discharged from toilets and urinals located within facilities subject to this subpart.

(w) The term *static sheen test* shall refer to the standard test procedure that has been developed for this industrial subcategory for the purpose of demonstrating compliance with the requirement of no discharge of free oil. The methodology for performing the static sheen test is presented in appendix 1 to 40 CFR part 435, subpart A.

(x) The term *synthetic material* as applied to synthetic-based drilling fluid means material produced by the reaction of specific purified chemical feedstock, as opposed to the traditional base fluids such as diesel and mineral oil which are derived from crude oil solely through physical separation processes. Physical separation processes include fractionation and distillation and/or minor chemical reactions such as cracking and hydro processing. Since they are synthesized by the reaction of purified compounds, synthetic materials suitable for use in drilling fluids are typically free of polycyclic aromatic hydrocarbons (PAH's) but are sometimes found to contain levels of PAH up to 0.001 weight percent PAH expressed as phenanthrene. Poly(alpha olefins) and vegetable esters are two examples of synthetic materials used by the oil and gas extraction industry in formulating drilling fluids. Poly(alpha olefins) are synthesized from the polymerization (dimerization, trimerization, tetramerization, and higher oligomerization) of purified straight-chain hydrocarbons such as C<sub>6</sub>-C<sub>14</sub> alpha olefins. Vegetable esters are synthesized from the acid-catalyzed esterification of vegetable fatty acids with various alcohols. The mention of these two branches of synthetic fluid base materials is to provide examples, and is not meant to exclude other

synthetic materials that are either in current use or may be used in the future. A synthetic-based drilling fluid may include a combination of synthetic materials.

(y) The term *toxicity* as applied to BAT effluent limitations and NSPS for drilling fluids and drill cuttings shall refer to the bioassay test procedure presented in Appendix 2 of 40 CFR part 435, subpart A.

(z) The term *well completion fluids* shall refer to salt solutions, weighted brines, polymers, and various additives used to prevent damage to the well bore during operations which prepare the drilled well for hydrocarbon production.

(aa) The term *well treatment fluids* shall refer to any fluid used to restore or improve productivity by chemically or physically altering hydrocarbon-bearing strata after a well has been drilled.

(bb) The term *workover fluids* shall refer to salt solutions, weighted brines, polymers, or other specialty additives used in a producing well to allow for maintenance, repair or abandonment procedures.

(cc) The term *96-hour LC50* shall refer to the concentration (parts per million) or percent of the suspended particulate phase (SPP) from a sample that is lethal to 50 percent of the test organisms exposed to that concentration of the SPP after 96 hours of constant exposure.

4. Subpart D is revised to read as follows:

**Subpart D—Coastal Subcategory**

Sec.

435.40 Applicability; description of the coastal subcategory.

435.41 Specialized definitions.

435.42 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).

435.43 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT).

435.44 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT).

435.45 Standards of performance for new sources (NSPS).

435.46 Pretreatment Standards of performance for existing sources (PSES).

435.47 Pretreatment Standards of performance for new sources (PSNS).

**Subpart D—Coastal Subcategory**

**§ 435.40 Applicability; description of the coastal subcategory.**

The provisions of this subpart are applicable to those facilities engaged in field exploration, drilling, well production, and well treatment in the oil and gas industry in areas defined as "coastal." The term "coastal" shall mean:

(a) Any location in or on a water of the United States landward of the inner boundary of the territorial seas; or

(b) (1) Any location landward from the inner boundary of the territorial seas and bounded on the inland side by the line defined by the inner boundary of the territorial seas eastward of the point defined by 89°45' West Longitude and 29°46' North Latitude and continuing as follows west of that point:

Direction to west longitude	Direction to north latitude
West, 89°48'	North, 29°50'.
West, 90°12'	North, 30°06'.
West, 90°20'	South, 29°35'.
West, 90°35'	South, 29°30'.
West, 90°43'	South, 29°25'.
West, 90°57'	North, 29°32'.
West, 91°02'	North, 29°40'.
West, 91°14'	South, 29°32'.
West, 91°27'	North, 29°37'.
West, 91°33'	North, 29°46'.
West, 91°46'	North, 29°50'.
West, 91°50'	North, 29°55'.
West, 91°56'	South, 29°50'.
West, 92°10'	South, 29°44'.
West, 92°55'	North, 29°46'.
West, 93°15'	North, 30°14'.
West, 93°49'	South, 30°07'.
West, 94°03'	South, 30°03'.
West, 94°10'	South, 30°00'.
West, 94°20'	South, 29°53'.
West, 95°00'	South, 29°35'.
West, 95°13'	South, 29°28'.
East, 95°08'	South, 29°15'.
West, 95°11'	South, 29°08'.
West, 95°22'	South, 28°56'.
West, 95°30'	South, 28°55'.
West, 95°33'	South, 28°49'.
West, 95°40'	South, 28°47'.
West, 96°42'	South, 28°41'.
East, 96°40'	South, 28°28'.
West, 96°54'	South, 28°20'.
West, 97°03'	South, 28°13'.
West, 97°15'	South, 27°58'.
West, 97°40'	South, 27°45'.
West, 97°46'	South, 27°28'.
West, 97°51'	South, 27°22'.
East, 97°46'	South, 27°14'.
East, 97°30'	South, 26°30'.
East, 97°26'	South, 26°11'.

(2) East to 97°19' West Longitude and Southward to the U.S.-Mexican border.

**§ 435.41 Specialized definitions.**

For the purpose of this subpart:

(a) Except as provided below, the general definitions, abbreviations and

methods of analysis set forth in 40 CFR part 401 shall apply to this subpart.

(b) The term *average of daily values for 30 consecutive days* shall be the average of the daily values obtained during any 30 consecutive day period.

(c) The term "Cook Inlet" refers to coastal locations north of the line between Cape Douglas on the West and Port Chatham on the east.

(d) The term *daily values* as applied to produced water effluent limitations and NSPS shall refer to the daily measurements used to assess compliance with the maximum for any one day.

(e) The term *deck drainage* shall refer to any waste resulting from deck washings, spillage, rainwater, and runoff from gutters and drains including drip pans and work areas within facilities subject to this subpart.

(f) The term *development facility* shall mean any fixed or mobile structure subject to this subpart that is engaged in the drilling of productive wells.

(g) The term *dewatering effluent* means wastewater from drilling fluids and drill cuttings dewatering activities (including but not limited to reserve pits or other tanks or vessels, and chemical or mechanical treatment occurring during the drilling solids separation/recycle/disposal process).

(h) The term *diesel oil* shall refer to the grade of distillate fuel oil, as specified in the American Society for Testing and Materials Standard Specification for Diesel Fuel Oils D975-91, that is typically used as the continuous phase in conventional oil-based drilling fluids. 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 Society for Testing and Materials, 1916 Race Street, Philadelphia, PA 19103. Copies may be inspected at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC. A copy may also be inspected at EPA's Water Docket; Room M2616, 401 M Street SW., Washington, DC 20460.

(i) The term *domestic waste* shall refer to materials discharged from sinks, showers, laundries, safety showers, eye-wash stations, hand-wash stations, fish cleaning stations, and galleys located within facilities subject to this subpart.

(j) The term *drill cuttings* shall refer to the particles generated by drilling into subsurface geologic formations and carried to the surface with the drilling fluid.

(k) The term *drilling fluid* refers to the circulating fluid (mud) used in the rotary drilling of wells to clean and

condition the hole and to counterbalance formation pressure. The four classes of drilling fluids are:

(1) A water-based drilling fluid has water as the continuous phase and the suspending medium for solids, whether or not oil is present.

(2) An oil-based drilling fluid has diesel oil, mineral oil, or some other oil, but neither a synthetic material nor enhanced mineral oil, as its continuous phase with water as the dispersed phase.

(3) An enhanced mineral oil-based drilling fluid has an enhanced mineral oil as its continuous phase with water as the dispersed phase.

(4) A synthetic-based drilling fluid has a synthetic material as its continuous phase with water as the dispersed phase.

(l) The term *enhanced mineral oil* as applied to enhanced mineral oil-based drilling fluid means a petroleum distillate which has been highly purified and is distinguished from diesel oil and conventional mineral oil in having a lower polycyclic aromatic hydrocarbon (PAH) content. Typically, conventional mineral oils have a PAH content on the order of 0.35 weight percent expressed as phenanthrene, whereas enhanced mineral oils typically have a PAH content of 0.001 or lower weight percent PAH expressed as phenanthrene.

(m) The term *exploratory facility* shall mean any fixed or mobile structure subject to this subpart that is engaged in the drilling of wells to determine the nature of potential hydrocarbon reservoirs.

(n) The term *garbage* means all kinds of victual, domestic, and operational waste, excluding fresh fish and parts thereof, generated during the normal operation of coastal oil and gas facility and liable to be disposed of continuously or periodically, except dishwater, graywater, and those substances that are defined or listed in other Annexes to MARPOL 73/78. A copy of MARPOL may be inspected at EPA's Water Docket; Room M2616, 401 M Street SW, Washington, DC 20460.

(o) The term *maximum* as applied to BAT effluent limitations and NSPS for drilling fluids and drill cuttings shall mean the maximum concentration allowed as measured in any single sample of the barite.

(p) The term *maximum for any one day* as applied to BPT, BCT and BAT effluent limitations and NSPS for oil and grease in produced water shall mean the maximum concentration allowed as measured by the average of four grab samples collected over a 24-hour period that are analyzed

separately. Alternatively, for BAT and NSPS, the maximum concentration allowed may be determined on the basis of physical composition of the four grab samples prior to a single analysis.

(q) The term *minimum* as applied to BAT effluent limitations and NSPS for drilling fluids and drill cuttings shall mean the minimum 96-hour LC50 value allowed as measured in any single sample of the discharged waste stream. The term *minimum* as applied to BPT and BCT effluent limitations and NSPS for sanitary wastes shall mean the minimum concentration value allowed as measured in any single sample of the discharged waste stream.

(r) The term *M9IM* shall mean those coastal facilities continuously manned by nine (9) or fewer persons or only intermittently manned by any number of persons.

(s) The term *M10* shall mean those coastal facilities continuously manned by ten (10) or more persons.

(t) (1) The term *new source* means any facility or activity of this subcategory that meets the definition of "new source" under 40 CFR 122.2 and meets the criteria for determination of new sources under 40 CFR 122.29(b) applied consistently with all of the following definitions:

(i) The term *water area* as used in the term "site" in 40 CFR 122.29 and 122.2 shall mean the water area and water body floor beneath any exploratory, development, or production facility where such facility is conducting its exploratory, development or production activities.

(ii) The term *significant site preparation work* as used in 40 CFR 122.29 shall mean the process of surveying, clearing or preparing an area of the water body floor for the purpose of constructing or placing a development or production facility on or over the site.

(2) "New Source" does not include facilities covered by an existing NPDES permit immediately prior to the effective date of these guidelines pending EPA issuance of a new source NPDES permit.

(u) The term *no discharge of free oil* shall mean that waste streams may not be discharged when they would cause a film or sheen upon or a discoloration of the surface of the receiving water or fail the static sheen test defined in appendix 1 to 40 CFR part 435, subpart A.

(v) The term *produced sand* shall refer to slurried particles used in hydraulic fracturing, the accumulated formation sands and scales particles generated during production. Produced sand also includes desander discharge from the produced water waste stream,

and blowdown of the water phase from the produced water treating system.

(w) The term *produced water* shall refer to the water (brine) brought up from the hydrocarbon-bearing strata during the extraction of oil and gas, and can include formation water, injection water, and any chemicals added downhole or during the oil/water separation process.

(x) The term *production facility* shall mean any fixed or mobile structure subject to this subpart that is either engaged in well completion or used for active recovery of hydrocarbons from producing formations. It includes facilities that are engaged in hydrocarbon fluids separation even if located separately from wellheads.

(y) The term *sanitary waste* shall refer to human body waste discharged from toilets and urinals located within facilities subject to this subpart.

(y) The term *static sheen test* shall refer to the standard test procedure that has been developed for this industrial subcategory for the purpose of demonstrating compliance with the requirement of no discharge of free oil. The methodology for performing the static sheen test is presented in appendix 1 to 40 CFR part 435, subpart A.

(z) The term *synthetic material* as applied to synthetic-based drilling fluid means material produced by the reaction of specific purified chemical feedstock, as opposed to the traditional base fluids such as diesel and mineral oil which are derived from crude oil

solely through physical separation processes. Physical separation processes include fractionation and distillation and/or minor chemical reactions such as cracking and hydro processing. Since they are synthesized by the reaction of purified compounds, synthetic materials suitable for use in drilling fluids are typically free of polycyclic aromatic hydrocarbons (PAH's) but are sometimes found to contain levels of PAH up to 0.001 weight percent PAH expressed as phenanthrene. Poly(alpha olefins) and vegetable esters are two examples of synthetic used by the oil and gas extraction industry in formulating drilling fluids. Poly(alpha olefins) are synthesized from the polymerization (dimerization, trimerization, tetramerization, and higher oligomerization) of purified straight-chain hydrocarbons such as C<sub>6</sub>-C<sub>14</sub> alpha olefins. Vegetable esters are synthesized from the acid-catalyzed esterification of vegetable fatty acids with various alcohols. The mention of these two branches of synthetic fluid base materials is to provide examples, and is not meant to exclude other synthetic materials that are either in current use or may be used in the future. A synthetic-based drilling fluid may include a combination of synthetic materials.

(aa) The term *toxicity* as applied to BAT effluent limitations and NSPS for drilling fluids and drill cuttings shall refer to the bioassay test procedure presented in appendix 2 of 40 CFR part 435, subpart A.

(bb) The term *well completion fluids* shall refer to salt solutions, weighted brines, polymers, and various additives used to prevent damage to the well bore during operations which prepare the drilled well for hydrocarbon production.

(cc) The term *well treatment fluids* shall refer to any fluid used to restore or improve productivity by chemically or physically altering hydrocarbon-bearing strata after a well has been drilled.

(dd) The term *workover fluids* shall refer to salt solutions, weighted brines, polymers, or other specialty additives used in a producing well to allow for maintenance, repair or abandonment procedures.

(ee) The term *96-hour LC50* shall refer to the concentration (parts per million) or percent of the suspended particulate phase (SPP) from a sample that is lethal to 50 percent of the test organisms exposed to that concentration of the SPP after 96 hours of constant exposure.

**§ 435.42 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).**

Except as provided in 40 CFR 125.30-125.32, any existing point source subject to this Subpart must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

**BPT EFFLUENT LIMITATIONS—OIL AND GREASE**

[In milligrams per liter]

Pollutant parameter waste source	Maximum for any 1 day	Average of values for 30 consecutive days shall not exceed	Residual chlorine minimum for any 1 day
Produced water .....	72 .....	48 .....	NA
Deck drainage .....	( <sup>1</sup> ) .....	( <sup>1</sup> ) .....	NA
Drilling fluid .....	( <sup>1</sup> ) .....	( <sup>1</sup> ) .....	NA
Drill cuttings .....	( <sup>1</sup> ) .....	( <sup>1</sup> ) .....	NA
Well treatment, workover, and completion fluids .....	( <sup>1</sup> ) .....	( <sup>1</sup> ) .....	NA
Sanitary:			
M10 .....	NA .....	NA .....	≥ 1
M9IM <sup>3</sup> .....	NA .....	NA .....	NA
Domestic <sup>3</sup> .....	NA .....	NA .....	NA
Produced sand .....	Zero discharge ...	Zero discharge ...	NA

<sup>1</sup> No discharge of free oil.

<sup>2</sup> Minimum of 1 mg/l and maintained as close to this concentration as possible.

<sup>3</sup> There shall be no floating solids as a result of the discharge of these wastes.

**§ 435.43 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT).**

Except as provided in 40 CFR 125.30-125.32, any existing point source subject to this Subpart must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT):

BAT EFFLUENT LIMITATIONS

Stream	Pollutant parameter	BAT effluent limitations
Produced Water:		
(A) All coastal areas except Cook Inlet .....	.....	No discharge.
(B) Cook Inlet .....	Oil & Grease .....	The maximum for any one day shall not exceed 42 mg/l, and the 30-day average shall not exceed 29 mg/l.
Drilling Fluids, Drill Cuttings, and Dewatering Effluent: <sup>1</sup>		
(A) All coastal areas except Cook Inlet .....	.....	No discharge.
	Free Oil <sup>2</sup> .....	No discharge.
	Diesel Oil .....	No discharge.
(B) Cook Inlet .....	Mercury .....	1 mg/kg dry weight maximum in the stock barite.
	Cadmium .....	3 mg/kg dry weight maximum in the stock barite.
	Toxicity .....	Minimum 96-hour LC50 of the SPP shall be 3 percent by volume <sup>4</sup> .
Well Treatment, Workover and Completion Fluids:		
(A) All coastal areas except Cook Inlet .....	.....	No discharge.
(B) Cook Inlet .....	Oil and Grease .....	The maximum for any one day shall not exceed 42 mg/l, and the 30-day average shall not exceed 29 mg/l.
Produced Sand .....	.....	No discharge.
Deck Drainage .....	Free Oil <sup>3</sup> .....	No discharge.
Domestic Waste .....	Foam .....	No discharge.

<sup>1</sup> BCT limitations for dewatering effluent are applicable prospectively. BCT limitations in this rule are not applicable to discharges of dewatering effluent from reserve pits which as of the effective date of this rule no longer receive drilling fluids and drill cuttings. Limitations on such discharges shall be determined by the NPDES permit issuing authority.

<sup>2</sup> As determined by the static sheen test (see appendix 1 to 40 CFR part 435, subpart A).

<sup>3</sup> As determined by the presence of a film or sheen upon or a discoloration of the surface of the receiving water (visual sheen).

<sup>4</sup> As determined by the toxicity test (see appendix 2 of 40 CFR part 435, subpart A).

**§ 435.44 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT).**

Except as provided in 40 CFR 125.30–125.32, any existing point source subject to this Subpart must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT):

BCT EFFLUENT LIMITATIONS

Stream	Pollutant parameter	BCT effluent limitations
Produced Water (all facilities) .....	Oil & Grease .....	The maximum for any one day shall not exceed 72 mg/l and the 30-day average shall not exceed 48 mg/l.
Drilling Fluids and Drill Cuttings and Dewatering Effluent: <sup>1</sup>		
All facilities except Cook Inlet .....	.....	No discharge.
Cook Inlet .....	Free Oil .....	No discharge. <sup>2</sup>
Well Treatment, Workover and Completion Fluids.	Free Oil .....	No discharge. <sup>2</sup>
Produced Sand .....	.....	No discharge.
Deck Drainage .....	Free Oil .....	No discharge. <sup>3</sup>
Sanitary Waste:		
Sanitary M10 .....	Residual Chlorine .....	Minimum of 1 mg/l maintained as close to this concentration as possible.
Sanitary M91M .....	Floating Solids .....	No discharge.
Domestic Waste .....	Floating Solids and garbage .....	No discharge of Floating Solids or garbage. <sup>4</sup>

<sup>1</sup> BCT limitations for dewatering effluent are applicable prospectively. BCT limitations in this rule are not applicable to discharges of dewatering effluent from reserve pits which as of the effective date of this rule no longer receive drilling fluids and drill cuttings. Limitations on such discharges shall be determined by the NPDES permit issuing authority.

<sup>2</sup> As determined by the static sheen test (see appendix 1 to 40 CFR part 435, subpart A).

<sup>3</sup> As determined by the presence of a film or sheen upon or a discoloration of the surface of the receiving water (visual sheen).

<sup>4</sup> As determined by the toxicity test (see appendix 2 of 40 CFR part 435, subpart A).

**§ 435.45 Standards of performance for new sources (NSPS).**

Any new source subject to this subpart must achieve the following new source performance standards (NSPS):

**NSPS EFFLUENT LIMITATIONS**

Stream	Pollutant parameter	NSPS effluent limitations
Produced Water (all facilities) .....	.....	No discharge.
Drilling Fluids and Drill Cuttings and Dewatering Effluent: <sup>1</sup>		
(A) All coastal areas except Cook Inlet .....	.....	No discharge.
(B) Cook Inlet .....	Free Oil <sup>1</sup> .....	No discharge.
	Diesel Oil .....	No discharge.
	Mercury .....	1 mg/kg dry weight maximum in the stock barite; 3 mg/kg dry weight maximum in the stock barite.
	Cadmium .....	Minimum 96-hour LC50 of the SPP shall be 3 percent by volume. <sup>3</sup>
	Toxicity.	
Well Treatment, Workover and Completion Fluids:		
(A) All coastal areas except Cook Inlet .....	.....	No discharge.
(B) Cook Inlet .....	Oil and Grease .....	The maximum for any one day shall not exceed 42 mg/l, and the 30-day average shall not exceed 29 mg/l.
Produced Sand .....	.....	No discharge.
Deck Drainage .....	Free Oil <sup>2</sup> .....	No discharge.
Sanitary Waste:		
Sanitary M10 .....	Residual Chlorine .....	Minimum of 1 mg/l and maintained as close to this concentration as possible.
Sanitary M91M .....	Floating Solids .....	No discharge.
Domestic Waste .....	Floating Solids, Garbage <sup>4</sup> and Foam .....	No discharge of floating solids or garbage or foam.

<sup>1</sup> BAT limitations for dewatering effluent are applicable prospectively. BAT limitations in this rule are not applicable to discharges of dewatering effluent from reserve pits which as of the effective date of this rule no longer receive drilling fluids and drill cuttings. Limitations on such discharges shall be determined by the NPDES permit issuing authority.

<sup>2</sup> As determined by the static sheen test (see Appendix 1 to 40 CFR part 435, subpart A).

<sup>3</sup> As determined by the presence of a film or sheen upon or a discoloration of the surface of the receiving water (visual sheen).

<sup>4</sup> As determined by the toxicity test (see Appendix 2 of 40 CFR part 435, subpart A).

<sup>5</sup> As defined in 40 CFR 435.41(1).

**§ 435.46 Pretreatment Standards of Performance for Existing Sources (PSES)**

Except as provided in 40 CFR 403.7 and 403.13, any existing source with discharges subject to this subpart that introduces pollutants into a publicly owned treatment works must comply with 40 CFR part 403 and achieve the following pretreatment standards for existing sources (PSES).

**PSES EFFLUENT LIMITATIONS**

Stream	Pollutant parameter	PSES effluent limitations
Produced Water	.....	No discharge.
Drilling Fluids and Drill Cuttings Well Treatment.	.....	No discharge.
Workover and Completion Fluids.	.....	No discharge.
Produced Sand	.....	No discharge.
Deck Drainage ..	.....	No discharge.

**§ 435.47 Pretreatment Standards of performance for new sources (PSNS)**

Except as provided in 40 CFR 403.7 and 403.13, any new source with discharges subject to this subpart that introduces pollutants into a publicly

owned treatment works must comply with 40 CFR part 403 and achieve the following pretreatment standards for new sources (PSNS).

**PSNS EFFLUENT LIMITATIONS**

Stream	Pollutant parameter	PSNS effluent limitations
Produced Water (all facilities).	.....	No discharge.
Drilling fluids and Drill Cuttings.	.....	No discharge.
Well Treatment, Workover and Completion Fluids.	.....	No discharge.
Produced Sand.	.....	No discharge.
Deck Drainage.	.....	No discharge.

5. Subpart G consisting of § 435.10 is added to read as follows:

**Subpart G—General Provisions**

**§ 435.10 Applicability.**

(a) *Purpose.* This subpart is intended to prevent oil and gas facilities, for which effluent limitations guidelines

and standards, new source performance standards, or pretreatment standards have been promulgated under this part, from circumventing the effluent limitations guidelines and standards applicable to those facilities by moving effluent produced in one subcategory to another subcategory for disposal under less stringent requirements than intended by this part.

(b) *Applicability.* The effluent limitations and standards applicable to an oil and gas facility shall be determined as follows:

(1) An Oil and Gas facility, operator, or its agent or contractor may move its wastewaters from a facility located in one subcategory to another subcategory for treatment and return it to a location covered by the original subcategory for disposal. In such case, the effluent limitations guidelines, new source performance standards, or pretreatment standards for the original subcategory apply.

(2) An Oil and Gas facility, operator, or its agent or contractor may move its wastewaters from a facility located in one subcategory to another subcategory for disposal or treatment and disposal, provided:

(i) If an Oil and Gas facility, operator or its agent or contractor moves

wastewaters from a wellhead located in one subcategory to another subcategory where oil and gas facilities are governed by less stringent effluent limitations guidelines, new source performance standards, or pretreatment standards, the more stringent effluent limitations guidelines, new source performance

standards, or pretreatment standards applicable to the subcategory where the wellhead is located shall apply.

(ii) If an Oil and Gas facility, operator or its agent moves effluent from a wellhead located in one subcategory to another subcategory where oil and gas facilities are governed by more stringent effluent limitations guidelines, new

source performance standards, or pretreatment standards, the more stringent effluent limitations guidelines, new source performance standards, or pretreatment standards applicable at the point of discharge shall apply.

[FR Doc. 96-28659 Filed 12-13-96; 8:45 am]

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Monday  
December 16, 1996

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**Part IV**

**Department of  
Housing and Urban  
Development**

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Office of the Secretary

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**24 CFR Part 888**

**Section 8 Housing Assistance Payments  
Program; Contract Rent Annual  
Adjustment Factors, Fiscal Year 1997;  
Final Rule**

**DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT****Office of the Secretary****24 CFR Part 888**

[Docket No. FR-4157-N-01]

**Section 8 Housing Assistance Payments Program; Contract Rent Annual Adjustment Factors Fiscal Year 1997**

AGENCY: Office of the Secretary, HUD.

ACTION: Revised contract rent annual adjustment factors.

**SUMMARY:** The United States Housing Act of 1937 requires that the assistance contracts signed by owners participating in the Department's Section 8 Housing Assistance Payments programs provide for annual or more frequent adjustment in the maximum monthly rentals for units covered by the contract to reflect changes based on Fair Market Rents (FMRs) prevailing in a particular market area, or on a reasonable formula. This document announces revised Annual Adjustment Factors (AAFs) for assistance contract anniversaries from October 1, 1996. The factors are based on a formula using data on residential rent and utilities cost changes from the most current Bureau of Labor Statistics Consumer Price Index (CPI) survey and from HUD Random Digit Dialing (RDD) rent change surveys.

EFFECTIVE DATE: October 1, 1996.

**FOR FURTHER INFORMATION CONTACT:** Gerald J. Benoit, Rental Assistance Division, Office of Public and Indian Housing [(202) 708-0477], for questions relating to the Section 8 Voucher, Certificate, and Moderate Rehabilitation programs; Barbara D. Hunter, Program Management Division, Office of Multifamily Asset Management and Disposition [(202) 708-4162], for questions relating to all other Section 8 programs; Alan Fox, Economic and Market Analysis Division, Office of Policy Development and Research [(202) 708-0590; e-mail alan—fox@hud.gov], for technical information regarding the development of the schedules for specific areas or the methods used for calculating the AAFs. Mailing address for above persons: Department of Housing and Urban Development, 451 Seventh Street SW, Washington, DC 20410. Hearing- or speech-impaired persons may contact the Federal Information Relay Service at 1-800-877-8339 (TTY) (Other than the "800" TDD number, the above-listed telephone numbers are not toll-free.)

**SUPPLEMENTARY INFORMATION:**

A special requirement for determining the AAF used for the adjustment of Section 8 contract rents is applicable in Federal Fiscal Year 1997 (October 1, 1996 to September 30, 1997.) In FY 1997, the law provides (42 U.S.C. 1437f(c)(2)(A), as amended in 108 Stat. 2315 (9/28/94) and 110 Stat 2874 (9/26/96)):

Except for assistance under the certificate program, for any unit occupied by the same family at the time of the last annual rental adjustment, where the assistance contract provides for the adjustment of the maximum monthly rent by applying an annual adjustment factor and where the rent for a unit is otherwise eligible for an adjustment based on the full amount of the factor, 0.01 shall be subtracted from the amount of the factor, except that the factor shall not be reduced to less than 1.0. In the case of assistance under the certificate program, 0.01 shall be subtracted from the amount of the annual adjustment factor (except that the factor shall not be reduced to less than 1.0), and the adjusted rent shall not exceed the rent for a comparable unassisted unit of similar quality, type, and age in the market area.

This provision was amended by the FY 1997 appropriation (Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act of 1997, Pub. L. 104-204, approved September 26, 1996, 110 Stat. 2874). To implement the law, HUD is again publishing two separate AAF tables, contained in Schedule C, tables 1 and 2 of this document. Each AAF in table 2 is computed by subtracting 0.01 from the annual adjustment factor in table 1.

**Applicability of AAFs to Various Section 8 Programs**

AAFs established by this document are used to adjust contract rents for Section 8 Housing Assistance Payments Program units. However, the specific application of the AAFs is determined by the law, the HAP contract, and appropriate program regulations or requirements.

AAFs are not used for the Section 8 voucher program.

Contract rents for some projects receiving Section 8 subsidies under the loan management program (24 CFR part 886, subpart A) and for projects receiving Section 8 subsidies under the property disposition program (24 CFR part 886, subpart C) are adjusted, at HUD's option, either by applying the AAFs or by adjusting rents in accordance with 24 CFR 207.19(e).

Under the Section 8 moderate rehabilitation program (both the regular program and the single room occupancy program), the public housing agency (PHA) applies the AAF to the base rent

component of the contract rent, not the full contract rent.

**Adjustment Procedures Under Fiscal Year 1997 Appropriation**

The discussion in this Federal Register document is intended to provide a broad orientation on procedures for adjustment under the FY 1997 appropriations. Technical details and requirements will be described in HUD notices (by the HUD Office of Housing and the HUD Office of Public and Indian Housing).

Because of statutory and structural distinctions between the various Section 8 programs, separate procedures are used for three program categories:

**Category 1: Section 8 New Construction, Substantial Rehabilitation and Moderate Rehabilitation Programs**

In the Section 8 New Construction and Substantial Rehabilitation programs, the published AAF factor is applied to the pre-adjustment contract rent. In the Section 8 Moderate Rehabilitation program, the published AAF is applied to the pre-adjustment base rent.

For category 1 programs, the Table 1 AAF factor is applied before determining comparability (rent reasonableness.) Comparability applies if the pre-adjustment gross rent (pre-adjustment contract rent plus any allowances for tenant-paid utilities) is above the published FMR.

If the comparable rent level (plus any initial difference) is lower than the contract rent as adjusted by application of the table 1 AAF, the comparable rent level (plus any initial difference) will be the new contract rent. However, the pre-adjustment contract rent will not be decreased by application of comparability.

In all other cases (i.e., unless contract rent is reduced by comparability):

- The table 1 AAF is used for a unit occupied by a new family since the last annual contract anniversary.
- The table 2 AAF is used for a unit occupied by the same family as at the time of the last annual contract anniversary.

**Category 2: The Loan Management Program (Part 886, Subpart A) or Property Disposition Program (Part 886 Subpart C), Where Rents are Adjusted by Applying the AAF**

At this time, rent adjustment in the Category 2 programs is not subject to comparability. (Comparability will again apply if HUD establishes regulations for conducting comparability studies under 42 U.S.C. 1437f(c)(2)(C).) Rents are adjusted by applying the full amount of

the applicable AAF under this document.

The applicable AAF is determined as follows:

- The table 1 AAF is used for a unit occupied by a new family since the last annual contract anniversary.
- The table 2 AAF is used for a unit occupied by the same family as at the time of the last annual contract anniversary.

#### *Category 3: Section 8 Certificate Program*

The same adjustment procedure is used for rent adjustment in both the tenant-based and project-based certificate programs. The following procedures are used:

- The Table 2 factor is always used in the Section 8 certificate program; the Table 1 factor is not used in this program.
- The Table 2 AAF factor is always applied before determining comparability (rent reasonableness).
- Comparability always applies. If the comparable rent level is lower than the contract rent as adjusted (by application of the Table 2 AAF), the comparable rent level will be the new contract rent. However, under the old form of HAP contract the housing authority may not reduce the rent below the initial rent.

#### *AAF Tables*

The AAFs for fiscal year 1996 are contained in Schedule C, tables 1 and 2 of this document. Two columns are shown in this table. The first column is to be used for units where the highest cost utility is included in the contract rent. The second column is to be used where it is excluded from the contract rent.

#### *AAF Areas*

Each AAF applies to a specified geographic area and to units of all bedroom sizes. AAFs are provided:

- (1) For the metropolitan parts of the ten HUD regions exclusive of CPI areas;
- (2) for the nonmetropolitan parts of these regions, and
- (3) for 102 separate metropolitan AAF areas for which local CPI survey data are available.

With the exceptions discussed below, the AAFs shown in Schedule C use the Office of Management and Budget's (OMB) most current definitions of metropolitan areas. HUD uses the OMB Metropolitan Statistical Area (MSA) and Primary Metropolitan Statistical Area (PMSA) definitions for AAF areas because of their close correspondence to housing market area definitions.

The exceptions are for certain large metropolitan areas, where HUD

considers the area covered by the OMB definition to be larger than appropriate for use as a housing market area definition. In those areas, HUD has deleted some of the counties that OMB had added to its revised definitions. The following counties are deleted from the HUD definitions of AAF areas:

#### *Metropolitan Area and Deleted Counties*

Atlanta, GA: Carroll, Pickens, and Walton Counties.  
 Chicago, IL: DeKalb, Grundy and Kendall Counties.  
 Cincinnati-Hamilton, OH-KY-IN: Brown County, Ohio; Gallatin, Grant and Pendleton Counties in Kentucky; and Ohio County, Indiana.  
 Dallas, TX: Henderson County.  
 Flagstaff, AZ-UT: Kane County, UT.  
 New Orleans, LA: St. James Parish.  
 Washington, DC-VA-MD-WV: Berkeley and Jefferson Counties in West Virginia; and Clarke, Culpeper, King George and Warren counties in Virginia.

Separate AAFs are listed in this publication for the above counties. They and the metropolitan area of which they are a part are identified with an asterisk (\*) next to the area name. The asterisk denotes that there is a difference between the OMB metropolitan area and the HUD AAF area definition for these areas.

To make certain that they are using the correct AAFs, users should refer to the area definitions section at the end of Schedule C. For units located in metropolitan areas with a local CPI survey, AAFs are listed separately. For units located in areas without a local CPI survey, the appropriate HUD regional Metropolitan or Nonmetropolitan AAFs are used.

The AAF area definitions shown in Schedule C are listed in alphabetical order by State. The associated HUD region is shown next to each State name. Areas whose AAFs are determined by local CPI surveys are listed first. All metropolitan CPI areas have separate AAF schedules and are shown with their corresponding county definitions or as metropolitan counties. Listed after the metropolitan CPI areas (in those states that have such areas) are the non-CPI metropolitan and nonmetropolitan counties of each State. In the six New England States, the listings are for counties or parts of counties as defined by towns or cities.

Puerto Rico and the Virgin Islands use the Southeast AAFs. All areas in Hawaii use the AAFs identified in the table as "STATE: Hawaii," which are based on the CPI survey for the Honolulu metropolitan area. The Pacific Islands

use the Pacific/Hawaii Nonmetropolitan AAFs. The Anchorage metropolitan area uses the AAFs based on the local CPI survey; all other areas in Alaska use the Northwest/Alaska Nonmetropolitan AAFs.

#### *Section 8 Certificate Program AAFs For Manufactured Home Spaces*

The AAFs in this publication identified as "Highest Cost Utility Excluded" are to be used to adjust manufactured home space contract rents. The applicable AAF is determined by reference to the geographic listings contained in Schedule C, as described in the preceding section.

#### *How Factors Are Calculated*

##### *For Areas With CPI Surveys:*

- (1) Changes in the shelter rent and utilities components were calculated based on the most recent CPI annual average change data.

- (2) The "Highest Cost Utility Excluded" column in Schedule C was calculated by eliminating the effect of heating costs that are included in the rent of some of the units included in the CPI surveys.

- (3) The "Highest Cost Utility Included" column in Schedule C was calculated by weighing the rent and utility components with the corresponding components from the 1990 Census.

##### *For Areas Without CPI Surveys:*

- (1) HUD used RDD regional surveys to calculate AAFs. The RDD survey method is based on a sampling procedure that uses computers to select a statistically random sample of rental housing, dial and keep track of the telephone calls, and process the responses. RDD surveys are conducted to determine the rent change factors for the metropolitan parts (exclusive of CPI areas) and nonmetropolitan parts of the 10 HUD regions, a total of 20 surveys.

- (2) The change in rent including the highest cost utility was calculated using the ratio of the most recent RDD survey median gross rents for the respective metropolitan or nonmetropolitan parts of the HUD region.

- (3) The change in rent excluding the highest cost utility was calculated by subtracting the median value of utilities costs from the median gross rent. The median cost of utilities was determined from the units in the RDD sample which reported that all utilities were paid by the tenant.

*Other Matters*

Environmental Impact

An environmental assessment is unnecessary, since revising Annual Adjustment Factors is categorically excluded from the Department's National Environmental Policy Act procedures under 24 CFR 50.200(l).

Executive Order 12612, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that the policies contained in this document do not have federalism implications and, thus, are not subject to review under the Order. The

document merely announces the adjustment factors to be used to adjust contract rents in the Section 8 Housing Assistance Payment programs, as required by the United States Housing Act of 1937.

Executive Order 12606, The Family

The General Counsel, as the Designated Official under Executive Order 12606, The Family, has also determined that this document does not have potential significant impact on family formation, maintenance, and general well-being and, thus, is not subject to review under the Order. The document merely announces the adjustment factors to be used to adjust

contract rents in the Section 8 Housing Assistance Payment programs, as required by the United States Housing Act of 1937.

The Catalog of Federal Domestic Assistance program number for Lower Income Housing Assistance programs (Section 8) is 14.156.

Accordingly, the Department publishes these Annual Adjustment Factors for the Section 8 Housing Assistance Payments Programs as set forth in the following tables:

Dated: December 2, 1996.

Henry Cisneros,  
*Secretary.*

**BILLING CODE 4210-32-P**



SCHEDULE C - TABLE 1 - CONTRACT RENT AAFS

	HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED	PREPARED ON
*COUNTY Culpeper, VA	1.019	1.022	1.035 1.038
PMSA Danbury, CT	1.025	1.028	1.040 1.043
PMSA Denver, CO	1.044	1.051	1.014 1.018
PMSA Dutchess County, NY	1.026	1.028	1.029 1.034
PMSA Flint, MI	1.014	1.019	1.027 1.029
PMSA Fort Worth-Arlington, TX	1.034	1.038	1.020 1.041
PMSA Galveston-Texas City, TX	1.007	1.028	1.039 1.044
*COUNTY Grant, KY	1.021	1.040	1.045 1.051
*COUNTY Grundy, IL	1.039	1.044	1.019 1.022
PMSA Hamilton-Middletown, OH	1.026	1.037	1.032 1.038
PMSA Houston, TX	1.011	1.028	1.018 1.022
PMSA Jersey City, NJ	1.026	1.028	1.039 1.044
MSA Kansas City, MO-KS	1.028	1.034	1.040 1.043
PMSA Kenosha, WI	1.040	1.043	1.019 1.022
PMSA Lawrence, MA-NH	1.029	1.035	1.000 1.000
PMSA Lowell, MA-NH	1.029	1.034	1.029 1.034
PMSA Miami, FL	1.027	1.029	1.026 1.028
PMSA Milwaukee-Waukesha, WI	1.038	1.052	1.026 1.028
PMSA Monmouth-Ocean, NJ	1.025	1.029	1.029 1.034
PMSA Nassau-Suffolk, NY	1.025	1.028	1.029 1.034
PMSA New Haven-Meriden, CT	1.025	1.028	1.000 1.014

SCHEDULE C - TABLE 1 - CONTRACT RENT AAFS

	HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED		HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED
PMSA New York, NY	1.026	1.028	*COUNTY Westchester, NY	1.026	1.028
PMSA Newark, NJ	1.026	1.028	PMSA Newburgh, NY-PA	1.026	1.028
PMSA Oakland, CA	1.016	1.015	*COUNTY Ohio, IN	1.022	1.040
PMSA Olympia, WA	1.018	1.018	PMSA Orange County, CA	1.000	1.000
*COUNTY Pendleton, KY	1.022	1.040	PMSA Philadelphia, PA-NJ	1.016	1.014
*COUNTY Pickens, GA	1.033	1.057	PMSA Pittsburgh, PA	1.025	1.028
PMSA Portland-Vancouver, OR-WA	1.029	1.031	PMSA Portsmouth-Rochester, NH-ME	1.029	1.034
PMSA Racine, WI	1.037	1.052	PMSA Riverside-San Bernardino, CA	1.000	1.000
*COUNTY St. James Parish, LA	1.000	1.014	MSA St. Louis, MD-IL	1.015	1.025
PMSA Salem, OR	1.029	1.031	MSA San Diego, CA	1.008	1.006
PMSA San Francisco, CA	1.016	1.015	PMSA San Jose, CA	1.016	1.015
PMSA Santa Cruz-Watsonville, CA	1.016	1.015	PMSA Santa Rosa, CA	1.017	1.015
PMSA Seattle-Bellevue-Everett, WA	1.018	1.018	PMSA Stamford-Norwalk, CT	1.026	1.028
PMSA Tacoma, WA	1.018	1.018	MSA Tampa-St. Petersburg-Clearwater, FL	1.022	1.025
PMSA Trenton, NJ	1.026	1.028	PMSA Vallejo-Fairfield-Napa, CA	1.017	1.015
PMSA Ventura, CA	1.000	1.000	PMSA Vineland-Millville-Bridgeton, NJ	1.016	1.014
*COUNTY Walton, GA	1.035	1.057	*COUNTY Warren, VA	1.019	1.022
*Washington, DC-MD-VA	1.020	1.021	PMSA Waterbury, CT	1.025	1.028
PMSA Wilmington-Newark, DE-MD	1.016	1.014	PMSA Worcester, MA-CT	1.029	1.034

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SCHEDULE C - TABLE 2 - CONTRACT RENT AAFS

	HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED		HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED	PREPARED ON
New England Metropolitan	1.000	1.003	New England Nonmetropolitan	1.013	1.025	111396
New York/New Jersey Metropolitan	1.000	1.000	New York/New Jersey Nonmetropolitan	1.014	1.016	
Mid-Atlantic Metropolitan	1.016	1.026	Mid-Atlantic Nonmetropolitan	1.001	1.007	
Southeast Metropolitan	1.020	1.020	Southeast Nonmetropolitan	1.002	1.000	
Midwest Metropolitan	1.012	1.017	Midwest Nonmetropolitan	1.009	1.015	
Southwest Metropolitan	1.018	1.015	Southwest Nonmetropolitan	1.000	1.000	
Great Plains Metropolitan	1.015	1.015	Great Plains Nonmetropolitan	1.011	1.001	
Rocky Mountain Metropolitan	1.048	1.052	Rocky Mountain Nonmetropolitan	1.030	1.027	
Pacific/Hawaii Metropolitan	1.010	1.011	Pacific/Hawaii Nonmetropolitan	1.004	1.002	
Northwest/Alaska Metropolitan	1.008	1.010	Northwest/Alaska Nonmetropolitan	1.015	1.015	
STATE Hawaii	1.000	1.000	PMSA Akron, OH	1.013	1.022	
MSA Anchorage, AK	1.004	1.007	PMSA Ann Arbor, MI	1.005	1.008	
*Atlanta, GA	1.033	1.047	PMSA Atlantic-Cape May, NJ	1.006	1.004	
PMSA Baltimore, MD	1.000	1.001	PMSA Bergen-Passaic, NJ	1.016	1.018	
*COUNTY Berkeley, WV	1.009	1.012	PMSA Boston, MA-NH	1.019	1.024	
PMSA Boulder-Longmont, CO	1.035	1.041	PMSA Brazoria, TX	1.000	1.018	
PMSA Bremerton, WA	1.008	1.008	PMSA Bridgeport, CT	1.015	1.019	
PMSA Brockton, MA	1.019	1.024	*COUNTY Brown, OH	1.011	1.030	
PMSA Buffalo-Niagara Falls, NY	1.013	1.021	*COUNTY Carroll, GA	1.025	1.047	
*Chicago, IL	1.030	1.033	*Cincinnati, OH-KY-IN	1.017	1.026	
*COUNTY Clarke, VA	1.009	1.012	PMSA Cleveland-Lorain-Elyria, OH	1.013	1.022	

SCHEDULE C - TABLE 2 - CONTRACT RENT AAFS

	HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED	HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED	PREPARED ON
*COUNTY Culpeper, VA	1.009	1.012	*Dallas, TX	1.025	1.028
PMSA Danbury, CT	1.015	1.018	*COUNTY De Kalb, IL	1.030	1.033
PMSA Denver, CO	1.034	1.041	PMSA Detroit, MI	1.004	1.008
PMSA Dutchess County, NY	1.016	1.018	PMSA Fitchburg-Leominster, MA	1.019	1.024
PMSA Flint, MI	1.004	1.009	PMSA Fort Lauderdale, FL	1.017	1.019
PMSA Fort Worth-Arlington, TX	1.024	1.028	*COUNTY Gallatin, KY	1.010	1.031
PMSA Galveston-Texas City, TX	1.000	1.018	PMSA Gary, IN	1.029	1.034
*COUNTY Grant, KY	1.011	1.030	PMSA Greeley, CO	1.035	1.041
*COUNTY Grundy, IL	1.029	1.034	PMSA Hagerstown, MD	1.009	1.012
PMSA Hamilton-Middletown, OH	1.016	1.027	*COUNTY Henderson, TX	1.022	1.028
PMSA Houston, TX	1.001	1.018	*COUNTY Jefferson, WV	1.008	1.012
PMSA Jersey City, NJ	1.016	1.018	PMSA Kankakee, IL	1.029	1.034
MSA Kansas City, MO-KS	1.018	1.024	*COUNTY Kendall, IL	1.030	1.033
PMSA Kenosha, WI	1.030	1.033	*COUNTY King George, VA	1.009	1.012
PMSA Lawrence, MA-NH	1.019	1.025	PMSA Los Angeles-Long Beach, CA	1.000	1.000
PMSA Lowell, MA-NH	1.019	1.024	PMSA Manchester, NH	1.019	1.024
PMSA Miami, FL	1.017	1.019	PMSA Middlesex-Somerset-Hunterdon, NJ	1.016	1.018
PMSA Milwaukee-Waukesha, WI	1.028	1.042	MSA Minneapolis-St. Paul, MN-WI	1.016	1.018
PMSA Monmouth-Ocean, NJ	1.015	1.019	PMSA Nashua, NH	1.019	1.024
PMSA Nassau-Suffolk, NY	1.015	1.018	PMSA New Bedford, MA	1.019	1.024
PMSA New Haven-Meriden, CT	1.015	1.018	*New Orleans, LA	1.000	1.004

SCHEDULE C - TABLE 2 - CONTRACT RENT AAFS

	HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED		HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED
PMSA New York, NY	1.016	1.018	*COUNTY Westchester, NY	1.016	1.018
PMSA Newark, NJ	1.016	1.018	PMSA Newburgh, NY-PA	1.016	1.018
PMSA Oakland, CA	1.006	1.005	*COUNTY Ohio, IN	1.012	1.030
PMSA Olympia, WA	1.008	1.008	PMSA Orange County, CA	1.000	1.000
*COUNTY Pendleton, KY	1.012	1.030	PMSA Philadelphia, PA-NJ	1.006	1.004
*COUNTY Pickens, GA	1.023	1.047	PMSA Pittsburgh, PA	1.015	1.018
PMSA Portland-Vancouver, OR-WA	1.019	1.021	PMSA Portsmouth-Rochester, NH-ME	1.019	1.024
PMSA Racine, WI	1.027	1.042	PMSA Riverside-San Bernardino, CA	1.000	1.000
*COUNTY St. James Parish, LA	1.000	1.004	MSA St. Louis, MO-IL	1.005	1.015
PMSA Salem, OR	1.019	1.021	MSA San Diego, CA	1.000	1.000
PMSA San Francisco, CA	1.006	1.005	PMSA San Jose, CA	1.006	1.005
PMSA Santa Cruz-Watsonville, CA	1.007	1.005	PMSA Santa Rosa, CA	1.007	1.005
PMSA Seattle-Bellevue-Everett, WA	1.008	1.008	PMSA Stamford-Norwalk, CT	1.016	1.018
PMSA Tacoma, WA	1.008	1.008	MSA Tampa-St. Petersburg-Clearwater, FL	1.012	1.015
PMSA Trenton, NJ	1.016	1.018	PMSA Vallejo-Fairfield-Napa, CA	1.007	1.005
PMSA Ventura, CA	1.000	1.000	PMSA Vineland-Millville-Bridgeton, NJ	1.007	1.004
*COUNTY Walton, GA	1.025	1.047	*COUNTY Warren, VA	1.009	1.012
*Washington, DC-MD-VA	1.010	1.011	PMSA Waterbury, CT	1.015	1.018
PMSA Wilmington-Newark, DE-MD	1.006	1.004	PMSA Worcester, MA-CT	1.019	1.024

PREPARED ON 111396

**SCHEDULE C - CONTRACT RENT ANNUAL ADJUSTMENT FACTORS - AREA DEFINITIONS****ALABAMA (SOUTHEAST)****METROPOLITAN COUNTIES**

Autauga, Baldwin, Blount, Calhoun, Colbert, Dale, Elmore, Etowah, Houston, Jefferson, Lauderdale, Lawrence, Limestone, Madison, Mobile, Montgomery, Morgan, Russell, Shelby, St. Clair, Tuscaloosa

**NONMETROPOLITAN COUNTIES**

Barbour, Bibb, Bullock, Butler, Chambers, Cherokee, Chilton, Choctaw, Clarke, Clay, Cleburne, Coffee, Conecuh, Coosa, Covington, Crenshaw, Cullman, Dallas, DeKalb, Escambia, Fayette, Franklin, Geneva, Greene, Hale, Henry, Jackson, Lamar, Lee, Lowndes, Macon, Marengo, Marion, Marshall, Monroe, Perry, Pickens, Pike, Randolph, Sumter, Talladega, Tallapoosa, Walker, Washington, Wilcox, Winston

**ALASKA (NORTHWEST/ALASKA)****CPI AREAS: COUNTIES**

MSA Anchorage, AK: Anchorage

**NONMETROPOLITAN COUNTIES**

Aleutian East, Aleutian West, Bethel, Dillingham, Lake & Peninsula, Northwest Arctic, Nome, Pr. Wales-Outer Ketchikan, Skagway-Yakutat-Angoon, Southeast Fairbanks, Valdez-Cordova, Wade Hampton, Wrangell-Petersburg, Yukon-Koyukuk, Bristol Bay, Fairbanks North Star, Haines, Juneau, Kenai Peninsula, Ketchikan Gateway, Kodiak Island, Matanuska-Susitna, North Slope, Sitka

**ARIZONA (PACIFIC/HAWAII)****METROPOLITAN COUNTIES**

Maricopa, Mohave, Pima, Pinal, Yuma

**NONMETROPOLITAN COUNTIES**

Apache, Cochise, Coconino, Gila, Graham, Greenlee, La Paz, Navajo, Santa Cruz, Yavapai

**ARKANSAS (SOUTHWEST)****METROPOLITAN COUNTIES**

Benton, Crawford, Crittenden, Faulkner, Jefferson, Lonoke, Miller, Pulaski, Saline, Sebastian, Washington

**NONMETROPOLITAN COUNTIES**

Arkansas, Ashley, Baxter, Boone, Bradley, Calhoun, Carroll, Chicot, Clark, Clay, Cleburne, Cleveland, Columbia, Conway, Craighead, Cross, Dallas, Desha, Drew, Franklin, Fulton, Garland, Grant, Greene, Hempstead, Hot Spring, Howard, Independence, IZard, Jackson, Johnson, Lafayette, Lawrence, Lee, Lincoln, Little River, Logan, Madison, Marion, Mississippi, Monroe, Montgomery, Nevada, Newton Ouachita, Perry, Phillips, Pike, Poinsett, Polk, Pope, Prairie, Randolph, Scott, Searcy, Sevier, Sharp, St. Francis, Stone, Union, Van Buren, White, Woodruff, Yell

**CALIFORNIA (PACIFIC/HAWAII)****CPI AREAS: COUNTIES**

PMSA	Los Angeles-Long Beach, CA:	Los Angeles
PMSA	Oakland, CA:	Alameda, Contra Costa
PMSA	Orange County, CA:	Orange
PMSA	Riverside-San Bernardino, CA:	Riverside, San Bernardino
MSA	San Diego, CA:	San Diego
PMSA	San Francisco, CA:	Marin, San Francisco, San Mateo
PMSA	San Jose, CA:	Santa Clara
PMSA	Santa Cruz-Watsonville, CA:	Santa Cruz
PMSA	Santa Rosa, CA:	Sonoma
PMSA	Vallejo-Fairfield-Napa, CA:	Napa, Solano
PMSA	Ventura, CA:	Ventura

**METROPOLITAN COUNTIES**

Butte, El Dorado, Fresno, Kern, Madera, Merced, Monterey, Placer, Sacramento, San Joaquin, San Luis Obispo, Santa Barbara, Shasta, Stanislaus, Sutter, Tulare, Yolo, Yuba

**NONMETROPOLITAN COUNTIES**

Alpine, Amador, Calaveras, Colusa, Del Norte, Glenn, Humboldt, Imperial, Inyo, Kings, Lake, Lassen, Mariposa, Mendocino, Modoc, Mono, Nevada, Plumas, San Benito, Sierra, Siskiyou, Tehama, Trinity, Tuolumne

**SCHEDULE C - CONTRACT RENT ANNUAL ADJUSTMENT FACTORS - AREA DEFINITIONS****COLORADO (ROCKY MOUNTAIN)****CPI AREAS: COUNTIES**

PMSA Boulder-Longmont, CO: Boulder  
 PMSA Denver, CO: Adams, Arapahoe, Denver, Douglas, Jefferson  
 PMSA Greeley, CO: Weld

**METROPOLITAN COUNTIES**

El Paso, Larimer, Pueblo

**NONMETROPOLITAN COUNTIES**

Alamosa, Archuleta, Baca, Bent, Chaffee, Cheyenne, Clear Creek, Conejos, Costilla, Crowley, Custer, Delta, Dolores, Eagle, Elbert, Fremont, Garfield, Gilpin, Grand, Gunnison, Hinsdale, Huerfano, Jackson, Kiowa, Kit Carson, La Plata, Lake, Las Animas, Lincoln, Logan, Mesa, Mineral, Moffat, Montezuma, Montrose, Morgan, Otero, Ouray, Park, Phillips, Pitkin, Prowers, Rio Blanco, Rio Grande, Routt, Saguache, San Juan, San Miguel, Sedgwick, Summit, Teller, Washington, Yuma

**CONNECTICUT (NEW ENGLAND)****CPI AREAS: COUNTIES**

PMSA Bridgeport, CT  
 Fairfield County part: Bridgeport town, Easton town, Fairfield town, Monroe town, Shelton town, Stratford town, Trumbull town  
 New Haven County part: Ansonia town, Beacon Falls town, Derby town, Milford town, Oxford town, Seymour town

**PMSA Danbury, CT**

Fairfield County part: Bethel town, Brookfield town, Danbury town, New Fairfield town, Newtown town, Redding town, Ridgefield town, Sherman town  
 Litchfield County part: Bridgewater town, New Milford town, Roxbury town, Washington town

**PMSA New Haven-Meriden, CT**

Middlesex County part: Clinton town, Killingworth town  
 New Haven County part: Bethany town, Branford town, Cheshire town, East Haven town, Guilford town, Hamden town, Madison town, Meriden town, New Haven town, North Branford town, North Haven town, Orange town, Wallingford town, North Haven town, Woodbridge town

**PMSA Stamford-Norwalk, CT**

Fairfield County part: Darien town, Greenwich town, New Canaan town, Norwalk town, Stamford town, Weston town, Westport town, Wilton town

**PMSA Waterbury, CT**

Litchfield County part: Bethlehem town, Thomaston town, Watertown town, Woodbury town  
 New Haven County part: Middlebury town, Naugatuck town, Prospect town, Southbury town, Waterbury town, Wolcott town

**PMSA Worcester, MA-CT**

Windham County part: Thompson town

**METROPOLITAN COUNTIES**

Hartford County part: Avon town, Berlin town, Bloomfield town, Bristol town, Burlington town, Canton town, East Granby town, East Hartford town, East Windsor town, Enfield town, Farmington town, Glastonbury town, Granby town, Hartford town, Manchester town, Marlborough town, New Britain town, Rocky Hill town, Simsbury town, Southington town, South Windsor town, Suffield town, West Hartford town, Wethersfield town, Windsor town, Windsor Locks town  
 Litchfield County part: Barkhamsted town, Harwinton town, New Hartford town, Plymouth town, Winchester town  
 Middlesex County part: Cromwell town, Durham town, East Haddam town, East Hampton town, Haddam town, Middlefield town, Middletown town, Portland town, Old Saybrook town  
 New London County part: Bozrah town, East Lyme town, Franklin town, Griswold town, Groton town, Ledyard town, Lisbon town, Montville town, New London town, North Stonington town, Norwich town, Old Lyme town, Preston town, Salem town, Sprague town, Stonington town, Waterford town, Colchester town, Lebanon town  
 Tolland County part: Andover town, Bolton town, Columbia town, Coventry town, Ellington town, Hebron town, Mansfield town, Somers town, Stafford town, Tolland town, Vernon town, Willington town  
 Windham County part: Ashford town, Chaplin town, Windham town, Canterbury town, Plainfield town

**SCHEDULE C - CONTRACT RENT ANNUAL ADJUSTMENT FACTORS - AREA DEFINITIONS****NONMETROPOLITAN COUNTIES**

Hartford County part:	Hartland town
Litchfield County part:	Canaan town, Colebrook town, Cornwall town, Goshen town, Kent town, Litchfield town, Morris town, Norfolk town, North Canaan town, Salisbury town, Sharon town, Torrington town, Warren town
Middlesex County part:	Chester town, Deep River town, Essex town, Westbrook town
New London County part:	Lyme town, Voluntown town
Tolland County part:	Union town
Windham County part:	Brooklyn town, Eastford town, Hampton town, Killingly town, Pomfret town, Putnam town, Scotland town, Sterling town, Woodstock town

**DELAWARE (MID-ATLANTIC)****CPI AREAS: COUNTIES**

PMSA Wilmington-Newark, DE-MD: New Castle

**METROPOLITAN COUNTIES**

Kent

**NONMETROPOLITAN COUNTIES**

Sussex

**DIST. OF COLUMBIA (MID-ATLANTIC)****CPI AREAS: COUNTIES**

District of Columbia

**FLORIDA (SOUTHEAST)****CPI AREAS: COUNTIES**

PMSA Fort Lauderdale, FL:	Broward
PMSA Miami, FL:	Dade
MSA Tampa-St. Petersburg-Clearwater, FL:	Hernando, Hillsborough, Pasco, Pinellas

**METROPOLITAN COUNTIES**

Alachua, Bay, Brevard, Charlotte, Clay, Collier, Duval, Escambia, Flagler, Gadsden, Lake, Lee, Leon, Manatee, Marion, Martin, Nassau, Okaloosa, Orange, Osceola, Palm Beach, Polk, Santa Rosa, Sarasota, Seminole, St. Johns, St. Lucie, Volusia

**NONMETROPOLITAN COUNTIES**

Baker, Bradford, Calhoun, Citrus, Columbia, Desoto, Dixie, Franklin, Gilchrist, Glades, Gulf, Hamilton, Hardee, Hendry, Highlands, Holmes, Indian River, Jackson, Jefferson, Lafayette, Levy, Liberty, Madison, Monroe, Okeechobee, Putnam, Sumter, Suwannee, Taylor, Union, Wakulla, Walton, Washington

**GEORGIA (SOUTHEAST)****CPI AREAS: COUNTIES**

*Atlanta, GA:	Barrow, Bartow, Cherokee, Clayton, Cobb, Coweta, Dekalb, Douglas, Fayette, Forsyth, Fulton, Gwinnett, Henry, Newton, Paulding, Rockdale
*COUNTY Carroll County, GA	
*COUNTY Pickens County, GA	
*COUNTY Spalding County, GA	
*COUNTY Walton County, GA	

**METROPOLITAN COUNTIES**

Bibb, Bryan, Catoosa, Chatham, Chattahoochee, Clarke, Columbia, Dade, Dougherty, Effingham, Harris, Houston, Jones, Lee, Madison, McDuffie, Muscogee, Oconee, Peach, Richmond, Twiggs, Walker

**NONMETROPOLITAN COUNTIES**

Appling, Atkinson, Bacon, Baker, Baldwin, Banks, Ben Hill, Berrien, Bleckley, Brantley, Brooks, Bulloch, Burke, Butts, Calhoun, Camden, Candler, Charlton, Chattooga, Clay, Clinch, Coffee, Colquitt, Cook, Crawford, Crisp, Dawson, Decatur, Dodge, Dooly, Early, Echols, Elbert, Emanuel, Evans, Fannin, Floyd, Franklin, Gilmer, Glascock, Glynn, Gordon, Grady, Greene, Habersham, Hall, Hancock, Haralson, Hart, Heard, Irwin, Jackson, Jasper, Jeff Davis, Jefferson, Jenkins, Johnson, Lamar, Lanier, Laurens, Liberty, Lincoln, Long, Lowndes, Lumpkin, Macon, Marion, McIntosh, Meriwether, Miller, Mitchell, Monroe, Montgomery, Morgan, Murray, Oglethorpe, Pierce, Pike, Polk, Pulaski, Putnam, Quitman, Rabun, Randolph, Schley, Screven, Seminole, Stephens, Stewart, Sumter, Talbot, Taliaferro, Tattnall, Taylor, Telfair, Terrell, Thomas, Tift, Toombs, Towns, Treutlen, Troup, Turner, Union, Upson, Ware, Warren, Washington, Wayne, Webster, Wheeler, White, Whitfield, Wilcox, Wilkes, Wilkinson, Worth

**SCHEDULE C - CONTRACT RENT ANNUAL ADJUSTMENT FACTORS - AREA DEFINITIONS****HAWAII (PACIFIC/HAWAII)****CPI AREAS: COUNTIES**

STATE Hawaii: Hawaii, Honolulu, Kauai, Maui

**IDAHO (NORTHWEST/ALASKA)****METROPOLITAN COUNTIES**

Ada, Canyon

**NONMETROPOLITAN COUNTIES**

Adams, Bannock, Bear Lake, Benewah, Bingham, Blaine, Boise, Bonner, Bonneville, Boundary, Butte, Camas, Caribou, Cassia, Clark, Clearwater, Custer, Elmore, Franklin, Fremont, Gem, Gooding, Idaho, Jefferson, Jerome, Kootenai, Latah, Lemhi, Lewis, Lincoln, Madison, Minidoka, Nez Perce, Oneida, Owyhee, Payette, Power, Shoshone, Teton, Twin Falls, Valley, Washington

**ILLINOIS (MIDWEST)****CPI AREAS: COUNTIES**

*Chicago, IL:	Cook, Dupage, Kane, Lake, Mchenry, Will
*COUNTY De Kalb, IL:	Dekalb
*COUNTY Grundy, IL:	Grundy
PMSA Kankakee, IL:	Kankakee
*COUNTY Kendall, IL:	Kendall
MSA St. Louis, MO-IL:	Clinton, Jersey, Madison, Monroe, St. Clair

**METROPOLITAN COUNTIES**

Boone, Champaign, Henry, Macon, Mclean, Menard, Ogle, Peoria, Rock Island, Sangamon, Tazewell, Winnebago, Woodford

**NONMETROPOLITAN COUNTIES**

Adams, Alexander, Bond, Brown, Bureau, Calhoun, Carroll, Cass, Christian, Clark, Clay, Coles, Crawford, Cumberland, De Witt, Douglas, Edgar, Edwards, Effingham, Fayette, Ford, Franklin, Fulton, Gallatin, Greene, Hamilton, Hancock, Hardin, Henderson, Iroquois, Jackson, Jasper, Jefferson, Jo Daviess, Johnson, Knox, La Salle, Lawrence, Lee, Livingston, Logan, Macoupin, Marion, Marshall, Mason, Massac, McDonough, Mercer, Montgomery, Morgan, Moultrie, Perry, Piatt, Pike, Pope, Pulaski, Putnam, Randolph, Richland, Saline, Schuyler, Scott, Shelby, Stark, Stephenson, Union, Vermilion, Wabash, Warren, Washington, Wayne, White, Whiteside, Williamson

**INDIANA (MIDWEST)****CPI AREAS: COUNTIES**

*Cincinnati, OH-KY-IN:	Dearborn
PMSA Gary, IN:	Lake, Porter
*COUNTY Ohio, IN:	Ohio

**METROPOLITAN COUNTIES**

Adams, Allen, Boone, Clark, Clay, Clinton, De Kalb, Delaware, Elkhart, Floyd, Hamilton, Hancock, Harrison, Hendricks, Howard, Huntington, Johnson, Madison, Marion, Monroe, Morgan, Posey, Scott, Shelby, St. Joseph, Tippecanoe, Tipton, Vanderburgh, Vermillion, Vigo, Warrick, Wells, Whitley

**NONMETROPOLITAN COUNTIES**

Bartholomew, Benton, Blackford, Brown, Carroll, Cass, Crawford, Daviess, Decatur, Dubois, Fayette, Fountain, Franklin, Fulton, Gibson, Grant, Greene, Henry, Jackson, Jasper, Jay, Jefferson, Jennings, Knox, Kosciusko, La Porte, Lagrange, Lawrence, Marshall, Martin, Miami, Montgomery, Newton, Noble, Orange, Owen, Parke, Perry, Pike, Pulaski, Putnam, Randolph, Ripley, Rush, Spencer, Starke, Steuben, Sullivan, Switzerland, Union, Wabash, Warren, Washington, Wayne, White

**IOWA (GREAT PLAINS)****METROPOLITAN COUNTIES**

Black Hawk, Dallas, Dubuque, Johnson, Linn, Polk, Pottawattamie, Scott, Warren, Woodbury

**NONMETROPOLITAN COUNTIES**

Adair, Adams, Allamakee, Appanoose, Audubon, Benton, Boone, Bremer, Buchanan, Buena Vista, Butler, Calhoun, Carroll, Cass, Cedar, Cerro Gordo, Cherokee, Chickasaw, Clarke, Clay, Clayton, Clinton, Crawford, Davis, Decatur, Delaware, Des Moines, Dickinson, Emmet, Fayette, Floyd, Franklin, Fremont,

**SCHEDULE C - CONTRACT RENT ANNUAL ADJUSTMENT FACTORS - AREA DEFINITIONS****IOWA (Cont.)**

Greene, Grundy, Guthrie, Hamilton, Hancock, Hardin, Harrison, Henry, Howard, Humboldt, Ida, Iowa, Jackson, Jasper, Jefferson, Jones, Keokuk, Kossuth, Lee, Louisa, Lucas, Lyon, Madison, Mahaska, Marion, Marshall, Mills, Mitchell, Monona, Monroe, Montgomery, Muscatine, O'Brien, Osceola, Page, Palo Alto, Plymouth, Pocahontas, Poweshiek, Ringgold, Sac, Shelby, Sioux, Story, Tama, Taylor, Union, Van Buren, Wapello, Washington, Wayne, Webster, Winnebago, Winneshiek, Worth, Wright

**KANSAS (GREAT PLAINS)****CPI AREAS: COUNTIES**

MSA Kansas City, MO-KS: Johnson, Leavenworth, Miami, Wyandotte

**METROPOLITAN COUNTIES**

Butler, Douglas, Harvey, Sedgwick, Shawnee

**NONMETROPOLITAN COUNTIES**

Allen, Anderson, Atchison, Barber, Barton, Bourbon, Brown, Chase, Chautauqua, Cherokee, Cheyenne, Clark, Clay, Cloud, Coffey, Comanche, Cowley, Crawford, Decatur, Dickinson, Doniphan, Edwards, Elk, Ellis, Ellsworth, Finney, Ford, Franklin, Geary, Gove, Graham, Grant, Gray, Greeley, Greenwood, Hamilton, Harper, Haskell, Hodgeman, Jackson, Jefferson, Jewell, Kearny, Kingman, Kiowa, Labette, Lane, Lincoln, Linn, Logan, Lyon, Marion, Marshall, Mcpherson, Meade, Mitchell, Montgomery, Morris, Morton, Nemaha, Neosho, Ness, Norton, Osage, Osborne, Ottawa, Pawnee, Phillips, Pottawatomie, Pratt, Rawlins, Reno, Republic, Rice, Riley, Rooks, Rush, Russell, Saline, Scott, Seward, Sheridan, Sherman, Smith, Stafford, Stanton, Stevens, Sumner, Thomas, Trego, Wabaunsee, Wallace, Washington, Wichita, Wilson, Woodson

**KENTUCKY (SOUTHEAST)****CPI AREAS: COUNTIES**

\*Cincinnati, OH-KY-IN: Boone, Campbell, Kenton  
 \*COUNTY Gallatin, KY: Gallatin  
 \*COUNTY Grant, KY: Grant  
 \*COUNTY Pendleton, KY: Pendleton

**METROPOLITAN COUNTIES**

Bourbon, Boyd, Bullitt, Carter, Christian, Clark, Daviess, Fayette, Greenup, Henderson, Jefferson, Jessamine, Madison, Oldham, Scott, Woodford

**NONMETROPOLITAN COUNTIES**

Adair, Allen, Anderson, Ballard, Barren, Bath, Bell, Boyle, Bracken, Breathitt, Breckinridge, Butler, Caldwell, Calloway, Carlisle, Carroll, Casey, Clay, Clinton, Crittenden, Cumberland, Edmonson, Elliott, Estill, Fleming, Floyd, Franklin, Fulton, Garrard, Graves, Grayson, Green, Hancock, Hardin, Harlan, Harrison, Hart, Henry, Hickman, Hopkins, Jackson, Johnson, Knott, Knox, Larue, Laurel, Lawrence, Lee, Leslie, Letcher, Lewis, Lincoln, Livingston, Logan, Lyon, Magoffin, Marion, Marshall, Martin, Mason, Mccracken, McCreary, Mclean, Meade, Menifee, Mercer, Metcalfe, Monroe, Montgomery, Morgan, Muhlenberg, Nelson, Nicholas, Ohio, Owen, Owsley, Perry, Pike, Powell, Pulaski, Robertson, Rockcastle, Rowan, Russell, Shelby, Simpson, Spencer, Taylor, Todd, Trigg, Trimble, Union, Warren, Washington, Wayne, Webster, Whitley, Wolfe

**LOUISIANA (SOUTHWEST)****CPI AREAS: COUNTIES**

\*New Orleans, LA: Jefferson, Orleans, Plaquemines, St. Bernard, St. Charles, St. John the Baptist, St. Tammany  
 \*COUNTY St. James Parish, LA: St. James

**METROPOLITAN COUNTIES**

Acadia, Ascension, Bossier, Caddo, Calcasieu, East Baton Rouge, Lafayette, Lafourche, Livingston, Ouachita, Rapides, St. Landry, St. Martin, Terrebonne, Webster, West Baton Rouge

**NONMETROPOLITAN COUNTIES**

Allen, Assumption, Avoyelles, Beauregard, Bienville, Caldwell, Cameron, Catahoula, Claiborne, Concordia, De Soto, East Carroll, East Feliciana, Evangeline, Franklin, Grant, Iberia, Iberville, Jackson, Jefferson, Davis, La Salle, Lincoln, Madison, Morehouse, Natchitoches, Pointe Coupee, Red River, Richland, Sabine, St. Helena, St. Mary, Tangipahoa, Tensas, Union, Vermilion, Vernon, Washington, West Carroll, West Feliciana, Winn

## SCHEDULE C - CONTRACT RENT ANNUAL ADJUSTMENT FACTORS - AREA DEFINITIONS

MAINE (NEW ENGLAND)

## CPI AREAS: COUNTIES

PMSA Portsmouth-Rochester, NH-ME

York County part: Berwick town, Eliot town, Kittery town, South Berwick town, York town

## METROPOLITAN COUNTIES

Androscoggin County part: Auburn city, Greene town, Lewiston city, Lisbon town, Mechanic Falls town, Poland town, Sabattus town, Turner town, Wales town

Cumberland County part: Cape Elizabeth town, Casco town, Cumberland town, Falmouth town, Freeport town, Gorham town, Gray town, North Yarmouth town, Portland city, Raymond town, Scarborough town, South Portland city, Standish town, Westbrook city, Windham town, Yarmouth town

Penobscot County part: Bangor city, Brewer city, Eddington town, Glenburn town, Hampden town, Hermon town, Holden town, Kenduskeag town, Milford town, Old Town city, Orono town, Orrington town, Penobscot Indian Island, Veazie town

Waldo County part: Winterport town

York County part: Buxton town, Hollis town, Limington town, Old Orchard Beach

## NONMETROPOLITAN COUNTIES

Aroostook

Franklin

Hancock

Kennebec

Knox

Lincoln

Oxford

Piscataquis

Sagadahoc

Somerset

Washington

Androscoggin County part: Durham town, Leeds town, Livermore town, Livermore Falls town, Minot town

Cumberland County part: Harpswell town, Harrison town, Naples town, New Gloucester town, Pownal town, Sebago town

Penobscot County part: Alton town, Argyle unorg., Bradford town, Bradley town, Burlington town, Charleston town, Chester town, Clifton town, Corinna town, Corinth town, Dexter town, Dixmont town, Drew plantation, East Central Penob, East Millinocket town, Edinburg town, Enfield town, Etna town, Exeter town, Garland town, Greenbush town, Greenfield town, Howland town, Hudson town, Kingman unorg., Lagrange town, Lakeville town, Lee town, Levant town, Lincoln town, Lowell town, Mattawamkeag town, Maxfield town, Medway town, Millinocket town, Mount Chase town, Newburgh town, Penobscot unorg., Passadumkeag town, Patten town, Plymouth town, Prentiss plantation, Seboeis plantation, Springfield town, Stacyville town, Stetson town, Twombly unorg., Webster plantation, Whitney unorg., Winn town, Woodville town

Waldo County part: Belfast city, Belmont town, Brooks town, Burnham town, Frankfort town, Freedom town, Islesboro town, Jackson town, Knox town, Liberty town, Lincolnville town, Monroe town, Montville town, Morrill town, Northport town, Palermo town, Prospect town, Searsmont town, Searsport town, Stockton Springs, Swanville town, Thorndike town, Troy town, Unity town, Waldo town

York County part: Acton town, Alfred town, Arundel town, Biddeford city, Cornish town, Dayton town, Kennebunk town, Kennebunkport town, Lebanon town, Limerick town, Lyman town, Newfield town, North Berwick town, Ogunquit town, Parsonsfield town, Saco city, Sanford town, Shapleigh town, Waterboro town, Wells town

MARYLAND (MID-ATLANTIC)

## CPI AREAS: COUNTIES

PMSA Baltimore, MD: Anne Arundel, Baltimore, Carroll, Harford, Howard, Queen Anne's, Baltimore city, Columbia city

PMSA Hagerstown, MD: Washington

\*Washington, DC-MD-VA: Calvert, Charles, Frederick, Montgomery, Prince George's

PMSA Wilmington-Newark, DE-MD: Cecil

## METROPOLITAN COUNTIES

Allegany

## NONMETROPOLITAN COUNTIES

Caroline, Dorchester, Garrett, Kent, Somerset, St. Mary's, Talbot, Wicomico, Worcester

**MASSACHUSETTS (NEW ENGLAND)****CPI AREAS: COUNTIES****PMSA Boston, MA-NH**

Bristol County part:

Essex County part:

Berkley town, Dighton town, Mansfield town, Norton town, Taunton city  
Amesbury town, Beverly city, Danvers town, Essex town, Gloucester city,  
Hamilton town, Ipswich town, Lynn city, Lynnfield town, Manchester town,  
Marblehead town, Middleton town, Nahant town, Newbury town, Newburyport city,  
Peabody city, Rockport town, Rowley town, Salem city, Salisbury town, Saugus  
town, Swampscott town, Topsfield town, Wenham town

Middlesex County part:

Acton town, Arlington town, Ashland town, Ayer town, Bedford town, Belmont  
town, Boxborough town, Burlington town, Cambridge city, Carlisle town, Concord  
town, Everett city, Framingham town, Holliston town, Hopkinton town, Hudson  
town, Lexington town, Lincoln town, Littleton town, Malden city, Marlborough  
city, Maynard town, Medford city, Melrose city, Natick town, Newton city,  
North Reading town, Reading town, Sherborn town, Shirley town, Somerville  
city, Stoneham town, Stow town, Sudbury town, Townsend town, Wakefield town,  
Waltham city, Watertown town, Wayland town, Weston town, Wilmington town,  
Winchester town, Woburn city

Norfolk County part:

Bellingham town, Braintree town, Brookline town, Canton town, Cohasset town,  
Dedham town, Dover town, Foxborough town, Franklin town, Holbrook town,  
Medfield town, Medway town, Millis town, Milton town, Needham town, Norfolk  
town, Norwood town, Plainville town, Quincy city, Randolph town, Sharon town,  
Stoughton town, Walpole town, Wellesley town, Westwood town, Weymouth town,  
Wrentham town

Plymouth County part:

Carver town, Duxbury town, Hanover town, Hingham town, Hull town, Kingston  
town, Marshfield town, Norwell town, Pembroke town, Plymouth town, Rockland  
town, Scituate town, Wareham town

Suffolk county part:

Boston city, Chelsea city, Revere city, Winthrop town

Worcester County part:

Berlin town, Blackstone town, Bolton town, Harvard town, Hopedale town,  
Lancaster town, Mendon town, Milford town, Millville town, Southborough town,  
Upton town

**PMSA Brockton, MA**

Bristol County part:

Norfolk County part:

Plymouth County part:

Easton town, Raynham town

Avon town

Abington town, Bridgewater town, Brockton city, East Bridgewater town, Halifax  
town, Hanson town, Lakeville town, Middleborough town, Plympton town, West  
Bridgewater town, Whitman town

**PMSA Fitchburg-Leominster, MA**

Middlesex County part:

Worcester County part:

Ashby town

Ashburnham town, Fitchburg city, Gardner city, Leominster city, Lunenburg  
town, Templeton town, Westminster town, Winchendon town

**PMSA Lawrence, MA-NH**

Essex County part:

Andover town, Boxford town, Georgetown town, Groveland town, Haverhill city,  
Lawrence city, Merrimac town, Methuen town, North Andover town, West Newbury  
town

**PMSA Lowell, MA-NH**

Middlesex County part:

Billerica town, Chelmsford town, Dracut town, Dunstable town, Groton town,  
Lowell city, Pepperell town, Tewksbury town, Tyngsborough town, Westford town

**PMSA New Bedford, MA**

Bristol County part:

Plymouth County part:

Acushnet town, Dartmouth town, Fairhaven town, Freetown town, New Bedford city  
Marion town, Mattapoisett town, Rochester town

**PMSA Worcester, MA-CT**

Hampden County part:

Worcester County part:

Holland town

Auburn town, Barre town, Boylston town, Brookfield town, Charlton town,  
Clinton town, Douglas town, Dudley town, East Brookfield town, Grafton town,  
Holden town, Leicester town, Millbury town, Northborough town, Northbridge  
town, North Brookfield town, Oakham town, Oxford town, Paxton town, Princeton  
town, Rutland town, Shrewsbury town, Southbridge town, Spencer town, Sterling  
town, Sturbridge town, Sutton town, Uxbridge town, Webster town,  
Westborough town, West Boylston town, West Brookfield town, Worcester city

## SCHEDULE C - CONTRACT RENT ANNUAL ADJUSTMENT FACTORS - AREA DEFINITIONS

MASSACHUSETTS (NEW ENGLAND) cont.

## METROPOLITAN COUNTIES

Barnstable County part: Barnstable town, Brewster town, Chatham town, Dennis town, Eastham town, Harwich town, Mashpee town, Orleans town, Sandwich town, Yarmouth town

Berkshire County part: Adams town, Cheshire town, Dalton town, Hinsdale town, Lanesborough town, Lee town, Lenox town, Pittsfield city, Richmond town, Stockbridge town

Bristol County part: Attleboro city, Fall River city, North Attleborough, Rehoboth town, Seekonk town, Somerset town, Swansea town, Westport town

Franklin County part: Sunderland town

Hampden County part: Agawam town, Chicopee city, East Longmeadow to, Hampden town, Holyoke city, Longmeadow town, Ludlow town, Monson town, Montgomery town, Palmer town, Russell town, Southwick town, Springfield city, Westfield city, West Springfield town, Wilbraham town

Hampshire County part: Amherst town, Belchertown town, Easthampton town, Granby town, Hadley town, Hatfield town, Huntington town, Northampton city, Southampton town, South Hadley town, Ware town, Williamsburg town

## NONMETROPOLITAN COUNTIES

Dukes

Nantucket

Barnstable County part: Bourne town, Falmouth town, Provincetown town, Truro town, Wellfleet town

Berkshire County part: Alford town, Becket town, Clarksburg town, Egremont town, Florida town, Great Barrington town, Hancock town, Monterey town, Mount Washington town, New Ashford town, New Marlborough town, North Adams city, Otis town, Peru town, Sandisfield town, Savoy town, Sheffield town, Tyringham town, Washington town, West Stockbridge town, Williamstown town, Windsor town

Franklin County part: Ashfield town, Bernardston town, Buckland town, Charlemont town, Colrain town, Conway town, Deerfield town, Erving town, Gill town, Greenfield town, Hawley town, Heath town, Leverett town, Leyden town, Monroe town, Montague town, New Salem town, Northfield town, Orange town, Rowe town, Shelburne town, Shutesbury town, Warwick town, Wendell town, Whately town

Hampden County part: Blandford town, Brimfield town, Chester town, Granville town, Tolland town, Wales town

Hampshire County part: Chesterfield town, Cummington town, Goshen town, Middlefield town, Pelham town, Plainfield town, Westhampton town, Worthington town

Worcester County part: Athol town, Hardwick town, Hubbardston town, New Braintree town, Petersham town, Phillipston town, Royalston town, Warren town

MICHIGAN (MIDWEST)

## CPI AREAS: COUNTIES

PMSA Ann Arbor, MI: Lenawee, Livingston, Washtenaw

PMSA Detroit, MI: Lapeer, Macomb, Monroe, Oakland, St. Clair, Wayne

PMSA Flint, MI: Genesee

## METROPOLITAN COUNTIES

Allegan, Bay, Berrien, Calhoun, Clinton, Eaton, Ingham, Jackson, Kalamazoo, Kent, Midland, Muskegon, Ottawa, Saginaw, Van Buren

## NONMETROPOLITAN COUNTIES

Alcona, Alger, Alpena, Antrim, Arenac, Baraga, Barry, Benzie, Branch, Cass, Charlevoix, Cheboygan, Chippewa, Clare, Crawford, Delta, Dickinson, Emmet, Gladwin, Gogebic, Grand Traverse, Gratiot, Hillsdale, Houghton, Huron, Ionia, Iosco, Iron, Isabella, Kalkaska, Keweenaw, Lake, Leelanau, Luce, Mackinac, Manistee, Marquette, Mason, Mecosta, Menominee, Missaukee, Montcalm, Montmorency, Newaygo, Oceana, Ogemaw, Ontonagon, Osceola, Oscoda, Otsego, Presque Isle, Roscommon, Sanilac, Schoolcraft, Shiawassee, St. Joseph, Tuscola, Wexford

MINNESOTA (MIDWEST)

## CPI AREAS: COUNTIES

MSA Minneapolis-St. Paul, MN-WI: Anoka, Carver, Chisago, Dakota, Hennepin, Isanti, Ramsey, Scott, Washington, Wright

## METROPOLITAN COUNTIES

Benton, Clay, Houston, Olmsted, Polk, St. Louis, Stearns

**SCHEDULE C - CONTRACT RENT ANNUAL ADJUSTMENT FACTORS - AREA DEFINITIONS****NONMETROPOLITAN COUNTIES**

Aitkin, Becker, Beltrami, Big Stone, Blue Earth, Brown, Carlton, Cass, Chippewa, Clearwater, Cook, Cottonwood, Crow Wing, Dodge, Douglas, Faribault, Fillmore, Freeborn, Goodhue, Grant, Hubbard, Itasca, Jackson, Kanabec, Kandiyohi, Kittson, Koochiching, Lac qui Parle, Lake, Lake of the Woods, Le Sueur, Lincoln, Lyon, Mahanomen, Marshall, Martin, McLeod, Meeker, Mille Lacs, Morrison, Mower, Murray, Nicollet, Nobles, Norman, Otter Tail, Pennington, Pine, Pipestone, Pope, Red Lake, Redwood, Renville, Rice, Rock, Roseau, Sibley, Steele, Stevens, Swift, Todd, Traverse, Wabasha, Wadena, Waseca, Watonwan, Wilkin, Winona, Yellow Medicine

**MISSISSIPPI (SOUTHEAST)****METROPOLITAN COUNTIES**

Desoto, Hancock, Harrison, Hinds, Jackson, Madison, Rankin

**NONMETROPOLITAN COUNTIES**

Adams, Alcorn, Amite, Attala, Benton, Bolivar, Calhoun, Carroll, Chickasaw, Choctaw, Claiborne, Clarke, Clay, Coahoma, Copiah, Covington, Forrest, Franklin, George, Greene, Grenada, Holmes, Humphreys, Issaquena, Itawamba, Jasper, Jefferson, Jefferson Davis, Jones, Kemper, Lafayette, Lamar, Lauderdale, Lawrence, Leake, Lee, Leflore, Lincoln, Lowndes, Marion, Marshall, Monroe, Montgomery, Neshoba, Newton, Noxubee, Oktibbeha, Panola, Pearl River, Perry, Pike, Pontotoc, Prentiss, Quitman, Scott, Sharkey, Simpson, Smith, Stone, Sunflower, Tallahatchie, Tate, Tippah, Tishomingo, Tunica, Union, Walthall, Warren, Washington, Wayne, Webster, Wilkinson, Winston, Yalobusha, Yazoo

**MISSOURI (GREAT PLAINS)****CPI AREAS: COUNTIES**

MSA Kansas City, MO-KS: Cass, Clay, Clinton, Jackson, Lafayette, Platte, Ray  
MSA St. Louis, MO-IL: Franklin, Jefferson, Lincoln, St. Charles, St. Louis, Warren, St. Louis city, Crawford-Sullivan (part)

**METROPOLITAN COUNTIES**

Andrew, Boone, Buchanan, Christian, Greene, Jasper, Newton, Webster

**NONMETROPOLITAN COUNTIES**

Adair, Atchison, Audrain, Barry, Barton, Bates, Benton, Bollinger, Butler, Caldwell, Callaway, Camden, Cape Girardeau, Carroll, Carter, Cedar, Chariton, Clark, Cole, Cooper, Crawford, Dade, Dallas, Daviess, Dekalb, Dent, Douglas, Dunklin, Gasconade, Gentry, Grundy, Harrison, Henry, Hickory, Holt, Howard, Howell, Iron, Johnson, Knox, Laclède, Lawrence, Lewis, Linn, Livingston, Macon, Madison, Maries, Marion, McDonald, Mercer, Miller, Mississippi, Moniteau, Monroe, Montgomery, Morgan, New Madrid, Nodaway, Oregon, Osage, Ozark, Pemiscot, Perry, Pettis, Phelps, Pike, Polk, Pulaski, Putnam, Rails, Randolph, Reynolds, Ripley, Saline, Schuyler, Scotland, Scott, Shannon, Shelby, St. Clair, St. Francois, Ste. Genevieve, Stoddard, Stone, Sullivan, Taney, Texas, Vernon, Washington, Wayne, Worth, Wright

**MONTANA (ROCKY MOUNTAIN)****METROPOLITAN COUNTIES**

Cascade, Yellowstone

**NONMETROPOLITAN COUNTIES**

Beaverhead, Big Horn, Blaine, Broadwater, Carbon, Carter, Chouteau, Custer, Daniels, Dawson, Deer-Lodge, Fallon, Fergus, Flathead, Gallatin, Garfield, Glacier, Golden Valley, Granite, Hill, Jefferson, Judith Basin, Lake, Lewis and Clark, Liberty, Lincoln, Madison, McCone, Meagher, Mineral, Missoula, Musselshell, Park, Petroleum, Phillips, Pondera, Powder River, Powell, Prairie, Ravalli, Richland, Roosevelt, Rosebud, Sanders, Sheridan, Silver Bow, Stillwater, Sweet Grass, Teton, Toole, Treasure, Valley, Wheatland, Wibaux

**NEBRASKA (GREAT PLAINS)****METROPOLITAN COUNTIES**

Cass, Dakota, Douglas, Lancaster, Sarpy, Washington

**NONMETROPOLITAN COUNTIES**

Adams, Antelope, Arthur, Banner, Blaine, Boone, Box Butte, Boyd, Brown, Buffalo, Burt, Butler, Cedar, Chase, Cherry, Cheyenne, Clay, Colfax, Cuming, Custer, Dawes, Dawson, Deuel, Dixon, Dodge, Dundy, Fillmore, Franklin, Frontier, Furnas, Gage, Garden, Garfield, Gosper, Grant, Greeley, Hall, Hamilton, Harlan, Hayes, Hitchcock, Holt, Hooker, Howard, Jefferson, Johnson, Kearney, Keith, Keya Paha, Kimball, Knox, Lincoln, Logan, Loup, Madison, McPherson, Merrick, Morrill, Nance, Nemaha, Nuckolls, Otoe, Pawnee, Perkins, Phelps, Pierce, Platte, Polk, Red Willow, Richardson, Rock, Saline, Saunders, Scotts Bluff, Seward, Sheridan, Sherman, Sioux, Stanton, Thayer, Thomas, Thurston, Valley, Wayne, Webster, Wheeler, York

**SCHEDULE C - CONTRACT RENT ANNUAL ADJUSTMENT FACTORS - AREA DEFINITIONS**

**NEVADA (PACIFIC/HAWAII)**

**METROPOLITAN COUNTIES**

Clark, Nye, Washoe

**NONMETROPOLITAN COUNTIES**

Churchill, Douglas, Elko, Esmeralda, Eureka, Humboldt, Lander, Lincoln, Lyon, Mineral, Pershing, Storey, White Pine, Carson City

**NEW HAMPSHIRE (NEW ENGLAND)**

**CPI AREAS: COUNTIES**

PMSA Lawrence, MA-NH

Rockingham County part: Atkinson town, Chester town, Danville town, Derry town, Fremont town, Hampstead town, Kingston town, Newton town, Plaistow town, Raymond town, Salem town, Sandown town, Windham town

PMSA Lowell, MA-NH

Hillsborough county part: Pelham town

PMSA Manchester, NH

Hillsborough county part: Bedford town, Goffstown town, Manchester city, Weare town

Merrimack county part: Allenstown town, Hooksett town

Rockingham county part: Auburn town, Candia town, Londonderry town

PMSA Nashua, NH

Hillsborough county part: Amherst town, Brookline town, Greenville town, Hollis town, Hudson town, Litchfield town, Mason town, Merrimack town, Milford town, Mont Vernon town, Nashua city, New Ipswich town, Wilton town

PMSA Portsmouth-Rochester, NH-ME

Rockingham County part: Brentwood town, East Kingston town, Epping town, Exeter town, Greenland town, Hampton town, Hampton Falls town, Kensington town, New Castle town, Newfields town, Newington town, Newmarket town, North Hampton town, Portsmouth city, Rye town, Stratham town

Strafford County part: Barrington town, Dover city, Durham town, Farmington town, Lee town, Madbury town, Milton town, Rochester city, Rollinsford town, Somersworth city

**NONMETROPOLITAN COUNTIES**

Belknap

Carroll

Cheshire

Coos

Grafton

Sullivan

Hillsborough County part: Antrim town, Bennington town, Deering town, Francestown town, Greenfield town, Hancock town, Hillsborough town, Lyndeborough town, New Boston town, Peterborough town, Sharon town, Temple town, Windsor town

Merrimack County part: Andover town, Boscawen town, Bow town, Bradford town, Canterbury town, Chichester town, Concord city, Danbury town, Dunbarton town, Epsom town, Franklin city, Henniker town, Hill town, Hopkinton town, Loudon town, Newbury town, New London town, Northfield town, Pembroke town, Pittsfield town, Salisbury town, Sutton town, Warner town, Webster town, Wilmot town

Rockingham County part: Deerfield town, Northwood town, Nottingham town,

Strafford County part: Middleton town, New Durham town, Strafford town

**NEW JERSEY (NEW YORK/NEW JERSEY)**

**CPI AREAS: COUNTIES**

PMSA Atlantic-Cape May, NJ: Atlantic, Cape May

PMSA Bergen-Passaic, NJ: Bergen, Passaic

PMSA Jersey City, NJ: Hudson

PMSA Middlesex-Somerset-Hunterdon, NJ: Hunterdon, Middlesex, Somerset

PMSA Monmouth-Ocean, NJ: Monmouth, Ocean

PMSA Newark, NJ: Essex, Morris, Sussex, Union, Warren

PMSA Philadelphia, PA-NJ: Burlington, Camden, Gloucester, Salem

PMSA Trenton, NJ: Mercer

**SCHEDULE C - CONTRACT RENT ANNUAL ADJUSTMENT FACTORS - AREA DEFINITIONS****NEW JERSEY (Cont.)**

PMSA Vineland-Millville-Bridgeton, NJ: Cumberland

**NEW MEXICO (SOUTHWEST)****METROPOLITAN COUNTIES**

Bernalillo, Dona Ana, Los Alamos, Sandoval, Santa Fe, Valencia

**NONMETROPOLITAN COUNTIES**

Catron, Chaves, Cibola, Colfax, Curry, DeBaca, Eddy, Grant, Guadalupe, Harding, Hidalgo, Lea, Lincoln, Luna, Mckinley, Mora, Otero, Quay, Rio Arriba, Roosevelt, San Juan, San Miguel, Sierra, Socorro, Taos, Torrance, Union

**NEW YORK (NEW YORK/NEW JERSEY)****CPI AREAS: COUNTIES**

PMSA Buffalo-Niagara Falls, NY: Erie, Niagara

PMSA Dutchess County, NY : Dutchess

PMSA Nassau-Suffolk, NY: Nassau, Suffolk

PMSA New York, NY: Bronx, Kings, New York, Putnam, Queens, Richmond, Rockland

\*COUNTY Westchester, NY: Westchester

PMSA Newburgh, NY-PA: Orange

**METROPOLITAN COUNTIES**

Albany, Broome, Cayuga, Chautauqua, Chemung, Genesee, Herkimer, Livingston, Madison, Monroe, Montgomery, Oneida, Onondaga, Ontario, Orleans, Oswego, Rensselaer, Saratoga, Schenectady, Schoharie, Tioga, Warren, Washington, Wayne

**NONMETROPOLITAN COUNTIES**

Allegany, Cattaraugus, Chenango, Clinton, Columbia, Cortland, Delaware, Essex, Franklin, Fulton, Greene, Hamilton, Jefferson, Lewis, Otsego, Schuyler, Seneca, St. Lawrence, Steuben, Sullivan, Tompkins, Ulster, Wyoming, Yates

**NORTH CAROLINA (SOUTHEAST)****METROPOLITAN COUNTIES**

Alamance, Alexander, Brunswick, Buncombe, Burke, Cabarrus, Caldwell, Catawba, Chatham, Cumberland, Currituck, Davidson, Davie, Durham, Edgecombe, Forsyth, Franklin, Gaston, Guilford, Johnston, Lincoln, Madison, Mecklenburg, Nash, New Hanover, Onslow, Orange, Pitt, Randolph, Rowan, Stokes, Union, Wake, Wayne, Yadkin

**NONMETROPOLITAN COUNTIES**

Alleghany, Anson, Ashe, Avery, Beaufort, Bertie, Bladen, Camden, Carteret, Caswell, Cherokee, Chowan, Clay, Cleveland, Columbus, Craven, Dare, Duplin, Gates, Graham, Granville, Greene, Halifax, Harnett, Haywood, Henderson, Hertford, Hoke, Hyde, Iredell, Jackson, Jones, Lee, Lenoir, Macon, Martin, McDowell, Mitchell, Montgomery, Moore, Northampton, Pamlico, Pasquotank, Pender, Perquimans, Person, Polk, Richmond, Robeson, Rockingham, Rutherford, Sampson, Scotland, Stanly, Surry, Swain, Transylvania, Tyrrell, Vance, Warren, Washington, Watauga, Wilkes, Wilson, Yancey

**NORTH DAKOTA (ROCKY MOUNTAIN)****METROPOLITAN COUNTIES**

Burleigh, Cass, Grand Forks, Morton

**NONMETROPOLITAN COUNTIES**

Adams, Barnes, Benson, Billings, Bottineau, Bowman, Burke, Cavalier, Dickey, Divide, Dunn, Eddy, Emmons, Foster, Golden Valley, Grant, Griggs, Hettinger, Kidder, Lamoure, Logan, Mchenry, McIntosh, Mckenzie, Mclean, Mercer, Mountrail, Nelson, Oliver, Pembina, Pierce, Ramsey, Ransom, Renville, Richland, Rolette, Sargent, Sheridan, Sioux, Slope, Stark, Steele, Stutsman, Towner, Traill, Walsh, Ward, Wells, Williams

**OHIO (MIDWEST)****CPI AREAS: COUNTIES**

PMSA Akron, OH: Portage, Summit

\*COUNTY Brown, OH: Brown

\*Cincinnati, OH-KY-IN: Clermont, Hamilton, Warren

PMSA Cleveland-Lorain-Elyria, OH: Ashtabula, Cuyahoga, Geauga, Lake, Lorain, Medina

PMSA Hamilton-Middletown, OH: Butler

**SCHEDULE C - CONTRACT RENT ANNUAL ADJUSTMENT FACTORS - AREA DEFINITIONS**

**OHIO (MIDWEST) cont.**

**METROPOLITAN COUNTIES**

Allen, Auglaize, Belmont, Carroll, Clark, Columbiana, Crawford, Delaware, Fairfield, Franklin, Fulton, Greene, Jefferson, Lawrence, Licking, Lucas, Madison, Mahoning, Miami, Montgomery, Pickaway, Richland, Stark, Trumbull, Washington, Wood

**NONMETROPOLITAN COUNTIES**

Adams, Ashland, Athens, Champaign, Clinton, Coshocton, Darke, Defiance, Erie, Fayette, Gallia, Guernsey, Hancock, Hardin, Harrison, Henry, Highland, Hocking, Holmes, Huron, Jackson, Knox, Logan, Marion, Meigs, Mercer, Monroe, Morgan, Morrow, Muskingum, Noble, Ottawa, Paulding, Perry, Pike, Preble, Putnam, Ross, Sandusky, Scioto, Seneca, Shelby, Tuscarawas, Union, Van Wert, Vinton, Wayne, Williams, Wyandot

**OKLAHOMA (SOUTHWEST)**

**METROPOLITAN COUNTIES**

Canadian, Cleveland, Comanche, Creek, Garfield, Logan, McClain, Oklahoma, Osage, Pottawatomie, Rogers, Sequoyah, Tulsa, Wagoner

**NONMETROPOLITAN COUNTIES**

Adair, Alfalfa, Atoka, Beaver, Beckham, Blaine, Bryan, Caddo, Carter, Cherokee, Choctaw, Cimarron, Coal, Cotton, Craig, Custer, Delaware, Dewey, Ellis, Garvin, Grady, Grant, Greer, Harmon, Harper, Haskell, Hughes, Jackson, Jefferson, Johnston, Kay, Kingfisher, Kiowa, Latimer, Le Flore, Lincoln, Love, Major, Marshall, Mayes, Mccurtain, Mcintosh, Murray, Muskogee, Noble, Nowata, Okfuskee, Okmulgee, Ottawa, Pawnee, Payne, Pittsburg, Pontotoc, Pushmataha, Roger Mills, Seminole, Stephens, Texas, Tillman, Washington, Washita, Woods, Woodward

**OREGON (NORTHWEST/ALASKA)**

**CPI AREAS: COUNTIES**

PMSA Portland-Vancouver, OR-WA: Clackamas, Columbia, Multnomah, Washington, Yamhill  
 PMSA Salem, OR: Marion, Polk

**METROPOLITAN COUNTIES**

Jackson, Lane

**NONMETROPOLITAN COUNTIES**

Baker, Benton, Clatsop, Coos, Crook, Curry, Deschutes, Douglas, Gilliam, Grant, Harney, Hood River, Jefferson, Josephine, Klamath, Lake, Lincoln, Linn, Malheur, Morrow, Sherman, Tillamook, Umatilla, Union, Wallowa, Wasco, Wheeler

**PENNSYLVANIA (MID-ATLANTIC)**

**CPI AREAS: COUNTIES**

PMSA Newburgh, NY-PA: Pike  
 PMSA Philadelphia, PA-NJ: Bucks, Chester, Delaware, Montgomery, Philadelphia  
 PMSA Pittsburgh, PA: Allegheny, Beaver, Butler, Fayette, Washington, Westmoreland

**METROPOLITAN COUNTIES**

Berks, Blair, Cambria, Carbon, Centre, Columbia, Cumberland, Dauphin, Erie, Lackawanna, Lancaster, Lebanon, Lehigh, Luzerne, Lycoming, Mercer, Northampton, Perry, Somerset, Wyoming, York

**NONMETROPOLITAN COUNTIES**

Adams, Armstrong, Bedford, Bradford, Cameron, Clarion, Clearfield, Clinton, Crawford, Elk, Forest, Franklin, Fulton, Greene, Huntingdon, Indiana, Jefferson, Juniata, Lawrence, Mc Kean, Mifflin, Monroe, Montour, Northumberland, Potter, Schuylkill, Snyder, Sullivan, Susquehanna, Tioga, Union, Venango, Warren, Wayne

**RHODE ISLAND (NEW ENGLAND)**

**METROPOLITAN COUNTIES**

Bristol County part: Barrington town, Bristol town, Warren town  
 Kent County part: Coventry town, East Greenwich town, Warwick city, West Greenwich town, West Warwick town  
 Providence County part: Burrillville town, Central Falls city, Cranston city, Cumberland town, East Providence city, Foster town, Glocester town, Johnston town, Lincoln town, North Providence town, North Smithfield town, Pawtucket city, Providence city, Scituate town, Smithfield town, Woonsocket city  
 Newport County part: Jamestown town, Little Compton town, Tiverton town

**SCHEDULE C - CONTRACT RENT ANNUAL ADJUSTMENT FACTORS - AREA DEFINITIONS****RHODE ISLAND (CONT.)**

Washington County part: Charlestown town, Exeter town, Narragansett town, North Kingstown town,  
Richmond town, South Kingstown town  
Washington County part: Hopkinton town, Westerly town

NONMETROPOLITAN COUNTIES  
Newport County part: Middletown town, Newport city, Portsmouth town  
Washington County part: New Shoreham town

**SOUTH CAROLINA (SOUTHEAST)**

METROPOLITAN COUNTIES  
Aiken, Anderson, Berkeley, Charleston, Cherokee, Dorchester, Edgefield, Florence, Greenville, Horry,  
Lexington, Pickens, Richland, Spartanburg, Sumter, York

NONMETROPOLITAN COUNTIES  
Abbeville, Allendale, Bamberg, Barnwell, Beaufort, Calhoun, Chester, Chesterfield, Clarendon, Colleton,  
Darlington, Dillon, Fairfield, Georgetown, Greenwood, Hampton, Jasper, Kershaw, Lancaster, Laurens, Lee,  
Marion, Marlboro, McCormick, Newberry, Oconee, Orangeburg, Saluda, Union, Williamsburg

**SOUTH DAKOTA (ROCKY MOUNTAIN)**

METROPOLITAN COUNTIES  
Lincoln, Minnehaha, Pennington

NONMETROPOLITAN COUNTIES  
Aurora, Beadle, Bennett, Bon Homme, Brookings, Brown, Brule, Buffalo, Butte, Campbell, Charles Mix,  
Clark, Clay, Codington, Corson, Custer, Davison, Day, Deuel, Dewey, Douglas, Edmunds, Fall River, Faulk,  
Grant, Gregory, Haakon, Hamlin, Hand, Hanson, Harding, Hughes, Hutchinson, Hyde, Jackson, Jerauld, Jones,  
Kingsbury, Lake, Lawrence, Lyman, Marshall, Mccook, Mcpherson, Meade, Mellette, Miner, Moody,  
Perkins, Potter, Roberts, Sanborn, Shannon, Spink, Stanley, Sully, Todd, Tripp, Turner, Union, Walworth,  
Yankton, Ziebach

**TENNESSEE (SOUTHEAST)**

METROPOLITAN COUNTIES  
Anderson, Blount, Carter, Cheatham, Davidson, Dickson, Fayette, Hamilton, Hawkins, Knox, Loudon, Madison,  
Marion, Montgomery, Robertson, Rutherford, Sevier, Shelby, Sullivan, Sumner, Tipton, Unicoi, Union,  
Washington, Williamson, Wilson

NONMETROPOLITAN COUNTIES  
Bedford, Benton, Bledsoe, Bradley, Campbell, Cannon, Carroll, Chester, Claiborne, Clay, Cocke, Coffee,  
Crockett, Cumberland, Dekalb, Decatur, Dyer, Fentress, Franklin, Gibson, Giles, Grainger, Greene, Grundy,  
Hamblen, Hancock, Hardeman, Hardin, Haywood, Henderson, Henry, Hickman, Houston, Humphreys, Jackson,  
Jefferson, Johnson, Lake, Lauderdale, Lawrence, Lewis, Lincoln, Macon, Marshall, Maury, McMinn, McNairy,  
Meigs, Monroe, Moore, Morgan, Obion, Overton, Perry, Pickett, Polk, Putnam, Rhea, Roane, Scott,  
Sequatchie, Smith, Stewart, Trousdale, Van Buren, Warren, Wayne, Weakley, White

**TEXAS (SOUTHWEST)**

CPI AREAS: COUNTIES  
PMSA Brazoria, TX: Brazoria  
\*Dallas, TX: Collin, Dallas, Denton, Ellis, Hunt, Kaufman, Rockwall  
PMSA Fort Worth-Arlington, TX: Hood, Johnson, Parker, Tarrant  
PMSA Galveston-Texas City, TX: Galveston  
\*COUNTY Henderson, TX: Henderson  
PMSA Houston, TX: Chambers, Fort Bend, Harris, Liberty, Montgomery, Waller

METROPOLITAN COUNTIES  
Archer, Bastrop, Bell, Bexar, Bowie, Brazos, Caldwell, Cameron, Comal, Coryell, Ector, El Paso, Grayson,  
Gregg, Guadalupe, Hardin, Harrison, Hays, Hidalgo, Jefferson, Lubbock, McLennan, Midland, Nueces, Orange,  
Potter, Randall, San Patricio, Smith, Taylor, Tom Green, Travis, Upshur, Victoria, Webb, Wichita,  
Williamson, Wilson

**SCHEDULE C - CONTRACT RENT ANNUAL ADJUSTMENT FACTORS - AREA DEFINITIONS**

**TEXAS (Cont.)**

**NONMETROPOLITAN COUNTIES**

Anderson, Andrews, Angelina, Aransas, Armstrong, Atascosa, Austin, Bailey, Bandera, Baylor, Bee, Blanco, Borden, Bosque, Brewster, Briscoe, Brooks, Brown, Burleson, Burnet, Calhoun, Callahan, Camp, Carson, Cass, Castro, Cherokee, Childress, Clay, Cochran, Coke, Coleman, Collingsworth, Colorado, Comanche, Concho, Cooke, Cottle, Crane, Crockett, Crosby, Culberson, Dallam, Dawson, Dewitt, Deaf Smith, Delta, Dickens, Dimmit, Donley, Duval, Eastland, Edwards, Erath, Falls, Fannin, Fayette, Fisher, Floyd, Foard, Franklin, Freestone, Frio, Gaines, Garza, Gillespie, Glasscock, Goliad, Gonzales, Gray, Grimes, Hale, Hall, Hamilton, Hansford, Hardeman, Hartley, Haskell, Hemphill, Hill, Hockley, Hopkins, Houston, Howard, Hudspeth, Hutchinson, Irion, Jack, Jackson, Jasper, Jeff Davis, Jim Hogg, Jim Wells, Jones, Karnes, Kendall, Kenedy, Kent, Kerr, Kimble, King, Kinney, Kleberg, Knox, La Salle, Lamar, Lamb, Lampasas, Lavaca, Lee, Leon, Limestone, Lipscomb, Live Oak, Llano, Loving, Lynn, Madison, Marion, Martin, Mason, Matagorda, Maverick, Mcculloch, McMullen, Medina, Menard, Milam, Mills, Mitchell, Montague, Moore, Morris, Motley, Nacogdoches, Navarro, Newton, Nolan, Ochiltree, Oldham, Palo Pinto, Panola, Parmer, Pecos, Polk, Presidio, Rains, Reagan, Real, Red River, Reeves, Refugio, Roberts, Robertson, Runnels, Rusk, Sabine, San Augustine, San Jacinto, San Saba, Schleicher, Scurry, Shackelford, Shelby, Sherman, Somervell, Starr, Stephens, Sterling, Stonewall, Sutton, Swisher, Terrell, Terry, Throckmorton, Titus, Trinity, Tyler, Upton, Uvalde, Val Verde, Van Zandt, Walker, Ward, Washington, Wharton, Wheeler, Wilbarger, Willacy, Winkler, Wise, Wood, Yoakum, Young, Zapata, Zavala

**UTAH (ROCKY MOUNTAIN)**

**METROPOLITAN COUNTIES**

Davis, Salt Lake, Utah, Weber

**NONMETROPOLITAN COUNTIES**

Beaver, Box Elder, Cache, Carbon, Daggett, Duchesne, Emery, Garfield, Grand, Iron, Juab, Kane, Millard, Morgan, Piute, Rich, San Juan, Sanpete, Sevier, Summit, Tooele, Uintah, Wasatch, Washington, Wayne

**VERMONT (NEW ENGLAND)**

**METROPOLITAN COUNTIES**

Chittenden County part: Burlington city, Charlotte town, Colchester town, Essex town, Hinesburg town, Jericho town, Milton town, Richmond town, St. George town, Shelburne town, South Burlington city, Williston town, Winooski city  
 Franklin County part: Fairfax town, Georgia town, St. Albans city, St. Albans town, Swanton town  
 Grand Isle County part: Grand Isle town, South Hero town

**NONMETROPOLITAN COUNTIES**

Addison  
 Bennington  
 Caledonia  
 Essex  
 Lamoille  
 Orange  
 Orleans  
 Rutland  
 Washington  
 Windham  
 Windsor  
 Chittenden County part: Bolton town, Buels gore, Huntington town, Underhill town, Westford town  
 Franklin County part: Bakersfield town, Berkshire town, Enosburg town, Fairfield town, Fletcher town, Franklin, Highgate town, Montgomery town, Richford town, Sheldon town  
 Grand Isle County part: Alburg town, Isle La Motte town, North Hero town

**VIRGINIA (MID-ATLANTIC)**

**CPI AREAS: COUNTIES**

\*COUNTY Clarke, VA: Clarke  
 \*COUNTY Culpeper, VA: Culpeper  
 \*COUNTY King George, VA: King George  
 \*COUNTY Warren, VA: Warren

**SCHEDULE C - CONTRACT RENT ANNUAL ADJUSTMENT FACTORS - AREA DEFINITIONS****VIRGINIA (MID-ATLANTIC) cont.****CPI AREAS: COUNTIES**

\*Washington, DC-MD-VA: Arlington, Fairfax, Fauquier, Loudoun, Prince William, Spotsylvania, Stafford, Alexandria city, Fairfax city, Falls Church city, Fredericksburg city, Manassas Park city, Manassas city

**METROPOLITAN COUNTIES**

Albemarle, Amherst, Bedford, Botetourt, Campbell, Charles City, Chesterfield, Dinwiddie, Fluvanna, Gloucester, Goochland, Greene, Hanover, Henrico, Isle of Wight, James City, Mathews, New Kent, Pittsylvania, Powhatan, Prince George, Roanoke, Scott, Washington, York, Bedford city, Bristol city, Charlottesville city, Chesapeake city, Colonial Heights city, Danville city, Hampton city, Hopewell city, Lynchburg city, Newport News city, Norfolk city, Petersburg city, Poquoson city, Portsmouth city, Richmond city, Roanoke city, Salem city, Suffolk city, Virginia Beach city, Williamsburg city

**NONMETROPOLITAN COUNTIES**

Accomack, Alleghany, Amelia, Appomattox, Augusta, Bath, Bland, Brunswick, Buchanan, Buckingham, Caroline, Carroll, Charlotte, Craig, Cumberland, Dickenson, Essex, Floyd, Franklin, Frederick, Giles, Grayson, Greensville, Halifax, Henry, Highland, King William, King and Queen, Lancaster, Lee, Louisa, Lunenburg, Madison, Mecklenburg, Middlesex, Montgomery, Nelson, Northampton Northumberland, Nottoway, Orange, Page, Patrick, Prince Edward, Pulaski, Rappahannock, Richmond, Rockbridge, Rockingham, Russell Shenandoah, Smyth, Southampton, Surry, Sussex, Tazewell, Westmoreland, Wise, Wythe

**WASHINGTON (NORTHWEST/ALASKA)****CPI AREAS: COUNTIES**

PMSA Bremerton, WA: Kitsap  
 PMSA Olympia, WA: Thurston  
 PMSA Portland-Vancouver, OR-WA: Clark  
 PMSA Seattle-Bellevue-Everett, WA: Island, King, Snohomish  
 PMSA Tacoma, WA: Pierce

**METROPOLITAN COUNTIES**

Benton, Franklin, Spokane, Whatcom, Yakima

**NONMETROPOLITAN COUNTIES**

Adams, Asotin, Chelan, Clallam, Columbia, Cowlitz, Douglas, Ferry, Garfield, Grant, Grays Harbor, Jefferson, Kittitas, Klickitat, Lewis, Lincoln, Mason, Okanogan, Pacific, Pend Oreille, San Juan, Skagit, Skamania, Stevens, Wahkiakum, Walla Walla, Whitman

**WEST VIRGINIA (MID-ATLANTIC)****CPI AREAS: COUNTIES**

\*COUNTY Berkeley, WV: Berkeley  
 \*COUNTY Jefferson, WV: Jefferson

**METROPOLITAN COUNTIES**

Brooke, Cabell, Hancock, Kanawha, Marshall, Mineral, Ohio, Putnam, Wayne, Wood

**NONMETROPOLITAN COUNTIES**

Barbour, Boone, Braxton, Calhoun, Clay, Doddridge, Fayette, Gilmer, Grant, Greenbrier, Hampshire, Hardy, Harrison, Jackson, Lewis, Lincoln, Logan, Marion, Mason, McDowell, Mercer, Mingo, Monongalia, Monroe, Morgan, Nicholas, Pendleton, Pleasants, Pocahontas, Preston, Raleigh, Randolph, Ritchie, Roane, Summers, Taylor, Tucker, Tyler, Upshur, Webster, Wetzel, Wirt, Wyoming

**WISCONSIN (MIDWEST)****CPI AREAS: COUNTIES**

PMSA Kenosha, WI: Kenosha  
 PMSA Milwaukee-Waukesha, WI: Milwaukee, Ozaukee, Washington, Waukesha  
 MSA Minneapolis-St. Paul, MN-WI: Pierce, St. Croix  
 PMSA Racine, WI: Racine

**METROPOLITAN COUNTIES**

Brown, Calumet, Chippewa, Dane, Douglas, Eau Claire, La Crosse, Marathon, Outagamie, Rock, Sheboygan, Winnebago

**SCHEDULE C - CONTRACT RENT ANNUAL ADJUSTMENT FACTORS - AREA DEFINITIONS**

**WISCONSIN (Cont.)**

**NONMETROPOLITAN COUNTIES**

Adams, Ashland, Barron, Bayfield, Buffalo, Burnett, Clark, Columbia, Crawford, Dodge, Door, Dunn, Florence, Fond du Lac, Forest, Grant, Green, Green Lake, Iowa, Iron, Jackson, Jefferson, Juneau, Kewaunee, Lafayette, Langlade, Lincoln, Manitowoc, Marinette, Marquette, Menominee, Monroe, Oconto, Oneida, Pepin, Polk, Portage, Price, Richland, Rusk, Sauk, Sawyer, Shawano, Taylor, Trempealeau, Vernon, Vilas, Walworth, Washburn, Waupaca, Waushara, Wood

**WYOMING (ROCKY MOUNTAIN)**

**METROPOLITAN COUNTIES**

Laramie, Natrona

**NONMETROPOLITAN COUNTIES**

Albany, Big Horn, Campbell, Carbon, Converse, Crook, Fremont, Goshen, Hot Springs, Johnson, Lincoln, Niobrara, Park, Platte, Sheridan, Sublette, Sweetwater, Teton, Uinta, Washakie, Weston

**PACIFIC ISLANDS (PACIFIC/HAWAII)**

**NONMETROPOLITAN COUNTIES**

Pacific Islands

**PUERTO RICO (SOUTHEAST)**

**METROPOLITAN COUNTIES**

Aguada, Aguadilla, Aguas Buenas, Anasco, Arecibo, Barceloneta, Bayamon, Cabo Rojo, Caguas, Camuy, Canovanas, Carolina, Catano, Cayey, Ceiba, Cidra, Comerio, Corozal, Dorado, Fajardo, Florida, Guayanilla, Guaynabo, Gurabo, Hatillo, Hormigueros, Humacao, Juana Diaz, Juncos, Las Piedras, Loiza, Luquillo, Manati, Mayaguez, Moca, Morovis, Naguabo, Naranjito, Penuelas, Ponce, Rio Grande, Sabana Grand, San German, San Juan, San Lorenzo, Toa Alta, Toa Baja, Trujillo Alt, Vega Alta, Vega Baja, Villalba, Yabucoa, Yauco

**NONMETROPOLITAN COUNTIES**

Aibonito, Arroyo, Adjuntas, Barranquitas, Ciales, Coamo, Culerbra, Guanica, Guayama, Isabela, Jayuya, Lajas, Lares, Las Marias, Maricao, Maunabo, Orocovis, Patillas, Quebradillas, Rincon, Salinas, San Sebastia, Santa Isabel, Utuado, Vieques

**VIRGIN ISLANDS (SOUTHEAST)**

**NONMETROPOLITAN COUNTIES**

Virgin Island

**Federal Register**

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Monday  
December 16, 1996

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**Part V**

**Department of  
Energy**

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**Office of Civilian Radioactive Waste  
Management**

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**10 CFR Part 960  
General Guidelines for the  
Recommendation of Sites for Nuclear  
Waste Repositories; Proposed Rule and  
Public Hearing**

**DEPARTMENT OF ENERGY****Office of Civilian Radioactive Waste Management****10 CFR Part 960****General Guidelines for the Recommendation of Sites for Nuclear Waste Repositories**

**AGENCY:** Office of Civilian Radioactive Waste Management, Department of Energy.

**ACTION:** Notice of proposed rulemaking and public hearing.

**SUMMARY:** The Department of Energy, Office of Civilian Radioactive Waste Management, today proposes to amend its General Guidelines for the Recommendation of Sites for Nuclear Waste Repositories. The DOE is proposing these amendments to clarify and focus the Guidelines to be used in evaluating the suitability of the Yucca Mountain site in Nevada for development as a repository. This proposal would provide that a total system assessment of the performance of a proposed site-specific repository design within the geologic setting of Yucca Mountain would be compared to the applicable regulatory standards to determine whether this site is suitable for development as a repository.

**DATES:** Written comments (8 copies and, if possible, a computer disk) on the proposed rule must be received by the Department on or before February 14, 1997. Oral views, data and arguments may be presented at a public hearing which is scheduled for the afternoon (12:30 p.m. to 4:30 p.m.) and evening (6 p.m. until there are no longer persons requesting an opportunity to speak) of January 23, 1997. Requests to speak at the hearing should be submitted in writing or by telephone at (800) 967-3477 to the Department no later than 4:30 P.M. on January 17, 1997. The length of each oral presentation is limited to five minutes. The DOE requests public comments only on the amendatory language in this notice and will not consider comments on the current regulation in this rulemaking proceeding.

**ADDRESSES:** Written comments (8 copies) and requests to speak at the public hearing should be addressed to April V. Gil, U.S. Department of Energy, Office of Civilian Radioactive Waste Management, Yucca Mountain Site Characterization Office, PO Box 98608, Las Vegas, NV 89193-8608, or provided by electronic mail to 10CFR960@notes.ymmp.gov. The public hearing will be held at the following

location: University of Nevada, Las Vegas, 4505 Maryland Parkway, Moyer Student Union, Second Level, Lounge #201, Las Vegas, Nevada. Copies of transcripts from the hearing, written comments, and documents referenced in this Notice may be inspected and photocopied in the Yucca Mountain Science Center, 4101B Meadows Lane, Las Vegas, Nevada, (702) 295-1312, and the DOE Freedom of Information Reading Room, Room 1E-190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, (202) 586-6020, between the hours of 8:30 a.m. and 4 p.m., Monday through Friday, except Federal holidays. For more information concerning public participation in this rulemaking see the "Opportunity for Public Comment" section of this proposed rule.

**FOR FURTHER INFORMATION CONTACT:** April V. Gil, U.S. Department of Energy, Office of Civilian Radioactive Waste Management, Yucca Mountain Site Characterization Office, PO Box 98608, Las Vegas, NV 89193-8608, (800) 967-3477.

**SUPPLEMENTARY INFORMATION:**

- I. Background.
  - A. The Law.
  - B. Development and Application of the Guidelines.
- II. Description of Proposed Action.
  - A. General Discussion.
  - B. Proposed Revisions.
- III. References
- IV. Opportunity for Public Comment.
  - A. Participation in Rulemaking.
  - B. Written Comment Procedures.
  - C. Public Hearing Procedures.
- V. Compliance with the National Environmental Policy Act (NEPA).
- VI. Review Under the Regulatory Flexibility Act.
- VII. Review Under the Paperwork Reduction Act.
- VIII. Review Under the Unfunded Mandates Reform Act.
- IX. Review Under Executive Order 12612.
- X. Review Under Executive Order 12866.
- XI. Review Under Executive Order 12875.
- XII. Review Under Executive Order 12988.

**I. Background****A. The Law**

The Nuclear Waste Policy Act of 1982 (hereinafter referred to as the 1982 NWPA), signed into law on January 7, 1983, established a Federal policy and the Department of Energy (DOE) responsibility for the disposal of spent nuclear fuel and high-level radioactive waste in geologic repositories. It established the Office of Civilian Radioactive Waste Management (OCRWM) to carry out these DOE responsibilities, subject to repository licensing by the Nuclear Regulatory

Commission (NRC) and environmental protection standards set by the Environmental Protection Agency (EPA). The 1982 NWPA provided a process and schedule for siting two mined geologic repositories, and the statutory framework by which the DOE would screen, characterize, and select candidate sites. Section 112, "Recommendation of Candidate Sites for Site Characterization," of the 1982 NWPA required the DOE to establish general guidelines for recommendation of sites for repositories (the Guidelines). Section 112(a) required the DOE to "issue general guidelines for recommendation of sites for repositories," following consultation with the Council on Environmental Quality, the Administrator of the EPA, the Director of the Geological Survey, interested Governors, and the concurrence of the NRC. This section also provided that "such guidelines" may be revised from time to time.

The 1982 NWPA provided that the Guidelines would be used by the DOE to identify and nominate at least five sites in different geologic media as suitable for characterization. As part of this screening process, section 112(b) required the Secretary to recommend three of these sites to the President for characterization to determine their suitability for development as a repository.

Section 113, "Site Characterization," of the 1982 NWPA provided that the DOE was to carry out site characterization activities beginning with the candidate sites that had been approved under section 112(b) and that were located in various geologic media. Section 113(b) required the DOE to develop and submit to the Governor of the State, or governing body of the affected Indian tribe, a general plan describing the activities to be conducted in characterizing that site and identifying the criteria, developed pursuant to section 112(a), that would be used to determine the suitability of each site for the location of a repository.

Section 114, "Site Approval and Construction Authorization," of the 1982 NWPA provided that upon completion of public hearings in the vicinity of each site and completion of site characterization at each site, a single site could be recommended to the President for development as a repository. The 1982 NWPA provided that this recommendation by the Secretary to the President was to be accompanied by a final Environmental Impact Statement (EIS) in accordance with the requirements of the National Environmental Policy Act (NEPA), as modified by section 114(f) of the 1982

NWPA. If the recommendation was approved and the designation of the repository site became effective, the DOE was to submit a license application to the NRC for authorization to construct the repository at the designated site.

The 1987 amendments to the 1982 NWPA (the 1982 NWPA, as amended, is hereinafter referred to as the NWPA), provided that site characterization under section 113 and site approval under section 114 could proceed only at the Yucca Mountain site. Section 160 of the NWPA required the DOE to terminate site-specific activities at the other two candidate sites.

#### *B. Development and Application of the Guidelines*

To implement section 112(a) of the 1982 NWPA, the DOE published the proposed "General Guidelines for the Recommendation of Sites for Nuclear Waste Repositories," for review and comment on February 13, 1983 (48 FR 5670). The DOE published the final version of the Guidelines on December 6, 1984 (49 FR 47714), after considering public comments, consulting with the designated agencies, and receiving the concurrence of the NRC, as required by the 1982 NWPA.

The NRC concurred on the Guidelines after the DOE agreed to changes that closely linked the Guidelines to the NRC regulatory requirements of 10 CFR part 60 (49 FR 9650). In response to comments requesting closer alignment of the Guidelines to the EPA and the NRC requirements, the DOE stated that,

"In the event of a conflict between the Guidelines and either 10 CFR part 60 (the NRC regulations) or 40 CFR Part 191 (the EPA regulations), these NRC and EPA regulations will supersede the siting guidelines and constitute the operative requirement in any application of the guidelines." (49 FR 47721)

Consistent with section 112(b) of the 1982 NWPA, the DOE used the Guidelines in nominating five sites as suitable for characterization and in recommending to the President the three sites to be characterized as candidate sites for the first repository. On May 28, 1986, the President approved the three sites recommended for characterization, including the Yucca Mountain site. The 1987 amendments to the 1982 NWPA required the DOE to characterize only the Yucca Mountain site, and to terminate site-specific activities at all other sites.

In accordance with section 113(b) of the NWPA, the DOE prepared a Site Characterization Plan (the SCP) (1) for characterizing the Yucca Mountain

site.<sup>1</sup> The SCP included a description of how the DOE proposed to apply the Guidelines within the scope of the planned site characterization program. The applicability of certain comparative provisions in the Guidelines as a result of the 1987 amendments to the 1982 NWPA was explained in the SCP. The DOE stated that the provision in the Guidelines for comparative evaluations of performance (10 CFR 960.3-1-5) was no longer applicable. The DOE also stated that the provision in 10 CFR 960.5-1(a)(3), the preclosure system guideline for Ease and Cost of Siting, Construction, Operation, and Closure, for comparative evaluation of costs relative to other siting options was no longer applicable.

Although the SCP describes how the DOE would apply the Guidelines during site characterization to evaluate the site in light of the 1987 amendments, a number of entities indicated that they remained unclear as to the DOE's future application of the Guidelines. Because of the continuing confusion in this regard, and because section 112(a) of the NWPA, unchanged from the 1982 NWPA, and the Guidelines themselves contemplate that the DOE may revise the Guidelines from time to time, the DOE instituted an ongoing dialogue with external parties about the Guidelines.

In October 1993, the DOE briefed the representatives of the affected units of local government and the State of Nevada on its plans for activities related to site suitability evaluation. The members of this group noted that because the development of the Guidelines received broad public exposure through publication in the Federal Register, the DOE's review of the Guidelines also should receive broad public exposure. In response, the DOE published a Notice of Inquiry on April 25, 1994 (59 FR 19680) eliciting the views of the public on the appropriate role of the Guidelines in the evaluation of site suitability at Yucca Mountain. The DOE then conducted a public workshop on May 21, 1994, in Las Vegas, Nevada, to discuss the Guidelines and other issues related to the process for the evaluation of site suitability. The DOE also provided the opportunity for the public to submit written comments. The comment period ended on June 24, 1994.

Following the public meeting and the close of the public comment period, and after consideration of the comments

<sup>1</sup>The documents mentioned followed by a number enclosed in parenthesis are fully identified in III. References. Documents are numbered only when first referenced.

received, the DOE published a notice in the Federal Register on August 4, 1994 (59 FR 39766), announcing, that it would continue to use the Guidelines in 10 CFR part 960, as currently written and as explained in the SCP. The detailed rationale for concluding that the existing Guidelines "should not be amended at this time," was published in a notice in the Federal Register on September 14, 1995 (60 FR 47737). For reasons stated below, the DOE has now determined that the Guidelines should be amended.

## II. Description of Proposed Action

### *A. General Discussion*

The DOE is proposing these amendments to clarify and focus the Guidelines to be used in evaluating the suitability of the Yucca Mountain site for development as a repository. The amendments would concentrate the regulatory review on the analyses of overall repository performance. This would enhance the ability of the DOE to provide the public a more understandable conclusion about the suitability of the Yucca Mountain site for development as a repository. To provide this focus, a new subpart would be added to govern the evaluation of the Yucca Mountain site. Other sections of the Guidelines would be revised only as needed to make them consistent with the new subpart. The Guidelines applicable to site screening and comparisons will be preserved should they be needed in the future.

As detailed in the Background section of this Notice, section 112 of the NWPA describes the steps to be taken during site screening and prior to site characterization. The general guidelines required by section 112(a) were developed in 1983 and 1984 when the DOE had only a general understanding of geologic disposal and a mandate to use the general guidelines to screen sites in various geologic media. The DOE then formulated a generic set of guidelines to apply throughout the entire siting process that could be applied to any site, in any type of host rock, and in any geohydrologic setting.

As the DOE recognized in the December 6, 1984, Federal Register notice publishing the Guidelines (49 FR 47714), the decision to recommend sites for the development of repositories must include analyses of expected repository performance. However, because the comparison of characterized sites was then the focal point in the final recommendation decision, the contribution of engineered barriers to the ability of a repository system at each site to contain radioactive waste was

minimized (49 FR 47714, 47729). The DOE response to comments that stressed the importance of using system-analysis techniques, rather than treating each factor (e.g., geohydrology) independently, was that "the final comparisons of the sites are to be based on the system guidelines" (49 FR 47714, 47732). The DOE also explained that Part 960 consisted of general guidelines and that site-specific considerations were not appropriate at that time (49 FR 47714, 47734). The DOE has decided that it is now time for a site-specific evaluation of overall system performance at Yucca Mountain.

Initially, the DOE planned a broad characterization program at Yucca Mountain to ensure that all important scientific and technical issues would be identified and addressed. The DOE recognized that the iterative nature of site characterization would drive the broad-based plan into a more narrowly focused program. Section 113c of the NWPA provides that the DOE may conduct only such site characterization activities as it determines are necessary to evaluate the suitability of Yucca Mountain for submitting a construction authorization application to the NRC and to comply with the National Environmental Policy Act of 1969. That Congress intends the DOE to focus the work at Yucca Mountain on only that which is necessary to determine site suitability was recently reinforced in the Conference Report on the Fiscal Year 1996 Energy and Water Development Appropriations Act, H.R. Rep. No. 293, 104th Cong., 1st Sess. 68 (1995). In the Conference Report the conferees directed the Department to refocus the repository program on completing the core scientific activities at Yucca Mountain and provided that the Department's goal should be to collect the scientific information needed to determine the suitability of the Yucca Mountain site.

On June 12, 1996, OCRWM released its revised Program Plan (2) which addressed the direction of Congress in the Fiscal Year 1996 Appropriation legislation. It also recognized the great deal of progress made in the evaluation and understanding of the Yucca Mountain site since implementing the Civilian Radioactive Waste Management Program Plan (3), published in December 1994. Consistent with the policy direction from Congress, the revised Program Plan explained that as part of Fiscal Year 1996 implementation of the restructured repository program, OCRWM would propose amending the Guidelines to provide a more efficient and understandable process for evaluating the Yucca Mountain site. The

revised Program Plan was endorsed in the Conference Report on the Energy and Water Development Appropriations Act, 1997, H.R. Rep. No. 782, 104th Cong., 2d Sess. 82 (1996), by the conferees directing that the appropriated funds be used in accordance with the revised Program Plan.

Based on the DOE's accumulated knowledge, and significantly enhanced understanding of the Yucca Mountain site and geologic disposal, the DOE has now determined that a system performance assessment approach provides the most meaningful method for evaluating whether the Yucca Mountain site is suitable for development as a repository. The performance assessments (4-6) conducted to date have consistently driven the DOE to focus its evaluation of the Yucca Mountain site on those aspects most important to predicting how the overall system will perform in isolating and containing waste.

The DOE now understands that only by assessing how specific design concepts will work within the natural system at Yucca Mountain, and comparing the results of these assessments to the applicable regulatory standards, can the DOE reach a meaningful conclusion regarding the site's suitability for development as a repository. The proposed amendments to the Guidelines would require a comprehensive evaluation focused on whether a geologic repository at the Yucca Mountain site would adequately protect the public and the environment from the hazards posed by high-level radioactive waste and spent nuclear fuel. This approach would include consideration of technical factors in an integrated manner within the system postclosure and preclosure qualifying conditions. Discrete, independent findings on individual technical factors would not be required.

The proposed amendments would focus the site suitability evaluation of Yucca Mountain on a determination of whether the expected system performance will meet both the site-specific public health and safety standards that the EPA is establishing under section 801 of the Energy Policy Act of 1992 and the applicable NRC regulations. Compliance with these requirements is the core of the approach proposed as subpart E to part 960. The proposed amendments are being submitted to the NRC and the DOE will obtain its concurrence in accordance with 10 CFR 960.1.

## 1. Congressional Direction

Since the DOE promulgated the Guidelines, Congress has made major changes to the framework for developing a geologic repository. In 1987, the NWPA designated Yucca Mountain as the only potential repository site to be characterized, thereby eliminating the comparison of multiple characterized sites. Although the DOE did not revise the Guidelines at that time, it recognized in its SCP that not all of the technical factors cited in the Guidelines would be equally significant to the evaluation of the Yucca Mountain site.

In section 801 of the Energy Policy Act of 1992, Congress directed the EPA to promulgate new site-specific health and safety standards for protecting the public from radioactive releases at a repository at Yucca Mountain. These standards will replace the general environmental standard for geologic repositories (40 CFR part 191) for application at the Yucca Mountain site. In the Energy Policy Act of 1992, Congress also directed the NRC to revise its regulations to be consistent with the new EPA standards.

In the Conference Report on the Fiscal Year 1996 Energy and Water Development Appropriations Act, Congress directed the Program to focus on only those activities necessary to assess the performance of a repository at the Yucca Mountain site and to collect the scientific information needed to determine the site's suitability (H.R. Rept. No. 293, 104th Cong., 1st Sess. 68 (1995)). The OCRWM responded by revising its Program Plan. Part of the revised Program Plan approach is the development of a proposal to amend the Guidelines for site-specific application at the Yucca Mountain site. Congress indicated its approval of the revised Program Plan in the Conference Report on the Energy and Water Development Appropriations Act, 1997, H.R. Rep. No. 782, 104th Cong., 2d Sess. 82 (1996), by directing "that the appropriated funds be used in accordance with the Civilian Radioactive Waste Management Draft Program Plan issued by the Department in May 1996 \* \* \*"

The DOE is proposing these amendments now in response to the Congressional direction provided as part of the Fiscal Year 1996 appropriation process. The focused approach in this proposal is part of the revised Program Plan that was developed based on Congressional guidance and the technical understanding gained from characterization work performed at Yucca Mountain.

## 2. Understanding Gained

The DOE has been considering Yucca Mountain as a potential site for a repository since 1978. Formal site characterization studies began following the publication of the SCP in December 1988. The DOE has recently produced results in four major areas fundamental to advancing the ability to evaluate this site, and geologic disposal, to the point that a system approach is now appropriate. These four areas are: (1) Analysis and integration of data collected from the surface-based testing and regional studies; (2) examination of the potential repository horizon made possible by the excavation of the Exploratory Studies Facility (ESF); (3) the site-specific conceptual design of the engineered facilities, both surface and underground; and (4) performance assessment analyses.

The DOE began collecting surface-based test data at the site and from the surrounding region in the late 1970s, as described in the Environmental Assessment (7) and the SCP. In recent years, project scientists have undertaken a concerted effort to analyze and integrate these data in order to formulate a better understanding of the site. Several reports (8–16) issued in 1996 have significantly contributed to that understanding. These analyses involve compiling the data collected and developing process models to describe each of the characteristics of the site. Further, data integration is proceeding from cross-disciplinary discussions among the scientists and through consultations with experts outside of the project. The result is a rapidly evolving understanding of the natural system at the site and how the natural system would function as part of a repository system.

Construction of the ESF has provided the opportunity for direct underground observations and testing. Data obtained from the potential repository host rock, together with the analysis of data from surface-based studies (17–20), have significantly improved the understanding of site conditions. For example, the rock quality at the repository level generally confirms the assumptions upon which the projected area for the statutory limit of 70,000 metric tons of heavy metal was based. No new major faults have been found and some faults, when observed underground, are less structurally significant than expected from surface-based studies.

The DOE has now advanced its site-specific conceptual design (21) to focus on the surface and subsurface facilities, the waste package, and a concept of

operations to describe how an operational repository would function at Yucca Mountain. This focus allows project engineers to develop process models to explicitly analyze such factors as potential repository materials and layout, the thermal load imposed on the system by waste emplacement, and the performance of the engineered barrier system.

The models needed to evaluate repository system performance at the Yucca Mountain site continue to become more detailed and more representative of site conditions and engineered system behavior. Performance assessments are analyses used to predict or estimate the behavior of a system based on a given set of conditions. The assessments take into consideration the inherent uncertainties in the data and models used, and permit the evaluation of the significance of these uncertainties in predicting performance for thousands of years into the future. Performance assessments called "Total System Performance Assessments," were conducted in 1991, 1993, and 1995, and another iteration is underway. The amount of detail in the models and the amount of data available have increased with each iteration.

The results of these performance assessments describe what the repository system will be capable of and how it will function through time. For example, the performance assessments have confirmed that among the most important characteristics of the Yucca Mountain site and its suitability for repository development are the amount of water, the flow pathways, and the rate at which water flows through and away from the repository area. The repository system performance models will enable the DOE to predict, with greater confidence, the way water moves through the site and how this affects repository performance.

By evaluating, through system performance assessments, the conclusions reached from analysis and integration of surface-based test data, the observations and testing in the ESF, and the site-specific advanced conceptual design, the DOE will be able to reach informed conclusions regarding the suitability of the site for development as a repository.

Information on the general approach that the DOE will take in performing this work is available in the 1996 Revision I to the Program Plan. More specific information on the nature and extent of changes to previously planned activities is available in the Progress Reports that the DOE issues semiannually pursuant to section 113(b)(3). The most recently issued

Progress Report (22) was distributed on October 8, 1996.

### B. Proposed Revisions

Because section 160 of the NWP provides that Yucca Mountain is to be the sole site to be characterized by the DOE under section 113 of the NWP, the proposed amendments would establish a discrete set of site-specific guidelines for evaluating the suitability of Yucca Mountain for development as a repository. The site-specific guidelines proposed for Yucca Mountain would be added to part 960 in a new subpart E. Subpart B, the "Implementation Guidelines," would be amended to reflect the adoption of the new subpart E and provide the procedure and basis for applying the new guidelines in subpart E. Subparts C and D would be retained for potential future application in the event that it is determined that Yucca Mountain is not suitable for development as a repository and other sites are identified as potential candidate sites for site characterization.

The proposed subpart E would focus on the ability of a repository system at the Yucca Mountain site to protect public health and safety by adequately containing and isolating waste, rather than on evaluating each technical aspect of the site independently. This new subpart would represent a change for evaluating Yucca Mountain from the Guideline's general site screening and comparison approach to a site-specific system performance approach.

The results of integrated assessments of system performance in Subpart E would provide a more meaningful indicator of the ability of a repository to protect public health and safety, before and after permanent closure, than would separate evaluations of individual site characteristics. For example, a geologic structural feature that provides a fast pathway for ground-water flow through the mountain may seem a detriment when considered alone but, when considered in conjunction with a specific repository design, may act beneficially by channeling flow away from the waste and thus reducing the potential for ground-water contact with the waste packages.

In conducting performance assessments, the DOE uses computer and mathematical models to evaluate the ability of the geologic repository to contain and isolate high-level radioactive waste. This may include the use of mathematical models of site processes such as water flow in the geologic setting and engineering processes such as corrosion of the waste packages as part of the assessment of

overall repository system performance. To evaluate potential radiation exposure to the public, performance assessments use biosphere models that describe the pathways by which individuals in the vicinity of Yucca Mountain might receive radiation doses. Performance assessments are iterative, so that insights gained from each assessment, together with new scientific and engineering information and improvements in the models themselves, are used to guide subsequent assessments.

The general provisions of subpart A and the implementation guidelines of subpart B would be revised to reflect the addition of the Yucca Mountain site-specific guidelines in subpart E, and to be consistent with the NWPA. The proposed revisions would preserve the existing portions of the Guidelines that are applicable to site screening and to comparing sites in varied geologic settings as provided in section 112(a) of the NWPA. Additional revisions would be incorporated throughout the Guidelines only as needed to explicitly accommodate the addition of subpart E.

Consistent with the existing structure of the Guidelines, the site-specific guidelines proposed in subpart E would include postclosure and preclosure system guidelines. The postclosure system and preclosure radiological safety system guidelines proposed as "qualifying conditions" in subpart E would be essentially the same as their counterparts in subparts C and D, except that these amendments would recognize the changes in the regulatory standards mandated by the Energy Policy Act of 1992. Because 40 CFR part 191 is no longer the applicable standard for the Yucca Mountain site, the new system performance guidelines would apply the EPA's final rule for site-specific public health and safety standards when they are issued and in effect. The preclosure system guideline would also apply the NRC regulations applicable to Yucca Mountain during the preclosure period.

The original suites of technical guidelines in subparts C and D consider characteristics that might be important at any type of site in any geologic or hydrologic setting and provide a basis for comparing sites. Corresponding technical guidelines are not proposed in subpart E. The performance assessments in subpart E will consider all of the significant technical aspects of the site and demonstrate through sensitivity analyses which characteristics are most important.

The preclosure system guidelines in subpart D, other than the one for radiological safety (§ 960.5-1(a)(1)), were originally intended to provide a

broad basis for site evaluation and for comparisons among multiple characterized sites, prior to site recommendation under the 1982 NWPA. Sections 113 and 160 of the NWPA now direct the DOE to characterize only the Yucca Mountain site to determine its suitability for development as a repository. In the absence of a need to consider siting alternatives, the DOE is not specifying separate system guidelines for environmental, socioeconomic, and transportation considerations in subpart E, as it did in § 960.5-1(a)(2) of subpart D. The DOE will not require or make findings with regard to such considerations as part of any evaluation of the suitability of the Yucca Mountain site for recommendation. The provisions of subpart D, § 960.5-1(a)(3), relating to the feasibility of constructing, operating, and closing a repository at the Yucca Mountain site also are not incorporated in subpart E. Absent the need to develop a broad basis for comparative evaluations, such considerations are most appropriately dealt with as part of the repository design process and in the evaluation of the performance of any design concept with respect to the radiological protection requirements of the preclosure system guideline in subpart E.

The requirement in § 960.5-1(a)(2) of subpart D to adequately protect the public and the environment from hazards posed by the disposal of radioactive waste is the essence of the preclosure system guideline proposed as § 960.6-2. Separately, as part of the Environmental Impact Statement that will be prepared pursuant to section 114 of the NWPA, the DOE will thoroughly explore potential impacts to the environment as a result of developing a repository at Yucca Mountain. The DOE will consider the information presented in the Environmental Impact Statement, and the results of its evaluation of the Yucca Mountain site under subpart E, in making any recommendation that the site be developed.

#### 1. General Provisions (subpart A)

This section of the Guidelines consists of the statement of applicability of the Guidelines and the definitions. Revisions proposed to this section would establish the applicability of the new subpart E to the evaluation of the Yucca Mountain site for development as a repository while preserving the general comparative siting process originally defined in the Guidelines and would remove inconsistencies with the 1987 amendments to the 1982 NWPA and the Energy Policy Act of 1992. Revisions are proposed for some of the

definitions to make the terms consistent with the NWPA and to accommodate programmatic changes instituted since the Guidelines were written.

#### Section 960.1 Applicability

The statement of applicability would establish that these are the Guidelines developed in accordance with sections 112(a) and 113(b)(1)(A)(iv) of the NWPA. It is the intent of these amendments to continue to apply subparts C and D of 10 CFR part 960 as the General Guidelines providing "the primary criteria for the selection of sites in various geologic media" as required by section 112(a). The comparative aspects of the regulation would be preserved for use if the DOE ever needs to use the process to select other sites for characterization through a comparative screening process.

The proposed amendments would account for the 1987 amendments beginning with the insertion of the words "as amended" after "Nuclear Waste Policy Act of 1982" in the first sentence. Section 113(b)(1)(A)(iv) of the Act would also be referenced in the first sentence to indicate that these Guidelines would contain the criteria to determine the suitability of the candidate site for location of a repository. A new second sentence would be inserted to make explicit that subpart B explains the procedure and basis for applying the guidelines in subparts C, D, and E. The second sentence would now state that the Guidelines in subparts C and D will be used for comparative suitability evaluations made pursuant to section 112(b). The final phrase, "and any preliminary suitability determinations required by section 114(f)" would be deleted because this requirement was removed from section 114(f) by the 1987 amendments. This phrase would be replaced by a new fourth sentence stating that "Only subpart E will be used for evaluating the suitability of the Yucca Mountain site pursuant to section 113(b)(1)(A)(iv)."

These revisions would recognize that the EPA standards promulgated under 40 CFR part 191 no longer apply to the Yucca Mountain site. Section 801 of the Energy Policy Act of 1992 requires the EPA to issue site-specific public health and safety standards as "the only such standards applicable to the Yucca Mountain site." Therefore, the third sentence, stating that these guidelines are intended to complement the requirements set forth in the Act, 10 CFR part 60, and 40 CFR part 191, would be deleted. The fifth sentence is revised to more clearly state that the DOE recognizes NRC jurisdiction for the

resolution of differences between the guidelines and the NRC regulations. The sixth sentence would be deleted as unnecessary.

### *Section 960.2 Definitions*

Revisions to the terms and definitions are proposed to reflect the legislative and programmatic changes since the Guidelines were originally written. The definition of the term "Act" would recognize the 1987 amendments in its use throughout the regulation. The terms "Application" and "Evaluation" would include references to subpart E for the Yucca Mountain site in addition to references to subparts C and D. The definition of "Closure" would include ramps to acknowledge the use of inclined ramps at Yucca Mountain in addition to vertical shafts. The term "Determination" would now apply to subparts C and D for purposes of decisions of suitability for site characterization, and to subpart E for purposes of decisions of suitability for repository development.

### *2. Implementation Guidelines (subpart B)*

#### *Section 960.3 Siting provisions*

The implementation guidelines in subpart B establish the procedure and basis for applying the postclosure and preclosure guidelines of subparts C and D to the siting process when site recommendation for characterization is to be made from multiple candidate sites. In general, references to subpart E would be added to the implementation guidelines in subpart B wherever subpart C and D are mentioned to ensure consistency and clarity in the distinctions between the two sets of postclosure and preclosure guidelines. Subpart B would be revised only to the extent necessary to accommodate the insertion of subpart E into the regulation.

The first sentence of section 960.3 would be replaced by two sentences. The first would state that the guidelines of subpart B establish the procedure and basis for applying the guidelines in subparts C, D, and E. The new second sentence would explain that the guidelines of subparts C and D apply to comparative evaluations of multiple sites for suitability for characterization. The original second sentence would be revised to include the word comparative in reference to those parts of the siting process that require consideration of various settings and consultation with various affected units of government. A new final sentence would be added to explicitly state that the guidelines of subpart E apply to evaluations of the

suitability of the Yucca Mountain site for development as a repository.

Section 960.3-1 would be revised by replacing a phrase in the final sentence to clarify that § 960.3-1-5, Basis for Site Evaluations, establishes the basis for applying subparts C, D and E. Section 960.3-1-1 to § 960.3-1-4 requires the consideration of various site settings and types in precharacterization screening and describe the types of evidence needed at each step in the sequence of siting decisions. No changes are proposed to these sections because they are already consistent with the proposed amendments to the existing regulation and the proposed addition of subpart E.

Section 960.3-1-5 provides the basis for evaluations of individual sites and comparisons between and among sites. This section provides that the guidelines of subparts C and D apply to the screening and selection of sites through the recommendation of candidate sites for characterization. Because the NWA now requires that only the Yucca Mountain site be characterized and evaluated for suitability for development as a repository, the proposed amendment would refer to subpart E as the basis for this evaluation. This section would be divided into three subsections to make the following two distinctions. First, it would distinguish between evaluations of sites leading to recommendations for characterization and the evaluation of the Yucca Mountain site for development as a repository. Second, it would distinguish the basis for evaluating individual sites from the basis for comparing multiple sites.

The subsection heading "(a) General Provisions," is inserted at the beginning of the section. This newly designated subsection would consist of the first two sentences of § 960.3-1-5 with the following revisions. A proposed addition to the first sentence would specify that the evaluation of the suitability of the Yucca Mountain site for development as a repository would be based on the guidelines in subpart E. The second sentence, assigning primary significance to the postclosure guidelines, except during the screening of potentially acceptable sites (the first of the four decisions in the siting process sequence set forth in § 960.3-1-4), would exempt subpart E from this ranking of the guidelines. The guidelines were ranked to reflect the fundamental purpose of a repository to provide long-term isolation of radioactive waste and to facilitate comparisons of sites where some site attributes under the Guidelines may be similar. The ranking would not apply to

subpart E because it would serve no comparative purpose. To clarify this distinction between evaluating individual sites and ranking the guidelines for comparisons of multiple sites, the word "comparisons" would replace "evaluations" in the second sentence of subsection (a).

The subsection heading "(b) Site Evaluations," would be inserted before the third sentence in § 960.3-1-5 to create a new subsection containing the third through tenth sentences of this section revised as follows. This subsection would separate the process and basis for evaluating individual sites from the process for comparing multiple sites under the proposed subsection (c). The description of the arrangement of the Guidelines would now refer directly to subparts C and D where the system guidelines have corresponding technical guidelines. A sentence would be added for clarity, after the eighth sentence, stating that subpart E does not contain corresponding technical guidelines. This sentence is added because the proposed subpart E use of system guidelines would consider the full range of relevant site conditions embodied in any technical guidelines. The proposed system guideline approach of subpart E would not eliminate or disguise consideration of any specific characteristic of the Yucca Mountain site that may affect repository performance. Indeed, the relevant technical factors in subparts C and D would still be considered; but, rather than each being evaluated against a specific independent technical guideline, the factors would be considered for their role in the system's performance. The ninth (now tenth) sentence of this subsection would be revised to explain that subpart E would be used to evaluate the Yucca Mountain site. The final sentence would be revised to explain that disqualification of a site depends on findings made regarding the "applicable" qualifying or disqualifying conditions. For the characterization work at Yucca Mountain, the "applicable" conditions would be the qualifying conditions in § 960.6.

The subsection heading "(c) Site Comparisons," would be inserted before the eleventh sentence of § 960.3-1-5. The subsection would consist of the remainder of this section revised as follows. The first sentence would now include a specific reference to subparts C and D to avoid confusion with subpart E. The portion of the sentence referencing § 960.3-2-4, "performed to support the recommendation of sites for the development of repositories in § 960.3-2-4," would be deleted. This

deletion would recognize that § 960.3–2–4, “Recommendation of sites for the development of repositories,” would be revised to no longer include comparisons of characterized sites. The next sentence, defining the accessible environment, would be deleted because that term is already defined in § 960.2. The repetition of the definition is unnecessary and potentially confusing.

Section 960.3–2 addresses the four steps in the comparative siting process in §§ 960.3–2–1 through 960.3–2–4. Sections 960.3–2–1 through 960.3–2–3 address the three steps in the process that were completed before the 1987 amendments designated Yucca Mountain as the sole site to be characterized. Although these steps were successfully completed with regard to the Yucca Mountain site, they are still found in section 112 of the NWPA, and could possibly be used to evaluate another or other sites in the future. Therefore, no changes are proposed to these sections.

Section 960.3–2–4, “Recommendation of sites for the development of repositories,” establishes the process for the fourth and final step in the siting process. This section refers to multiple characterized candidate sites for the development of the first repository, or subsequent repositories. It would now recognize Yucca Mountain as the sole candidate site that may be recommended under section 114 of the NWPA. The title would be revised to “Recommendation of a site for the development of a repository.” The first sentence would now explain that the Yucca Mountain site shall be evaluated on the basis of the guidelines in subpart E. Because section 114 of the NWPA now provides only for the recommendation of the Yucca Mountain site if it is found suitable for development as a repository, the final sentence would refer specifically to the Yucca Mountain site and all references to other candidate sites would be deleted. If the Yucca Mountain site is found unsuitable, NWPA subsection 113(c)(3)(F) requires the Secretary to report to Congress recommendations for further action to assure the safe, permanent disposal of spent nuclear fuel and high-level radioactive waste, including the need for new legislative authority.

### 3. Yucca Mountain Site Guidelines (subpart E)

#### *Section 960.6 Yucca Mountain Site Guidelines*

The postclosure and preclosure system guidelines of subpart E would

each contain a single qualifying condition that the geologic repository at Yucca Mountain must meet in order for the site to be found suitable for development as a repository. The qualifying condition in both cases would provide that the geologic repository shall be capable of limiting radioactive releases as required by the site-specific standards to be promulgated by the EPA pursuant to the Energy Policy Act of 1992. The DOE would not reach a determination on the suitability of the Yucca Mountain site under these Guidelines in the absence of the final promulgation of those standards. Because the NRC must conform its regulations to the EPA standards, these guidelines also refer to the NRC regulations implementing those standards.

Section 960.6 would provide that a decision to recommend the site as suitable for development as a repository under the Guidelines must include compliance with both postclosure and preclosure system guidelines. The DOE would evaluate compliance with these guidelines by conducting performance assessments and then comparing the results of those assessments to the applicable standards and regulations.

In § 960.6–1, “Postclosure system guideline,” the DOE would recognize that a geologic repository at Yucca Mountain shall be evaluated against the site-specific EPA standards and the NRC regulations implementing them. The key differences between the postclosure guidelines under subpart C and this section would be that this section would not include technical guidelines and would require using the site-specific EPA standards being promulgated pursuant to section 801 of the Energy Policy Act of 1992 and the NRC regulations implementing those standards. Compliance with the postclosure system guideline in this section would be determined through a performance assessment that evaluates the ability of the repository system to allow for the containment and isolation of radioactive waste after permanent closure.

Section 960.6–2, “Preclosure radiological safety system guideline,” would provide for compliance with the EPA site-specific standards and the NRC radiation protection standards applicable during construction, operation and closure of the repository. The preclosure radiological safety system guideline in subpart D calls for compliance with 10 CFR parts 20 and 60, and 40 CFR part 191. This preclosure guideline would recognize

that the EPA site-specific standards, rather than 40 CFR part 191, apply to Yucca Mountain. It would also recognize the application of the requirements of 10 CFR part 20, “Standards for Protection Against Radiation,” which generally apply to licensed, operational nuclear facilities throughout the United States, and 10 CFR Part 60, “Disposal of High-Level Radioactive Wastes in Geologic Repositories,” or successor provisions. Thus, the main difference between the subpart D preclosure radiological safety system guideline and the preclosure evaluation conducted under this section is that this section would apply the Yucca Mountain site-specific EPA standards being developed pursuant to the Energy Policy Act of 1992.

### 4. Appendix III

#### *Appendix III—Application of the System and Technical Guidelines During the Siting Process*

The introductory text in this appendix would be amended by adding a single sentence to clearly establish that this appendix does not apply to the guidelines of Subpart E for the evaluation of the Yucca Mountain site for its suitability for development as a repository. The distinctions between lower-level and higher-level findings have been preserved for their use in the comparative siting process.

### III. References

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#### IV. Opportunity for Public Comment

##### A. Participation in Rulemaking

Interested persons are invited to participate in this proposed rulemaking by submitting written data, views, or comments with respect to the subject set forth in this notice. The Department encourages the maximum level of public participation possible in this rulemaking. Individuals, coalitions, states or other government entities, and others are urged to submit written comments on the proposal. The Department also encourages interested persons to participate in the public hearing to be held at the time and place indicated at the beginning of this notice.

##### B. Written Comment Procedures

The DOE requests public comments only on the proposed amendatory language in this notice and will not consider comments on the current regulation in this rulemaking proceeding. Written comments (eight copies) should be identified on the outside of the envelope, and on the comments themselves, with the designation: "General Guidelines NOPR, Docket Number RW-RM-96-100" and must be received by the date specified at the beginning of this notice in order to be considered. In the event any person wishing to submit a written comment cannot provide eight copies, alternative arrangements can be made in advance by calling (702) 794-5578. Additionally, the Department would appreciate an electronic copy of the written comments to the extent possible. The Department is currently using WordPerfect 6.1 for Windows. All comments received on or before the date specified at the beginning of this notice and other relevant information will be considered by the DOE before final action is taken on the proposed rule. All comments submitted will be available for examination in the Rule Docket File in the Yucca Mountain Science Center in Las Vegas, Nevada, and the DOE's Freedom of Information Reading Room. In addition, a transcript of the proceedings of the public hearing will be filed in the docket. The transcript and additional material will be available by electronic mail at the following URL address: <http://www.ymp.gov>. Pursuant to the provisions of 10 CFR 1004.11 any person submitting information or data that is believed to be confidential, and which may be exempt by law from public disclosure, should submit one complete copy, as well as two copies from which the information claimed to be confidential has been deleted. The Department of Energy will make its own

determination of any such claim and treat it according to its determination.

### C. Public Hearing Procedures

The time and place of the public hearing are indicated at the beginning of this notice. The Department invites any person who has an interest in the proposed regulation or who is a representative of a group or class of persons which has an interest to make a request for an opportunity to make an oral presentation at the hearing. Requests to speak should be sent to the address or phone number indicated in the **ADDRESSES** section of this notice and be received by the time specified in the **DATES** section of this notice. The person making the request should briefly describe his or her interest in the proceedings and, if appropriate, state why that person is a proper representative of the group or class of persons that has such an interest. The person also should provide a phone number where they may be reached during the day. Each person selected to speak at a public hearing will be notified as to the approximate time that they will be speaking. They should bring eight copies of their oral statement to the hearing. In the event any person wishing to testify cannot meet this requirement, alternative arrangements can be made in advance by calling (702) 794-1322. The length of each presentation will be limited to five minutes, or based on the number of persons requesting to speak. Persons planning to speak should address their comments to the proposed amendatory language contained in this notice. The DOE will not consider testimony on the language in the current regulation in this rulemaking proceeding. A Department official will be designated to preside at the hearing. The hearing will not be a judicial or an evidentiary-type hearing, but will be conducted in accordance with 5 U.S.C. 553 and section 501 of the Department of Energy Organization Act. 42 U.S.C. 7191. At the conclusion of all initial oral statements, each person will be given the opportunity to make a rebuttal or clarifying statement. These statements will be given in the order in which the initial statements were made. Any further procedural rules needed for the proper conduct of the hearing will be announced by the Presiding Officer at the hearing. If the DOE must cancel the hearing, the DOE will make every effort to publish an advance notice of such cancellation in the Federal Register. Notice of cancellation will also be given to all persons scheduled to speak at the hearing. Hearing dates may be canceled

in the event no public testimony has been scheduled in advance.

### V. Compliance With the National Environmental Policy Act (NEPA)

The issuance of these amendments to the Guidelines is a preliminary decision making activity pursuant to section 112(d) and 113(d) of the NWPA and therefore does not require the preparation of an environmental impact statement pursuant to section 102(2)(C) of the NEPA or any other environmental review under section 102(2) (E) or (F) of the NEPA.

### VI. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, was enacted by Congress to ensure that small entities do not face significant negative economic impact as a result of Government regulations. The DOE certifies that the rule amending the Guidelines will not have a significant impact on a substantial number of small entities. The rule will not regulate anyone outside of the DOE. It merely articulates proposed considerations for the Secretary of Energy to undertake in determining whether the Yucca Mountain site is suitable to be recommended for development as a repository. Accordingly, no regulatory flexibility analysis is required under the Regulatory Flexibility Act.

### VII. Review Under the Paperwork Reduction Act

The DOE has determined that this proposed rule contains no new or amended recordkeeping, reporting, or application requirements, or any other type of information collection requirements subject to the Paperwork Reduction Act (Pub. L. 96-511).

### VIII. Review Under Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4) generally requires Federal agencies to closely examine the impacts of regulatory actions on State, local, and tribal governments. Section 101(5) of Title I of that law defines a Federal intergovernmental mandate to include any regulation that would impose an enforceable duty upon State, local, or tribal governments, except, among other things, a condition of Federal assistance or a duty arising from participating in a voluntary federal program. Title II of that law requires each Federal agency to assess the effects of Federal regulatory actions on State, local, and tribal governments, in the aggregate, or to the private sector, other than to the extent

such actions merely incorporate requirements specifically set forth in a statute. Section 202 of that title requires a Federal agency to perform a detailed assessment of the anticipated costs and benefits of any rule that includes a Federal mandate which may result in costs to State, local, or tribal governments, or to the private sector, of \$100 million or more. Section 204 of that title requires each agency that proposes a rule containing a significant Federal intergovernmental mandate to develop an effective process for obtaining meaningful and timely input from elected officers of State, local, and tribal governments.

This proposed rule is not likely to result in the promulgation of any final rule that includes any Federal mandate 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 in any one year. Further, the Guidelines in 10 CFR part 960 and the proposed amendments to part 960 in this rule largely incorporate requirements specifically provided in sections 112 and 113 of the NWPA. Moreover, sections 112, 113 and 114 of the NWPA provide for meaningful and timely input from elected officials of State, local and tribal governments. Accordingly, no assessment or analysis is required under the Unfunded Mandates Reform Act of 1995.

### IX. Review Under Executive Order 12612

Executive Order 12612, 52 FR 41685, requires that regulations, rules, legislation, and any other policy actions be reviewed for any substantial direct effect on States, on the relationship between the Federal government and the States, or in the distribution of power and responsibilities among various levels of government. If there are substantial effects, then the Executive Order requires a preparation of a Federalism assessment to be used in all decisions involved in promulgating and implementing policy action. The rule proposed in this notice will not have a substantial direct effect on the institutional interests or traditional functions of the States. Accordingly, no assessment or analysis is required under Executive Order 12612.

### X. Review Under Executive Order 12866

Section 1 of Executive Order 12866 ("Regulatory Planning and Review"), 58 FR 51735, establishes a philosophy and principles for Federal agencies to follow in promulgating regulations. Section 1(b)(9) of that Order provides:

“Wherever feasible, agencies shall seek views of appropriate State, local, and tribal officials before imposing regulatory requirements that might significantly or uniquely affect those governmental entities. Each agency shall assess the effects of Federal regulations on State, local, and tribal governments, including specifically the availability of resources to carry out those mandates, and seek to minimize those burdens that uniquely or significantly affect such governmental entities, consistent with achieving regulatory objectives. In addition, agencies shall seek to harmonize Federal regulatory actions with regulated State, local and tribal regulatory and other governmental functions.”

Section 6 of Executive Order 12866 provides for a review by the Office of Information and Regulatory Affairs (OIRA) of a “significant regulatory action,” which is defined to include an action that may have an effect on the economy of \$100 million or more, or adversely affect, in a material way, the economy, competition, jobs, productivity, the environment, public health or safety, or State, local, or tribal governments. The Department has concluded that this rule is not a significant regulatory action that requires a review by the OIRA.

#### XI. Review Under Executive Order 12875

Executive Order 12875 (“Enhancing Intergovernmental Partnership”), provides for reduction or mitigation, to the extent allowed by law, of the burden on State, local and tribal governments of unfunded Federal mandates not required by statute. The analysis under the Unfunded Mandates Reform Act of 1995, above, satisfies the requirements of Executive Order 12875. Accordingly, no further analysis is required under Executive Order 12875.

#### XII. Review Under Executive Order 12988

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, “Civil Justice Reform,” 61 FR 4729 (February 7, 1996), imposes on Executive agencies the general duty to adhere to the following requirements: (1) Eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; and (3) provide a clear legal standard for affected conduct rather than a general standard and promote simplification and burden reduction. With regard to the review required by section 3(a), section 3(b) of Executive Order 12988 specifically requires that Executive

agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in section 3(a) and section 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. The DOE has completed the required review and determined that, to the extent permitted by law, the proposed regulations meet the relevant standards of Executive Order 12988.

#### List of Subjects in 10 CFR Part 960

Environmental protection, Geologic repositories, Nuclear energy, Nuclear materials, Radiation protection, Waste disposal.

Issued in Washington, DC, on December 9, 1996.

Daniel A. Dreyfus,

*Director, Office of Civilian Radioactive Waste Management.*

For the reasons set out in the preamble, part 960 of title 10 of the Code of Federal Regulations is proposed to be amended as follows.

### **PART 960—GENERAL GUIDELINES FOR THE RECOMMENDATION OF SITES FOR NUCLEAR WASTE REPOSITORIES**

1. The authority citation for 10 CFR part 960 is revised to read as follows:

Authority: 42 U.S.C. 2011 *et seq.*, 42 U.S.C. 5801 *et seq.*, 42 U.S.C. 7101 *et seq.*, 42 U.S.C. 10101 *et seq.*

#### **Subpart A—General Provisions**

2. Section 960.1 is revised to read as follows:

##### **§ 960.1 Applicability.**

These guidelines were developed in accordance with the requirements of sections 112(a) and 113(b)(1)(A)(iv) of the Nuclear Waste Policy Act of 1982, as amended, for use by the Secretary of Energy in evaluating the suitability of sites for the development of repositories. Subpart B of this part explains the procedure and basis for applying the guidelines in subparts C, D and E of this part. The guidelines in subparts C and D of this part will be

used for comparative suitability evaluations and determinations made pursuant to section 112(b). Only subpart E of this part will be used for evaluating the suitability of the Yucca Mountain site pursuant to section 113(b)(1)(A)(iv). In the event of an inconsistency between the guidelines and the applicable NRC regulations, the NRC regulations would apply. The DOE contemplates revising the guidelines from time to time, as permitted by the Act, to take into account revisions made to the NRC regulations and to otherwise update the guidelines as necessary. The DOE will submit the revisions to the NRC and obtain its concurrence before issuance.

3. Section 960.2 is amended by revising the definitions of “Act,” “Application,” “Closure,” “Determination,” and “Evaluation,” as follows:

##### **§ 960.2 Definitions.**

\* \* \* \* \*

*Act* means the Nuclear Waste Policy Act of 1982, as amended.

\* \* \* \* \*

*Application* means the act of making a finding of compliance or noncompliance with the qualifying or disqualifying conditions specified in the guidelines of subparts C and D of this part, in accordance with the types of findings specified in appendix III to this part, or with the qualifying conditions specified in the guidelines of subpart E of this part.

\* \* \* \* \*

*Closure* means the final closing of the remaining open operational areas of the underground facility and boreholes after termination of waste emplacement, culminating in the sealing of shafts and ramps.

\* \* \* \* \*

*Determination* means a decision by the Secretary that a site is suitable for characterization consistent with the guidelines of subparts C and D of this part or that the Yucca Mountain site is suitable for development as a repository consistent with subpart E of this part.

\* \* \* \* \*

*Evaluation* means the act of carefully examining the characteristics of a site in relation to the requirements of the qualifying or disqualifying conditions specified in the guidelines of subpart C and D or subpart E of this part.

4. Section 960.3 is revised to read as follows:

##### **§ 960.3 Implementation guidelines.**

The guidelines of this subpart establish the procedure and basis for applying the guidelines in subparts C, D

and E of this part. The postclosure and the preclosure guidelines of subparts C and D of this part, respectively, apply to comparative evaluations of the suitability of multiple sites for characterization. As may be appropriate during the comparative siting process, this procedure requires consideration of a variety of geohydrologic settings and rock types, regionality, and environmental impacts and consultation with affected States, affected Indian tribes, and Federal agencies. The postclosure and preclosure guidelines of subpart E of this part apply to evaluations of the suitability of the Yucca Mountain site for development as a repository.

5. Section 960.3-1 is amended by revising the final sentence of the section to read as follows:

**§ 960.3-1 Siting provisions.**

\* \* \* Section 960.3-1-5 establishes the basis for site evaluations against the postclosure and the preclosure guidelines of subparts C, D and E of this part.

6. Section 960.3-1-5 is revised to read as follows:

**§ 960.3-1-5 Basis for site evaluations.**

(a) *General provisions.* Evaluations of individual sites and comparisons between and among sites shall be based on the postclosure and preclosure guidelines specified in subparts C and D of this part, respectively, except that the evaluation of the suitability of the Yucca Mountain site for development as a repository shall be based on the guidelines in subpart E of this part. Except for screening for potentially acceptable sites as specified in § 960.3-2-1 and in the implementation of subpart E of this part, such comparisons shall place primary significance on the postclosure guidelines and secondary significance on the preclosure guidelines, with each set of guidelines considered collectively for such purposes.

(b) *Site evaluations.* Both the postclosure and the preclosure guidelines of subparts C and D of this part consist of a system guideline or guidelines and corresponding groups of technical guidelines. The postclosure guidelines of subpart C of this part contain eight technical guidelines in one group. The preclosure guidelines of subpart D of this part contain eleven technical guidelines separated into three groups that represent, in decreasing order of importance, preclosure radiological safety; environment, socioeconomics, and transportation; and ease and cost of siting, construction, operation, and closure. The relative

significance of any technical guideline to its corresponding system guideline is site specific. Therefore, for each technical guideline, an evaluation of compliance with the qualifying condition shall be made in the context of the collection of system elements and the evidence related to that guideline, considering on balance the favorable conditions and the potentially adverse conditions identified at a site. Similarly, for each system guideline, such evaluation shall be made in the context of the group of technical guidelines and the evidence related to that system guideline. The guidelines of subpart E of this part contain two system performance guidelines without corresponding technical guidelines. For purposes of recommending the Yucca Mountain site for development as a repository, such evidence shall include analyses of expected repository performance to determine the ability of the site to comply with the standards set forth in subpart E of this part. A site shall be disqualified at any time during the siting process if the evidence supports a finding by the DOE that an applicable disqualifying condition exists or an applicable qualifying condition cannot be met.

(c) *Site comparisons.* Comparisons between and among sites shall be based on the system guidelines in subparts C and D of this part, to the extent practicable and in accordance with the levels of relative significance specified above for the postclosure and the preclosure guidelines. Such comparisons are intended to allow comparative evaluations of sites in terms of the capabilities of the natural barriers for waste isolation and to identify innate deficiencies that could jeopardize compliance with such requirements. If the evidence for the sites is not adequate to substantiate such comparisons, then the comparisons shall be based on the groups of technical guidelines under the postclosure and the preclosure guidelines, considering the levels of relative significance appropriate to the postclosure and the preclosure guidelines and the order of importance appropriate to the subordinate groups within the preclosure guidelines. Comparative site evaluations shall place primary importance on the natural barriers of the site. In such evaluations for the postclosure guidelines of subpart C of this part, engineered barriers shall be considered only to the extent necessary to obtain realistic source terms for comparative site evaluations based on the sensitivity of the natural barriers to such realistic engineered barriers. For a

better understanding of the potential effects of engineered barriers on the overall performance of the repository system, these comparative evaluations shall consider a range of levels in the performance of the engineered barriers. That range of performance levels shall vary by at least a factor of 10 above and below the engineered-barrier performance requirements set forth in 10 CFR 60.113, and the range considered shall be identical for all sites compared. The comparisons shall assume equivalent engineered-barrier performance for all sites compared and shall be structured so that engineered barriers are not relied upon to compensate for deficiencies in the geologic media. Furthermore, engineered barriers shall not be used to compensate for an inadequate site; mask the innate deficiencies of a site; disguise the strengths and weaknesses of a site and the overall system; and mask differences between sites when they are compared. Site comparisons shall evaluate predicted releases of radionuclides to the accessible environment. Releases of different radionuclides shall be combined by the methods specified in appendix A of 40 CFR part 191. The comparisons specified above shall consist of two comparative evaluations that predict radionuclide releases for 100,000 years after repository closure and shall be conducted as follows. First, the sites shall be compared by means of evaluations that emphasize the performance of the natural barriers at the site. Second, the sites shall be compared by means of evaluations that emphasize the performance of the total repository system. These second evaluations shall consider the expected performance of the repository system; be based on the expected performance of waste packages and waste forms, in compliance with the requirements of 10 CFR 60.113, and on the expected hydrologic and geochemical conditions at each site; and take credit for the expected performance of all other engineered components of the repository system. The comparison of isolation capability shall be one of the significant considerations in the recommendation of sites for the development of repositories. The first of the two comparative evaluations specified above shall take precedence unless the second comparative evaluation would lead to substantially different recommendations. In the latter case, the two comparative evaluations shall receive comparable consideration. Sites with predicted isolation capabilities that differ by less than a

factor of 10, with similar uncertainties, may be assumed to provide equivalent isolation.

7. Section 960.3-2-4 is revised to read as follows:

**§ 960.3-2-4 Recommendation of a site for the development of a repository.**

After completion of site characterization and non-geologic data gathering activities at the Yucca Mountain site, the site shall be evaluated on the basis of the guidelines specified in subpart E of this part. Together with any recommendation to the President to approve the Yucca Mountain site for the development of a repository, the Secretary shall make available to the public, and submit to the President, a comprehensive statement of the basis of such recommendation pursuant to the requirements specified in section 114(a)(1) of the Act, including an environmental impact statement prepared in accordance with the provisions of sections 114(a)(1)(D) and 114(f) of the Act.

8. Subpart E is added to read as follows:

**Subpart E—Yucca Mountain Site Guidelines**

Sec.

960.6 Yucca Mountain site guidelines.

960.6-1 Postclosure system guideline.

960.6-2 Preclosure radiological safety system guideline.

**Subpart E—Yucca Mountain Site Guidelines**

**§ 960.6 Yucca Mountain site guidelines.**

The guidelines in this subpart specify the qualifying conditions that a geologic repository at Yucca Mountain shall meet for the site to be determined suitable for development as a repository. The guidelines are separated into postclosure and preclosure system guidelines. Compliance with the postclosure system guideline shall be determined by the ability of a geologic repository to meet the applicable standards through a postclosure system performance assessment. Compliance with the preclosure radiological safety system guideline shall be determined by the ability of a geologic repository to meet the applicable standards through a preclosure performance assessment.

**§ 960.6-1 Postclosure system guideline.**

*Qualifying condition.* The geologic repository shall allow for the

containment and isolation of radioactive waste after permanent closure in accordance with the EPA standards established specifically for the Yucca Mountain site and the NRC regulations implementing those standards.

**§ 960.6-2 Preclosure radiological safety system guideline.**

*Qualifying condition.* During construction, operation, and closure, the geologic repository shall perform in accordance with the EPA standards established specifically for the Yucca Mountain site and the applicable safety requirements set forth in 10 CFR parts 20 and 60 or their successor provisions.

9. Appendix III is amended in the introductory text of paragraph number 1 by adding a new sentence immediately after the first sentence of that paragraph to read as follows:

Appendix III—Application of the System and Technical Guidelines During the Siting Process

1. \* \* \* This appendix does not apply to the guidelines of subpart E for the evaluation of the Yucca Mountain site for its suitability for development as a repository. \* \* \*

[FR Doc. 96-31603 Filed 12-13-96; 8:45 am]

BILLING CODE 6450-01-P

# Federal Register

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Monday  
December 16, 1996

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Part VI

## Office of Management and Budget

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Budget Rescissions and  
Deferrals; Notice

**OFFICE OF MANAGEMENT AND BUDGET****Budget Rescission and Defferals**

The White House

Washington

December 4, 1996.

Dear Mr. President: In accordance with the Congressional Budget and Impoundment Control Act of 1974, I herewith report seven new deferrals of budgetary resources, totaling \$3.5 billion.

These deferrals affect programs of the Department of State, the Social Security

Administration, and International Security Assistance.

Sincerely,

William J. Clinton.

The Honorable Albert Gore, Jr.,

*President of the Senate, Washington, D.C. 20510.*

The White House

Washington

December 4, 1996.

Dear Mr. Speaker: In accordance with the Congressional Budget and Impoundment Control Act of 1974, I herewith report seven

new deferrals of budgetary resources, totaling \$3.5 billion.

These deferrals affect programs of the Department of State, the Social Security Administration, and International Security Assistance.

Sincerely,

William J. Clinton.

The Honorable Newt Gingrich,

*Speaker of the House of Representatives, Washington, D.C. 20515.*

**BILLING CODE 3100-01-P**

**CONTENTS OF SPECIAL MESSAGE**  
(in thousands of dollars)

Deferral No.	ITEM	Budgetary Resources
<b>Funds Appropriated to the President</b>		
International Security Assistance		
D97-1	Economic support fund and International Fund for Ireland.....	1,258,292
D97-2	Foreign military financing program.....	1,412,375
D97-3	Foreign military financing loan program.....	60,000
D97-4	Foreign military financing direct loan financing account.....	540,000
Agency for International Development		
D97-5	International disaster assistance, Executive.....	147,800
<b>Department of State</b>		
Other		
D97-6	United States emergency refugee and migration assistance fund.....	118,486
<b>Social Security Administration</b>		
D97-7	Limitation on administrative expenses.....	7,365
Total, deferrals.....		3,544,318

Deferral No. 97-1

**DEFERRAL OF BUDGET AUTHORITY**  
**Report Pursuant to Section 1013 of P.L. 93-344**

<b>AGENCY:</b> Funds Appropriated to the President	<b>New budget authority.....</b> \$ <u>2,362,600,000</u> (P.L. 104-208)
<b>BUREAU:</b> International Security Assistance	
<b>Appropriation title and symbol:</b>  Economic support fund and International Fund for Ireland 1/  726/71037 727/81037 72X1037	<b>Other budgetary resources.....</b> \$ <u>286,160,636</u>
	<b>Total budgetary resources.....</b> \$ <u>2,648,760,636</u>
<b>OMB identification code:</b> 72-1037-0-1-152	<b>Amount to be deferred:</b>
<b>Grant program:</b>  <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	<b>Part of year.....</b> \$ _____
	<b>Entire year.....</b> \$ <u>1,258,292,400</u>
<b>Type of account or fund:</b>  <input type="checkbox"/> Annual <input checked="" type="checkbox"/> Multi-year: September 30, 1997 <input checked="" type="checkbox"/> No-Year: September 30, 1998 (expiration date)	<b>Legal authority (in addition to sec. 1013):</b>
	<input checked="" type="checkbox"/> Antideficiency Act  <input type="checkbox"/> Other _____
	<b>Type of budget authority:</b>
	<input checked="" type="checkbox"/> Appropriation <input type="checkbox"/> Contract authority <input type="checkbox"/> Other _____

**Coverage:**

<u>Appropriation</u>	<u>Account Symbol</u>	<u>OMB Identification Code</u>	<u>Deferred Amount Reported</u>
Economic support fund and International Fund for Ireland.....	726/71037	72-1037-0-1-152	\$ 30,851,000
	727/81037	72-1037-0-1-152	\$ 1,162,600,000
	72X1037	72-1037-0-1-152	\$ <u>64,841,400</u>
			\$ 1,258,292,400 *

**Justification:** The President is authorized by the Foreign Assistance Act of 1961, as amended, to furnish assistance to countries and organizations, on such terms and conditions as he may determine, in order to promote economic or political stability. Section 531(b) of the Act makes the Secretary of State, in cooperation with the Administrator of the Agency for International Development, responsible for policy decisions and justifications for economic support programs, including whether there will be an economic support program for a country and the amount of the program for each country. This deferral of funds for the Economic Support Fund has no effect on the availability of funds for the International Fund for Ireland.

These funds have been deferred pending the development of country-specific plans that assure that aid is provided in an efficient manner and are reserved for unanticipated program needs. This deferral action is taken under the provisions of the Antideficiency Act (31 U.S.C. 1512).

**Estimated Program Effect:** None.

**Outlay Effect:** None

1/ This account was the subject of a similar deferral in FY 1996 (D96-1A).

\* Subsequent releases have reduced the amount deferred to \$1,258,092,388.



Deferral No. 97-3

**DEFERRAL OF BUDGET AUTHORITY**  
**Report Pursuant to Section 1013 of P.L. 93-344**

<b>AGENCY:</b> Funds Appropriated to the President	<b>New budget authority.....</b> \$ <u>60,000,000</u> (P.L. 104-208) <b>Other budgetary resources.....</b> \$ <u>---</u> <b>Total budgetary resources.....</b> \$ <u>60,000,000</u>
<b>BUREAU:</b> International Security Assistance	
<b>Appropriation title and symbol:</b>  Foreign military financing loan program 1/  1171085	<b>Amount to be deferred:</b> <b>Part of year.....</b> \$ 60,000,000 <b>Entire year.....</b> \$ <u>---</u>
<b>OMB identification code:</b> 11-1085-0-1-152	
<b>Grant program:</b>  <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	<b>Legal authority (in addition to sec. 1013):</b>  <input checked="" type="checkbox"/> Antideficiency Act  <input type="checkbox"/> Other _____
<b>Type of account or fund:</b>  <input checked="" type="checkbox"/> Annual  <input type="checkbox"/> Multi-year: _____ (expiration date)  <input type="checkbox"/> No-Year	<b>Type of budget authority:</b>  <input checked="" type="checkbox"/> Appropriation  <input type="checkbox"/> Contract authority  <input type="checkbox"/> Other _____

**Justification:** The President is authorized by the Arms Export Control Act to sell or finance by credit, loan guarantees, or grants, articles and defense services to friendly countries to facilitate the common defense. Under section 2 of the Act, the Secretary of State, under the direction of the President, is responsible for sales made under this Act. Executive Order 11958 further requires the Secretary of State to obtain prior concurrence of the Secretaries of Defense and Treasury, respectively, regarding consistency of transactions with national security and financial policies.

As required by the Federal Credit Reform Act of 1990, this account records the subsidy costs associated with the direct loans obligated and loan guarantees for foreign military financing committed in FY 1992 and beyond. The foreign military financing credit program provides loans that finance sales of defense articles, defense services, and design and construction services to foreign countries and international organizations. The subsidy amounts are estimated on a present value basis.

These funds have been deferred pending the review of specific grants to eligible countries by the Departments of State, Treasury, and Defense. The review process will ensure that in each proposed program the proposed recipients are qualified and that the limits of available funds are not exceeded. This deferral action is taken under the provisions of the Antideficiency Act (31 U.S.C. 1512).

**Estimated Program Effect:** None.

**Outlay Effect:** None

1/ This account was the subject of a similar deferral in FY 1996 (D96-5).

Deferral No. 97-4

**DEFERRAL OF BUDGET AUTHORITY**  
**Report Pursuant to Section 1013 of P.L. 93-344**

<b>AGENCY:</b> Funds Appropriated to the President	<b>New budget authority.....</b> \$ <u>540,000,000</u> (P.L. 104-208)
<b>BUREAU:</b> International Security Assistance	<b>Other budgetary resources.....</b> \$ <u>---</u>
<b>Appropriation title and symbol:</b>  Foreign military financing direct loan financing account  11X4122	<b>Total budgetary resources.....</b> \$ <u>540,000,000</u>
	<b>Amount to be deferred:</b>
	<b>Part of year.....</b> \$ 540,000,000
	<b>Entire year.....</b> \$ <u>---</u>
<b>OMB identification code:</b>  11-4122-0-3-152	<b>Legal authority (in addition to sec. 1013):</b>
<b>Grant program:</b>  <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	<input checked="" type="checkbox"/> Antideficiency Act <input type="checkbox"/> Other _____
<b>Type of account or fund:</b>  <input type="checkbox"/> Annual <input type="checkbox"/> Multi-year: _____ (expiration date) <input checked="" type="checkbox"/> No-Year	<b>Type of budget authority:</b>  <input checked="" type="checkbox"/> Appropriation <input type="checkbox"/> Contract authority <input type="checkbox"/> Other _____

**Justification:** The President is authorized by the Arms Export Control Act to sell or finance by credit, loan guarantees, or grants, articles and defense services to friendly countries to facilitate the common defense. Under section 2 of the Act, the Secretary of State, under the direction of the President, is responsible for sales made under this Act. Executive Order 11958 further requires the Secretary of State to obtain prior concurrence of the Secretaries of Defense and Treasury, respectively, regarding consistency of transactions with national security and financial policies.

As required by the Federal Credit Reform Act of 1990, this account records the financing costs associated with the direct loans obligated and loan guarantees for foreign military financing committed in FY 1992 and beyond. The foreign military financing credit program provides loans that finance sales of defense articles, defense services, and design and construction services to foreign countries and international organizations. The subsidy amounts are estimated on a present value basis.

These funds have been deferred pending the review of specific grants to eligible countries by the Departments of State, Treasury, and Defense. The review process will ensure that in each proposed program the proposed recipients are qualified and that the limits of available funds are not exceeded. This deferral action is taken under the provisions of the Antideficiency Act (31 U.S.C. 1512).

**Estimated Program Effect:** None.

**Outlay Effect:** None



Deferral No. 97-6

**DEFERRAL OF BUDGET AUTHORITY**  
**Report Pursuant to Section 1013 of P.L. 93-344**

<b>AGENCY:</b> Department of State	<b>New budget authority.....</b> \$ <u>50,000,000</u> (P.L. 104-208)
<b>BUREAU:</b> Other	<b>Other budgetary resources.....</b> \$ <u>68,931,456</u>
<b>Appropriation title and symbol:</b>  United States emergency refugee and migration assistance fund 1/  11X0040	<b>Total budgetary resources.....</b> \$ <u>118,931,456</u>
<b>OMB identification code:</b>  11-0040-0-1-151	<b>Amount to be deferred:</b>
<b>Grant program:</b>  <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	<b>Part of year.....</b> \$ _____
<b>Type of account or fund:</b>  <input type="checkbox"/> Annual <input type="checkbox"/> Multi-year: _____ (expiration date) <input checked="" type="checkbox"/> No-Year	<b>Entire year.....</b> \$ <u>118,485,726</u>
	<b>Legal authority (in addition to sec. 1013):</b>
	<input checked="" type="checkbox"/> Antideficiency Act
	<input type="checkbox"/> Other _____
	<b>Type of budget authority:</b>
	<input checked="" type="checkbox"/> Appropriation
	<input type="checkbox"/> Contract authority
	<input type="checkbox"/> Other _____

**Justification:** Section 501(a) of the Foreign Relations Authorization Act of 1976 (Public Law 94-141) and section 414(b)(1) of the Refugee Act of 1980 (Public Law 96-212) amended section 2(c) of the Migration and Refugee Assistance Act of 1962 (22 U.S.C. 2601) by authorizing a fund to enable the President to provide emergency assistance for unexpected urgent refugee and migration needs.

Executive Order No. 11922 of June 16, 1976, allocated all funds appropriated to the President for the Emergency Fund to the Secretary of State, but reserved for the President the determination of assistance to be furnished and the designation of refugees to be assisted by the Fund.

These funds have been deferred pending Presidential decisions required by Executive Order No. 11922. Funds will be released as the President determines assistance to be furnished and designates refugees to be assisted by the Fund. This deferral action is taken under the provisions of the Antideficiency Act (31 U.S.C. 1512).

**Estimated Program Effect:** None.

**Outlay Effect:** None

1/ This account was the subject of a similar deferral in FY 1996 (D96-3A).

Deferral No. 97-7

**DEFERRAL OF BUDGET AUTHORITY**  
**Report Pursuant to Section 1013 of P.L. 93-344**

<b>AGENCY:</b> Social Security Administration	<b>New budget authority.....</b> \$ <u>234,895,000</u> (P.L. 104-208) <b>Other budgetary resources.....</b> \$ <u>54,414,828</u> <b>Total budgetary resources.....</b> \$ <u>289,309,828</u>
<b>BUREAU:</b>	
<b>Appropriation title and symbol:</b>  Limitation on Administrative expenses 1/  28X8704	
<b>OMB identification code:</b>  20-8007-0-7-651	<b>Legal authority (in addition to sec. 1013):</b>  <input checked="" type="checkbox"/> Antideficiency Act  <input type="checkbox"/> Other _____
<b>Grant program:</b>  <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
<b>Type of account or fund:</b>  <input type="checkbox"/> Annual <input type="checkbox"/> Multi-year: _____ (expiration date) <input checked="" type="checkbox"/> No-Year	<b>Type of budget authority:</b>  <input checked="" type="checkbox"/> Appropriation <input type="checkbox"/> Contract authority <input type="checkbox"/> Other _____

**Justification:** This account includes funding for construction and/or renovation of Social Security trust fund-owned headquarters and field office buildings. In addition, funds remain available for costs associated with acquisition of land in Colonial Park Estates adjacent to the Social Security Administration complex in Baltimore, Maryland. The Social Security Administration has received an approved FY 1997 apportionment for \$50,000 to cover potential upward adjustments of prior-year costs related to field office roof repair and replacement projects. Deferred funds may be made available for two purposes: (1) purchase of 9.8 acres of privately-owned land consisting of 14 scattered lots within the Social Security Administration complex that the Federal Government made a commitment to the original owners to purchase and to pay relocation costs contingent upon the owner's desire to sell at some future date; and (2) construction, renovation, and expansion projects when a need for such projects is identified and determined to be necessary for the efficient operation of the Social Security Administration. This action is taken pursuant to the Antideficiency Act (31 U.S.C. 1512).

**Estimated Program Effect:** None.

**Outlay Effect:** None

1/ This account was the subject of a similar deferral in FY 1996 (D96-2A).

**Federal Register**

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Monday  
December 16, 1996

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**Part VII**

**Department of  
Transportation**

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Federal Aviation Administration

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14 CFR Part 91  
Stage 2 Airplane Operations; Final Rule

**DEPARTMENT OF TRANSPORTATION****Federal Aviation Administration****14 CFR Part 91**

[Docket No. 28213; Amdt. No. 91-252]

RIN 2120-AE83

**Stage 2 Airplane Operations**

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

**SUMMARY:** This document revises the airplane operating rules to provide reporting requirements for air carriers and foreign air carriers operating Stage 2 airplanes in Hawaii. These revisions require any air carrier or foreign air carrier that operates Stage 2 airplanes in Hawaii to include certain information in its annual progress reports to the Federal Aviation Administration (FAA). This action also identifies certain operations of aircraft (otherwise restricted from operation in the contiguous United States) that are allowed, and corrects an oversight made when the regulations were adopted. These revisions will implement the amendments to the law and clarify existing regulations and FAA policy.

**EFFECTIVE DATES:** January 15, 1997.

**FOR FURTHER INFORMATION CONTACT:** Ms. Laurette V. Fisher, Policy and Regulatory Division (AEE-300), Office of Environment and Energy, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 267-3561.

**SUPPLEMENTARY INFORMATION:**

## Background

The Airport Noise and Capacity Act of 1990 (49 U.S.C. 47521 *et seq.*) (ANCA) placed a ban on the operation of Stage 2 airplanes with a maximum weight of more than 75,000 pounds in the contiguous United States after December 31, 1999. To achieve an organized transition to this goal, the FAA was charged with establishing a schedule of phased compliance with that requirement. On September 25, 1991, the FAA amended subpart I of 14 CFR part 91 (part 91) to add new §§ 91.801 (c) and 91.851 through 91.875 that implemented the Stage 2 nonaddition rules of the ANCA and adopted phased transition criteria (56 FR 26433). The regulatory scheme established in 1991 requires all operators of Stage 2 airplanes (including foreign air carriers and operators) to establish a starting base level of Stage 2 airplanes from

which they will accomplish the required reduction. The regulations give operators a choice of how they will achieve this reduction, and require that each operator report its actions toward compliance on a yearly basis.

Neither the NCA nor the implementing regulations affected the importation or operation of Stage 2 airplanes in the States of Alaska and Hawaii. On October 21, 1991, Congress amended section 2157 of the ANCA to add a new subsection (i) (now 49 U.S.C. 47528) that placed limits on the operation of Stage 2 airplanes in Hawaii. The amendment sought to prevent the proliferation of Stage 2 airplane noise in Hawaii by limiting the number of Stage 2 operations allowed between Hawaii and points outside the contiguous United States, and by restricting "turnaround" service within the State of Hawaii using Stage 2 airplanes. In effect, this amendment creates a kind of operational nonaddition rule for the State of Hawaii; however, this statutory provision differs significantly from the nonaddition rule that applies to Stage 2 airplanes eligible to operate in the contiguous United States and the two should not be confused.

## Discussion of Comments

On May 11, 1995, the FAA published an NPRM (60 FR 25554) that proposed amending the reporting requirements for certain operators of Stage 2 airplanes in Hawaii. Three comments were received in response to the NPRM.

The State of Hawaii Department of Transportation commented and recommended that operators submit the required reports to Hawaii's Department of Transportation in addition to the FAA. The FAA disagrees. First, the FAA does not have the authority to require certain operators to submit annual reports to an individual State. Second, the reports will contain only the number of airplanes operated by reporting operators to ensure compliance with the statute; they will not contain the number of operations nor the locations of those operations of Stage 2 airplanes within the State of Hawaii, as the commenter implies it needs. Accordingly, for those reasons, the filing of the reports to the State will not be mandated by this rulemaking.

The second commenter, a major air carrier serving Hawaii, comments through its industry association and recommends that the rule language in proposed §§ 91.877(c) (1) and (2) be clarified to reflect that the number of Stage 2 airplanes used to conduct Hawaiian operations on November 5, 1990, means the number of Stage 2 airplanes in the operator's fleet that

were used in Hawaiian operations at that time, rather than the number of airplanes actually flown on the single day set out in the statute.

The FAA agrees with the comment that the law did not necessarily intend to restrict the number of Stage 2 airplanes to the number that actually operated in service to Hawaii on November 5, 1990. However, the language adopted in this final rule will be changed only slightly. The FAA is sensitive to the fact that general language describing Stage 2 airplanes could lead to the number reported being the entire fleet of a carrier's Stage 2 airplanes, regardless of whether all of these airplanes were regularly used in such service. This was clearly not the intent of the 1991 legislation. To include all of the Stage 2 airplanes in the fleet of a carrier that serves Hawaii would obviate the intent of the restriction. Accordingly, rather than the proposed language "Stage 2 airplanes used to conduct such operations on November 5, 1990," the final rule requires a report of the number of "Stage 2 airplanes used to conduct such operations as of November 5, 1990." This change is intended to allow affected carriers to provide the FAA with the number of Stage 2 airplanes that were usually available for the indicated service as of November 5, 1990. The FAA may require reporting carriers to justify the number claimed under this provision, especially if the number is adjusted for seasonal or other schedule variation.

The commenter also states that the term "turnaround service" is defined in the legislation as a flight between two or more points within the State of Hawaii, and indicates that this language could be read to mean that inter-island segments of mainland-to-Hawaii service should be reported as turnaround service. The commenter states that this does not appear to be the intent of Congress in the legislation, and that the proposed reporting requirement should include the word "exclusively" to indicate that the operations reported as turnaround service are not segments of mainland-to-Hawaii service.

The FAA disagrees that a change to the proposed regulation is necessary. The Hawaiian operations amendment restricts the number of Stage 2 airplanes that conduct turnaround service in the State of Hawaii, as indicated by the commenter. The original language of the legislation described turnaround service as "the operation of a flight between two or more points, all of which are within the State of Hawaii." The Senate Report that accompanied the legislation indicated that it covered "the operation

of local flights between two Hawaii cities and/or counties which also serve as the origin and destination for those flights." The comment's suggestion that the regulation should read "operations conducted *exclusively* within the State of Hawaii" does not appear to add clarity to the proposed regulation. The commenter has interpreted the statute correctly, in that inter-island segments of flights that begin outside the state are not considered turnaround service under the law. The FAA has determined that adding a term that does not appear in the legislation is unnecessary, a conclusion bolstered by the fact that the commenter interpreted the law correctly without the term.

The commenter also suggests that the new required and amended reports be submitted concurrently with the next annual report of an air carrier, since the proposed 90 days may not be sufficient to gather the necessary information. The FAA agrees, and this change is reflected in the text of the final rule.

The third commenter supported the rule as proposed.

The FAA received no comments on the other two changes proposed in the NPRM. One proposal was to eliminate the references to parts 125 and 135 in the definition of new entrant in § 91.851, and in the special provisions for new entrant air carriers under § 91.867. The FAA inadvertently included operators operating under 14 CFR parts 125 and 135 in the original regulation. The inclusion of each of these parts was in error since, by definition, there can be no new entrant air carriers operating under either of these parts. No comments were received on this proposal, and it is adopted as proposed.

The other proposal was to revise § 91.857 to remove the reference to "imported" airplanes. The proposed rule would refer only to Stage 2 airplanes "operating between points outside the contiguous United States." This section was always intended to apply to both "imported" Stage 2 airplanes covered by the nonaddition rule but operated outside the contiguous United States, and Stage 2 airplanes removed from the operation in the contiguous United States as a means of complying with the phased transition regulations. No comments were received on this proposal, and it is adopted as proposed.

In the NPRM, the FAA also solicited comments about the continuing coverage of airplanes that operate under nonstandard airworthiness certificates but are included in the applicability section of the phased transition rules. As stated in the NPRM, the underlying

statute does not distinguish between airplanes that operate under standard category airworthiness certificates, and those that operate under an experimental or other restricted category certificate. No comments concerning the effect of this provision were received. Accordingly, there is no change to the section of the regulations. The regulations will continue to require that by December 31, 1999, the operator of any civil subsonic turbojet aircraft with a maximum weight of more than 75,000 pounds must comply with the Stage 3 noise requirements contained in 14 CFR part 36, regardless of the category of airworthiness certificate under which a covered airplane operates. Similarly, operators of these airplanes must continue to comply with the phased transition requirements of part 91 as well.

#### Other Changes

In reviewing the NPRM, the FAA determined that the proposed rule language regarding Hawaiian operation reporting was overly broad, referring to "operators" rather than "air carriers," as provided by the law. That reference has been corrected in the final rule to indicate that only air carriers and foreign air carriers subject to the restriction in the law need report their Hawaiian operations under § 91.877. This correction does not affect the costs detailed in the regulatory evaluation.

Also in reviewing the NPRM, the FAA determined that the language of the proposed reporting requirement may not have clearly distinguished that there are three types of flights to report—those between the contiguous U.S. and the State of Hawaii, those between the State of Hawaii and a point outside the contiguous U.S., and turnaround service only between the islands. All three of these flights are limited by law, and the FAA always intended that all three be reported. Accordingly, the language of the final rule has been changed to clarify this distinction. This clarification does not affect the costs detailed in the regulatory evaluation.

Finally, the applicability of § 91.851, the definitions applicable to the transition regulations, is being revised to reference § 91.877, which is being added by this rule. This revision does not change the scope of this rule.

#### Paperwork Reduction Act

Information collection requirements currently contained in part 91 have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) and have been assigned OMB control number 2120-

0553. An amendment of that approval is being submitted to OMB to include the small additional burden associated with this final rule.

#### Economic 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 determination 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 Office of Management and Budget directs agencies to assess the effect of regulatory changes on international trade. In conducting these analyses, the FAA has determined that this rule: (1) Will generate benefits that justify its costs and is not "a significant regulatory action" as defined in Executive Order 12866; (2) is not significant as defined in Department of Transportation's Regulatory Policies and Procedures; (3) will not have a significant impact on a substantial number of small entities; and (4) will not constitute a barrier to international trade. Since the impacts of the change are relatively minor, this economic summary constitutes the analysis and no regulatory evaluation will be placed in the docket.

#### Costs

There are three new provisions of the rule.

##### 1. Stage 2 Operations in Hawaii

The current requirements of the law restricting Stage 2 airplane operations in Hawaii do not include the reporting necessary for the FAA to ensure compliance with the statutory restrictions added by the 1991 amendment. This rule will add a new paragraph to § 91.801 and add a new § 91.877 that will contain the reporting requirements for aircraft operated within the State of Hawaii or between the State of Hawaii and points outside the contiguous United States on and since November 5, 1990. Each affected operator will need to report the number of Stage 2 airplanes it operated in either described operation since November 5, 1990, and any changes in the number since that time. This reporting requirement is needed to ensure compliance with the 1991 amendment to ANCA.

The FAA estimates that this provision will require for each carrier no more than two hours per year of a Flight Operations Manager's time to collect the necessary information. The FAA further

estimates that there will be a one-time agency cost expended in the first year of implementation as a result of this rule change. There are approximately 10 U.S. operators that fly Stage 2 airplanes in and out of Hawaii that are not presently required to report the needed information.

The FAA assumes that reporting the information required by this action will be performed by a Flight Operations Manager at a loaded hourly wage (which includes benefits) of \$26.74. Two hours at this rate times 10 carriers yields the total annual cost of \$535.00 to affected carriers.

The FAA estimates that it will also take a total of two hours for the FAA to review and approve the initial information submitted. (Time spent in review thereafter will be insignificant because it will be included in regular reviews of reports.) Given a loaded hourly wage rate (which includes benefits) of \$38.87 for a government worker, GS-13 step 5, the FAA estimates that this provision will cost the FAA \$777 ( $\$38.87 \times 10 \times 3$ ) to process this information. The total annual cost of this provision is, therefore, \$1,312.

## 2. Other Stage 2 Operations

Currently §91.857 applies to Stage 2 airplanes imported into a noncontiguous state, territory, or possession of the United States on or after November 5, 1990. That section was promulgated to provide a means by which airplanes purchased after the date of the statutory nonaddition rule could be included on the operations specifications of operators, but restricted from operations in the contiguous United States. Paragraph (b) of that section allows operators to obtain a special flight authorization to bring these airplanes into the contiguous United States for the purpose of maintenance.

Since §91.857 was promulgated, the FAA found that the same restricted operations specification arrangement was the most effective means for some operators to comply with the phased compliance regulations. Accordingly, the FAA is revising the text of §91.857 to remove the reference to "imported" airplanes; the revision will include a reference only to Stage 2 airplanes "operating between points outside the contiguous United States." This language is intended to include both Stage 2 airplanes covered by the nonaddition rule and Stage 2 airplanes removed from operations in the contiguous United States as a means of complying with the phased transition regulations.

This change does not represent a change in policy toward these airplanes. There is, therefore, no cost associated with this provision.

## 3. Correction of New Entrant References

As part of the required transition to an all Stage 3 fleet, the FAA was required to consider the impact of any regulations on a "new entry into the airline industry." In adopting the regulations, the FAA made special provisions for new entrant air carriers under §91.867. In that regulation, and in the definition of new entrant in §91.851, the FAA inadvertently included operators operating under parts 125 and 135. The inclusion of each of these parts was in error. As outlined in the final rule synopsis, air carriers operate under part 121, 129, or 135; no air carriers are certificated under part 125. Also, since the noise transition regulations affect only jet airplanes over 75,000 pounds, the airplane size limitations of part 135 mean that there are no part 135 operators affected by the rules, and thus there can be no part 135 new entrants.

The FAA is eliminating the references to "new entrants" under parts 125 and 135 since, as explained above, such status is not possible given the limitations of the statute and those of parts 125 and 135. There are no costs associated with this change.

## Benefits

The statute contains a provision that limits the number of Stage 2 airplanes that operate exclusively within the State of Hawaii, or between Hawaii and a point outside the contiguous United States. The benefits associated with the reduction in noise are attributed to the law itself. No direct benefits of the reduction in noise levels can be attributed to this rule making. Without this rule the FAA will not have the information necessary to enforce the law.

## Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA; 5 U.S.C. 601 *et seq.*) was enacted by Congress to ensure that small entities are not unnecessarily and disproportionately burdened by Government regulations. The RFA requires agencies to review rules that may have "a significant economic impact on a substantial number of small entities." Small entities are independently owned and operated small businesses and small not-for-profit organizations.

According to the FAA's Order on Regulatory Flexibility Criteria and Guidance, a small operator of airplanes

for hire is one that owns, but does not necessarily operate, nine or fewer airplanes. The Order also defines a substantial number of small entities as a number that is not less than 11 and that is more than one-third of the small entities subject to the rule. The small entities that will be affected by this rule are the operators of Stage 2 civil subsonic airplanes with maximum weights of more than 75,000 pounds that operate in Hawaii.

The annual costs of this rule are negligible (\$535 per operator). For this reason the FAA concludes that the final rule does not significantly affect a substantial number of small air carrier entities as defined in the FAA's Regulatory Flexibility Criteria and Guidance.

## International Trade Impact

The final rule is expected to have little or no impact on trade opportunities of U.S. firms conducting business overseas or for foreign firms conducting business in the United States. The rule will impose the same requirements on both domestic air carriers operating under part 121 and foreign air carriers subject to part 129. The costs of compliance to foreign air carriers flying into the United States and domestic operators are similar and negligible. Therefore, it will not cause a competitive disadvantage for U.S. carriers operating overseas or for foreign carriers operating in the United States.

## Federalism Implications

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

## Environmental Analysis

This rule will ensure implementation of the law by adding a new section §91.877 that will contain new reporting requirements for operators conducting Stage 2 operations in the State of Hawaii. The new reporting requirement refines existing reporting requirements in part 91, and will not have a significant effect on the quality of the human environment. Any environmental impact associated with this regulation is the result of the amendment to the statute made by Congress. This action, the addition of a

reporting requirement, in itself, has no environmental impact.

The change to § 91.857 that acknowledges an acceptable means of compliance with the Stage 3 transition, and the elimination of two drafting errors, also will not have a significant effect on the quality of the human environment. This rule does not in any way change the substantive effect of the transition regulations, but only reflects the practices of the FAA since the regulations were adopted in 1991.

**Conclusion**

These amendments to part 91 will result in no substantial costs or savings. They will not have an annual effect on the economy of \$100 million or more, will not result in a major increase in costs to consumers or others, nor have other significant adverse effects. In addition, this rule will have little or no impact on trade opportunities for U.S. firms doing business overseas, or on foreign firms doing business in the United States. Accordingly, the FAA has determined that these amendments: (1) Are not a significant regulatory action under Executive Order 12866; (2) are not a significant regulatory action under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

**List of Subjects in 14 CFR Part 91**

Aircraft, Noise control, Reporting and recordkeeping requirements.

**The Amendment**

Accordingly, the Federal Aviation Administration amends 14 CFR part 91 as follows:

**PART 91—GENERAL OPERATING AND FLIGHT RULES**

1. The authority citation for part 91 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120, 44101, 44111, 44701, 44709, 44711, 44715, 44716, 44717, 44722, 46306, 46315, 46316, 46502, 46504, 46506-46507, 47122, 47508, 47528-47531.

**§ 91.801 [Amended]**

2. Section 91.801(c) is amended by removing the reference to “91.875” and adding the reference “91.877” in its place.

3. Section 91.801 is amended by adding a new paragraph (d) to read as follows:

**§ 91.801 Applicability: Relation to part 36.**

\* \* \* \* \*

(d) Section 91.877 prescribes reporting requirements that apply to any civil subsonic turbojet airplane with a maximum weight of more than 75,000 pounds operated by an air carrier or foreign air carrier between the contiguous United States and the State of Hawaii, between the State of Hawaii and any point outside of the 48 contiguous United States, or between the islands of Hawaii in turnaround service, under part 121 or 129 of this chapter on or after November 5, 1990.

**§ 91.851 [Amended]**

4. The introductory text of § 91.851 is amended by removing the reference “91.875” and by adding the reference “91.877” in its place.

**§ 91.851 [Amended]**

5. Section 91.851 is amended in the definition of “New entrant” by revising the phrase “part 121, 125, 129 or 135” to read “part 121 or 129”.

6. Section 91.857 is amended by revising the heading and introductory text to read as follows:

**§ 91.857 Stage 2 operations outside of the 48 contiguous United States, and authorization for maintenance.**

An operator of a Stage 2 airplane that is operating only between points outside the contiguous United States on or after November 5, 1990, shall—

\* \* \* \* \*

**§ 91.867 [Amended]**

7. Section 91.867(a)(1) is amended by revising the phrase “part 121, 125, or 135” to read “part 121”.

8. A new § 91.877 is added to read as follows:

**§ 91.877 Annual reporting of Hawaiian operations.**

(a) Each air carrier or foreign air carrier subject to § 91.865 or § 91.867 of this part that conducts operations between the contiguous United States and the State of Hawaii, between the State of Hawaii and any point outside of the contiguous United States, or between the islands of Hawaii in turnaround service, on or since November 5, 1990, shall include in its annual report the information described in paragraph (c) of this section.

(b) Each air carrier or foreign air carrier not subject to § 91.865 or § 91.867 of this part that conducts operations between the contiguous U.S. and the State of Hawaii, between the State of Hawaii and any point outside of the contiguous United States, or between the islands of Hawaii in turnaround service, on or since November 5, 1990, shall submit an annual report to the FAA, Office of

Environment and Energy, on its compliance with the Hawaiian operations provisions of 49 U.S.C. 47528. Such reports shall be submitted no later than 45 days after the end of a calendar year. All progress reports must provide the information through the end of the calendar year, be certified by the operator as true and complete (under penalty of 18 U.S.C. 1001), and include the following information—

(1) The name and address of the air carrier or foreign air carrier;

(2) The name, title, and telephone number of the person designated by the air carrier or foreign air carrier to be responsible for ensuring the accuracy of the information in the report; and

(3) The information specified in paragraph (c) of this section.

(c) The following information must be included in reports filed pursuant to this section—

(1) For operations conducted between the contiguous United States and the State of Hawaii—

(i) The number of Stage 2 airplanes used to conduct such operations as of November 5, 1990;

(ii) Any change to that number during the calendar year being reported, including the date of such change;

(2) For air carriers that conduct inter-island turnaround service in the State of Hawaii—

(i) The number of Stage 2 airplanes used to conduct such operations as of November 5, 1990;

(ii) Any change to that number during the calendar year being reported, including the date of such change;

(iii) For an air carrier that provided inter-island turnaround service within the state of Hawaii on November 5, 1990, the number reported under paragraph (c)(2)(i) of this section may include all Stage 2 airplanes with a maximum certificated takeoff weight of more than 75,000 pounds that were owned or leased by the air carrier on November 5, 1990, regardless of whether such airplanes were operated by that air carrier or foreign air carrier on that date.

(3) For operations conducted between the State of Hawaii and a point outside the contiguous United States—

(i) The number of Stage 2 airplanes used to conduct such operations as of November 5, 1990; and

(ii) Any change to that number during the calendar year being reported, including the date of such change.

(d) Reports or amended reports for years predating this regulation are required to be filed concurrently with the next annual report.

Issued in Washington, DC, on November  
21, 1996.

Linda Hall Daschle,  
*Acting Administrator.*

[FR Doc. 31873 Filed 12-13-96; 8:45 am]

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#### **LIST OF PUBLIC LAWS**

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The list of Public Laws for the  
104th Congress, Second  
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The list will resume when bills  
are enacted into law during  
the first session of the 105th  
Congress, which convenes at  
noon on January 7, 1997.

Note: A cumulative list of  
Public Laws for the 104th  
Congress, Second Session, is  
in Part II of this issue.

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Title	Stock Number	Price	Revision Date
<b>1, 2 (2 Reserved)</b> .....	(869-028-00001-1) .....	\$4.25	Feb. 1, 1996
<b>3 (1995 Compilation and Parts 100 and 101)</b> .....	(869-028-00002-9) .....	22.00	Jan. 1, 1996
<b>4</b> .....	(869-028-00003-7) .....	5.50	Jan. 1, 1996
<b>5 Parts:</b>			
1-699 .....	(869-028-00004-5) .....	26.00	Jan. 1, 1996
700-1199 .....	(869-028-00005-3) .....	20.00	Jan. 1, 1996
1200-End, 6 (6 Reserved) .....	(869-028-00006-1) .....	25.00	Jan. 1, 1996
<b>7 Parts:</b>			
0-26 .....	(869-028-00007-0) .....	22.00	Jan. 1, 1996
27-45 .....	(869-028-00008-8) .....	11.00	Jan. 1, 1996
46-51 .....	(869-028-00009-6) .....	13.00	Jan. 1, 1996
52 .....	(869-028-00010-0) .....	5.00	Jan. 1, 1996
53-209 .....	(869-028-00011-8) .....	17.00	Jan. 1, 1996
210-299 .....	(869-028-00012-6) .....	35.00	Jan. 1, 1996
300-399 .....	(869-028-00013-4) .....	17.00	Jan. 1, 1996
400-699 .....	(869-028-00014-2) .....	22.00	Jan. 1, 1996
700-899 .....	(869-028-00015-1) .....	25.00	Jan. 1, 1996
900-999 .....	(869-028-00016-9) .....	30.00	Jan. 1, 1996
1000-1199 .....	(869-028-00017-7) .....	35.00	Jan. 1, 1996
1200-1499 .....	(869-028-00018-5) .....	29.00	Jan. 1, 1996
1500-1899 .....	(869-028-00019-3) .....	41.00	Jan. 1, 1996
1900-1939 .....	(869-028-00020-7) .....	16.00	Jan. 1, 1996
1940-1949 .....	(869-028-00021-5) .....	31.00	Jan. 1, 1996
1950-1999 .....	(869-028-00022-3) .....	39.00	Jan. 1, 1996
2000-End .....	(869-028-00023-1) .....	15.00	Jan. 1, 1996
<b>8</b> .....	(869-028-00024-0) .....	23.00	Jan. 1, 1996
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1-199 .....	(869-028-00025-8) .....	30.00	Jan. 1, 1996
200-End .....	(869-028-00026-6) .....	25.00	Jan. 1, 1996
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0-50 .....	(869-028-00027-4) .....	30.00	Jan. 1, 1996
51-199 .....	(869-028-00028-2) .....	24.00	Jan. 1, 1996
200-399 .....	(869-028-00029-1) .....	5.00	Jan. 1, 1996
400-499 .....	(869-028-00030-4) .....	21.00	Jan. 1, 1996
500-End .....	(869-028-00031-2) .....	34.00	Jan. 1, 1996
<b>11</b> .....	(869-028-00032-1) .....	15.00	Jan. 1, 1996
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220-299 .....	(869-028-00035-5) .....	29.00	Jan. 1, 1996
300-499 .....	(869-028-00036-3) .....	21.00	Jan. 1, 1996
500-599 .....	(869-028-00037-1) .....	20.00	Jan. 1, 1996

Title	Stock Number	Price	Revision Date
600-End .....	(869-028-00038-0) .....	31.00	Jan. 1, 1996
<b>13</b> .....	(869-028-00039-8) .....	18.00	Mar. 1, 1996
<b>14 Parts:</b>			
1-59 .....	(869-028-00040-1) .....	34.00	Jan. 1, 1996
60-139 .....	(869-028-00041-0) .....	30.00	Jan. 1, 1996
140-199 .....	(869-028-00042-8) .....	13.00	Jan. 1, 1996
200-1199 .....	(869-028-00043-6) .....	23.00	Jan. 1, 1996
1200-End .....	(869-028-00044-4) .....	16.00	Jan. 1, 1996
<b>15 Parts:</b>			
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300-799 .....	(869-028-00046-1) .....	26.00	Jan. 1, 1996
800-End .....	(869-028-00047-9) .....	18.00	Jan. 1, 1996
<b>16 Parts:</b>			
0-149 .....	(869-028-00048-7) .....	6.50	Jan. 1, 1996
150-999 .....	(869-028-00049-5) .....	19.00	Jan. 1, 1996
1000-End .....	(869-028-00050-9) .....	26.00	Jan. 1, 1996
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150-279 .....	(869-028-00056-8) .....	12.00	Apr. 1, 1996
280-399 .....	(869-028-00057-6) .....	13.00	Apr. 1, 1996
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●400-499 .....	(869-028-00063-1) .....	35.00	Apr. 1, 1996
500-End .....	(869-028-00064-9) .....	32.00	Apr. 1, 1996
<b>21 Parts:</b>			
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●100-169 .....	(869-028-00066-5) .....	22.00	Apr. 1, 1996
●170-199 .....	(869-028-00067-3) .....	29.00	Apr. 1, 1996
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●600-799 .....	(869-028-00071-1) .....	8.50	Apr. 1, 1996
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220-499 .....	(869-028-00079-7) .....	13.00	May 1, 1996
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700-899 .....	(869-028-00081-9) .....	13.00	May 1, 1996
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§§ 1.401-1.440 .....	(869-028-00089-4) .....	31.00	Apr. 1, 1996
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§§ 1.908-1.1000 .....	(869-028-00094-1) .....	26.00	Apr. 1, 1996
§§ 1.1001-1.1400 .....	(869-028-00095-9) .....	26.00	Apr. 1, 1996
§§ 1.1401-End .....	(869-028-00096-7) .....	35.00	Apr. 1, 1996

Title	Stock Number	Price	Revision Date	Title	Stock Number	Price	Revision Date
2-29	(869-028-00097-5)	28.00	Apr. 1, 1996	●136-149	(869-028-00150-5)	35.00	July 1, 1996
30-39	(869-028-00098-3)	20.00	Apr. 1, 1996	150-189	(869-028-00151-3)	33.00	July 1, 1996
40-49	(869-028-00099-1)	13.00	Apr. 1, 1996	●190-259	(869-028-00152-1)	22.00	July 1, 1996
50-299	(869-028-00100-9)	14.00	Apr. 1, 1996	260-299	(869-026-00153-7)	40.00	July 1, 1995
300-499	(869-028-00101-7)	25.00	Apr. 1, 1996	●300-399	(869-028-00154-8)	28.00	July 1, 1996
500-599	(869-028-00102-5)	6.00	<sup>4</sup> Apr. 1, 1990	●400-424	(869-028-00155-6)	33.00	July 1, 1996
600-End	(869-028-00103-3)	8.00	Apr. 1, 1996	●425-699	(869-028-00156-4)	38.00	July 1, 1996
<b>27 Parts:</b>				●700-789	(869-028-00157-2)	33.00	July 1, 1996
1-199	(869-028-00104-1)	44.00	Apr. 1, 1996	●790-End	(869-028-00158-7)	19.00	July 1, 1996
200-End	(869-028-00105-0)	13.00	Apr. 1, 1996	<b>41 Chapters:</b>			
<b>28 Parts:</b>				1, 1-1 to 1-10		13.00	<sup>3</sup> July 1, 1984
1-42	(869-028-00106-8)	35.00	July 1, 1996	1, 1-11 to Appendix, 2 (2 Reserved)		13.00	<sup>3</sup> July 1, 1984
43-end	(869-028-00107-6)	30.00	July 1, 1996	3-6		14.00	<sup>3</sup> July 1, 1984
<b>29 Parts:</b>				7		6.00	<sup>3</sup> July 1, 1984
0-99	(869-028-00108-4)	26.00	July 1, 1996	8		4.50	<sup>3</sup> July 1, 1984
100-499	(869-028-00109-2)	12.00	July 1, 1996	9		13.00	<sup>3</sup> July 1, 1984
500-899	(869-028-00110-6)	48.00	July 1, 1996	10-17		9.50	<sup>3</sup> July 1, 1984
900-1899	(869-028-00111-4)	20.00	July 1, 1996	18, Vol. I, Parts 1-5		13.00	<sup>3</sup> July 1, 1984
1900-1910 (§§ 1909 to 1910.999)	(869-028-00112-2)	43.00	July 1, 1996	18, Vol. II, Parts 6-19		13.00	<sup>3</sup> July 1, 1984
1910 (§§ 1910.1000 to end)	(869-028-00113-1)	27.00	July 1, 1996	18, Vol. III, Parts 20-52		13.00	<sup>3</sup> July 1, 1984
1911-1925	(869-028-00114-9)	19.00	July 1, 1996	1-100	(869-028-00159-9)	12.00	July 1, 1996
1926	(869-028-00115-7)	30.00	July 1, 1996	101	(869-028-00160-2)	36.00	July 1, 1996
1927-End	(869-028-00116-5)	38.00	July 1, 1996	102-200	(869-028-00161-1)	17.00	July 1, 1996
<b>30 Parts:</b>				201-End	(869-028-00162-9)	17.00	July 1, 1996
1-199	(869-028-00117-3)	33.00	July 1, 1996	<b>42 Parts:</b>			
200-699	(869-028-00118-1)	26.00	July 1, 1996	1-399	(869-026-00163-4)	26.00	Oct. 1, 1995
700-End	(869-028-00119-0)	38.00	July 1, 1996	400-429	(869-026-00164-2)	26.00	Oct. 1, 1995
<b>31 Parts:</b>				430-End	(869-026-00165-1)	39.00	Oct. 1, 1995
0-199	(869-028-00120-3)	20.00	July 1, 1996	<b>43 Parts:</b>			
200-End	(869-028-00121-1)	33.00	July 1, 1996	●1-999	(869-026-00166-9)	23.00	Oct. 1, 1995
<b>32 Parts:</b>				1000-3999	(869-026-00167-7)	31.00	Oct. 1, 1995
1-39, Vol. I		15.00	<sup>2</sup> July 1, 1984	4000-End	(869-026-00168-5)	15.00	Oct. 1, 1995
1-39, Vol. II		19.00	<sup>2</sup> July 1, 1984	<b>44</b>	(869-026-00169-3)	24.00	Oct. 1, 1995
1-39, Vol. III		18.00	<sup>2</sup> July 1, 1984	<b>45 Parts:</b>			
1-190	(869-028-00122-0)	42.00	July 1, 1996	1-199	(869-022-00170-7)	22.00	Oct. 1, 1995
191-399	(869-028-00123-8)	50.00	July 1, 1996	200-499	(869-028-00170-0)	14.00	<sup>6</sup> Oct. 1, 1995
400-629	(869-028-00124-6)	34.00	July 1, 1996	500-1199	(869-026-00172-3)	23.00	Oct. 1, 1995
630-699	(869-028-00125-4)	14.00	<sup>5</sup> July 1, 1991	1200-End	(869-026-00173-1)	26.00	Oct. 1, 1995
700-799	(869-028-00126-2)	28.00	July 1, 1996	<b>46 Parts:</b>			
800-End	(869-028-00127-1)	28.00	July 1, 1996	1-40	(869-026-00174-0)	21.00	Oct. 1, 1995
<b>33 Parts:</b>				41-69	(869-026-00175-8)	17.00	Oct. 1, 1995
1-124	(869-028-00128-9)	26.00	July 1, 1996	70-89	(869-026-00176-6)	8.50	Oct. 1, 1995
*125-199	(869-028-00129-7)	35.00	July 1, 1996	90-139	(869-026-00177-4)	15.00	Oct. 1, 1995
200-End	(869-028-00130-1)	32.00	July 1, 1996	140-155	(869-026-00178-2)	12.00	Oct. 1, 1995
<b>34 Parts:</b>				156-165	(869-026-00179-1)	17.00	Oct. 1, 1995
1-299	(869-028-00131-9)	27.00	July 1, 1996	166-199	(869-026-00180-4)	17.00	Oct. 1, 1995
300-399	(869-028-00132-7)	27.00	July 1, 1996	●200-499	(869-026-00181-2)	19.00	Oct. 1, 1995
400-End	(869-028-00133-5)	46.00	July 1, 1996	500-End	(869-026-00182-1)	13.00	Oct. 1, 1995
<b>35</b>	(869-028-00134-3)	15.00	July 1, 1996	<b>47 Parts:</b>			
<b>36 Parts:</b>				0-19	(869-026-00183-9)	25.00	Oct. 1, 1995
1-199	(869-028-00135-1)	20.00	July 1, 1996	20-39	(869-026-00184-7)	21.00	Oct. 1, 1995
200-End	(869-028-00136-0)	48.00	July 1, 1996	40-69	(869-026-00185-5)	14.00	Oct. 1, 1995
<b>37</b>	(869-028-00137-8)	24.00	July 1, 1996	70-79	(869-026-00186-3)	24.00	Oct. 1, 1995
<b>38 Parts:</b>				80-End	(869-026-00187-1)	30.00	Oct. 1, 1995
0-17	(869-028-00138-6)	34.00	July 1, 1996	<b>48 Chapters:</b>			
18-End	(869-028-00139-4)	38.00	July 1, 1996	1 (Parts 1-51)	(869-026-00188-0)	39.00	Oct. 1, 1995
<b>39</b>	(869-028-00140-8)	23.00	July 1, 1996	1 (Parts 52-99)	(869-026-00189-8)	24.00	Oct. 1, 1995
<b>40 Parts:</b>				2 (Parts 201-251)	(869-026-00190-1)	17.00	Oct. 1, 1995
●1-51	(869-028-00141-6)	50.00	July 1, 1996	2 (Parts 252-299)	(869-026-00191-0)	13.00	Oct. 1, 1995
●52	(869-028-00142-4)	51.00	July 1, 1996	3-6	(869-026-00192-8)	23.00	Oct. 1, 1995
●53-59	(869-028-00143-2)	14.00	July 1, 1996	7-14	(869-026-00193-6)	28.00	Oct. 1, 1995
60	(869-028-00144-1)	47.00	July 1, 1996	15-28	(869-026-00194-4)	31.00	Oct. 1, 1995
●61-71	(869-028-00145-9)	47.00	July 1, 1996	29-End	(869-026-00195-2)	19.00	Oct. 1, 1995
●72-80	(869-028-00146-7)	34.00	July 1, 1996	<b>49 Parts:</b>			
●81-85	(869-028-00147-5)	31.00	July 1, 1996	1-99	(869-026-00196-1)	25.00	Oct. 1, 1995
86	(869-026-00149-9)	40.00	July 1, 1995	100-177	(869-026-00197-9)	34.00	Oct. 1, 1995
●87-135	(869-028-00149-1)	35.00	July 1, 1996	178-199	(869-026-00198-7)	22.00	Oct. 1, 1995
				200-399	(869-026-00199-5)	30.00	Oct. 1, 1995
				400-999	(869-026-00200-2)	40.00	Oct. 1, 1995
				1000-1199	(869-026-00201-1)	18.00	Oct. 1, 1995

Title	Stock Number	Price	Revision Date
●1200-End .....	(869-026-00202-9) .....	15.00	Oct. 1, 1995
<b>50 Parts:</b>			
1-199 .....	(869-026-00203-7) .....	26.00	Oct. 1, 1995
200-599 .....	(869-026-00204-5) .....	22.00	Oct. 1, 1995
600-End .....	(869-026-00205-3) .....	27.00	Oct. 1, 1995
CFR Index and Findings			
Aids .....	(869-028-00051-7) .....	35.00	Jan. 1, 1996
Complete 1996 CFR set .....		883.00	1996
Microfiche CFR Edition:			
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Individual copies .....		1.00	1996
Complete set (one-time mailing) .....		264.00	1995
Complete set (one-time mailing) .....		244.00	1994

<sup>6</sup>No amendments were promulgated during the period October 1, 1995 to September 30, 1996. The CFR volume issued October 1, 1995 should be retained.

<sup>1</sup>Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

<sup>2</sup>The July 1, 1985 edition of 32 CFR Parts 1-189 contains a note only for Parts 1-39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1-39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

<sup>3</sup>The July 1, 1985 edition of 41 CFR Chapters 1-100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

<sup>4</sup>No amendments to this volume were promulgated during the period Apr. 1, 1990 to Mar. 31, 1996. The CFR volume issued April 1, 1990, should be retained.

<sup>5</sup>No amendments to this volume were promulgated during the period July 1, 1991 to June 30, 1996. The CFR volume issued July 1, 1991, should be retained.