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SMALL BUSINESS ADMINISTRATION

13 CFR Part 120

Business Loan Program

AGENCY: Small Business Administration (SBA).

ACTION: Final rule.

SUMMARY: This final rule implements Pub. L. 104–208, enacted on September 30, 1996, and Pub. L. 105–135, enacted on December 2, 1997, with respect to SBA financing in the 504 program, and clarifies existing regulations applicable to the 504 program and, in some cases, to the 7(a) program. In the 504 program, the final rule allows more than one business to qualify for SBA financing for a specific 504 Project; allows a 504 Borrower to lease long term up to 20 percent of the rentable space in a 504 Project; describes how much a Borrower must contribute to a 504 Project under certain circumstances; modifies allowable fees paid by the Borrower, Third Party Lender, and Certified Development Company (CDC); and allows certain fees incurred by a CDC in the closing of a 504 loan, up to $2,500 per closing, to be eligible administrative costs.

DATE: This rule is effective on January 13, 1999.

FOR FURTHER INFORMATION CONTACT: Michael J. Dowd, 202–205–6660.

SUPPLEMENTARY INFORMATION: On May 5, 1998, SBA published in the **Federal Register** (63 FR 24753), proposed regulations which would implement Public Law 105–135, the ''Small Business Reauthorization Act of 1997'' (1997 legislation), enacted on December 2, 1997, and Public Law 104–208 (1996 legislation), enacted on September 30, 1996, that amended the Small Business Investment Act of 1958 (15 U.S.C. § 601 *et seq.*) (Act). SBA received responses from three commenters and will address each one. SBA published in the **Federal Register** on August 13, 1998, (63 FR 43330) a notice to reopen the comment period, with respect to 7(a) loans, on the proposed rule's change to 13 CFR section 120.111 on Eligible Passive Companies. SBA received one comment from a trade association representing a large number of 7(a) lenders and we will respond to that comment. These final regulations implement the amendments required by the 1996 legislation and some of the amendments required under the 1997 legislation, and make other changes.

Change Affecting the 7(a) and 504 Programs.

The 1997 legislation authorizes SBA to provide financial assistance to more than one identifiable small business for a qualified 504 project.

- SBA is amending Section 120.10 to add the definition of Rentable Property previously included in the text of Section 120.131(a).
- SBA is amending Section 120.111 with respect to Eligible Passive Companies to make that rule consistent with the 1997 legislation. Current Section 120.111 allows SBA to assist an Eligible Passive Company to use loan proceeds to acquire property for lease to an Operating Company. SBA is amending Section 120.111 to authorize SBA to provide financing to an Eligible Passive Company that uses the loan proceeds to lease property to multiple unrelated Operating Companies. This change makes the Eligible Passive Company provision consistent with the change to Section 120.801 discussed in the next paragraph. SBA is also adding a parenthetical to make it clear that references to Operating Company throughout the subsections of section 120.111 mean each Operating Company if there are multiple Operating Companies. This change applies to loans under SBA's 7(a) and 504 programs.
- SBA is making a technical amendment to Section 121.131, which covers leasing a part of new construction or existing buildings to a third party. The amendment changes references to an Operating Company to multiple Operating Companies to conform Section 121.131 to the 1997 legislation and to the revised regulation Sections 120.111 and 120.801. SBA also revised the text of Section 120.131(a) and (b) by using the new defined term ''Rentable Property'' throughout the section and by making them more understandable and consistent. Two commenters interpreted the changes to Section 120.111 to allow multiple Operating Companies to join together to meet the occupancy requirements of Section 120.131(b), allowing them to lease up to 33 percent for new construction and 49 percent for an existing building. SBA agrees with the commenters' interpretation since the indented effect of this change is for the multiple operating companies to be in a position similar to that of a single operating company and, as such, each Operating Company must be a co-borrower or guarantor of the entire loan.

Changes Affecting the 504 Program

The 1996 and 1997 legislation require SBA to amend its regulations. In addition, SBA is announcing other program changes.

- Section 502 of the Act authorizes SBA to provide financial assistance to a small business through a CDC to acquire, construct, convert, or expand its plant facility as a 504 Project under section 504 of the Act. SBA interpreted the statute to allow the Agency to assist only one identifiable business for any particular project. In response to the 1997 legislation, SBA is amending Section 120.801 of its regulations to allow CDCs to assist two ore more unrelated small businesses for any qualified 504 Project.
- The 1996 legislation amended the Act regarding the amount of the Borrower's contribution to a 504 Project financing. SBA is amending Section 120.910 of its regulations to comply with the legislation. The regulation requires the Borrower to contribute at least 15 percent of the total cost of the 504 Project if (i) the Borrower (or Operating Company or Companies if the Borrower is an Eligible Passive Company) has been in business for two years or less, (ii) or if the Project is the acquisition, construction, conversion or expansion of a limited or single purpose building. The Borrower must contribute at least 20 percent of the total cost of the Project if both conditions exist. The only comment received concerning this amendment agreed with the proposed rule.
- The 1996 legislation requires that a Third Party Lender finance at least 50 percent of a Project's cost if the Borrower's contribution is made under either condition described above for

Section 120.910. One commenter disagreed with the statute. Nevertheless, SBA must comply with the legislation and is amending Section 120.920 to implement this change.

• The 1997 legislation amended the Act to permit a 504 Borrower to lease long term no more than 20 percent of a new 504 Project if the Borrower immediately occupies at least 60 percent of the property. To comply with the 1997 legislation, SBA proposed to amend Section 120.870 of its regulations to authorize a Borrower to lease long term no more than 20 percent of the rentable space in a 504 Project to third parties if the Borrower occupies at least 60 percent of the rentable space with plans to occupy the remaining rentable space within three years. A commenter suggested that SBA apply the same schedule to the occupancy of the remainder of the space as Section 120.831(a) now applies to the occupancy of the portion of the space in a new building. SBA concurs with that suggestion and in the final rule allows the Borrower to lease long term no more than 20 percent of the rentable space in a 504 Project to one or more tenants if (i) the Borrower immediately occupies at least 60 percent of the rentable space, (ii) plans to occupy within 3 years some of the remaining space not immediately occupied or leased long term, and (iii) plans to occupy within 10 years all of the remaining space not leased long term. This change will allow a business to build in a good location without having to show that it will use all of the space immediately.

• Section 120.862(b) sets forth specific public policy goals a CDC may use to qualify a 504 Project or support an increased amount of 504 financing. Section 120.862(b)(3) lists expanding Minority Enterprise development as one of the public policy goals. SBA is amending Section 120.862(b)(3) to tell the reader the section in SBA's regulation designating the minority groups to which the subsection applies. Section 120.862(b)(7) lists as one of the public policy goals the assistance of businesses affected by Federal budget reductions. SBA is amending Section 120.862(b)(7) to clarify that the public policy goal is to assist any eligible small business in an area affected by such reductions, not only to assist those businesses that can show that budget reductions adversely affected them. Therefore, if Federal budget reductions adversely affected a geographic area, SBA can assist a business located in or moving to that area without showing that the reductions affected the particular business.

• The 1996 legislation requires SBA to charge the Borrower a fee of up to 0.9375 percent on the unpaid principal balance of the loan as determined at five-year anniversary intervals. SBA is amending Section 120.971 of its regulations to implement this change. In addition, Section 120.971(a)(3) raises the minimum servicing fee from .5 percent to .625 percent.

• SBA is inserting a new Section 120.972 in its regulations to implement the 1996 legislation that requires SBA to collect (i) a one-time fee, equal to 50 basis points, of a Third Party Lender's participation in a Project when the Third Party Lender holds a senior credit position to that of SBA, and (ii) an annual fee from each CDC equal to 0.125 percent of the outstanding principal balance of any Debenture guaranteed by SBA after September 30, 1996. The CDC must pay this fee from the servicing fees collected by the CDC and not from additional fees imposed on the Borrower.

• Currently, under Section 120.921(d), any future advance by a Third Party Lender greater than the outstanding balance and accrued interest must be subordinated to the CDC/SBA lien unless the future advance is to collect payments, maintain collateral or protect the Third Party Lender's lien position on the Third Party Loan. At times, SBA has been unable to realize the full benefit of its lien position, despite its regulations requiring that future advances be subordinate to the CDC/SBA lien. If a Third Party Lender wants to make additional capital available to a 504 Borrower, it easily can do so through another loan. SBA is revising subsection (d) to state that the Third Party Loan cannot be open-ended as to the amount, and after completion of the 504 Project, a Third Party Lender may only make a future advance under the Third Party Loan to collect amounts due on the Third Party Loan note, maintain collateral or protect its lien.

• SBA also has been unable to realize the full benefit of its lien position because of prepayment penalties, late fees, and escalated interest after default due under the Third Party Loan. Accordingly, SBA is adding a new subsection (e) to Section 120.921 that states that the Third Party Lender's lien is subordinate to the CDC/SBA lien regarding prepayment penalties, late fees and escalated interest after default due under the Third Party lien.

• When a small business defaults on a Third Party Loan, SBA may choose to assume the obligations of the Borrower. The 1996 legislation amended the Act to ensure that when SBA assumes such obligation for Projects approved after September 30, 1996, it only will pay the interest rate on the note in effect immediately before the date of the Borrower's default. SBA is renumbering present subsection (e) of Section 120.921 of its regulations as subsection (f) and SBA is revising it to state that SBA only will pay the interest rate in effect immediately before the date of the Borrower's default regarding a Project approved after September 30, 1996.

• SBA is amending Section 120.802 to clarify the definition of a Third Party Loan, and Section 120.801(c)(3) to reflect that definition.

• Currently, Section 120.870(c)(1) of SBA's regulations requires the term of a lease of the Project premises to be at least equal to the term of the Debenture. However, this may not be necessary if the Project is not a structure, but consists only of machinery and equipment. Therefore, SBA is deleting machinery and equipment from the definition to clarify that the length of a lease for machinery and equipment is a credit issue.

Changes to CDC Closing Fees

Section 120.883 sets forth administrative costs that may be paid with the proceeds of a loan funded by a 504 Debenture rather than out of the Borrower's own resources. Section 120.971 sets forth the fees that a CDC may charge the Borrower.

Throughout the history of the 504 program, most of the services required to prepare 504 loan documents and close a 504 loan have been performed for CDCs, at CDC cost, by legal counsel, paralegals, and CDC staff. The CDC has then charged its Borrower a fee at closing to reimburse the CDC for these expenses (''CDC Closing Fee''). Although this CDC Closing Fee reimburses the CDC for its own lawyers' expenses, the Borrower is not considered to be paying a legal fee, since CDC counsel does not represent the Borrower. The Borrower pays separately the legal fees of its legal counsel.

Under the 504 program, loan proceeds may be used to pay eligible Project costs and eligible administrative costs. Eligible Project costs are costs directly attributable to the Project including professional fees necessary for Project services such as architecture, engineering, and environmental studies. The Borrower's legal fees for Project-related matters such as zoning, title searches and recording fees, as well as interest and points on the interim construction loan, are eligible Project costs. The Borrower's legal fees

associated with the closing are not eligible Project costs.

Eligible administrative costs are amounts the Borrower pays for services connected with closing, but not directly attributable to the Project itself. These include SBA's guarantee fee, the CDC's processing fee, and 504 closing agent fees. The Borrower's legal fees associated with the closing are not eligible administrative costs. Until March 1, 1996, the CDC Closing Fee was an eligible administrative cost, and, by regulation, the Borrower could pay this fee out of 504 loan proceeds up to a maximum of $2,500. Since then SBA has not recognized the CDC Closing Fee as an eligible administrative cost, and the Borrower must reimburse the CDC out of its own resources.

CDCs, Borrowers, and SBA share a common interest in minimizing legal fees to reduce costs to the Borrower. During the period before March 1, 1996, some in the 504 industry felt that SBA's regulation influenced the market rate for legal fees and other miscellaneous expenses associated with 504 Closings. They argued that attorney fees charged to CDCs by CDC counsel were artificially high because the CDC Closing Fee was an eligible administrative cost financed out of the loan proceeds. They further argued that the reference in the regulation to a $2,500 limitation established a minimum base for the attorney fees.

SBA received 15 comments concerning these issues during the comment period following publication of proposed rule changes on December 15, 1995. Most of them supported keeping the CDC Closing Fee as an eligible administrative cost. SBA believed, however, that the marketplace should determine the legal expenses associated with the 504 Closing and that there was some merit in the argument that the eligibility of the CDC Closing Fee as an administrative cost resulted in higher attorney fees. Despite the opposition expressed in most of the comments, SBA decided to exclude the CDC Closing Fee from eligible administrative costs and eliminated the $2,500 reference in its final rule dated January 31, 1996.

SBA expected that these regulatory changes would reduce attorney fees. It also anticipated downward competitive pressure on such fees as more attorneys became designated to perform expedited 504 loan closings.

CDCs have been closing loans under the new rules for over two years. Approximately 140 attorneys are enrolled as designated closing attorneys and more than 50 percent of all 504 loans close under the expedited process. Yet fees associated with 504 closings charged to CDCs by CDC counsel do not appear to have decreased.

Legislation enacted since the rule became effective has imposed additional fees upon Borrowers. Industry representatives indicate that the combination of increased fees and the inability to pay CDC Closing Fees out of the Debenture proceeds has reduced small businesses access to the 504 program. Because the fees now are not eligible administrative costs, they must be paid by Borrowers from other resources. Not all Borrowers can afford to pay these costs without use of the Debenture proceeds.

To assist small businesses, SBA is amending Section 120.883 to make CDC Closing Fees eligible administrative costs up to a maximum of $2,500 per Closing. To conform Section 120.884, which lists ineligible costs for 504 loans, to the change in Section 120.883, SBA is deleting the reference to closing legal fees in Section 120.884.

SBA received one comment asking SBA to clarify that $2,500 is not the maximum CDC closing fee that a CDC may charge, but only the maximum amount that may be paid out of the debenture proceeds as an eligible administrative cost. SBA believes the text of Section 120.883 is clear, and declines to make any change in the proposed rule. Under Section 120.971(a)(2), a CDC may charge a borrower a reasonable CDC closing fee. Under Section 120.883, up to $2,500 is eligible to be paid out of the debenture proceeds.

Compliance With Executive Orders 12612, 12778, and 12866, the Regulatory Flexibility Act (5 U.S.C. 601, et seq.), and the Paperwork Reduction Act (44 U.S.C. Ch. 35).

SBA certifies that this final rule does not constitute a significant rule within the meaning of Executive Order 12866, since it is not likely to have an annual effect on the economy of $100 million or more, result in a major increase in costs or prices, or have a significant adverse effect on competition or the U.S. economy.

SBA certifies that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* Last year, SBA made approximately four thousand 504 loans. Currently there are approximately 300 CDCs, less than 15 of which are Premier CDCs. While the 1997 legislation removes the limit on the number of CDCs that can become Premier CDCs, SBA anticipates that, at most, this Rule will affect only half of the CDCs. Thus, the changes to the program in the final rule, including the changes to the Closing Fee provisions and the changes implementing P.L. 104–208 and P.L. 105–135 will not have a significant impact on a substantial number of small businesses.

SBA certifies that this final rule does not impose any additional reporting or recordkeeping requirements under the Paperwork Reduction Act, 44 U.S.C. chapter 35.

For purposes of Executive Order 12612, SBA certifies that this final rule has no federalism implications warranting preparation of a Federalism Assessment.

For purposes of Executive Order 12778, SBA certifies that this final rule is drafted, to the extent practicable, to follow with the standards set forth in section 2 of that Order.

List of Subjects in 13 CFR Part 120

Loan programs—business, Small businesses.

For the reasons set forth in the preamble, SBA amends 13 CFR part 120 as follows:

PART 120—BUSINESS LOANS

1. The authority citation for Part 120 continues to read as follows:

Authority: 15 U.S.C. 634 (b)(6) and 636(a) and (h).

2. In § 120.10, add a new definition as follows:

§ 120.10 Definitions.

* * * * *

Rentable Property is the total square footage of all buildings or facilities used for business operations.

* * * * *

3. Amend § 120.111 by revising the first sentence to read as follows:

§ 120.111 What conditions must an Eligible Passive Company satisfy?

An Eligible Passive Company must use loan proceeds to acquire or lease, and/or improve or renovate, real or personal property (including eligible refinancing), that it leases to one or more Operating Companies for conducting the Operating Company's business (references to Operating Company in paragraphs (a) and (b) of this section mean each Operating Company).

* * * * *

4. Revise § 120.131 to read as follows:

§ 120.131 Leasing part of new construction or existing building to another business.

(a) If the SBA business loan involves the construction of a new building, a

Borrower may lease up to 33 percent of the Rentable Property for a short term to any third party if reasonable growth projections show that the Borrower will need additional space within three years. If the Borrower is an Eligible Passive Company leasing 100 percent of the Project space to one or more Operating Company, the Operating Company, or Operating Companies together, may sublease up to 33 percent of the Rentable Property to a third party under the same conditions. (See § 120.870(c) for an exception with respect to 504 Projects.)

(b) If the SBA business loan involves the acquisition, renovation, or reconstruction of an existing building, the Borrower may lease up to 49 percent of the Rentable Property long term. If the Borrower is an Eligible Passive Company leasing 100 percent of the Project space to one or more Operating Companies, the Operating Company, or Operating Companies together may sublease up to 49 percent of its Rentable Property to a third party under the same conditions. (For 504 loans, see § 120.871).

5. Amend section 120.801 to revise the first sentence of paragraph (a) and paragraph (c)(3) to read as follows:

§ 120.801 How is a 504 Project financed?

(a) One or more small businesses may apply for 504 financing through a CDC serving the area where the 504 Project is located.* * *

* * * * *

(c)* * *

(3) A *Third Party Loan* comprising the balance of the financing, collateralized by a first lien on the Project property (see § 120.920).

* * * * *

6. Amend § 120.802 to revise the definition of Third Party Loan to read as follows:

§ 120.802 Definitions.

* * * * *

Third Party Loan is a loan from a commercial or private lender, investor, or Federal (non-SBA), State or local government source that is part of the Project financing.

* * * * *

7. Amend § 120.862 to revise the parenthetical clause in paragraph (b)(3), and to revise paragraph (b)(7), to read as follows:

§ 120.862 Other economic development objectives.

* * * * *

(b) Public Policy goals: * * *

(3) * * * (See § 124.105(b) for minority groups who qualify for this description.)

* * * * *

(7) Assisting businesses in or moving to areas affected by Federal budget reductions, including base closings, either because of the loss of Federal contracts or the reduction in revenues in the area due to a decreased Federal presence.

8. Amend § 120.870 to revise paragraph (a)(1), and add a new paragraph (c), to read as follows:

§ 120.870 Leasing Project Property.

(a) * * *

(1) The remaining term of the lease, including options to renew, exercisable only by the lessee, equals or exceeds the term of the Debenture;

* * * * *

(c) If the Project is for new construction, the Borrower may lease long term up to 20 percent of the Rentable Property in the Project to one or more tenants if the Borrower immediately occupies at least 60 percent of the Rentable Property, plans to occupy within three years some of the remaining space not immediately occupied and not leased long term, and plans to occupy all of the remaining space not leased long term within ten years.

9. Revise § 120.883 to read as follows:

§ 120.883 Eligible administrative costs for 504 loans.

The following administrative costs are not part of Project costs, but may be paid with the proceeds of the 504 loan and the Debenture (see § 120.971):

(a) SBA guarantee fee;

(b) Funding fee (to cover the cost of a public issuance of securities and the Trustee);

(c) CDC processing fee;

(d) Borrower's out-of-pocket costs associated with the closing of the 504 loan (other than legal fees);

(e) CDC Closing Fee (see § 120.971(a)(2)) up to a maximum of $2,500; and

(f) Underwriters' fee.

§ 120.884 [Amended]

10. Amend § 120.884 to remove paragraph (e).

11. Revise § 120.910 to read as follows:

§ 120.910 How much must the Borrower contribute?

(a) The Borrower must contribute to the Project cash (or property acceptable to SBA obtained with the cash) or land (that is part of the Project Property), in an amount equal to the following percentage of the Project cost, excluding administrative costs:

(1) At least 15 percent, if the Borrower (or Operating Company if the Borrower is an Eligible Passive Company) has operated for two years or less;

(2) At least 15 percent, if the Project involves the acquisition, construction, conversion, or expansion of a limited or single purpose building or structure;

(3) At least 20 percent, if the Project involves conditions described in paragraphs (a)(1) and (2) of this section; or

(4) At least 10 percent, in all other circumstances.

(b) The source of the contribution may be a CDC or any other source except an SBA business loan program (see § 120.913 for SBIC exception).

12. Revise § 120.920 to read as follows:

§ 120.920 Required participation by the Third Party Lender.

(a) *Amount of Third Party Loans.* A Project financing must include one or more Third Party Loans totaling at least as much as the 504 loan. However, the Third Party Loans must total at least 50 percent of the total cost of the Project if:

(1) The Borrower (or Operating Company, if the Borrower is an Eligible Passive Company) has operated for two years or less, or

(2) The Project is for the acquisition, construction, conversion or expansion of a limited or single purpose asset.

(b) *Third Party Loan collateral.* Third Party Loans usually are collateralized by a first lien on the Project property. The SBA cannot guarantee these loans.

13. Amend § 120.921 to revise paragraphs (d) and (e) and redesignate them as (e) and (f), respectively, and add a new paragraph (d), to read as follows:

§ 120.921 Terms of Third Party loans.

* * * * *

(d) *Future advances.* The Third Party Loan must not be open-ended. After completion of the Project, the Third Party Lender may not make future advances under the Third Party Loan except expenditures to collect amounts due the Third Party Loan notes, maintain collateral and protect the Third Party Lender's lien position on the Third Party Loan.

(e) *Subordination.* The Third Party Lender's lien will be subordinate to the CDC/SBA lien regarding any prepayment penalties, late fees, other default charges, and escalated interest after default due under the Third Party Loan.

(f) *Escalation upon default.* A Third-Party Lender may not escalate the rate of interest upon default to a rate greater

than the maximum rate set forth in paragraph (b) of this section. Regarding any Project that SBA approved after September 30, 1996, SBA will only pay the interest rate on the note in effect before the date of the Borrower's default.

14. Amend § 120.971 by revising the first sentence and removing the second sentence of paragraph (a)(2), and by revising paragraphs (a)(3) and (d)(2) to read as follows:

§ 120.971 Allowable Fees paid by Borrower.

(a) * * *

(2) *Closing fee.* The CDC may charge a reasonable closing fee sufficient to reimburse it for the expenses of its in-house or outside legal counsel, and other miscellaneous closing costs (CDC Closing Fee). * * *

(3) *Servicing fee.* The CDC will charge a monthly servicing fee of at least 0.625 percent per annum and no more than 2 percent per annum on the unpaid balance of the loan as determined at five-year anniversary intervals. A servicing fee greater than 1.5 percent in a rural area and 1 percent everywhere else requires SBA's prior written approval, based on evidence of substantial need. The servicing fee may be paid only from loan payments received. The fees may be accrued without interest and collected from the CSA when the payments are made.

* * * * *

(d) * * *

(2) For loans approved by SBA after September 30, 1996, SBA charges a fee of not more than 0.9375 percent annually on the unpaid principal balance of the loan as determined at five-year anniversary intervals.

* * * * *

15. Redesignate § 120.972 as § 120.973, and add a new § 120.972 to read as follows:

§ 120.972 Third Party Lender participation fee and Development Company fee.

(a) *Participation fee.* For loans approved by SBA after September 30, 1996, SBA must collect a one-time fee from the Third Party Lender equal to 50 basis points on its total participation in a Project when the Third Party Lender occupies a senior credit position to SBA in the project.

(b) *Development company fee.* For loans approved by SBA after September 30, 1996, SBA must collect an annual fee from the CDC equal to 0.125 percent of the outstanding principal balance of the debenture. The fee must be paid from the servicing fees collected by the CDC and cannot be paid from any additional fees imposed on the Borrowers.

Dated: December 23, 1998.

Aida Alvarez,

Administrator.

[FR Doc. 99–559 Filed 1–12–99; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–ASO–18]

Amendment of Class E Airspace; Carrollton, GA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This notice amends Class E airspace at Carrollton, GA. The Non-Directional Beacon (NDB) or Global Positioning System (GPS) Runway (RWY) 34 and the Localizer (LOC) RWY 34 Standard Instrument Approach Procedures (SIAP's) have been amended to the West Georgia Regional Airport. The outbound course from the Carrollton NDB for the NDB or GPS RWY 34 SIAP has changed from the 168 degree bearing to the 167 degree bearing and the inbound course has changed from the 348 degree bearing to the 347 degree bearing. The outbound course from the Carrollton NDB for the LOC RWY 34 SIAP has changed from the 165 degree bearing to the 166 degree bearing and the inbound course has changed from the 345 degree bearing to the 346 degree bearing. As a result, the length of the Class E airspace extension south of the NDB will be reduced from 9 to 7 miles and the width of the airspace extension will be increased from 6 to 7 miles.

EFFECTIVE DATE: 0901 UTC, March 25, 1999.

FOR FURTHER INFORMATION CONTACT: Nancuy B. Shelton, Manager, Airspace Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5627.

SUPPLEMENTARY INFORMATION:

History

On November 27, 1998, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) by establishing Class E airspace at Carrollton, GA, (63 FR 65565). This action provides adequate Class E airspace for IFR operations at West Georgia Regional Airport. Designations for Class E airspace extending upward from 700 feet or more above the surface are published in FAA Order 7400.9F, dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR part 71.1. The Class E designation listed in this document will be published subsequently in the Order.

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 was received.

The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) amends Class E Airspace at Carrollton, GA for the West Georgia Regional 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—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

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

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9F, Airspace Designations and Reporting Points,

dated September 10, 1998, and effective September 16, 1998, is amended as follows:

Paragraph 6005 Class E Airspace Areas Extending Upward from 700 feet or More above the Surface of the Earth.

* * * * *

ASO GA E5 Carrollton, GA [Revised]

West Georgia Regional Airport
(Lat. 33°37′52″N, long. 85°09′07″W)
Carrolton NDB
(Lat. 33°33′57″N, long. 85°07′51″W)

That airspace extending upward from 700 feet or more above the surface of the earth within a 6.4-mile radius of West Georgia Regional Airport and within 3.5 miles from each side of the 166 degree bearing from the Carrollton NDB, extending from the 6.4-mile radius to 7 miles south of the NDB.

* * * * *

Issued in College Park, Georgia, on January 6, 1999.

Nancy B. Shelton,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 99–730 Filed 1–12–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–AEA–40]

Amendment to Class E Airspace; Romulus, NY

AGENCY: Federal Aviation Administration, (FAA) DOT.

ACTION: Final rule.

SUMMARY: This action removes Class E airspace at Seneca Army Air Field (AAF), Romulus, NY. The airport has been closed and all instrument procedures for the airport have been cancelled. The need for Class E airspace no longer exists for Instrument Flight Rules (IFR) operations at the airport. This action will result in the airspace reverting to Class E airspace.

EFFECTIVE DATE: 9091 UTC, March 25, 1999.

FOR FURTHER INFORMATION CONTACT: Mr. Francis Jordan, Airspace Specialist, Airspace Branch, AEA–520, Air Traffic Division, Eastern Region, Federal Aviation Administration, Federal #111, John F. Kennedy International Airport, Jamaica, New York 11430, telephone: (718) 553–4521.

SUPPLEMENTARY INFORMATION:

History

On November 3, 1998, a proposal to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to remove the Class E airspace extending upward from 700 feet above the surface at Seneca AAF, Romulus, NY, was published in the **Federal Register** (63 FR 59256).

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments to the proposal were received. The rule is adopted as proposed.

The coordinates for this airspace docket are based on North American Datum 83. Class E airspace areas designations for airspace extending upward from 700 feet AGL are published in paragraph 6005 of FAA Order 7400.9F, dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be removed subsequently from the Order.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations (14 CFR Part 71) removes Class E airspace at Romulus, NY. The need for controlled airspace extending from 700 feet AGL at Seneca AAF no longer exists. This area will be removed from the appropriate aeronautical charts.

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 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 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.

§ 71.1 [Amended]

The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9F, Airspace Designations and Reporting Points, dated September 10, 1998, and effective September 16, 1998, is amended as follows:

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

* * * * *

AEA NY E5, Romulus, NY [Removed]

* * * * *

Issued in Jamaica, New York on January 4, 1999.

Franklin D. Hatfield,

Manager, Air Traffic Division, Eastern Region.

[FR Doc. 99–729 Filed 1–12–99; 8:45 am]

BILLING CODE 4910–13–M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 279

[Release No. IA–1733A; File No. S7–28–97]

RIN 3235–AH22

Technical Changes to Schedule I to Form ADV

AGENCY: Securities and Exchange Commission.

ACTION: Final rule; technical changes to a form.

SUMMARY: The Commission is making technical changes to Schedule I to Form ADV, referenced in 17 CFR 279.1. Schedule I is the form on which investment advisers declare their eligibility for Commission registration. Schedule I to Form ADV was published Thursday, May 22, 1997 (62 FR 28112), under the Investment Advisers Act of 1940. Amendments to Schedule I to Form ADV were published Friday, July 24, 1998 (63 FR 39708), under the Advisers Act.

EFFECTIVE DATE: The rule amendments will become effective on January 7, 1999.

FOR FURTHER INFORMATION CONTACT: Arthur Laby, Special Counsel, at (202) 942–0716, Task Force on Investment Adviser Regulation, Division of Investment Management, Securities and Exchange Commission, 450 Fifth Street,

NW, Mail Stop 5–6, Washington, DC 20549.

I. Supplementary Information

Under section 203A of the Investment Advisers Act of 1940 (''Advisers Act''), the Commission has regulatory responsibility for an investment adviser that has at least $25 million of assets under management or advises a registered investment company. The Commission also has responsibility for an adviser that has less than $25 million of assets under management, if its principal office and place of business is in a state that has not enacted investment adviser legislation.[1] An adviser with its principal office in one of those states must indicate its eligibility for Commission registration on Schedule I of Form ADV.[2]

Colorado and Iowa recently passed investment adviser statutes, which became effective on January 1, 1999. An adviser that has its principal office and place of business in Colorado or Iowa, therefore, may not register with the Commission unless it has at least $25 million of assets under management, advises an investment company, or qualifies for an exemption under rule 203A–2.[3] Last July, the Commission adopted certain amendments to Schedule I to Form ADV.[4] The Commission today is making additional technical changes to Schedule I and the Instructions to Schedule I to reflect enactment of the Colorado and Iowa legislation.

New advisers (*i.e.*, those advisers that are not currently registered with the Commission) that have their principal place of business in Colorado or Iowa that are not eligible for Commission registration (*e.g.*, because they do not have at least $25 million of assets under management) must now register with Colorado or Iowa.[5] Advisers currently registered with the Commission solely because their principal office and place of business is located in Colorado or Iowa must withdraw from Commission registration no later than 180 days after the end of their fiscal year.[6]

II. Certain Findings

Under the Administrative Procedure Act (''APA''), notice of proposed rulemaking is not required when the agency, for good cause, finds ''that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.'' [7] The Commission is making technical changes to Schedule I to Form ADV to accommodate new legislation in Colorado and Iowa. The Commission, therefore, finds that publishing the changes for comment is unnecessary.

Publication of a substantive rule not less than 30 days before its effective date is required by the APA except as otherwise provided by the agency for good cause.[8] For the same reasons described above with respect to notice and opportunity for comment, the Commission finds that there is good cause for making these technical changes effective on January 7, 1999.

List of Subjects in 17 CFR Part 279

Reporting and recordkeeping requirements; Securities.

Accordingly, 17 CFR part 279 is amended as follows:

PART 279—FORMS PRESCRIBED UNDER THE INVESTMENT ADVISERS ACT OF 1940

1. The authority citation for part 279 continues to read as follows:

Authority: The Investment Advisers Act of 1940, 15 U.S.C. 80b–1, *et seq.*

2. By amending Schedule I to Form ADV (referenced in § 279.1) to remove all references to ''Colorado'' and ''Iowa'' and by amending the Instructions to Schedule I to Form ADV (referenced in § 279.1) to remove references to ''Colorado'' and ''Iowa'' and to remove the second paragraph under ''Instruction 3.''

Note: The text of Schedule I to Form ADV (§ 279.1) does not and the corrections will not appear in the Code of Federal Regulations.

Dated: January 7, 1999.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–738 Filed 1–12–99; 8:45 am]

BILLING CODE 8010–01–U

[1] 15 U.S.C. 80b–3a.

[2] 17 CFR 279.1. Under rule 203–1 (17 CFR 275.203–1), an adviser must file Schedule I to Form ADV with its initial application for Commission registration, and under rule 204–1 (17 CFR 275.204–1), an adviser must file Schedule I to Form ADV with annual amendments to Form ADV.

[3] 17 CFR 275.203A–2.

[4] *See* Exemption for Investment Advisers Operating in Multiple States; Revisions to Rules Implementing Amendments to the Investment Advisers Act of 1940; Investment Advisers with Principal Offices and Places of Business in Colorado or Iowa, Investment Advisers Act Release No. 1733 (July 17, 1998) (63 FR 39708 (July 24, 1998)).

[5] In addition, advisers ineligible for Commission registration that have their principal office in Colorado or Iowa may be required to register in another state, if they have six or more clients that are residents of that state or have a place of business in that state. *See* Advisers Act section 222(d) (15 U.S.C. 80b–22(d)).

[6] Under rule 204–1(a) (17 CFR 275.204–1), an adviser is required to file its annual amendment to Form ADV within 90 days of the end of its fiscal year. Under rule 203A–1(c) (17 CFR 275.203A–1(c)), an adviser that is no longer eligible for Commission registration must withdraw from Commission registration within 90 days from the date the adviser was required to file its amended Form ADV. *See also* Schedule I to Form ADV, Instruction 6 (17 CFR 279.1).

[7] 5 U.S.C. 553(b).

[8] 5 U.S.C. 553(d).

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 520

Oral Dosage Form New Animal Drugs; Selegiline Hydrochloride Tablets

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed by Pfizer, Inc. The supplemental NADA provides for oral veterinary prescription use of selegiline hydrochloride tablets for dogs for the control of clinical signs associated with cognitive dysfunction syndrome.

EFFECTIVE DATE: January 13, 1999.

FOR FURTHER INFORMATION CONTACT: Melanie R. Berson, Center For Veterinary Medicine (HFV–110), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–7543.

SUPPLEMENTARY INFORMATION: Pfizer, Inc., 235 East 42d St., New York, NY 10017, filed supplemental NADA 141–080 that provides for oral veterinary prescription use of Anipryl® (selegiline hydrochloride) tablets for dogs for the control of clinical signs associated with canine cognitive dysfunction syndrome. The product is approved for the control of clinical signs associated with uncomplicated pituitary-dependent hyperadrenocorticism. The supplement is approved as of December 10, 1998, and the regulations are amended by revising 21 CFR 520.2098 to reflect the approval. The basis of approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of 21 CFR part 20 and 514.11(e)(2)(ii), a summary of safety and effectiveness data and information submitted to support approval of this supplemental application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, between 9 a.m. and 4 p.m., Monday

through Friday, except on Federal holidays.

Under 21 U.S.C. 360b(c)(2)(F)(iii), this approval for nonfood-producing animals qualifies for 3 years of marketing exclusivity beginning December 10, 1998, because the supplement contains substantial evidence of the effectiveness of the drug involved or any studies of animal safety required for approval of the supplement and conducted or sponsored by the applicant. The 3 years of marketing exclusivity applies only to veterinary prescription use of the drug in dogs for the control of clinical signs associated with cognitive dysfunction syndrome.

The agency has determined under 21 CFR 25.33(d)(1) 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 520

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 520 is amended as follows:

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 520 continues to read as follows:

Authority: 21 U.S.C. 360b.

2. Section 520.2098 is amended by redesignating paragraphs (d)(2) and (d)(3) as paragraphs (d)(1)(i) and (d)(1)(ii), respectively, and by adding paragraph (d)(2) to read as follows:

§ 520.2098 Selegiline hydrochloride tablets.

* * * * *

(d) *Conditions of use.* * * *

(2) *Dosage.* 0.5 to 1.0 milligram per kilogram of body weight once daily.

(i) *Indications for use.* For the control of clinical signs associated with canine cognitive dysfunction syndrome.

(ii) *Limitations.* Federal law restricts this drug to use by or on the order of a licensed veterinarian.

Dated: January 6, 1999.

Stephen F. Sundlof,

Director, Center for Veterinary Medicine.

[FR Doc. 99–739 Filed 1–12–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Parts 4, 5, 7, 13, and 19

[TD ATF–406 Re: Notice No. 815 and Notice No. 819]

RIN: 1512–AB34

Procedures for the Issuance, Denial, and Revocation of Certificates of Label Approval, Certificates of Exemption From Label Approval, and Distinctive Liquor Bottle Approvals (93F–029P)

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Treasury.

ACTION: Final rule, Treasury decision.

SUMMARY: The Bureau of Alcohol, Tobacco and Firearms (ATF) is issuing regulations setting forth the procedures for the issuance, denial, and revocation of certificates of label approval (COLAs), certificates of exemption from label approval, and distinctive liquor bottle approvals. The denial and revocation regulations are new, whereas the issuance regulations merely amend current regulations. The new regulations also codify procedures for administratively appealing the denial or revocation of certificates of label approval, exemptions from label approval, or distinctive liquor bottle approvals.

DATES: These regulations are effective March 15, 1999.

ADDRESSES: Copies of the proposed regulation and written comments are available for public inspection during normal business hours at: ATF Reading Room, Office of Public Affairs and Disclosure, Room 6480, 650 Massachusetts Avenue, NW, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Edward A. Reisman, Jr., Product Compliance Branch, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue, NW, Washington, DC 20226 (202–927–8140).

SUPPLEMENTARY INFORMATION:

Background

The Federal Alcohol Administration (FAA) Act, 27 U.S.C. 205(e), provides ATF, as the delegate of the Secretary of the Treasury, with authority to promulgate regulations with respect to the bottling, packaging, and labeling of distilled spirits, wine, and malt beverages in order to prohibit deception of the consumer, and provide the consumer with adequate information as to the identity and quality of the product.

In order to carry out such requirements, domestic bottlers and producers are prohibited from bottling distilled spirits, wines, or malt beverages, and importers are prohibited from removing bottled distilled spirits, wines, or malt beverages from customs custody unless they have in their possession a certificate of label approval covering such products, ''issued by the Secretary in such manner and form as he shall by regulations prescribe.'' 27 U.S.C. 205(e). The law provides an exemption from these requirements for products that are not to be sold, offered for sale, or shipped or delivered for shipment, or otherwise introduced, in interstate or foreign commerce.

The regulations implementing these statutory provisions provide that no person shall bottle or pack wine, distilled spirits, or malt beverages unless application is made to the Director and an approved certificate of label approval, ATF Form 5100.31, is issued. 27 CFR 4.50(a), 5.55(a), and 7.41. The regulations also provide that no bottled wines, distilled spirits, or malt beverages shall be released from customs custody for consumption unless an approved certificate of label approval, ATF Form 5100.31, is deposited with the appropriate customs officer at the port of entry. 27 CFR 4.40(a), 5.51(a), and 7.31(a).

A bottler of wine or distilled spirits who can show to the satisfaction of the Director that the product is not to be sold, offered for sale, or shipped or delivered for shipment or otherwise introduced in interstate or foreign commerce, must make application for exemption from the labeling requirements of the FAA Act on ATF Form 5100.31 in accordance with the instructions on the form. If the application is approved, a certificate of exemption from label approval will be issued on the same form. 27 CFR 4.50(b) and 5.55(b). Certificates of exemption from label approval are not issued for malt beverages.

Finally, the ATF Form 5100.31 is also used to obtain approval for distinctive liquor bottles, pursuant to the regulations appearing at 27 CFR 19.633(a). ATF's authority to regulate liquor bottles is derived from section 5301 of the Internal Revenue Code of 1986, 26 U.S.C. 5301. However, the approval of a distinctive liquor bottle also includes the approval of the label on that bottle, pursuant to the FAA Act.

Revocation of COLAs

ATF reviews approximately 60,000 applications for certificates of label approval, exemptions from label approval, and distinctive liquor bottle

approvals every year. Because errors occasionally occur in the approval process, there is a need for some type of revocation procedure.

Since the enactment of the FAA Act in 1935, ATF and its predecessor agencies have taken the position that the statutory authority to issue certificates of label approval includes the implied statutory authority to cancel or revoke the certificates if they were approved in error. However, there have never been formal procedures in the regulations for denial or revocation of certificates of label approval. Instead, ATF has utilized informal procedures for denials and revocations, where applicants or certificate holders who wished to contest a denial or revocation are given an opportunity to do so in writing, or through informal meetings with Bureau officials.

The certificate of label approval was never intended to convey any type of proprietary interest to the certificate holder. On the contrary, Paragraph 1 of Form 5100.31 provides that ''This certificate is issued for ATF use only. This certificate does not constitute trademark protection.'' Paragraph 2 of this form reminds applicants that the ''certificate does not relieve any person from liability for violations of the Federal Alcohol Administration Act.'' The certificate of label approval is a statutorily mandated tool used to help ATF in its enforcement of the labeling requirements of the FAA Act.

ATF's informal procedures for revocation of COLAs were subject to challenge in the Federal District Court for the Northern District of California. In *Cabo Distributing Co.* v. Brady, 821 F. Supp. 601 (N.D. Cal. 1992), the court set aside ATF's revocation of labels for ''Black Death'' vodka on several grounds. The court held that there was no express statutory or regulatory authority for the Bureau to cancel certificates of label approval, and that the Bureau had implied authority to reverse its actions only in limited circumstances. The court thus concluded that ''[w]ithout statutory authority or regulatory authority, the BATF cannot cancel a certificate of label approval.'' 821 F. Supp. at 612. The court also held that the Bureau's informal procedures for revoking the ''Black Death'' certificates of label approval had not afforded the certificate holders their constitutional right to procedural due process. 821 F. Supp. at 612.

AFT does not agree with the court's decision on either of these two holdings. ATF believes that a right to cancel certificates of label approval is implied from the authority granted by the statute to the Secretary to issue certificates of label approval ''in such manner and form as he shall by regulations prescribe * * *'' The statute explicitly authorizes ATF, as a delegate of the Secretary, to issue regulations governing the procedure for the issuance of certificates of label approval. There is also implicit statutory authority to issue regulations governing the procedures for denying and revoking certificates of label approval.

Furthermore, ATF believes that the procedures that it has been using for revoking certificates of label approval, although not codified in the regulations, have provided certificate holders with due process of law. However, ATF determined that rulemaking was appropriate in order to clarify its authority and procedures for revocation of label approvals.

Notice of Proposed Rulemaking

On September 13, 1995, ATF published a notice of proposed rulemaking (Notice No. 815, 60 FR 47506–47512) to solicit public comment on regulations setting forth procedures for the issuance, denial, and revocation of certificates of label approval, certificates of exemption from label approval, and distinctive liquor bottle approvals. The comment period closed on December 12, 1995, and was reopened until February 21, 1996, by notice dated January 22, 1996 (Notice No. 819, 61 FR 1545–1546).

Notice No. 815 proposed to make existing regulations covering issuance of certificates of label approval, certificates of exemption from label approval, and distinctive liquor bottle approvals more specific and proposed new regulations to codify existing informal procedures for denial of applications and revocation of certificates. The notice also proposed the codification of procedures for administratively appealing the denial or revocation of certificates of label approval, exemptions from label approval, and distinctive liquor bottle approvals. In the notice, ATF restated its position that the proposed regulations would afford applicants and certificate holders due process of law, and that the codification of these procedures in the regulations would eliminate any question as to ATF's authority to revoke certificates of label approval, exemptions from label approval, and distinctive liquor bottle approvals.

Under current regulations, the authority to approve certificates of label approval, exemptions from label approval, and distinctive liquor bottle applications rests with the Director and has been delegated to the labeling specialists in the Product Compliance Branch. The proposed regulations described the process of approval, denial, and administrative appeal in a new part 13. Proposed revisions to parts 4, 5, 7, and 19 added cross-references to the new part 13.

With respect to revocations of certificates of label approval, certificates of exemption from label approval, or distinctive liquor bottle approvals, and administrative appeals of such actions, the proposed regulations set forth a procedure based on ATF's informal practices.

In response to Notice 815, ATF received comments from the following organizations:

Government Liaison Services, Inc.;

Presidents' Forum of the Beverage Alcohol Industry (Presidents' Forum);

American Brandy Association (ABA);

Wine Institute;

Fédération Internationale des Vins et Spiriteux (FIVS);

Fédération des Exportateurs de Vins & Spiriteux de France (FEVS);

National Assocaition of Beverage Importers, Inc. (NABI). Five importers, Remy Amerique, Inc., Austin Nichols & Co. Inc., Dribeck Importers, Inc., Guinness Import Company, Kobrand Corporation, and two associations, The Scotch Whisky Association and the Associación de Criadores Exportadores de Sherry, wrote to endorse the comments of NABI;

The Distilled Spirits Council of the U.S. (DISCUS). Jim Beam Brands Co., a distiller, wrote to express agreement with the DISCUS comments;

Beer Institute filed comments on behalf of its senior members: The Anheuser Busch Companies, Miller Brewing Company, Coors Brewing Company, Stroh Brewery Company, and G. Heileman Brewing Company;

Ropes & Gray filed comments on behalf of the Institut Nationale des Appellations d'Origine (INAO) of France, an entity responsible for protecting French appellations of origin;

The U.S. Department of Commerce transmitted comments from the European Commission (EC); and

The Embassy of Mexico Trade Office forwarded comments from Mexico's Dirección General De Normas concerning labeling of tequila and mezcal. This last comment suggests regulatory changes that are beyond the scope of Notice Number 815, but may be considered as part of a future rulemaking.

Analysis of Comments

The majority of the commenters expressed support for ATF's effort to promulgate regulations covering issuance, denial, and revocation of certificates of label approval, certificates of exemption from label approval, and distinctive liquor bottle approvals, though most had comments on specific proposals.

Proposals and Comments on Application, Approval and Denial

In Notice No. 815, ATF set forth proposed regulations describing in detail the steps in applying for a certificate of label approval, certificate of exemption from label approval, or distinctive liquor bottle approval, including issuance of approved certificates, denial of applications, and appeal of such denials. A number of comments addressed specific items in these proposed regulations.

In its comment, Government Liaison Services, Inc. expressed concern at the use of the word ''send'' in proposed § 13.11, which they interpreted to preclude hand delivery of applications for label approval. A clarifying change is made to this section, now designated as § 13.21. ATF did not intend to prohibit hand-delivered applications.

In the proposed rule, ATF described the approval process, including the noting of any qualifications to the approval in the appropriate space on the form. The proposed rule further provided that if an application is denied for any reason, the applicant is sent an ATF Form 5190.1, ''ATF F 5100.31 Correction Sheet,'' with the reasons for the denial briefly noted on the form. The proposed regulations afforded the applicant an opportunity to file an administrative appeal of the denial of an application for a certificate of label approval, certificate of exemption from label approval, or distinctive liquor bottle approval, with the Chief, Labeling Section, Product Compliance Branch, who would make a final decision on the denial of the application.

Government Liaison Services, Inc., the President's Forum, NABI and DISCUS all commented that the initial correction notice and informal discussion of technical issues arising from the application that often occurs between applicants and ATF representatives should be kept separate from a formal appeal process. DISCUS, in its comment, noted ''these informal consultations and contacts have served and do serve the interests of all parties, with commensurate savings in expenditures and manpower for both the government and the industry.''

In practice, applicants and ATF representatives often informally resolve issues related to a qualified approval or a denied application. ATF does not wish to create the impression that all qualifications or denials must be formally appealed. Accordingly, we have added a new subsection § 13.25(b) to confirm that the applicant has the option of pursuing informal resolution of a labeling issue by requesting an informal conference with the Product Compliance Branch Specialist or the Chief, Product Compliance Branch.

Government Liaison Services, Inc. also noted that the proposed regulations did not incorporate ATF's practice of allowing voluntary withdrawal of applications. A new § 13.22 has been added to cover withdrawal of applications.

Beer Institute, DISCUS and Government Liaison Services, Inc. questioned ATF's proposal to authorize the Chief of the Labeling Section to make final decisions on appeals of denials of applications for certificates of label approvals, exemptions from label approvals and distinctive liquor bottles. They suggested review by either a higher level officials within the Alcohol and Tobacco Programs Division or by someone outside the Division. Pursuant to these comments, a second level of appeal has been added in § 13.27 for qualifications or denials of applications for label approval. The final rule provides that the first appeal will be decided by the Chief, Product Compliance Branch, and the second appeal will be decided by the Chief, Alcohol and Tobacco Programs Division.

Appeal of Qualifications

The final rule expands the formal and informal resolution and appeal procedures for denials to include resolution of disagreements concerning qualifications on approved certificates. For these purposes, a qualification is treated like a partial denial, since it limits the use of the COLA.

Comments on Revocation and Appeal

With respect to revocations of certificates of label approval, certificates of exemption from label approval, or distinctive liquor bottle approvals, the proposed regulations divided revocations into two categories, revocation of specific labels and revocation by operation of law or regulation. The two types of revocation will be discussed separately in this background material.

The proposed regulations on revocation of specific approvals gave the Chief, Product Compliance Branch, authority to issue a notice of proposed revocation and gave the certificate holder 45 days to present written arguments as to why the revocation should not occur. In the proposed rule, the Chief, Product Compliance Branch, was authorized to decide whether to revoke the certificate. If a label or distinctive liquor bottle approval were revoked, the certificate holder would have 45 days to file a written appeal with the Chief, Alcohol and Tobacco Programs Division. In the proposed rule, the decision of the Chief, Alcohol and Tobacco Programs Division, was the final decision of the Bureau.

ATF's Authority To Revoke Label Approvals

Most commenters who addressed the issue agreed that ATF had authority to revoke certificates of label approval, although there was disagreement on the circumstances where revocation would be appropriate. DISCUS argued, however, that in the absence of a specific statutory provision authorizing revocations of approved labels, ATF lacked authority to take such actions.

ATF does not agree that it lacks statutory authority to revoke certificates of label approval. Many courts have recognized ''an implied authority in other agencies to reconsider and rectify errors even though the applicable statute and regulations do not expressly provide for such reconsideration.'' *Gun South, Inc.* v. *Brady*, 877 F.2d 858, 862 (11th Cir. 1989). For example, in concluding that the Interstate Commerce Commission could order a refund to correct a prior error, the Supreme Court stated that ''[a]n agency, like a court, can undo what is wrongfully done by virtue of its order.'' *United Gas Improvement Co.* v. *Callery Properties*, 382 U.S. 223, 229 (1965). *See also Kudla* v. *Modde*, 537 F. Supp. 87, 89 (E.D. Mich. 1982) (''[t]he power of the state to require a license implies the power of the state to revoke a license which has been improperly issued.''), *aff'd without opinion*, 711 F.2d 1057 (6th Cir. 1983); *Century Arms, Inc.* v. *Kennedy*, 323 F. Supp. 1002, 1016–17 (D. Vt. 1971), (''we are aware of no licenses which once granted, can never be taken away.''), *aff'd*, 449 F.2d 1306 (2d Cir. 1971), *cert. denied*, 405 U.S. 1065 (1972).

As we explained in the notice, it is ATF's position that its statutory authority to issue regulations governing the issuance of COLAs also includes the implied authority to issue regulations setting forth procedures for the denial and revocation of such COLAs. The single comment opposed to this position did not provide a persuasive basis for concluding otherwise.

Due Process Issues

The American Brandy Association (ABA), Beer Institute, Wine Institute, NABI and DISCUS submitted comments suggesting that ATF's approval of a certificate of label approval (COLA) does create a property right subject to the protection of due process of law.

ATF has always maintained that its informal procedures concerning the

denial and revocation of COLAs were sufficient to provide procedural due process to the applicant or certificate holder. Procedural due process imposes constraints on governmental decisions which deprive individuals of ''liberty'' or ''property'' interests within the meaning of the Due Process Clause of the Fifth Amendment. The Supreme Court has recognized that ''due process is flexible and calls for such procedural protections as the particular situation demands.'' *Morrissey* v. *Brewer,* 408 U.S. 471, 481 (1972).

In determining whether an administrative procedure accords due process, three factors are considered:

> First, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and finally, the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail.

Mathews v. *Eldridge,* 424 U.S. 319, 334 (1976).

ATF recognizes that brand names and other terms on labels may be significant elements in the marketing of an alcohol beverage. However, even assuming that a certificate represents a property interest, we believe that the procedures set forth in the final rule minimize the risk of an erroneous deprivation of the interest of the industry member. The procedures adopted in the final rule ensure that certificate holders are given prior written notice of a proposed revocation; the opportunity to meet with agency officials to discuss the issues; and the opportunity to present written arguments or evidence before the agency takes final action to revoke a label.

There have been suggestions that an evidentiary hearing, complete with an Administrative Law Judge and the right to cross-examine witnesses, is the appropriate model for a revocation proceeding. However, none of the commenters explained why a written review procedure involved a risk of erroneous deprivation of the certificate holder's property interests, or why an evidentiary hearing would shed further light on the issue of whether a label is in compliance with the regulations. *See Doolin Sec. Sav. Bank* v. *FDIC,* 53 F.3d 1395, 1403 (4th Cir. 1995), *cert. denied* 516 U.S. 973 (1995) (finding that an agency was not required to provide an evidentiary hearing where the plaintiff did not ''offer sufficient evidence demonstrating that an oral hearing would allow it to present evidence * * * that it could not present in the written review procedure'' and the ''determination did not involve credibility assessments, which would benefit from an oral hearing with the presentation of witnesses'').

Thus, the comments provided no basis for concluding that the additional procedural safeguards provided by an evidentiary hearing would be of value. However, such hearings would certainly impose additional administrative burdens on the agency. After evaluating the factors set forth in *Mathews* v. *Eldridge,* it is clear that due process does not require a formal evidentiary hearing before the agency revokes a certificate of label approval. As the Supreme Court noted in the case, ''the judicial model of an evidentiary hearing is neither a required, nor even the most effective, method of decisionmaking in all circumstances.'' 424 U.S. at 348. This is especially true where, as here, judicial review of the final agency determination is available in the United States District Court pursuant to the Administrative Procedure Act (APA). *See* 27 U.S.C. 205(e); 5 U.S.C. 702. *See also Doolin,* 53 F.3d at 1405 (''This opportunity for judicial review of FDIC reclassification determinations therefore supports our conclusion that the FDIC's risk classification review procedures satisfy due process''). Accordingly, the final rule does not provide for evidentiary hearings in connection with the revocation of certificates.

Level of Appeal

Some commenters suggested that the impact of a revocation on the industry member warrants review at a higher level than the ATF officials designated in the proposed rule. A number of commenters, including Beer Institute, suggested that the officials designated in the proposed rule to hear appeals are in day-to-day contact with the persons making the initial decisions and may even have participated in making those initial decisions. As previously noted, some commenters even suggested that appeals of revocations should be heard by an Administrative Law Judge.

The APA, 5 U.S.C. 554, generally requires that an independent hearing officer preside at formal adjudicatory hearings ''in every case of adjudication required by statute to be determined on the record after opportunity for an agency hearing.'' Section 554 also requires the separation of investigatory and decisionmaking functions for this type of formal adjudication.

The Federal Alcohol Administration Act does not provide that proceedings regarding labels must be ''determined on the record after opportunity for an agency hearing.'' Accordingly, proceedings regarding the approval or denial of a label do not constitute formal adjudicatory proceedings under the APA. *See Joseph E. Seagram & Sons, Inc.* v. *Dillon,* 344 F.2d 497 (D.C. Cir. 1965). Similarly, there is no statutory requirement that appeals of denials or revocations be determined on the record after opportunity for an agency hearing. Since these proceedings are not formal adjudications, there is no legal requirement that such appeals be heard by an independent hearing officer or Administrative Law Judge.

Nonetheless, ATF recognizes that many industry members believe that fairness dictates that appeals should be heard at a high enough level to ensure some division between the initiation of revocation proceedings and the final appeal. In response to these comments, we have revised the final rule to designate higher level officials to make revocation decisions and hear appeals. The Chief, Product Compliance Branch, will issue a notice of proposed revocation, but the decision whether or not to revoke a certificate will be made by the Chief, Alcohol and Tobacco Programs Division. Any appeal of such a revocation will be decided by the Assistant Director, Alcohol and Tobacco.

Time Limits for Initiating Revocation Proceedings

As noted above, many commenters suggested limitations on ATF's authority to rescind label approvals. Several commenters suggested setting a time within which ATF must begin revocation proceedings. For example, Beer Institute suggested a 30-day period during which ATF could revoke labels to correct agency administrative errors without a formal administrative hearing, and then ''an outer limit of one year'' on any other revocation. Wine Institute suggested that any time limit (they suggested five years) should be measured from ''relatively wide and bona fide distribution'' of a product, rather than from approval of a label.

It has been ATF's experience that in some cases, errors in the label approval process are not detected right away. For example, a label may be approved for a product that is not placed on the market for some time. ATF believes that the placement of an artificial time constraint on its ability to take revocation action would not further the statutory purpose of protecting the consumer from misleading labels. Accordingly, the final rule does not set forth such a time limit.

Standard of Proof for Revocation

The American Brandy Association and DISCUS suggested that the standard for revocation should be based on ''clear and convincing evidence'' that a label is not in compliance with law or regulations. However, the comment did not provide a legal basis for imposing such a standard.

Under the APA, an agency action (including an informal adjudication such as a denial or revocation of a certificate) shall be set aside by a reviewing court if it is arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law. 5 U.S.C. 706(2)(A). Even an agency's action in a formal adjudicatory proceeding (which this is not) will be set aside by a reviewing court only if it is ''unsupported by substantial evidence.'' 5 U.S.C. 706(2)(E). there is no requirement that an agency establish ''clear and convincing evidence'' to justify its actions.

The standard of review set forth in the APA provides sufficient protection to applicants and certificate holders wishing to contest agency actions. Accordingly, this comment was not adopted.

Judicial Review

ATF is modifying the final rule to clarify that the administrative remedies available within ATF must be exhausted prior to application to the Federal courts for review. Accordingly, §§ 13.26, 13.27 and 13.44 are amended to reflect this requirement.

Effect of Revocation

There were several comments and questions concerning the effect of revocation of a certificate. In response, we have added a new § 13.73 to clarify this issue. Section 13.73 provides that, as of the effective date of the revocation, a revoked certificate may not be used to bottle or pack distilled spirits, wine or malt beverages; to remove such products from the place where they were bottled or packed; or to remove such products from customs custody for consumption.

Use-Up Period

A number of commenters suggested a longer ''use-up'' period for revoked labels. We have revised the section covering this issue, now designated as § 13.72, to allow 60 days from the date of the initial revocation of the certificate. Some commenters also did not understand that the proposed regulations provided that a timely appeal would stay the effective date of a revocation of a certificate (other than a revocation by operation of law or regulations). Accordingly, § 13.72 now incorporates the material on the effect of an appeal on the date of revocation, which was originally proposed in § 13.50(b).

Revocations by Operation of Law or Regulation

With respect to revocations by operation of law or regulation, the proposed rule did not require ATF to issue a notice of proposed revocation prior to notifying a certificate holder of the revocation of a certificate of label approval, certificate of exemption from label approval, or distinctive liquor bottle approval. The proposed rule stated that in these cases, the burden of ensuring that affected labels were in compliance with the new requirements imposed by statute or regulation was on the certificate holder, not ATF.

The proposed rule provided that if ATF determined that a label or bottle which was not in compliance with the new statutory or regulatory requirements was still being used, the Chief, Product Compliance Branch, would issue a letter notifying the certificate holder that the certificate had been revoked by operation of law or regulation. If the certificate holder wished to challenge the application of the law or regulation to the particular label or bottle, the holder would appeal the decision, in writing, to the Chief, Alcohol and Tobacco Programs Division.

In its comment, DISCUS expressed its opinion that ATF should individually notify holders whose labels are revoked by operation of law, that ATF should never require submission of new COLAs to show compliance with any new requirement in the law, and further expressed the opinion that COLAs may not be revoked by operation of regulation. ATF is not adopting any of these comments.

In the first instance, affected certificate holders will likely receive notice of a proposed or final change in regulations by the publication of such notice or regulation in the **Federal Register**. Changes in law usually will be accompanied by changes in regulations. Amendments to both the law and regulations affecting industry members will be published in the ATF Quarterly Bulletin. Thus, there can be no argument that industry members do not receive notice of such changes. In those instances, ATF believes the responsibility for learning about the changes in the law and regulations and making appropriate changes to labels properly rests with the certificate holders.

Second, ATF reserves the right to decide, based on the facts and circumstances of each change in regulations, whether to require certificate holders to file new applications to show compliance with new requirements or to excuse holders of approved certificates from filing new applications, no longer as labels are modified appropriately.

Finally, on the issue of ATF's authority to revoke labels by operation of regulations, we believe this is part of our general authority to promulgate regulations and to revoke labels, which was discussed earlier in this preamble. Changes in the labeling regulations usually affect all future labeling activities, regardless of when a certificate of label approval was originally issued for a particular label. Such changes to the regulations will usually set forth specifically whether existing certificates of label approval must be surrendered, and new certificates obtained. In the event that an individual change to the labeling regulations is accompanied by a ''grandfathering'' provision for previously approved certificates of label approval, the regulation will so provide.

Time Limits for Appeals

Several commenters, including Beer Institute, DISCUS, FEVS and NABI, asked ATF to set a time limit for its own actions in response to appeals. DISCUS, in its comment, suggested that ''[c]onsistent with the tenet of administrative efficiency, we believe that it is appropriate that the Bureau be required to issue its written decision concerning a COLA denial within 15 days from the receipt of the applicant's appeal of the denial.'' DISCUS made similar recommendations with respect to deadlines for ATF action on decisions after a COLA holder disputes a notice of proposed revocation and appeals a revocation. Beer Institute made the following suggestion: ''* * * we propose that ATF adopt a 45-day period to render decisions on appeals of denials of COLA applications.'' With respect to revocations, they recommend that decisions ''be made within 30 days'' after a formal appeal by the holder of the COLA.

Pursuant to the comments received on this issue, ATF has added a time limit provision to each of the regulatory sections covering initial approvals, appeals of denials of certificates, decisions whether or not to revoke a certificate, and appeals of revocations. ATF does not believe that the time periods suggested by the comments provide sufficient time for the unusual labeling cases that may require extensive agency review. Accordingly, the final rule provides that ATF must

generally act within 90 days of receiving an application or appeal. However, the regulations provide that, if an applicant or certificate holder requests an informal conference as part of an appeal, as authorized in §13.71, the 90-day period will begin 10 days after the date of the conference to allow for consideration of any written arguments, facts or evidence submitted after the conference. Further, ATF may exercise an option to extend this period one time for an additional 90 days, based on unusual circumstances.

It should be emphasized that ATF's current customer service standards call for action on initial label applications within 9 calendar days; the allowance of 90 days in the regulations does not reflect any intention to lengthen the average period of time for label review. Instead, the regulation merely places an outside limit on the unusual labeling cases that may require additional fact-finding, consultation with other agencies, or extensive review within the agency. A new §13.75 has been added to clarify the beginning date of this time limit.

Formal Third-Party Involvement in the Label Process

The INAO comment suggested that ATF should recognize the rights of third parties with respect to certificates of label approval. Once example given by the INAO was where ''a label may contain a brand, fanciful name, class, type or other designation that is identical or substantially similar to a term, such as an appellation of origin, which is protected under U.S. treaties, agreements, laws or regulations.'' The INAO suggested that in such a case, ATF should implement procedures to ensure that the country of origin was contacted regarding the use of the term on the label.

In appropriate situations, ATF will contact the country of origin for more information regarding whether the use of a labeling term would violate the laws of the country. Accordingly, ATF does not believe it is necessary to codify such procedures in the regulations.

The INAO also suggested that ATF should implement a system to publish approved labels, perhaps similar to the *Official Gazette* of the Patent and Trademark Office. Their comment suggested that such a procedure would enable concerned third parties to receive timely notice of approved labels, and, in the case of an erroneous approval, will enable the third party to bring the error to ATF's attention promptly.

Certificates of label approval or exemption from label approval, and approvals of distinctive containers, become public information upon approval, and can be viewed at the ATF Library or requested by mail under the Freedom of Information Act. ATF is also working to make these public records more readily available through electronic means. We hope to make the approved label database available on the Internet in the next year or two; we believe that this will provide affected third parties ample opportunity to inspect approved labels. Thus, we do not see a need for publishing approved labels on a regular basis.

However, in response to this comment, the final regulations contain a new § 13.61, which codifies ATF's policy concerning publicity of information contained in applications for certificates of label approval, certificates of exemption from label approval, and distinctive liquor bottle approvals, and the resulting approvals or administrative actions. The regulations also codify ATF's longstanding policy that pending and denied applications for label approval are treated as proprietary information and are not released to the public without the consent of the submitter.

The INAO and FEVS requested ATF to consider new procedures that would allow third parties to intervene in proceedings concerning the denial or revocation of a label. The INAO suggested that if a proposed revocation of such a label were appealed by the certificate holder, the third party should have an opportunity during the appeal process to submit material in support of revocation.

The INAO correctly noted that ATF currently reviews complaints concerning approved labels where a third party believes that the label is in violation of the regulations. However, the INAO suggested that this policy be codified, so that the public would be aware of its existence. We concur with the suggestion to codify ATF's policy and informal practice concerning review of third party complaints, and accordingly have added a new § 13.62 to the final rule. However, the regulation does not provide for any formal role for third parties during a revocation proceeding. ATF believes that it may be appropriate in certain cases to seek the opinions of third parties regarding whether a particular label is misleading to consumers; however, we believe that this is best determined on a case-by-case basis.

Service of Notices

In proposed § 13.55, ATF stated that notices of denial, proposed revocation and revocation will be served by first class mail or by personal delivery. NABI and several other commenters stated that service by mail should be by registered mail, return receipt requested. This section has been renumbered as § 13.76 in the final rule and modified to require proof of service of notices of proposed revocation or revocation, either a postal return receipt or equivalent written acknowledgment obtained from the addressee by a commercial delivery service or a report of hand delivery by an ATF official. The final rule does not require proof of service for notices of denial of applications, since applicants may not use a label until an approved certificate is received.

Informal Conferences

In proposed § 13.40(a), ATF reserved the right to decide whether to grant an informal conference to discuss a denial or revocation of a certificate. Several commenters suggested that such a conference should be granted as a matter of right, and cited 27 CFR 70.418, which states that any person may have a conference concerning ''any matter arising in connection with such person's operations'' upon request. In the final rule, the paragraph, now designated as § 13.71, is revised to show that a conference will be granted upon request.

Proposed paragraph (b) of that section stated that no transcript would be made of a conference, if one was held, and that any arguments, facts or evidence on which an applicant or certificate holder wishes to rely, should be incorporated in a written submission. A number of commenters expressed the opinion that there should be a formal record made of such a conference. ATF disagrees. As noted above, proceedings regarding label approvals are not required by statute to be conducted on the record after an agency hearing; accordingly this is not a formal adjudicatory proceeding. The regulations clarify that the conference is an informal means of clarifying issues or discussing alternative solutions, not an administrative hearing. The written submission of the applicant or certificate holder and the written response of ATF will form the official administrative record of such proceedings.

Comments Regarding Imported Products

The EC commented that ''establishing a mandatory procedure concerning certificates of label approval * * * would appear to be disproportionate to the pursued objective'' (of preventing consumer deception). The EC said

further that they ''would, therefore, deem this regulation as having the effect of creating unnecessary obstacles to European exports unless the U.S. authorities can show that this proposal is not more trade-restrictive than necessary to fulfill the pursued objective and explain the justification for this technical rule in terms of these Articles. * * *'' (Article 2.2 and Article 5.1.2 in connection with Article 2.5 of the Agreement on Technical Barriers to Trade).

The final regulations do not create any unnecessary obstacles to European exports to the United States; on the contrary, the regulations will provide all applicants and certificate holders with more detailed and specific information about the label approval process. The regulations also set forth specific avenues of appeal for applicants and certificate holders. Domestic and imported products are treated with parity under both the proposed and final regulations. Accordingly, ATF does not agree that the regulations create unnecessary obstacles to imported products.

In its comments, FEVS asked that ATF ensure equal treatment of domestic and foreign goods in the final rule, but did not identify any specific changes to be made. As noted above, ATF is not aware of any provision in the proposed rule or this final rule that treats domestic and imported products differently.

NABI noted that importers of beer are subject to suspension or revocation of their basic permits for FAA Act violations, including labeling violations, while domestic brewers are not required to obtain a basic permit under the FAA Act. However, this distinction flows directly from the statute and is not subject to change through regulations. Furthermore, brewers may be subject to other sanctions for violations of the FAA Act. Thus, no changes were made to the final rule as a result of these comments.

Unrelated Labeling Issues

Government Liaison Services, Inc. expressed concerns about ATF's day-to-day handling of applications for certificates of label approval, exemption from label approval, and distinctive liquor bottles. They requested that ATF make changes in areas such as training, workflow, recordkeeping, and communication of policy decisions. Similar concerns were raised in the DISCUS and INAO comments.

These issues are beyond the scope of this rulemaking document. Nonetheless, ATF is committed to improving the day-to-day administration of its label approval system. ATF is addressing these issues through partnership meetings with the regulated industry, and through internal restructuring efforts.

Regulatory Flexibility Act

It is hereby certified that this regulation will not have a significant economic impact on a substantial number of small entities. The regulation will give ATF specific regulatory authority to issue, deny or revoke certificates of label approval, exemptions from label approval, and distinctive liquor bottle approvals. The regulation will not increase recordkeeping or reporting requirements. Accordingly, a regulatory flexibility analysis is not required because the final rule is not expected (1) to have significant secondary or incidental effects on a substantial number of small entitles; or (2) to impose, or otherwise cause a significant increase in the reporting, recordkeeping, or other compliance burdens on a substantial number of small entities.

Executive Order 12866

It has been determined that this final rule is not a significant regulatory action as defined by Executive Order 12866. Accordingly, this rule is not subject to the analysis required by this Executive Order.

Paperwork Reduction Act

The provisions of the Paperwork Reduction Act of 1995, 44 U.S.C. 3507(j), and its implementing regulations, 5 CFR part 1320, do not apply to this document because no requirement to collect information is imposed.

Drafting Information

The principal author of this document is Marjorie D. Ruhf, Regulations Division, Bureau of Alcohol, Tobacco and Firearms. However, other personnel of ATF participated in developing this document.

List of Subjects in

27 CFR Part 4

Advertising, Consumer protection, Customs duties and inspection, Imports, Labeling, Packaging and containers, Wine.

27 CFR Part 5

Advertising, Consumer protection, Customs duties and inspection, Imports, Labeling, Liquors, Packaging and containers, Reporting and recordkeeping requirements, Trade practices.

27 CFR Part 7

Advertising, Beer, Consumer protection, Customs duties and inspection, Imports, Labeling.

27 CFR Part 13

Administrative practice and procedure, Alcohol and alcoholic beverages, Appeals, Applications, Certificates of label approval, Certificates of exemption from label approval, Denials, Distinctive liquor bottle approvals, Informal conferences, Labeling, Revocations.

27 CFR Part 19

Administrative practice and procedure, Alcohol and alcoholic beverages, Authority delegations, Claims, Chemicals, Customs duties and inspection, Electronic fund transfers, Excise taxes, Exports, Gasohol, Imports, Labeling, Liquors, Packaging and containers, Puerto Rico, Reporting and recordkeeping requirements, Research, Security measures, Spices and flavorings, Surety bonds, Transportation, Virgin Islands, Warehouses, Wine.

Authority and Issuance

Chapter I of Title 27, Code of Federal Regulations, is amended as follows:

PART 4—LABELING AND ADVERTISING OF WINE

Paragraph 1. The authority citation for part 4 continues to read as follows:

Authority: 27 U.S.C. 205, unless otherwise noted.

Par. 2. Section 4.40 is amended to add paragraph (d) to read as follows:

§ 4.40 Label approval and release.

* * * * *

(d) *Cross reference.* For procedures regarding the issuance, denial, and revocation of certificates of label approval, as well as appeal procedures, see part 13 of this chapter.

Par. 3. Section 4.50 is amended to add paragraph (c) to read as follows:

§ 4.50 Certificates of label approval.

* * * * *

(c) *Cross reference.* For procedures regarding the issuance, denial, and revocation of certificates of label approval, and certificates of exemption from label approval, as well as appeal procedures, see part 13 of this chapter.

PART 5—LABELING AND ADVERTISING OF DISTILLED SPIRITS

Par. 4. The authority citaiton for part 5 continues to read as follows:

Authority: 26 U.S.C. 5301, 7805, 27 U.S.C. 205.

Par. 5. Section 5.46 is amended to revise paragraph (d) to read as follows:

§ 5.46 Standard liquor bottles.

* * * * *

(d) *Exceptions.*—(1) *Distinctive liquor bottles.* The headspace and design requirements in paragraphs (b) and (c) of this section do not apply to liquor bottles that are specifically exempted by the Director, pursuant to an application filed by the bottler or importer.

(2) *Cross reference.* For procedures regarding the issuance, denial and revocation of distinctive liquor bottle approvals, as well as appeal procedures, see part 13 of this chapter.

Par. 6. Section 5.51 is amended to add paragraph (e) to read as follows:

§ 5.51 Label approval and release.

* * * * *

(e) *Cross reference.* For procedures regarding the issuance, denial, and revocation of certificates of label approval, as well as appeal procedures, see part 13 of this chapter.

Par. 7. Section 5.55 is amended to add paragraph (d) to read as follows:

§ 5.55 Certificates of label approval.

* * * * *

(d) *Cross reference.* For procedures regarding the issuance, denial, and revocation of certificates of label approval and certificates of exemption from label approval, as well as appeal procedures, see part 13 of this chapter.

PART 7—LABELING AND ADVERTISING OF MALT BEVERAGES

Par. 8. The authority citation for part 7 continues to read as follows:

Authority: 27 U.S.C. 205.

Par. 9. Section 7.31 is amended to add paragraph (d) to read as follows:

§ 7.31 Label approval and release

* * * * *

(d) *Cross reference.* For procedures regarding the issuance, denial, and revocation of certificates of label approval, as well as appeal procedures, see part 13 of this chapter.

Par. 10. Section 7.41 is revised to read as follows:

§ 7.41 Certificates of label approval.

(a) *Requirement.* No person shall bottle or pack malt beverages, or remove malt beverages from the plant where bottled or packed unless application is made to the Director, and an approved certificate of label approval, ATF Form 5100.31, is issued by the Director.

(b) *Cross reference.* For procedures regarding the issuance, denial, and revocation of certificates of label approval, as well as appeal procedures, see part 13 of this chapter.

PART 13—LABELING PROCEEDINGS

Par. 11. Part 13 is added to read as follows:

Subpart A—Scope and Construction of Regulations

Sec.
13.1 Scope of part.

Subpart B—Definitions

13.11 Meaning of terms.

Subpart C—Applications

13.21 Application for certificate.
13.22 Withdrawal of applications.
13.23 Notice of denial.
13.25 Appeal of qualification or denial.
13.26 Decision after appeal of qualification or denial.
13.27 Second appeal of qualification or denial.

Subpart D—Revocations of Specific Certificates

13.41 Authority to revoke certificates.
13.42 Notice of proposed revocation.
13.43 Decision after notice of proposed revocation.
13.44 Appeal of revocation.
13.45 Final decision after appeal.

Subpart E—Revocation by Operation of Law or Regulation

13.51 Revocation by operation of law or regulation.
13.52 Notice of revocation.
13.53 Appeal of notice of revocation.
13.54 Decision after appeal.

Subpart F—Miscellaneous

13.61 Publicity of information.
13.62 Third-party comment on certificates.
13.71 Informal conferences.
13.72 Effective dates of revocations.
13.73 Effect of revocation.
13.74 Surrender of certificates.
13.75 Evidence of receipt by ATF.
13.76 Service on applicant or certificate holder.
13.81 Representation before ATF.
13.91 Computation of time.
13.92 Extensions.

Authority: 27 U.S.C. 205(e), 26 U.S.C. 5301 and 7805.

Subpart A—Scope and Construction of Regulations

§ 13.1 Scope of part.

The regulations in this part govern the procedure and practice in connection with the issuance, denial, and revocation of certificates of label approval, certificates of exemption from label approval, and distinctive liquor bottle approvals under 27 U.S.C. 205(e) and 26 U.S.C. 5301. The regulations in this part also provide for appeal procedures when applications for label approval, exemptions from label approval, or distinctive liquor bottle approvals are denied, when such applications are approved with qualifications, or when these applications are approved and then subsequently revoked.

Subpart B—Definitions

§ 13.11 Meaning of terms.

Where used in this part and in forms prescribed under this part, where not otherwise distinctly expressed or manifestly incompatible with the intent thereof, terms shall have the meaning ascribed in this subpart. Words in the plural form shall include the singular, and vice versa, and words importing the masculine gender shall include the feminine. The terms ''include'' and ''including'' do not exclude things not enumerated that are in the same general class.

Act. The Federal Alcohol Administration Act.

Applicant. The permittee or brewer whose name, address, and basic permit number, or plant registry number, appears on an unapproved ATF F 5100.31, application for a certificate of label approval, certificate of exemption from label approval, or distinctive liquor bottle approval.

Assistant Director, Alcohol and Tobacco. The ATF official responsible for deciding an appeal of a revocation of a certificate of label approval, a certificate of exemption from label approval, or a distinctive liquor bottle approval, under this part.

ATF. The Bureau of Alcohol, Tobacco and Firearms, Department of the Treasury, Washington, DC 20226.

Brewer. Any person who brews beer (except a person who produces only beer exempt from tax under 26 U.S.C. 5053(e)) and any person who produces beer for sale.

Certificate holder. The permittee or brewer whose name, address, and basic permit number, or plant registry number, appears on an approved ATF F 5100.31, certificate of label approval, certificate of exemption from label approval, or distinctive liquor bottle approval.

Certificate of exemption from label approval. A certificate issued on ATF F 5100.31 which authorizes the bottling of wine or distilled spirits, under the condition that the product will under no circumstances be sold, offered for sale, shipped, delivered for shipment, or otherwise introduced by the applicant, directly or indirectly, into interstate or foreign commerce.

Certificate of label approval. A certificate issued on ATF F 5100.31 that authorizes the bottling or packing of wine, distilled spirits, or malt beverages,

or the removal of bottled wine, distilled spirits, or malt beverages from customs custody for introduction into commerce, as long as the project bears labels identical to the labels affixed to the face of the certificate, or labels with changes authorized by the certificate.

Chief, Alcohol and Tobacco Programs Division. The ATF official responsible for issuing revocations of certificates of label approval, certificates of exemption from label approval, and distinctive liquor bottle approvals, under this part. This official is also responsible for deciding certain appeals of denials of applications for certificates of label approval, certificates of exemption from label approval, and distinctive liquor bottle approvals, under this part.

Chief, Product Compliance Branch. The ATF official responsible for deciding first appeals of denials of applications for certificates of label approval, certificates of exemption from label approval, and distinctive liquor bottle approvals, under this part. This official is also responsible for proposing revocation of certificates of label approval, certificates of exemption from label approval, and distinctive liquor bottle approvals, under this part.

Director. The Director, Bureau of Alcohol, Tobacco and Firearms, the Department of the Treasury, Washington, DC.

Distilled spirits. Ethyl alcohol, hydrated oxide of ethyl, spirits of wine, whisky, rum, brandy, gin, and other distilled spirits, including all dilutions and mixtures thereof for nonindustrial use. The term ''distilled spirits'' does not include mixtures containing wine, bottled at 48 degrees of proof or less, if the mixture contains more than 50 percent wine on a proof gallon basis.

Distinctive liquor bottle. A liquor bottle of distinctive shape or design.

Distinctive liquor bottle approval. Approval issued on ATF F 5100.31 that authorizes the bottling of distilled spirits, or the removal of bottled distilled spirits from customs custody for introduction into commerce, as long as the bottle is identical to the photograph affixed to the face of the form.

Interstate or foreign commerce. Commerce between any State and any place outside that State, or commerce within any Territory or the District of Columbia, or between points within the same State but through any place outside that State.

Liquor bottle: A bottle made of glass or earthenware, or of other suitable material approved by the Food and Drug Administration, which has been designed or is intended for use as a container for distilled spirits for sale for beverage purposes, and which has been determined by the Director to protect the revenue adequately.

Malt beverage. A beverage made by the alcoholic fermentation of an infusion or decoction, or combination of both, in potable brewing water, of malted barley with hops, or their parts, or their products, and with or without other malted cereals, and with or without the addition of unmalted or prepared cereals, other carbohydrates, or products prepared therefrom, and with or without the addition of carbon dioxide, and with or without other wholesome products suitable for human food consumption.

Permittee. Any person holding a basic permit under the Federal Alcohol Administration Act.

Person. Any individual, partnership, joint stock company, business trust, association, corporation, or other form of business enterprise, including a receiver, trustee, or liquidating agent and including an officer or employee of any agency of a State or political subdivision thereof.

Product Compliance Branch Specialist. An ATF official responsible for reviewing initial applications for certificates of label approval, certificates of exemption from label approval, and distinctive liquor bottle approvals, under this part, with authority to issue approvals, qualified approvals, or denials of such applications for certificates.

United States. The several States and Territories and the District of Columbia; the term ''State'' includes a Territory and the District of Columbia; and the term ''Territory'' means the Commonwealth of Puerto Rico.

Use of other terms. Any other term defined in the Federal Alcohol Administration Act and used in this part shall have the same meaning assigned to it by the Act.

Wine. Wine as defined in section 610 and section 617 of the Revenue Act of 1918 (26 U.S.C. 3036, 3044, 3045) and other alcoholic beverages not so defined, but made in the manner of wine, including sparkling and carbonated wine, wine made from condensed grape must, wine made from other agricultural products than the juice of sound, ripe grapes, imitation wine, compounds sold as wine, vermouth, cider, perry, and sake; in each instance only if containing not less than 7 percent, and not more than 24 percent of alcohol by volume, and if for nonindustrial use.

Subpart C—Applications

§ 13.21 Application for certificate.

(a) *Form of application.* An applicant for a certificate of label approval, certificate of exemption from label approval, or distinctive liquor bottle approval, must send or deliver signed duplicate copies of ATF Form 5100.31, ''Application For And Certification/Exemption Of Label/Bottle Approval'' to the Product Compliance Branch, Bureau of Alcohol, Tobacco and Firearms, Washington, DC 20226. If the application complies with applicable laws and regulations, a certificate of label approval, certificate of exemption from label approval, or distinctive liquor bottle approval will be issued. If the approval is qualified in any manner, such qualifications will be set forth in the appropriate space on the form.

(b) *Time period for action on application.* Within 90 days of receipt of an application, the Product Compliance Branch must notify the applicant whether the application has been approved or denied. The Product Compliance Branch may extend this period of time once by an additional 90 days if it finds that unusual circumstances require additional time to consider the issues presented by an application. If the Product Compliance Branch extends the period, it must notify the applicant by letter, along with a brief explanation of the issues presented by the label. If the applicant receives no decision from the Product Compliance Branch within the time periods set forth in this paragraph, the applicant may file an appeal as provided in § 13.25 of this part.

§ 13.22 Withdrawal of applications.

A person who has filed an application for a certificate of label approval, certificate of exemption from label approval, or distinctive liquor bottle approval, may withdraw such application at any time before ATF takes action on the application.

§ 13.23 Notice of denial.

Whenever an application for a certificate of label approval, certificate of exemption from label approval, or distinctive liquor bottle approval is denied, a Product Compliance Branch Specialist must issue to the applicant a notice of denial on ATF Form 5190.1, entitled ''ATF F 5100.31 Correction Sheet,'' briefly setting forth the reasons why the label or bottle is not in compliance with the applicable laws or regulations. The applicant may then submit a new application for approval after making the necessary corrections.

§ 13.25 Appeal of qualification or denial.

(a) *Form of appeal.* If an applicant for a certificate of label approval, certificate of exemption from label approval, or distinctive liquor bottle approval wishes to appeal the qualified approval or denial of an application, the applicant may file a written appeal with the Chief, Product Compliance Branch, within 45 days after the date of the notice of qualification or denial. The appeal should explain why the applicant believes that the label or bottle is in compliance with applicable laws and regulations. If no appeal is filed within 45 days after the date of the notice of qualification or denial, the notice will be the final decision of ATF.

(b) *Informal resolution.* Applicants may choose to pursue informal resolution of disagreements regarding correction sheets or qualifications by requesting an informal conference with the Specialist or the Chief, Product Compliance Branch. However, formal administrative appeals must comply with the provisions of paragraph (a) of this section.

§ 13.26 Decision after appeal of qualification or denial.

(a) *Decision.* After considering any written arguments or evidence presented by the applicant, the Chief, Product Compliance Branch, must issue a written decision to the applicant. If the decision is that the qualified approval or denial should stand, a copy of the application, marked ''appeal denied,'' must be returned to the applicant with an explanation of the decision and the specific laws or regulations relied upon in qualifying or denying the application. If the decision is that the certificate of label approval, certificate of exemption from label approval, or distinctive liquor bottle application should be approved without qualification, the applicant should resubmit ATF Form 5100.31 and the certificate will be issued.

(b) *Time limits for decision.* Within 90 days of receipt of an appeal, the Chief, Product Compliance Branch, must notify the appellant whether the appeal has been granted or denied. If an applicant requests an informal conference as part of an appeal, as authorized in § 13.71, the 90-day period will begin 10 days after the date of the conference to allow for consideration of any written arguments, facts or evidence submitted after the conference. The Chief, Product Compliance Branch, may extend this period of time once by an additional 90 days if he or she finds that unusual circumstances require additional time to consider the issues presented by an appeal. If the Chief, Product Compliance Branch, extends the period, he or she must notify the applicant by letter, briefly explaining the issues presented by the label. If the appellant receives no decision from the Chief, Product Compliance Branch, within the time periods set forth in this paragraph, the appellant may appeal as provided in § 13.27.

(c) *Judicial review.* Prior to applying to the Federal courts for review, an applicant must first exhaust his or her administrative remedies, including the appeal rights set forth in this section and § 13.27.

§ 13.27 Second appeal of qualification or denial.

(a) *Form of Appeal.* The decision of the Chief, Product Compliance Branch, may be appealed in writing to the Chief, Alcohol and Tobacco Programs Division. If the decision is that the qualified approval or denial was correct, a copy of the application, marked ''appeal denied,'' must be returned to the applicant, with an explanation of the decision and the specific laws or regulations relied upon in qualifying or denying the application. If the decision is that the certificate of label approval, certificate of exemption from label approval, or distinctive liquor bottle application should be approved without qualification, the applicant may resubmit ATF Form 5100.31 and the certificate will be issued.

(b) *Time limits for decision.* Within 90 days of receipt of an appeal, the Chief, Alcohol and Tobacco Programs Division, must notify the appellant whether the appeal has been granted or denied. If an applicant requests an informal conference as part of an appeal, as authorized in § 13.71, the 90-day period will begin 10 days after the date of the conference to allow for consideration of any written arguments, facts or evidence submitted after the conference. The Chief, Alcohol and Tobacco Programs Division, may extend this period of time once by an additional 90 days if he or she finds that unusual circumstances require additional time to consider the unique issues presented by an appeal. If the Chief, Alcohol and Tobacco Programs Division, extends the time period, he or she must notify the applicant by letter, briefly explaining the issues presented by the label. The decision of the Chief, Alcohol and Tobacco Programs Division, shall be the final decision of ATF.

(c) *Judicial review.* An appeal to the Chief, Alcohol and Tobacco Programs Division is required prior to application to the Federal courts for review of any denial or qualification of an application.

Subpart D—Revocations of Specific Certificates

§ 13.41 Authority to revoke certificates.

Certificates of label approval, certificates of exemption from label approval, and distinctive liquor bottle approvals, previously approved on ATF Form 5100.31, may be revoked by the Chief, Alcohol and Tobacco Programs Division, upon a finding that the label or bottle at issue is not in compliance with the applicable laws or regulations.

§ 13.42 Notice of proposed revocation.

Except as provided in § 13.51, when the Chief, Product Compliance Branch, determines that a certificate of label approval, certificate of exemption from label approval, or distinctive liquor bottle approval has been issued for a label or bottle that is not in compliance with the laws or regulations, he or she must issue to the certificate holder a notice of proposed revocation. The notice must set forth the basis for the proposed revocation and must provide the certificate holder with 45 days from the date of receipt of the notice to present written arguments or evidence why the revocation should not occur.

§ 13.43 Decision after notice of proposed revocation.

(a) *Decision.* After considering any written arguments or evidence presented by the certificate holder, the Chief, Alcohol and Tobacco Programs Division, must issue a decision. If the decision is to revoke the certificate, a letter must be sent to the holder explaining the revocation of the certificate, and the specific laws or regulations relied upon in determining that the label or bottle was not in conformance with law or regulations. If the decision is to withdraw the proposed revocation, a letter of explanation must be sent.

(b) *Time limits for decision.* Within 90 days of receipt of written arguments or evidence from the certificate holder, the Chief, Alcohol and Tobacco Programs Division, shall notify the appellant of his or her decision. If a certificate holder requests an informal conference as part of an appeal, as authorized in § 13.71, the 90-day period will begin 10 days after the date of the conference to allow for consideration of any written arguments, facts or evidence submitted after the conference. The Chief, Alcohol and Tobacco Programs Division, may extend this period of time once by an additional 90 days if he or she finds that unusual circumstances require additional time to consider the issues presented by a proposed revocation. If the Chief, Alcohol and Tobacco

Programs Division, extends the time period, he or she must notify the applicant by letter, along with a brief explanation of the issues under consideration.

§ 13.44 Appeal of revocation.

(a) *Filing of appeal.* A certificate holder who wishes to appeal the decision of the Chief, Alcohol and Tobacco Programs Division, to revoke a certificate of label approval, certificate of exemption from label approval, or distinctive liquor bottle approval, may file a written appeal with the Assistant Director, Alcohol and Tobacco, setting forth why the holder believes that the decision of the Chief, Alcohol and Tobacco Programs Division, was erroneous. The appeal must be filed with the Assistant Director, Alcohol and Tobacco within 45 days after the date of receipt of the decision of the Chief, Alcohol and Tobacco Programs Division.

(b) *Judicial review.* An appeal to the Assistant Director, Alcohol and Tobacco, is required prior to application to the Federal courts for review of any revocation of a certificate.

§ 13.45 Final decision after appeal.

(a) *Issuance of decision.* After considering any written arguments or evidence presented by the certificate holder or the holder's representative, the Assistant Director, Alcohol and Tobacco, must issue a final decision. If the decision is to revoke the certificate of label approval, certificate of exemption from label approval, or distinctive liquor bottle approval, a letter must be issued explaining the basis for the revocation, and the specific laws or regulations relied upon in determining that the label or bottle was not in conformance with law or regulations. If the decision is to withdraw the proposed revocation, a letter explaining the decision must be sent.

(b) *Time limits for decision.* Within 90 days of receipt of an appeal, the Assistant Director, Alcohol and Tobacco, must notify the holder whether the appeal has been granted or denied. If a certificate holder requests an informal conference as part of an appeal, as authorized in § 13.71, the 90-day period will begin 10 days after the date of the conference to allow for consideration of any written arguments, facts or evidence submitted after the conference. The Assistant Director, Alcohol and Tobacco, may extend this period of time once by an additional 90 days if he or she finds that unusual circumstances require additional time to consider the issues presented by an appeal. If the Assistant Director, Alcohol and Tobacco, extends the period, he or she must notify the holder by letter, briefly explaining the issues presented by the label. The decision of the Assistant Director, Alcohol and Tobacco, will be the final decision of the Bureau.

Subpart E—Revocation by Operation of Law or Regulation

§ 13.51 Revocation by operation of law or regulation.

ATF will not individually notify all holders of certificates of label approval, certificates of exemption from label approval, or distinctive liquor bottle approvals, that their approvals have been revoked if the revocation occurs by operation of law or regulation. If changes in labeling or other requirements are made as a result of amendments or revisions to the law or regulations, the certificate holder must voluntarily surrender all certificates that are no longer in compliance. The holder must submit applications for new certificates in compliance with the new requirements, unless ATF determines that new applications are not necessary. If a new application is unnecessary, it is the responsibility of the certificate holder to ensure that labels are in compliance with their requirements of the new regulations or law.

§ 13.52 Notice of revocation.

If ATF determines that a certificate holder is still using a certificate of label approval, certificate of exemption from label approval, or distinctive liquor bottle approval that is no longer in compliance due to amendments or revisions in the law or regulations, the Chief, Product Compliance Branch, will notify the certificate holder in writing that the subject certificate has been revoked by operation of law or regulations, with a brief description of the grounds for such revocation.

§ 13.53 Appeal of notice of revocation.

Within 45 days after the date of receipt of a notice of revocation by operation of law or regulations, the certificate holder may file a written appeal with the Chief, Alcohol and Tobacco Programs Division. The appeal should set forth the reasons why the certificate holder believes that the regulation or law at issue does not require the revocation of the certificate.

§ 13.54 Decision after appeal.

(a) *Issuance of decision.* After considering all written arguments and evidence submitted by the certificate holder, the Chief, Alcohol and Tobacco Programs Division, must issue a final decision regarding the revocation by operation of law or regulation of the certificate. If the decision is that the law or regulation at issue requires the revocation of the certificate of label approval, certificate of exemption from label approval, or distinctive liquor bottle approval, a letter must be issued explaining the basis for the revocation, and citing the specific laws or regulations which required the revocation of the certificate. If the decision is that the law or regulation at issue does not require the revocation of such certificate, a letter explaining the decision must be sent to the certificate holder. The decision of the Chief, Alcohol and Tobacco Programs Division, will be the final decision of ATF.

(b) *Time limits for decision.* Within 90 days of receipt of an appeal, the Chief, Alcohol and Tobacco Programs Division, must notify the holder whether the appeal has been granted or denied. If a certificate holder requests an informal conference as part of an appeal, as authorized in § 13.71, the 90-day period will begin 10 days after the date of the conference to allow for consideration of any written arguments, facts or evidence submitted after the conference. The Chief, Alcohol and Tobacco Programs Division, may extend this period of time once by an additional 90 days if he or she finds that unusual circumstances require additional time to consider the issues presented by an appeal. If the Chief, Alcohol and Tobacco Programs Division, extends the period, he or she must notify the holder by letter, briefly explaining the issues presented by the label. The decision of the Chief, Alcohol and Tobacco Programs Division, will be the final decision of ATF.

Subpart F—Miscellaneous

§ 13.61 Publicity of information.

(a) *Pending and denied applications.* Pending and denied applications for certificates of label approval, certificates of exemption from label approval, or distinctive liquor bottle approvals are treated as proprietary information, unless the applicant or certificate holder provides written authorization to release such information.

(b) *Approved applications.* The Chief, Product Compliance Branch, shall cause to be maintained in the ATF Library for public inspection, a copy of each approved application for certificate of label approval, certificate of exemption from label approval, or distinctive liquor bottle approval. These documents may be viewed during business hours at

650 Massachusetts Avenue, NW, Washington, DC 20226.

(c) *Revoked certificates.* If an approved certificate is subsequently revoked, the record of the approved application will remain on file for public inspection, but the index will be annotated to show it was revoked.

(d) *Further disclosure of information on denied or revoked certificates.* If an applicant whose application is pending or has been denied, or a holder of a revoked certificate of label approval, certificate of exemption from label approval, or distinctive liquor bottle approval, issues public statements concerning ATF action in connection with such application or certificate, then ATF may issue a statement to clarify its position or correct any misstatements of fact, including a disclosure of information contained on the application or certificate of label approval, certificate of exemption from label approval, or distinctive liquor bottle approval.

§ 13.62. Third-party comment on certificates.

When a third party (such as foreign government, another Federal agency, a State agency, an industry association, a competitor of a certificate holder, a consumer or consumer group, or any other interested person) wishes to comment on an approved certificate of label approval, certificate of exemption from label approval, or distinctive liquor bottle approval, such comments should be submitted in writing to the Chief, Product Compliance Branch. The Chief, Product Compliance Branch, will review the subject of the comment. If the comment raises an issue that is outside the scope of ATF's statutory or regulatory authority, or the Chief, Product Compliance Branch, determines that the certificate is in compliance with applicable law and regulations, the commenter will be informed that no further action will be taken. If the Chief, Product Compliance Branch, determines that the commenter has raised a valid issue that ATF has authority to address, then the Chief, Product Compliance Branch, will initiate appropriate action. The Chief, Product Compliance Branch, may, in his or her discretion, notify the commenter as to the action being taken by ATF with respect to the certificate.

§ 13.71 Informal conferences.

(a) *General.* As part of a timely filed written appeal of a notice of denial, a notice of proposed revocation, or a decision of the Chief, Alcohol and Tobacco Programs Division, to revoke a certificate, an applicant or certificate holder may file a written request for an informal conference with the ATF official deciding the appeal, or that official's delegate.

(b) *Informal conference procedures.* The deciding official, or such official's delegate, and the applicant or certificate holder will agree upon a date for an informal conference. The informal conference is for purposes of discussion only, and no transcript shall be made. If the applicant or certificate holder wishes to rely upon arguments, facts, or evidence presented at the informal conference, he or she has 10 days after the date of the conference to incorporate such arguments, facts, or evidence in a written submission to the deciding official.

§ 13.72 Effective dates of revocations.

(a) *Effective dates.*—(1) *Revocation of specific certificates.* A written decision to revoke a certificate becomes effective 60 days after the date of the decision.

(2) *Revocation by operation of law or regulation.* If a certificate is revoked by operation of law or regulation, the revocation becomes effective on the effective date of the change in law or regulation with which the certificate does not comply, or if a separate label compliance date is given, on that date.

(b) *Use of certificate during period of appeal.* If a certificate holder files a timely appeal after receipt of a decision to revoke a certificate from the Chief, Alcohol and Tobacco Programs Division, pursuant to § 13.45, the holder may continue to use the certificate at issue until the effective date of a final decision issued by the Assistant Director, Alcohol and Tobacco. However, the effective date of a notice of revocation by operation of law or regulations, issued pursuant to § 13.52, is not stayed pending the appeal.

§ 13.73 Effect of revocation.

On and after the effective date of a revocation of a certificate of label approval, certificate or exemption from label approval, or distinctive liquor bottle approval, the label or distinctive liquor bottle in question may not be used to bottle or pack distilled spirits, wine or malt beverages, to remove such products from the place where they were bottled or packed, or to remove such products from customs custody for consumption.

§ 13.74 Surrender of certificates.

On the effective date of a final decision that has been issued by the Chief, Alcohol and Tobacco Programs Division, or the Assistant Director, Alcohol and Tobacco, to revoke a certificate of label approval, certificate of exemption from label approval, or distinctive liquor bottle approval, the certificate holder must surrender the original of the certificate to ATF for manual cancellation. Regardless of whether the original certificate of label approval, certificate of exemption from label approval, or distinctive liquor bottle approval has been manually canceled or not, the certificate is null and void after the effective date of the revocation. It is a violation of this section for any certificate holder to present a certificate of label approval, certificate of exemption from label approval, or distinctive liquor bottle approval to an official of the United States Government as a valid certificate after the effective date of the revocation of the certificate if the certificate holder has been previously notified that such certificate has been revoked by ATF.

§ 13.75 Evidence of receipt by ATF.

If there is a time limit on ATF action that runs from ATF's receipt of a document, the date of receipt may be established by a certified mail receipt or equivalent written acknowledgment secured by a commercial delivery service or by a written acknowledgment of personal delivery. In the absence of proof of receipt, the date the document is logged in by ATF will be considered the date of receipt.

§ 13.76 Service on applicant or certificate holder.

(a) *Method of service.* ATF must serve notices of denial on an applicant by first class mail, or by personal delivery. ATF must serve notices of proposed revocation and notices of revocation on a certificate holder by certified mail, return receipt requested, by a commercial delivery service that will provide an equivalent written acknowledgment from the recipient, or by personal delivery.

(b) *Date of receipt.* If there is a time limit on a certificate holder's action that runs from the holder's receipt of a document, the date of receipt may be established by a certified mail receipt, an equivalent written acknowledgment secured by a commercial delivery service, or by a written acknowledgment of personal delivery.

(c) *Person to be served.* When service is by mail or other commercial delivery service, a copy of the document must be sent to the applicant or certificate holder at the address stated in the application or at the last known address. If authorized by the applicant or certificate holder, the copy of the document may be mailed to a designated representative. If service is by personal delivery, a copy of the document must be delivered to the

certificate holder or to a designated representative. In the case of a corporation, partnership, or association, personal delivery may be made to an officer, manager, or general agent thereof, or to the attorney of record.

§ 13.81 Representation before ATF.

An applicant or certificate holder may be represented by an attorney, certified public accountant, or other person recognized to practice before ATF as provided in 31 CFR part 8 (Practice Before the Bureau of Alcohol, Tobacco and Firearms). The applicable requirements of 26 CFR 601.521 through 601.527 (conference and practice requirements for alcohol, tobacco, and firearms activities) shall apply.

§ 13.91 Computation of time.

In computing any period of time prescribed or allowed by this part, the day of the act, event or default after which the designated period of time is to run, is not counted. The last day of the period to be computed is counted, unless it is a Saturday, Sunday, or legal holiday, in which case the period runs until the next day that is not a Saturday, Sunday, or legal holiday. Papers or documents that are required or permitted to be filed under this part must be received at the appropriate office within the filing time limits, if any.

§ 13.92 Extensions.

An applicant or certificate holder may apply to the Chief, Product Compliance Branch, the Chief, Alcohol and Tobacco Programs Division, or the Assistant Director, Alcohol and Tobacco for an extension of any time limit prescribed in this part. The time limit may be extended if ATF agrees the request is reasonable.

PART 19—DISTILLED SPIRITS PLANTS

Par. 12. The authority citation for part 19 continues to read as follows:

Authority: 19 U.S.C. 81c, 1311; 26 U.S.C. 5001, 5002, 5004–5006, 5008, 5010, 5041, 5061, 5062, 5066, 5081, 5101, 5111–5113, 5142, 5143, 5146, 5171–5173, 5175, 5176, 5178–5181, 5201–5204, 5206, 5207, 5211–5215, 5221–5223, 5231, 5232, 5235, 5236, 5241–5243, 5271, 5273, 5301, 5311–5313, 5362, 5370, 5373, 5501–5505, 5551–5555, 5559, 5561, 5562, 5601, 5612, 5682, 6001, 6065, 6109, 6302, 6311, 6676, 6806, 7011, 7510, 7805; 31 U.S.C. 9301, 9303, 9306.

Par. 13. Section 19.633 is amended to add paragraph (c) to read as follows:

§ 19.633 Distinctive liquor bottles.

* * * * *

(c) *Cross reference.* For procedures regarding issuance, denial and revocation of distinctive liquor bottle approvals, as well as appeal procedures, see part 13 of this chapter.

Par. 14. Section 19.641 is revised to read as follows:

§ 19.641 Certificate of label approval or exemption.

(a) *Requirement.* Proprietors are required by 27 CFR part 5 to obtain approval of labels, or exemption from label approval, for any label to be used on bottles of spirits for domestic use and shall exhibit evidence of label approval, or of exemption from label approval, on request of an ATF officer.

(b) *Cross reference.* For procedures regarding the issuance, denial and revocation of certificates of label approval and certificates of exemption from label approval, as well as appeal procedures, see Part 13 of this chapter.

''(Sec. 201, Pub. L. 85–859, 72 Stat. 1356, as amended (26 U.S.C. 5201))

Signed: August 6, 1998.

John W. Magaw,

Director.

Approved: December 11, 1998.

John P. Simpson,

Deputy Assistant Secretary (Regulatory, Tariff and Trade Enforcement).

[FR Doc. 99–624 Filed 1–12–99; 8:45 am]

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DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 20

RIN 2900–AJ15

Board of Veterans' Appeals: Rules of Practice—Revision of Decisions on Grounds of Clear and Unmistakable Error

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: This document amends the Rules of Practice of the Board of Veterans' Appeals (Board) to implement the provisions of section 1(b) of Pub. L. No. 105–111 (Nov. 21, 1997), which permit challenges to Board decisions on the grounds of ''clear and unmistakable error'' (CUE). The amendments provide specific application procedures and establish decision standards based on case law. These changes implement the new statutory provisions, which permit a claimant to demand review by the Board to determine whether CUE exists in an appellate decision previously issued by the Board, with a right of review of such determinations by the U.S. Court of Veterans Appeals.

DATES: Effective Date: February 12, 1999.

FOR FURTHER INFORMATION CONTACT: Steven L. Keller, Chief Counsel, Board of Veterans' Appeals, Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 565–5978.

SUPPLEMENTARY INFORMATION: The Board of Veterans' Appeals (Board) is an administrative body that decides appeals from denials of claims for veterans' benefits. There are currently 60 Board members, who decide 35,000 to 40,000 such appeals per year.

On May 19, 1998, the Department of Veterans Affairs (VA) published a notice of proposed rulemaking (NPRM) in the **Federal Register**. 63 FR 27534. We proposed to implement the provisions of section 1(b) of Pub. L. 105–111 (Nov. 21, 1997), which permits challenges to decisions of the Board of Veterans' Appeals (Board) on the grounds of ''clear and unmistakable error'' (CUE).

The public comment period ended on July 20, 1998. VA received 5 comments: 3 from veterans service organizations; one from a consortium of organizations, including veterans service organizations; and one from an individual. These comments are discussed below.

Based on the rationale set forth in the proposed rule and in this document, we adopt the provisions of the proposed rule as a final rule with changes explained below.

Subpart G, Rule 609(c)—Attorney Fees

Two commenters questioned Rule 609(c)(4)'s approach to attorney fees. That rule provides that the term ''issue,'' for purposes of charging a fee, would have the same meaning as ''issue'' in the context of a motion under subpart O. In other words, provided that the Board decision being challenged is associated with a notice of disagreement dated on or after November 18, 1988, and that the attorney was retained within one year of that decision, the attorney can be paid for services rendered in connection with a motion under subpart O.

The rule as proposed makes paid legal representation available to the maximum extent possible under existing law. For example, if we defined ''issue'' as meaning a challenge based on CUE, an attorney would never be able to charge for services in connection with a CUE motion because the Board would not have issued a final decision on the ''issue'' until after the CUE process was complete.

Two commenters suggested that we ignore the requirement that, in order for an attorney or agent to charge a fee, a

case must have associated with it a notice of disagreement received on or after November 18, 1988. That requirement is imposed by Pub. L. 100–687, Div. A, section 403, 102 Stat. 4108, *reprinted* at 38 U.S.C.A. 5904 note (applicability to attorneys fees), and VA may not by rule eliminate a requirement imposed by statute. One commenter suggested that we define ''case'' as a CUE case brought by a party unrepresented by an attorney, and that the one-year period should begin when the Board denies that party's motion. We do not believe that whether an action is a ''case'' depends on the nature of the movant's representation, and decline to adopt that suggestion.

Accordingly, we are adopting the change to Rule 609 as proposed.

Subpart K, Rule 1000—Reconsideration

General

We proposed to eliminate reconsideration on the grounds of obvious error based on the conclusion that this procedure was duplicative of the process under 38 U.S.C. 7111. Based on the comments received, we have concluded that the remedies are not totally equivalent, primarily because the remedy of reconsideration, when ordered by the Chairman, requires that the Board review the appeal de novo, while review on a CUE motion requires the review only of specific allegations of error. Accordingly, the final rule does not contain any change to Rule 1000.

Motions for Reconsideration as Motions for Review Under the Cue Standard

Because we had proposed to eliminate motions for reconsideration based on obvious error, we decided to treat motions for reconsideration alleging obvious error received after the enactment of Pub. L. 105–111 as motions for correction of CUE and so informed individuals who had filed such reconsideration motions. However, because we have now decided not to eliminate reconsideration based on obvious error, and because of the special pleading rules and the finality associated with motions under 38 U.S.C. 7111, we have decided that motions for reconsideration should not be considered CUE motions. In our view, there is a potential risk for the veteran to lose his or her chance at reversal on CUE grounds by inadvertently filing such a motion. We believe that CUE motions should be carefully thought out.

Accordingly, we have added a new paragraph (e) to Rule 1404 (relating to filing and pleading requirements) which provides that motions for reconsideration, whenever filed, will not be considered motions under subpart O. We do not believe this approach will prejudice anyone because (1) a CUE motion may be filed at any time; (2) the effect of a successful motion is the same no matter when filed—i.e., the prior Board decision is revised effective the date it was originally issued; and (3) the vast majority of individuals who applied for reconsideration probably had no idea that their motions would be construed as requests for revision under the new statute.

Nevertheless, since we have told individuals that we would decide their reconsideration motions under the new CUE regulations, and since the ''motions'' of those individuals have been assigned a place on the Board's ''docket,'' we will give each person so notified an opportunity to have his or her motion adjudicated under the new regulations. Accordingly, we will (1) notify the individuals concerned that their reconsideration motions will not be construed as CUE motions unless we receive notification from them that they want the motion construed as a CUE motion; (2) provide those individuals with a copy of the new regulations; and (3) encourage them to seek representation if they decide to pursue a motion under subpart O.

Subpart O—Revision of Decisions on Grounds of Clear and Unmistakable Error (Rules 1400–1411)

General

Several commenters suggested, in the context of various rules, that we interpret Pub. L. 105–111 more liberally than the courts have interpreted 38 CFR 3.105(a), VA's long-standing regulatory basis for CUE challenges to regional office decisions. We decline to follow these suggestions.

As we said in our NPRM, the legislative history of H.R. 1090, 105th Congress, which became Pub. L. 105–111, indicates that the Congress expected the Department would implement section 1(b) of the bill in accordance with current definitions of CUE. H.R. Rep. No. 52, 105th Cong., 1st Sess. 3 (1997) (report of House Committee on Veterans' Affairs on H.R. 1090) (''Given the Court's clear guidance on this issue [of CUE], it would seem that the Board could adopt procedural rules consistent with this guidance to make consideration of appeals raising clear and unmistakable error less burdensome''); 143 Cong. Rec. 1567, 1568 (daily ed. Apr. 16, 1997) (remarks of Rep. Evans, sponsor of H.R. 1090, in connection with House passage) (''The bill does not alter the standard for evaluation of claims of clear and unmistakable error'').

Rule 1400

Proposed Rule 1400 recited the statutory rule that Board decisions may be challenged on the grounds of CUE, and provided, in Rule 1400(b), that a Board decision on an issue (as defined in Rule 1401(a)) decided by a court of competent jurisdiction is not subject to challenge on the grounds of CUE.

One commenter objected to Rule 1400(b) on a variety of grounds, ranging from veterans' representatives who innocently miss grounds for appeal to the inapplicability of the rule, set forth in *Donovan* v. *Gober*, 10 Vet. App. 404 (1997), *aff'd sub. nom. Donovan* v. *West*, 158 F.3d 1377 (Fed. Cir. 1998), that a decision by an agency of original jurisdiction (AOJ) is ''subsumed'' in a Board decision on the merits, so that such an AOJ decision would no longer be subject to a CUE challenge. The reason for Rule 1400(b), as stated in our NPRM, is that it would be inappropriate for an inferior tribunal to review the actions of a superior, *Smith (William)* v. *Brown*, 35 F.3d 1516, 1526 (Fed. Cir. 1994); *Duran* v. *Brown*, 7 Vet. App. 216, 224 (1994). 63 FR 27536.

The same commenter suggested that Rule 1400(b) was unclear as to which final Board decisions would be exempt from review based on appeal to a court of competent jurisdiction. It was our intent that two classes of Board decisions not be subject to challenge: Those appealed to and decided by such courts, and those on issues which are subsequently decided by such courts. Consider this example:

> A 1985 Board decision finally denied service connection for a disability. In 1990, the veteran reopened the claim with new and material evidence at the regional office; the claim was denied and appealed to the Board; the Board again denied service connection; and the decision was appealed to the Court of Veterans' Appeals which, in 1995, affirmed the Board's decision. In 1997, the veteran reopened his claim at the regional office, where it was denied on the merits, and, in 1998, denied on appeal to the Board.

Under our rules, the veteran could challenge the 1998 Board decision, but could not challenge either the decision which was affirmed by the Court, or the 1985 decision. We believe that the rationale stated in jurisprudence which prevents regional offices from overturning Board decisions, and which therefore precludes regional offices from reviewing for CUE their own decisions that have been subsumed by subsequent Board decisions, is sound and is equally

applicable to the Board. *See generally Donovan* v. *West*, supra. Therefore, our rule precludes a CUE challenge to a Board decision on an issue that has been subsequently decided by a court of competent jurisdiction, whether on direct appeal of that Board decision or on appeal of a subsequent Board decision on the same issue.

We have amended Rule 1400(b) to make this clearer.

Rule 1401

Rule 1401 defines the terms ''issue'' and ''party.''

Rule 1401(a), which defines ''issue,'' requires that the applicable Board decision either have been appealable under Chapter 72 of title 38, United States Code, or would have been appealable if the notice of disagreement had been received by the AOJ on or after November 18, 1988.

One commenter thought that our definition of ''issue'' could be misinterpreted to mean that only Board decisions which in fact could have been appealed under Chapter 72 could be challenged on the grounds of CUE. That is certainly not what we intended. The purpose of this qualification is simply to clarify that only final, outcome-determinative decisions of the Board are subject to revision on the grounds of CUE. Our purpose in referencing appeals to the court is simply to provide a meaningful standard for what we mean by ''final'' Board decisions. Since all Board decisions on appeals require that the appellant have filed a notice of disagreement, 38 U.S.C. 7105(a), and final Board decisions are appealable under chapter 72 of title 38, *Zevalkink* v. *Brown*, 6 Vet. App. 483, 488 (1994), *aff'd*, 102 F.3d 1236 (Fed. Cir. 1996), *cert. denied*, 117 S. Ct. 2478 (1997), parties, the Board and reviewing courts, by using this standard, will be able to determine whether a Board decision was in fact final, whether or not it was actually appealed to the court. Nevertheless, we have revised Rule 1401(a) to clarify that a ''final decision'' is one which was appealable to the Court of Veterans Appeals (CVA), or which would have been appealable if the relevant statutory provisions providing review had been in effect at the time of the Board decision.

One commenter stated that the definition of ''issue'' was too vague because it refers to ''a matter upon which the Board made a final decision,'' and the term ''matter'' is not defined. We do not agree. The term ''matter'' is taken from 38 U.S.C. 7103(a), which refers to the finality of a ''decision of the Board determining a matter under section 7102'' of title 38. Section 7102 in turn relates to assignment of proceedings to Board members. ''Matter'' is not an unknown term in the context of Board decisions, *cf.* 38 U.S.C. 7104(a) (''matter'' for decision under 38 U.S.C. 511(a)), and we think it is serviceable enough in the context of subpart O.

The same commenter suggests that various ''subsidiary'' questions also be subject to CUE challenges. Again, we do not agree. As we stated in our NPRM, one of the purposes of this definition is to clarify that ''only final, outcome-determinative decisions of the Board are subject to revision on the grounds of CUE, so as to avoid, in the interests of judicial economy, atomization of Board decisions into myriad component parts * * *.'' 63 FR 27537.

Two commenters suggest amending the definition of ''party'' in Rule 1401(b), to include, variously, the representative of a party and the family of a party. We do not agree. The right to challenge a Board decision is limited by statute to the claimant and the Board. 38 U.S.C. 7111(c). Cf. *Haines* v. *West*, 154 F.3d 1298, 1301 (Fed. Cir. 1998) (substantively identical 38 U.S.C. 5109A, applicable to regional office decisions, contains nothing that provides for another person, even a survivor, to seek correction of a decision on a veteran's claim). We note that, under Rule 1404(a), a party's representative may sign the motion for a challenge on the grounds of CUE.

Accordingly, we are adopting Rule 1401(b) as proposed.

Rule 1402

There were no comments on Rule 1402, which provides that motions filed under subpart O are not appeals and, except as otherwise provided, are not subject to the provisions of the Board's regulations which relate to the processing and disposition of appeals. We are adopting Rule 1402 as proposed.

Rule 1403

Rule 1403 relates to what constitutes CUE and what does not. We received a number of comments on this rule.

In our proposed rulemaking, we based our definition of CUE on rulings by the CVA. A number of commenters suggested that this definition was too restrictive, and should be modified.

We do not agree. Congress intended that VA adopt the CVA interpretation of the term ''clear and unmistakable error.'' Indeed, as discussed in the NPRM, 63 FR 27536, the sponsor of the bill which became the law specifically noted that the bill would ''not alter the standard for evaluation of claims of clear and unmistakable error.'' 143 Cong. Rec. 1567, 1568 (daily ed. Apr. 16, 1997) (remarks of Rep. Evans, sponsor of H.R. 1090, in connection with House passage).

Several commenters objected to our incorporation, in Rule 1403(b)(2), of the holding in *Bell* v. *Derwinski*, 2 Vet. App. 611 (1992), that, with respect to Board decisions issued on or after July 21, 1992, documents which were actually in VA's possession—even though not physically before the adjudicator—are constructively a part of the record. While we agree that this rule appears to conflict with a basic tenet of CUE—i.e., that we look at the same set of facts and law as did the original adjudicator—we do not believe we are free to ignore the court's decision.

One commenter objected to Rules 1403(d)(2) and 1403(d)(3), which provide that neither (1) the Secretary's failure to fulfill the duty to assist nor (2) a disagreement as to how the facts were weighed or evaluated can constitute CUE. As described in our NPRM, the law is clear on these points. 63 FR 27536–37.

Rule 1403(e) provides that CUE does not include the otherwise correct application of a statute or regulation where, subsequent to the Board decision challenged, there has been a change in the interpretation of the statute or regulation. Two commenters objected to this rule. Without getting into the various arguments advanced, it is, we believe, enough to say that the CVA has now ruled that this is the proper interpretation of the law. *Smith (Rose)* v. *West*, 11 Vet. App. 134, 137–38 (1998).

Accordingly, we are adopting Rule 1403 as proposed.

Rule 1404

Rule 1404 relates to filing and pleading requirements in connection with a motion challenging a Board decision on the grounds of CUE. We received a number of comments on this rule.

Several commenters expressed the view that the pleading requirements set forth in the proposed rule are too strict. We do not agree.

While it is true that the requirements set forth in these proposed regulations are more strenuous than the ''paternalistic'' rules commonly associated with veterans' claims, challenges on the grounds of CUE are different from claims for benefits. Claims for benefits that meet certain minimum requirements—i.e., that are ''well grounded''—require VA to assist the veteran in a variety of ways and demand only that the veteran show that it is at least as likely as not that he or she meets the standards for a grant of

benefits. This process indeed occurs in a non-adversarial setting.

On the other hand, a CUE challenge to a final Board decision—itself the product of this non-adversarial process—is based on the allegation that the Board has denied the claim in such a fundamentally erroneous way that any reasonable person would have granted the claim. It is a collateral challenge to an otherwise final decision as to which the presumption of validity is very strong. *Fugo* v. *Brown*, 6 Vet. App. 40, 44 (1993).

We understand that a person whose claim for benefits is denied would prefer that the claim have been granted. And, indeed, in our NPRM we outlined several ways in which veterans' claims can be revived. 63 FR 27535. Nevertheless, where the veteran makes this kind of collateral challenge to a presumptively valid final decision, he or she is required to come forward with specific allegations as to the CUE. *Phillips* v. *Brown*, 10 Vet. App. 25, 31 (1997); *Fugo* v. *Brown*, 6 Vet. App. 40, 44 (1993); *cf. Berger* v. *Brown*, 10 Vet. App. 166, 169 (1997) (''(A)ppellant, who always bears the burden of persuasion on appeals to this Court, bears an extra-heavy burden when the appeal is a collateral attack, in the form of a CUE claim, concerning a final decision''). That is, in essence, all that our rules call for.

As described earlier in this document, we have added a new paragraph (e) to Rule 1404 to provide that motions for reconsideration, whenever filed, will not be considered motions under subpart O.

We have also added a new paragraph (f) to Rule 1404 to clarify that a motion under subpart O may be withdrawn at any time before the Board promulgates a decision on the motion. If such a request is timely received, the motion shall be dismissed without prejudice to refiling under subpart O.

Rule 1405

Rule 1405 relates to the disposition of motions filed under subpart O. The rule includes directions with respect to hearings, evidence, and opinions of VA's General Counsel. We received a number of comments on this rule.

Evidence (Rule 1405(b))

One commenter proposed another definition of CUE, which would include the Board's failure to obtain evidence that a reasonable Board member would have tried to obtain and that, more likely than not, would have resulted in a grant of benefits. This commenter further proposed that, under that definition, if a party submitted with the CUE motion evidence that a reasonable Board member would have tried to obtain, that evidence be considered to have been of record at the time of the original decision. While we appreciate the thoughtful recommendation, we do not concur. Congress intended VA to follow the established case law defining CUE in implementing 38 U.S.C. 7111. This recommendation—which would include in the definition of CUE evidence which would obviously not have been before the Board at the time of the original decision—does not meet that standard.

One commenter argued that a moving party should be permitted to submit additional evidence in connection with a CUE challenge because the word ''evidence'' is used in 38 U.S.C. 7111. Our NPRM set forth controlling court precedents which make it clear that a ruling on CUE is based on the record that was before the adjudicator. We have not adopted this commenter's suggestion.

That same commenter argued that it is arbitrary to prohibit a claimant from submitting evidence in connection with a CUE motion (Rule 20.1405(b)) but to permit the Board to use AOJs to ensure completeness of the record (Rule 20.1405(e)). However, Rule 20.1405(e) would not permit the Board to supplement the record with evidence that was not of record at the time of the original decision, but rather would permit the Board to ensure that all evidence that was before the Board at the time of the original decision is before the Board on the CUE motion. Accordingly, we have not adopted this argument.

Hearings (Rule 1405(c))

Rule 1405(c) provides that the Board, for good cause shown, may grant a request for a hearing for the purpose of argument. One commenter suggests that such hearings be made a matter of right. While it is true, as this commenter points out, that hearings are freely available in connection with most veterans' claims, those hearings are typically for the purpose of submitting evidence. There is, however, no evidence to be submitted in connection with a challenge based on CUE. Indeed, a ''hearing'' with respect to a motion under subpart O is more akin to oral argument in an appellate case. Accordingly, we are adopting Rule 1405(c) as proposed.

General Counsel opinions (Rule 1405(f))

Rule 1405(f) permits the Board to secure opinions of VA's General Counsel in connection with a motion under subpart O.

Two commenters expressed the opinion that this authority would be used only to establish post-hoc rationalizations for Board decisions. Those commenters articulate no factual basis for this conclusion. We believe that, in the proper case, an opinion from the Department's chief legal officer could be helpful in properly deciding the case. We are adopting Rule 1405(f) as proposed.

Decision format (Rule 1405(g))

One commenter questioned the decision format to be used by the Board, i.e., findings of fact, conclusions of law, and reasons and bases for such findings and conclusions. As we said in our NPRM, we believe that the format in our rule—based on the requirements in 38 U.S.C. 7104(d)—best facilitates judicial review. 63 FR at 27537. Accordingly, we are adopting Rule 1405(g) as proposed.

Rule 1406

Rule 1406 relates to the effect of a revision of a Board decision based on CUE. One commenter suggested that VA consider adopting a regulation permitting the claimant to file a motion requesting a stay of a Board order under subpart O which terminates or reduces benefits pending a decision on appeal to the court. We decline to add such a provision. In such a case, the Board would have, by definition, decided that an award of benefits was clearly and unmistakably erroneous. To continue the payment of benefits based on a clearly and unmistakably erroneous award would create an overpayment attributable to the party.

One commenter argued that Rule 1406 is contrary to law to the extent that it contemplates discontinuance or reduction of benefits in the context of a CUE motion because, according to this commenter, the Board has no authority to order such discontinuance or reduction. We do not agree. Section 7111(a) of title 38, United States Code, requires that, if evidence establishes a clear and unmistakable error in a Board decision, that decision be reversed or revised. The Board's duty to reverse or revise a clearly and unmistakably erroneous Board decision is not limited by the statutory language to situations in which a grant or increase in benefits would result. The commenter argued that 38 U.S.C. 7111(b)—which relates to procedures to be followed in those cases where the CUE motion results in an award of benefits—implicitly limits the Board's authority to granting benefits and denying motions. However, that subsection simply provides the effective date of a reversal or revision of a prior Board decision resulting in a grant of or

increase in benefits. The fact that section 7111(b) does not mention the effective date for discontinuances or reductions does not prohibit such orders any more than the fact that it does not mention denial of a motion means the Board must grant every CUE motion.

We have divided Rule 1406 into two separate paragraphs for purposes of clarity. This is purely stylistic, and we intend no substantive change.

Rule 1407

Rule 1407 relates to motions under subpart O made by the Board.

One commenter suggested that we amend that portion of the rule which provides that decisions on motions initiated by the Board are subject to the same finality as those initiated by a party. We do not agree. Should the Board undertake a motion, all parties will have an opportunity to address the motion fully. While we do not anticipate that the Board would use this authority often, we believe that the process outlined is fair.

Another commenter suggested that the regulations be amended to provide that the Board is subject to the same pleading rules as parties. No changes are made based on this comment. The purpose of the pleading requirements is for a claimant to sufficiently identify to the Board the particular case, issue, and alleged error to be adjudicated. In the case of the Board's own motion, the Board will already be aware of this information. Furthermore, Rule 1407 will provide means for the Board to inform the claimant of the same information and permit the claimant to respond to the Board's motion.

That same commenter also suggests that, when the Board proposes to reduce or terminate benefits as a result of a decision on the Board's motion under subpart O, the Board provide the party a predetermination hearing. We believe that the notice provisions of Rule 1407, and the availability of a hearing under Rule 1405(c) satisfy any due process concerns.

Accordingly, we are adopting Rule 1407 as proposed.

Rule 1408

No comments were received relating to Rule 1408, which applies to simultaneously contested claims.

Accordingly, we are adopting Rule 1408 as proposed.

Rule 1409

Rule 1409 relates to finality and appeal of a decision on a motion under subpart O.

One commenter objected to Rule 1409(c), which provides that, once there is a final decision on a motion under subpart O, that prior Board decision on that issue is no longer subject to revision on the grounds of CUE. We believe our explanation in the NPRM is sufficient to rebut any argument on this point, and will not burden the record with a point-by-point discussion. 63 FR 27538. *See also Allin* v. *Brown*, 10 Vet. App. 55, 57 (1997) (where court previously determined that there was no CUE in 1971 regional office decision, the question is no longer open for review).

As discussed earlier in this document, we have amended proposed Rule 1404(f) to clarify that a CUE motion may be withdrawn at any time before the Board promulgates a decision on the motion. We have amended Rule 1409(b) to provide that a dismissal without prejudice under Rule 1404(f) is not a final decision of the Board.

Rule 1410

Rule 1410 relates to stays pending court action. There were no comments relating to Rule 1410.

Accordingly, we are adopting Rule 1410 as proposed.

Rule 1411

Rule 1411 concerns the relationship of subpart O to other statutes.

One commenter objected to virtually all aspects of Rule 1411.

''Benefit of the doubt'' (Rule 1411(a)). This commenter argued that, because 38 U.S.C. 7111 uses the word ''case,'' the benefit of the doubt rule must apply to decisions made under subpart O. This commenter does not attempt to distinguish controlling precedent from the CVA, *Russell* v. *Principi*, 3 Vet. App. 310, 314 (1992), (discussed in our NPRM, 63 FR 27536), that the ''benefit of the doubt'' rule does not apply to the question of whether a prior decision was the result of CUE, nor the legislative history described earlier in this document. We reject this argument.

New and material evidence (Rule 1411(b)). The same commenter objects to the rule providing that CUE claims are not subject to reopening on the grounds of new and material evidence. However, as discussed extensively in our NPRM, a motion under subpart O is a challenge based on the evidence of record when the original decision was made. Accordingly, there is no evidence to submit in connection with such a motion, much less ''new and material evidence'' at some later date. Further, a motion under subpart O is not a claim within the meaning of 38 U.S.C. 5108 (relating to reopening claims with new and material evidence). We reject this argument.

Duties associated with applications for benefits (Rule 1411(c)). This same commenter objects to the rule providing that the duties associated with applications for benefits do not apply to motions under subpart O. We do not agree. Challenges based on CUE are collateral attacks on final decisions, *Berger* v. *Brown*, 10 Vet. App. 166, 169 (1997); *Duran* v. *Brown*, 7 Vet. App. 216, 223–24 (1994), not claims for benefits. Therefore, duties associated with applications for benefits do not apply to CUE motions. In any event, the detailed rules we are publishing are, we believe, fair and extremely detailed notice as to what is required to successfully maintain a challenge of CUE.

Accordingly, we are adopting Rule 1411 as proposed.

The Secretary hereby certifies that this final rule does not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. This rule would affect only the processing of claims by VA and would not affect small businesses. Therefore, pursuant to 5 U.S.C. 605(b), this proposed rule is exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604.

List of Subjects in 38 CFR Part 19

Administrative practice and procedure, Claims, Veterans.

Approved: January 8, 1999.

Togo D. West, Jr.,

Secretary of Veterans Affairs.

For the reasons set out in the preamble, 38 CFR part 20 is amended as set forth below:

PART 20—BOARD OF VETERANS' APPEALS: RULES OF PRACTICE

1. The authority citation for part 20 continues to read as follows:

Authority: 38 U.S.C. 501(a).

2. In subpart G, § 20.609, paragraph (c)(4) is added to read as follows:

§ 20.609 Rule 609. Payment of representative's fees in proceedings before Department of Veterans Affairs field personnel and before the Board of Veterans' Appeals.

* * * * *

(c) * * *

(4) For the purposes of this section, in the case of a motion under subpart O of this part (relating to requests for revision of prior Board decisions on the grounds of clear and unmistakable error), the ''issue'' referred to in this paragraph (c) shall have the same

meaning as ''issue'' in Rule 1401(a) (§ 20.1401(a) of this part).

* * * * *

3. A new subpart O is added to read as follows:

Subpart O—Revision of Decisions on Grounds of Clear and Unmistakable Error

Sec.
20.1400 Rule 1400. Motions to revise Board decisions.
20.1401 Rule 1401. Definitions.
20.1402 Rule 1402. Inapplicability of other rules.
20.1403 Rule 1403. What constitutes clear and unmistakable error; what does not.
20.1404 Rule 1404. Filing and pleading requirements; withdrawal.
20.1405 Rule 1405. Disposition.
20.1406 Rule 1406. Effect of revision; discontinuance or reduction of benefits.
20.1407 Rule 1407. Motions by the Board.
20.1408 Rule 1408. Special rules for simultaneously contested claims.
20.1409 Rule 1409. Finality and appeal.
20.1410 Rule 1410. Stays pending court action.
20.1411 Rule 1411. Relationship to other statutes.

Subpart O—Revision of Decisions on Grounds of Clear and Unmistakable Error

§ 20.1400 Rule 1400. Motions to revise Board decisions.

(a) Review to determine whether clear and unmistakable error exists in a final Board decision may be initiated by the Board, on its own motion, or by a party to that decision (as the term ''party'' is defined in Rule 1401(b) (§ 20.1401(b) of this part) in accordance with Rule 1404 (§ 20.1404 of this part).

(b) All final Board decisions are subject to revision under this subpart except:

(1) Those decisions which have been appealed to and decided by a court of competent jurisdiction; and

(2) Decisions on issues which have subsequently been decided by a court of competent jurisdiction.

(Authority: 38 U.S.C. 501(a), 7111)

Sec. 20.1401 Rule 1401. Definitions.

(a) *Issue.* Unless otherwise specified, the term ''issue'' in this subpart means a matter upon which the Board made a final decision (other than a decision under this subpart). As used in the preceding sentence, a ''final decision'' is one which was appealable under Chapter 72 of title 38, United States Code, or which would have been so appealable if such provision had been in effect at the time of the decision.

(b) *Party.* As used in this subpart, the term ''party'' means any party to the proceeding before the Board that resulted in the final Board decision which is the subject of a motion under this subpart, but does not include officials authorized to file administrative appeals pursuant to § 19.51 of this title.

(Authority: 38 U.S.C. 501(a), 7104(a))

20.1402 Rule 1402. Inapplicability of other rules.

Motions filed under this subpart are not appeals and, except as otherwise provided, are not subject to the provisions of part 19 of this title or this part 20 which relate to the processing and disposition of appeals.

(Authority: 38 U.S.C. 501(a))

§ 20.1403 Rule 1403. What constitutes clear and unmistakable error; what does not.

(a) *General.* Clear and unmistakable error is a very specific and rare kind of error. It is the kind of error, of fact or of law, that when called to the attention of later reviewers compels the conclusion, to which reasonable minds could not differ, that the result would have been manifestly different but for the error. Generally, either the correct facts, as they were known at the time, were not before the Board, or the statutory and regulatory provisions extant at the time were incorrectly applied.

(b) *Record to be reviewed.*—(1) *General.* Review for clear and unmistakable error in a prior Board decision must be based on the record and the law that existed when that decision was made.

(2) *Special rule for Board decisions issued on or after July 21, 1992.* For a Board decision issued on or after July 21, 1992, the record that existed when that decision was made includes relevant documents possessed by the Department of Veterans Affairs not later than 90 days before such record was transferred to the Board for review in reaching that decision, provided that the documents could reasonably be expected to be part of the record.

(c) *Errors that constitute clear and unmistakable error.* To warrant revision of a Board decision on the grounds of clear and unmistakable error, there must have been an error in the Board's adjudication of the appeal which, had it not been made, would have manifestly changed the outcome when it was made. If it is not absolutely clear that a different result would have ensued, the error complained of cannot be clear and unmistakable.

(d) *Examples of situations that are not clear and unmistakable error.*—(1) *Changed diagnosis.* A new medical diagnosis that ''corrects'' an earlier diagnosis considered in a Board decision.

(2) *Duty to assist.* The Secretary's failure to fulfill the duty to assist.

(3) *Evaluation of evidence.* A disagreement as to how the facts were weighed or evaluated.

(e) *Change in interpretation.* Clear and unmistakable error does not include the otherwise correct application of a statute or regulation where, subsequent to the Board decision challenged, there has been a change in the interpretation of the statute or regulation.

(Authority: 38 U.S.C. 501(a), 7111)

§ 20.1404 Rule 1404. Filing and pleading requirements; withdrawal.

(a) *General.* A motion for revision of a decision based on clear and unmistakable error must be in writing, and must be signed by the moving party or that party's representative. The motion must include the name of the veteran; the name of the moving party if other than the veteran; the applicable Department of Veterans Affairs file number; and the date of the Board of Veterans' Appeals decision to which the motion relates. If the applicable decision involved more than one issue on appeal, the motion must identify the specific issue, or issues, to which the motion pertains. Motions which fail to comply with the requirements set forth in this paragraph shall be dismissed without prejudice to refiling under this subpart.

(b) *Specific allegations required.* The motion must set forth clearly and specifically the alleged clear and unmistakable error, or errors, of fact or law in the Board decision, the legal or factual basis for such allegations, and why the result would have been manifestly different but for the alleged error. Non-specific allegations of failure to follow regulations or failure to give due process, or any other general, non-specific allegations of error, are insufficient to satisfy the requirement of the previous sentence. Motions which fail to comply with the requirements set forth in this paragraph shall be denied.

(c) *Filing.* A motion for revision of a decision based on clear and unmistakable error may be filed at any time. Such motions should be filed at the following address: Director, Administrative Service (014), Board of Veterans' Appeals, 810 Vermont Avenue, NW, Washington, DC 20420.

(d) *Requests not filed at the Board.* A request for revision transmitted to the Board by the Secretary pursuant to 38 U.S.C. 7111(f) (relating to requests for revision filed with the Secretary other than at the Board) shall be treated as if

a motion had been filed pursuant to paragraph (c) of this section.

(e) *Motions for reconsideration.* A motion for reconsideration, as described in subpart K of this part, whenever filed, will not be considered a motion under this subpart.

(f) *Withdrawal.* A motion under this subpart may be withdrawn at any time before the Board promulgates a decision on the motion. Such withdrawal shall be in writing, shall be filed at the address listed in paragraph (c) of this section, and shall be signed by the moving party or by such party's representative. If such a writing is timely received, the motion shall be dismissed without prejudice to refiling under this subpart.

(Authority: 38 U.S.C. 501(a), 7111)

§ 20.1405 Rule 1405. Disposition.

(a) *Docketing and assignment.* Motions under this subpart will be docketed in the order received and will be assigned in accordance with § 19.3 of this title (relating to assignment of proceedings). Where an appeal is pending on the same underlying issue at the time the motion is received, the motion and the appeal may be consolidated under the same docket number and disposed of as part of the same proceeding. A motion may not be assigned to any Member who participated in the decision that is the subject of the motion. If a motion is assigned to a panel, the decision will be by a majority vote of the panel Members.

(b) *Evidence.* No new evidence will be considered in connection with the disposition of the motion. Material included in the record on the basis of Rule 1403(b)(2) (§ 20.1403(b)(2) of this part) is not considered new evidence.

(c) *Hearing.*—(1) *Availability.* The Board may, for good cause shown, grant a request for a hearing for the purpose of argument. No testimony or other evidence will be admitted in connection with such a hearing. The determination as to whether good cause has been shown shall be made by the member or panel to whom the motion is assigned.

(2) *Submission of requests.* Requests for such a hearing shall be submitted to the following address: Director, Administrative Service (014), Board of Veterans' Appeals, 810 Vermont Avenue, NW, Washington, DC 20420.

(d) *Decision to be by the Board.* The decision on a motion under this subpart shall be made by the Board. There shall be no referral of the matter to any adjudicative or hearing official acting on behalf of the Secretary for the purpose of deciding the motion.

(e) *Referral to ensure completeness of the record.* Subject to the provisions of paragraph (b) of this section, the Board may use the various agencies of original jurisdiction to ensure completeness of the record in connection with a motion under this subpart.

(f) *General Counsel opinions.* The Board may secure opinions of the General Counsel in connection with a motion under this subpart. In such cases, the Board will notify the party and his or her representative, if any. When the opinion is received by the Board, a copy of the opinion will be furnished to the party's representative or, subject to the limitations provided in 38 U.S.C. 5701(b)(1), to the party if there is no representative. A period of 60 days from the date of mailing of a copy of the opinion will be allowed for response. The date of mailing will be presumed to be the same as the date of the letter or memorandum which accompanies the copy of the opinion for purposes of determining whether a response was timely filed.

(g) *Decision.* The decision of the Board on a motion will be in writing. The decision will include separately stated findings of fact and conclusions of law on all material questions of fact and law presented on the record, the reasons or bases for those findings and conclusions, and an order granting or denying the motion.

(Authority: 38 U.S.C. 501(a), 7104(d), 7111)

§ 20.1406 Rule 1406. Effect of revision; discontinuance or reduction of benefits.

(a) *General.* A decision of the Board that revises a prior Board decision on the grounds of clear and unmistakable error has the same effect as if the decision had been made on the date of the prior decision.

(b) *Discontinuance or reduction of benefits.* Revision of a prior Board decision under this subpart that results in the discontinuance or reduction of benefits is subject to laws and regulations governing the reduction or discontinuance of benefits by reason of erroneous award based solely on administrative error or errors in judgment.

(Authority: 38 U.S.C. 7111(b))

§ 20.1407 Rule 1407. Motions by the Board.

If the Board undertakes, on its own motion, a review pursuant to this subpart, the party to that decision and that party's representative (if any) will be notified of such motion and provided an adequate summary thereof and, if applicable, outlining any proposed discontinuance or reduction in benefits that would result from revision of the Board's prior decision. They will be allowed a period of 60 days to file a brief or argument in answer. The failure of a party to so respond does not affect the finality of the Board's decision on the motion.

(Authority: 38 U.S.C. 501(a), 7111)

§ 20.1408 Rule 1408. Special rules for simultaneously contested claims.

In the case of a motion under this subpart to revise a final Board decision in a simultaneously contested claim, as that term is used in Rule 3(o) (§ 20.3(o) of this part), a copy of such motion shall, to the extent practicable, be sent to all other contesting parties. Other parties have a period of 30 days from the date of mailing of the copy of the motion to file a brief or argument in answer. The date of mailing of the copy will be presumed to be the same as the date of the letter which accompanies the copy. Notices in simultaneously contested claims will be forwarded to the last address of record of the parties concerned and such action will constitute sufficient evidence of notice.

(Authority: 38 U.S.C. 501(a))

§ 20.1409 Rule 1409. Finality and appeal.

(a) A decision on a motion filed by a party or initiated by the Board pursuant to this subpart will be stamped with the date of mailing on the face of the decision, and is final on such date. The party and his or her representative, if any, will be provided with copies of the decision.

(b) For purposes of this section, a dismissal without prejudice under Rule 1404(a) (§ 20.1404(a) of this part) or Rule 1404(f) (§ 20.1404(f)), or a referral under Rule 1405(e) is not a final decision of the Board.

(c) Once there is a final decision on a motion under this subpart relating to a prior Board decision on an issue, that prior Board decision on that issue is no longer subject to revision on the grounds of clear and unmistakable error. Subsequent motions relating to that prior Board decision on that issue shall be dismissed with prejudice.

(d) Chapter 72 of title 38, United States Code (relating to judicial review), applies with respect to final decisions on motions filed by a party or initiated by the Board pursuant to this subpart.

(Authority: 38 U.S.C. 501(a); Pub. L. 105–111)

§ 20.1410 Rule 1410. Stays pending court action.

The Board will stay its consideration of a motion under this subpart upon receiving notice that the Board decision that is the subject of the motion has been appealed to a court of competent

jurisdiction until the appeal has been concluded or the court has issued an order permitting, or directing, the Board to proceed with the motion.

(Authority: 38 U.S.C. 501(a))

§ 20.1411 Rule 1411. Relationship to other statutes.

(a) The ''benefit of the doubt'' rule of 38 U.S.C. 5107(b) does not apply to the Board's decision, on a motion under this subpart, as to whether there was clear and unmistakable error in a prior Board decision.

(b) A motion under this subpart is not a claim subject to reopening under 38 U.S.C. 5108 (relating to reopening claims on the grounds of new and material evidence).

(c) A motion under this subpart is not an application for benefits subject to any duty associated with 38 U.S.C. 5103(a) (relating to applications for benefits).

(d) A motion under this subpart is not a claim for benefits subject to the requirements and duties associated with 38 U.S.C. 5107(a) (requiring ''well-grounded'' claims and imposing a duty to assist).

(Authority: 38 U.S.C. 501(a))

[FR Doc. 99–760 Filed 1–12–99; 8:45 am]

BILLING CODE 8320–01–P

POSTAL SERVICE

39 CFR Part 111

Addressing Requirements for Shared Mail Receptacles on Rural and Highway Contract Delivery Routes

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: This final rule amends the Domestic Mail Manual to clarify addressing requirements for customers of rural or highway contract delivery routes who share mail receptacles.

DATES: This final rule is effective February 11, 1999.

FOR FURTHER INFORMATION CONTACT: Jackie Estes, Operations Specialist, Delivery Policies and Programs, (202) 268–3543.

SUPPLEMENTARY INFORMATION: This rule change clarifies postal addressing requirements for certain customers of rural and highway contract delivery routes, when local governments implement street name and number systems. Normally this occurs in conjunction with Emergency 9–1–1 service activation.

Historically, customers of up to five (5) separate households on rural and highway contract delivery routes have been able to share a mail receptacle for purposes of receiving carrier delivery service, with the owner's written permission. In areas without street names and numbers, a postal route and box number addressing system (e.g., RR 1 BOX 250) is used. The box address reflects the receptacle location and sequence on the delivery route. Therefore, customers sharing the receptacle use its particular address. If a customer subsequently decides to erect an individual receptacle, that receptacle is assigned its own route-and-box-number address, reflecting its particular location and sequence.

When localities convert to street name and number systems, customers may continue to share a mail receptacle, but they still must use the address that reflects the particular box, e.g., the street name and number of the receptacle's owner, rather than the various street names and numbers now assigned to their individual properties. This addressing requirement is familiar to customers as the ''in care of'' address format, e.g.:

JOHN DOE
C/O R SMITH 123 MAIN ST
ANYTOWN USA 00000–0000

Customers who are entitled to individual carrier delivery but instead share a box, have always been able to erect individual receptacles. There is no change in this customer option. However, if a street name and number system is in place, the correct address for the individual receptacle will be the street name and number assigned to its owner's particular property.

These amendments are being published without a notice and comment provision in accordance with 5 U.S.C. 553(b)(B), since no customers are burdened by the rule change.

The Postal Service hereby adopts the following amendments to the Domestic Mail Manual which is incorporated by reference in the Code of Federal Regulations, 39 CFR 111.1.

List of Subjects in 39 CFR Part 111

Postal Service.

PART 111—[AMENDED]

1. The authority citation for 39 CFR part 111 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 404, 3001–3011, 3201–3219, 3403–3406, 3621, 3626, 5001.

2. Revise part D041 of the Domestic Mail Manual to read as follows:

D041 Customer Mail Receptacles

* * * * *

D041.2.0 CURBSIDE MAILBOXES

* * * * *

D041.2.8 More Than One Family

If more than one family wishes to share a mail receptacle, the following standards apply:

a. Route and Box Number Addressing. On rural and highway contract routes authorized to use a route and box numbering system (e.g., RR 1 BOX 155), up to five families may share a single mail receptacle and use a common route and box designation. A written notice of agreement, signed by the heads of the families or the individuals who want to join in the use of such box, must be filed with the postmaster at the delivery office.

b. Conversion to Street Name and Number Addressing. When street name and numbering systems are adopted, those addresses reflect distinct customer locations and sequences. Rural and highway contract route customers who are assigned different primary addresses (e.g., 123 APPLE WAY vs. 136 APPLE WAY) should erect individual mail receptacles in locations recommended by their postmasters and begin using their new addresses. Customers having different primary addresses, who wish to continue sharing a common receptacle, must use the address of the receptacle's owner and the ''care of'' address format:

JOHN DOE
C/O ROBERT SMITH 123 APPLE WAY

Customers having a common primary address (e.g., 800 MAIN ST, but different secondary addresses (e.g., APT 101, APT 102, etc.), may continue to share a common receptacle if single-point delivery is authorized for the primary address. Secondary addresses should still be included in all correspondence.

* * * * *

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 99–685 Filed 1–12–99; 8:45 am]

BILLING CODE 7710–12–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 211–0116a; FRL–6214–1]

Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision, Antelope Valley Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action on revisions to the California State Implementation Plan. The revisions concern the recission of three rules for the Antelope Valley Air Pollution Control District (AVAPCD). The intended effect of this action is to bring the AVAPCD SIP up to date in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). EPA is finalizing the approval of these recissions from the California SIP under provisions of the CAA regarding EPA action on SIP submittals, SIPs for national primary and secondary ambient air quality standards and plan requirements for nonattainment areas.

DATES: This rule is effective on March 15, 1999 without further notice, unless EPA receives adverse comments by February 12, 1999. If EPA receives such comment, it will publish a timely withdrawal in the **Federal Register** informing the public that this rule will not take effect.

ADDRESSES: Written comments must be submitted to Andrew Steckel, Chief, Rulemaking Office at the Region IX office listed below. Copies of the rule revisions and EPA's evaluation report are available for public inspection at EPA's Region IX office during normal business hours. Copies of the submitted rule revisions are available for inspection at the following locations:

Rulemaking Office (AIR–4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105

Environmental Protection Agency, Air Docket (6102), 401 ''M'' Street, S.W., Washington, D.C. 20460

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 ''L'' Street, Sacramento, CA 95812

Antelope Valley Air Pollution Control District, 43301 Division Street, Suite 206, Lancaster, CA 93539–4409

FOR FURTHER INFORMATION CONTACT: Julie A. Rose, Rulemaking Office, AIR–4, Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, Telephone: (415) 744–1184

SUPPLEMENTARY INFORMATION:

I. Applicability

The rules being approved for recission from the Antelope Valley Air Pollution Control District (AVAPCD) portion of the California SIP include: Rule 1106, Marine Coating Operations; Rule 1142, Marine Tank Vessel Operations; and Rule 1148, Thermally Enhanced Oil Recovery Wells. These rule recissions were submitted by the California Air Resources Board to EPA on June 23, 1998.

II. Background

On March 3, 1978, EPA promulgated a list of ozone nonattainment areas under the provisions of the Clean Air Act, as amended in 1977 (1977 Act or pre-amended Act), that included the Southeast Desert Modified Air Quality Maintenance Area and the Los Angeles-South Coast Air Basin Area. 43 FR 8964, 40 CFR 81.305. On May 26, 1988, EPA notified the Governor of California, pursuant to section 110(a)(2)(H) of the 1977 Act, that the above district's portion of the California SIP was inadequate to attain and maintain the ozone standard and requested that deficiencies in the existing SIP be corrected (EPA's SIP-Call). On November 15, 1990, the Clean Air Act Amendments of 1990 were enacted. Pub. L. 101–549, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671q. In amended section 182(a)(2)(A) of the CAA, Congress statutorily adopted the requirement that nonattainment areas fix their deficient reasonably available control technology (RACT) rules for ozone and established a deadline of May 15, 1991 for states to submit corrections of those deficiencies.

Section 182(a)(2)(A) applies to areas designated as nonattainment prior to enactment of the amendments and classified as marginal or above as of the date of enactment. It requires such areas to adopt and correct RACT rules pursuant to pre-amended section 172(b) as interpreted in pre-amendment guidance.[1] EPA's SIP-Call used that guidance to indicate the necessary corrections for specific nonattainment areas. The Southeast Desert Modified Air Quality Maintenance Area is classified as Severe-17, therefore, this area was subject to the RACT fix-up requirement and the May 15, 1991 deadline. The Los Angeles-South Coast Air Basin Area is classified as Extreme and was also subject to the RACT fix-up requirements and the May 15, 1991 deadline.

The Antelope Valley Air Pollution Control District (AVAPCD) was created pursuant to California Health and Safety Code (CHSC) section 40106 and assumed all air pollution control responsibilities of the South Coast Air Quality Management District (SCAQMD) in the Antelope Valley region of Los Angeles County,[2] effective July 1, 1997. AVAPCD is the successor agency to SCAQMD in the Antelope Valley portion of the Southeast Desert Modified Air Quality Maintenance Area. The AVAPCD remains subject to the RACT requirements. The AVAPCD has rescinded Rules 1106, 1142, and 1148 and has submitted negative declarations to certify that there are no sources covered by these rules within the jurisdiction of the AVAPCD.

The State of California submitted these rule recissions for incorporation into its SIP on June 23, 1998. This document addresses EPA's direct-final action for the recission of AVAPCD Rule 1106, Marine Coating Operations; Rule 1142, Marine Tank Vessel Operations; and Rule 1148, Thermally Enhanced Oil Recovery Wells. AVAPCD adopted these rule recissions on January 20, 1998. These submitted rule recissions were found to be complete on August 25, 1998 pursuant to EPA's completeness criteria that are set forth in 40 CFR part 51 Appendix V[3] and is being finalized for approval into the SIP.

Rules 1106 and 1142 establish limits on volatile organic compound (VOC) emissions produced by marine coating operations and marine tank vessel operations, respectively. Rule 1148 establishes limits on VOC emissions produced by thermally enhanced oil recovery wells. These rules were originally adopted as part of SCAQMD's effort to achieve the National Ambient Air Quality Standard (NAAQS) for ozone and in response to EPA's SIP-Call and the section 182(a)(2)(A) CAA requirement. The following is EPA's evaluation and final action for these rule recissions.

III. EPA Evaluation and Action

EPA has evaluated all the appropriate background and submittal documentation and has determined that the recission of Rules 1106, 1142, and 1148 is approvable. The AVAPCD has certified with Negative Declarations that the sources regulated by these rules are not present in the AVAPCD. Further, the

[1] Among other things, the pre-amendment guidance consists of those portions of the proposed Post-1987 ozone and carbon monoxide policy that concern RACT, 52 FR 45044 (November 24, 1987); ''Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations, Clarification to Appendix D of November 24, 1987 **Federal Register** Notice'' (Blue Book) (notice of availability was published in the **Federal Register** on May 25, 1988); and the existing control technique guidelines (CTGs).

[2] The Antelope Valley region of Los Angeles County is contained within the Federal area known as the Southeast Desert Modified Air Quality Management Area and the region identified by the State of California as the Mojave Desert Air Basin.

[3] EPA adopted the completeness criteria on February 16, 1990 (55 FR 5830) and, pursuant to section 110(k)(1)(A) of the CAA, revised the criteria on August 26, 1991 (56 FR 42216).

AVAPCD also stated that they do not anticipate these types of sources in the future.

The rule recissions are consistent with the CAA, EPA regulations, and EPA policy. Therefore, the recission of AVAPCD Rule 1106, Marine Coating Operations; Rule 1142, Marine Tank Vessel Operations; and Rule 1148, Thermally Enhanced Oil Recovery Wells is being approved under section 110(k)(3) of the CAA as meeting the requirements of section 110(a) and part D.

EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should adverse comments be filed. This rule will be effective March 15, 1999 without further notice unless the Agency receives adverse comments by February 12, 1999.

If the EPA receives such comments, then EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period on this rule. Any parties interested in commenting on this rule should do so at this time. If no such comments are received, the public is advised that this rule will be effective on March 15, 1999 and no further action will be taken on the proposed rule.

IV. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order (E.O.) 12866, entitled ''Regulatory Planning and Review.''

B. Executive Order 12875

Under E.O. 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a state, local, or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If the mandate is unfunded, EPA must provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected state, local, and tribal governments, the nature of their concerns, copies of written communications from the governments, and a statement supporting the need to issue the regulation. In addition, E.O. 12875 requires EPA to develop an effective process permitting elected officials and other representatives of state, local, and tribal governments ''to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates.''

Today's rule does not create a mandate on state, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of E.O. 12875 do not apply to this rule.

C. Executive Order 13045

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) is determined to be ''economically significant'' as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to E.O. 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

D. Executive Order 13084

Under E.O. 13084, EPA may not issue a regulation that is not required by statute, that significantly affects or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments ''to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities.''

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian Tribes. Accordingly, the requirements of section 3(b) of E.O. 13084 do not apply to this rule.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This final rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.,* v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

F. Unfunded Mandates

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

may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated annual costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

G. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a ''major'' rule as defined by 5 U.S.C. 804(2).

H. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by March 15, 1999. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

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

Note: Incorporation by reference of the State Implementation Plan for the State of California was approved by the Director of the Federal Register on July 1, 1982.

Dated: December 17, 1998.

Laura Yoshii,

Acting Regional Administrator, Region IX.

Part 52, chapter I, title 40 of the 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 *et seq.*

Subpart F—California

2. Section 52.220 is amended by adding paragraphs (c)(127)(vii)(E), (187)(i)(C)(*3*), and (215)(i)(A)(*5*) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(127) * * *

(vii) * * *

(E) Previously approved on October 19, 1984 and now deleted without replacement for implementation in the Antelope Valley Air Pollution Control District Rule 1148.

* * * * *

(187) * * *

(i) * * *

(C) * * *

(*3*) Previously approved on December 13, 1994 and now deleted without replacement for implementation in the Antelope Valley Air Pollution Control District Rule 1142.

* * * * *

(215) * * *

(i) * * *

(A) * * *

(*6*) Previously approved on July 14, 1995 and now deleted without replacement for implementation in the Antelope Valley Air Pollution Control District Rule 1106.

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[FR Doc. 99–15 Filed 1–12–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 272

[FRL–6217–7]

Utah: Final Authorization of State Hazardous Waste Management Program Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Immediate final rule.

SUMMARY: Utah has applied for Final authorization of the revisions (Addendums 7 and 8) to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). EPA has reviewed Utah's Department of Environmental Quality applications and determined that its hazardous waste program revisions satisfy all of the requirements necessary to qualify for Final authorization. Unless adverse written comments are received during the review and comment period, EPA's decision to authorize Utah's hazardous waste program revisions will take effect as provided below.

DATES: This Final authorization for Utah will become effective on March 15, 1999, if EPA receives no adverse comment. Should EPA receive such comments, EPA will withdraw this rule before its effective date by publishing a notice of withdrawal in the FR. Any comments on Utah's program revision application must be filed by February 12, 1999.

ADDRESSES: Send written comments to Kris Shurr, 8P–HW, U.S. EPA, Region VIII, 999 18th Street, Suite 500, Denver, Colorado 80202–2466, phone number: (303) 312–6139. Copies of the Utah program revision applications and the materials which EPA used in evaluating the revisions are available for inspection and copying at the following locations: EPA Region VIII Library, from Noon to 4:00 p.m., 999 18th Street, Suite 500, Denver, Colorado 80202–2466, contact: Environmental Information Service Center (EISC), phone number: (303) 312–6312; or Utah Department of Environmental Quality (UDEQ), from 8:00 a.m. to 5:00 p.m., 288 North 1460 West, Salt Lake City, Utah 84114–4880, contact: Susan Toronto, phone number: (801) 538–6776.

FOR FURTHER INFORMATION CONTACT: Kris Shurr, 8P–HW, U.S. EPA, Region VIII, 999 18th Street, Suite 500, Denver, Colorado 80202–2466, phone number: (303) 312–6139.

SUPPLEMENTARY INFORMATION:

A. Background

States with Final Authorization under section 3006(b) of RCRA, 42 U.S.C. 6926(b), have a continuing obligation to maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the Federal hazardous waste program. As the Federal hazardous waste program changes, the States must revise their programs and apply for authorization of the revisions. Revisions to State hazardous waste programs may be necessary when Federal or State statutory or regulatory authority is modified or when certain other changes occur. Most commonly, States must

revise their programs because of changes to EPA's regulations in 40 Code of Federal Regulations (CFR) parts 124, 260 through 266, 268, 270, 273, and 279.

B. Utah

Utah initially received Final Authorization on October 10, 1984, effective October 24, 1984 (49 FR 39683) to implement its base hazardous waste management program. Utah received authorization for revisions to its program on February 21, 1989, effective March 7, 1989 (54 FR 7417); May 23, 1991 (56 FR 23648) and August 6, 1991 (56 FR 37291, both effective July 22, 1991; May 15, 1992, effective July 14, 1992 (57 FR 20770); February 12, 1993 (58 FR 8232) and May 5, 1993 (58 FR 26689), both effective April 13, 1993; October 14, 1994, effective December 13, 1994 (59 FR 52084); and May 20, 1997 (62 FR 27501), effective July 21, 1997.

On July 1, 1998 (Addendum 7) and August 5, 1998 (Addendum 8), Utah submitted final complete program revision applications, seeking authorization of its program modifications in accordance with 40 CFR 271.21. EPA reviewed Utah's applications and now makes an immediate final decision, subject to receipt of adverse written comment, that Utah's hazardous waste program modifications, adopted between December 9, 1993, and January 11, 1996, satisfy all of the requirements necessary to qualify them for Final Authorization. Consequently, EPA intends to grant Utah Final Authorization for the program modifications contained in the revision applications designated as Addendums 7 and 8.

The public may submit written comments on EPA's immediate final decision until February 12, 1999. Copies of Utah's applications for program revision are available for inspection and copying at the locations indicated in the **ADDRESSES** section of this document.

If EPA does not receive adverse written comment pertaining to Utah's program revisions by the end of the comment period, the authorization of Utah's revisions will become effective 60 days from the date this document is published. If the Agency receives an adverse comment, it will publish a notice withdrawing this Immediate Final Rule before its effective date. EPA will then address the comments in a later Final Rule based on the companion document appearing in the ''Proposed Rules'' section of today's FR. EPA may not provide additional opportunity for comment. Any parties interested in commenting should do so at this time.

Today, Utah is seeking authority to administer the following Federal requirements promulgated between May 20, 1992 and May 11, 1995:

Federal citation	State analog [1]	Effective date [1]
Used Oil Filter Exclusion (HSWA) [57 FR 21524, 05/20/92) (Checklist 104).	R315–2–4(b)(14); R315–2–4(b)(14)(i)–(iv)	12/30/93
Used Oil Filter Exclusion; Technical Corrections (HSWA) [57 FR 29220, 07/01/92) (Checklist 107).	R315–2–4(b)(14)	12/30/93
Toxicity Characteristics Revisions; Technical Corrections (HSWA) [57 FR 30657, 07/10/92] (Checklist 108).	R315–2–4(b)(6)(ii); R315–2–4(b)(9); R315–7–21.2(d)(1)	07/30/93
Land Disposal Restrictions for Newly Listed Wastes and Hazardous Debris (HSWA) [57 FR 37914, 08/18/92] (Checklist 109).	R315–1–1(b); R315–2–3(a)(2)(iii); R315–2–3(c)(2)(ii)(C)(1)&(2); R315–2–3(e); R315–2–3(e)(1)&(2); R315–5–10; R315–8–7; R315–8–8; R315–8–20; R315–7–14; R315–7–15; R315–7–18.9(h); R315–7–29; R315–13–1; R315–3–4(p); R315–3–5(b)(2); R315–3–15(d); R315–50–16; R315–3–31(b)(6).	07/30/93
Coke By-Products Listing (HSWA) [57 FR 37284, 08/18/92] (Checklist 110).	R315–2–4(a)(10); R315–2–10(f); R315–50–9	07/30/93
Burning of Hazardous Wastes in Boilers and Industrial Furnaces; Technical Amendment III (HSWA/Non-HSWA) [57 FR 38558, 08/25/92] (Checklist 111).	R315–1–1(b); R315–2–17(b); R315–2–2(e)(2)(iv); R315–8–1(e)(9); R315–7–8.1(c)(3); R315–14–7.	07/30/93
Recycled Used Oil Management Standards (HSWA/Non-HSWA) [57 FR 41566, 09/10/92] (Checklist 112).	R315–1–1(b); R315–2–3(a)(2)(v); R315–2–3(a)(2)(v)(A)&(B); R315–2–5; R315–2–6; R315–14–4; R315–14–7; R315–15–1.1; 1.1(a)–(b)(2)(iii); R315–15–1.1(b)(3)–1.1(i); R315–15–1.2(a); R315–15–1.2, Table 1; R315–15–1.3(a)–(c)(2)(iii); R315–15–2.1(a)–(b)(5); R315–15–2.2(a)&(b); R315–15–2.3; R315–15–2.3(a)–(d)(4); R315–15–2.4; R315–15–2.4(a)–(c); R315–15–2.5; R315–15–2.5(a)–(c)(3); R315–15–3.1(a)–(b)(2); R315–15–3.3(a)&(b); R315–15–4.1(a)–(d)(5); R315–15–4.2(a)–(b)(2)(vii); R315–15–4.4(a)–(c)(5); R315–15–4.5(a)–(d); R315–15–4.6; R315–15–4.6(a)–(f)(4); R315–15–4.7(a)–(d); R315–15–4.8; R315–15–5.1(a)–(b)(5); R315–15–5.2(a)–(b)(2)(vi); R315–15–5.3(a)–(b)(6)(ix)(G); R315–15–5.4(a)–(c)(2); R315–15–5.5; R315–15–5.5(a)–(h)(2)(ii); R315–15–5.6; R315–15–5.6(a)–(b)(3); R315–15–5.7(a)–(c); R315–15–5.8(a)–(b); R315–15–5.9; R315–15–10; R315–15–6.1(a)–(c); R315–15–6.2(a)–(b)(2); R315–15–6.3(a)–(b)(2)(vi); R315–15–6.4(a)–(d); R315–15–6.5; R315–15–6.5(a)–(g)(4); R315–15–6.6(a)&(b); R315–15–6.7(a)&(b); R315–15–6.8; R315–15–7.1(a)–(c)(4); R315–15–7.2; R315–15–7.2(a)&(b); R315–15–7.3(a)&(b); R315–15–7.4(a)–(b)(2)(v); R315–15–7.5(a)–(c); R315–15–7.6(a)&(b); R315–15–8.1; R315–15–8.2(a)&(b); R315–15–8.3.	02/10/94
Consolidated Liability Requirements (Non-HSWA) [53 FR 33938, 06/29/95; 56 FR 30200, 07/01/91; 57 FR 42832, 09/16/92] (Checklist 113).	R315–8–8; R315–7–15	07/30/93
Burning of Hazardous Wastes in Boilers and Industrial Furnaces; Technical Amendment IV (HSWA/Non-HSWA) [57 FR 44999, 09/30/92] (Checklist 114).	R315–14–7	07/30/93
Chlorinated Toluene Production Waste Listing (HSWA) [57 FR 47376, 10/15/92] (Checklist 115).	R315–2–10(f); R315–50–9	07/30/93

Federal citation	State analog [1]	Effective date [1]
Hazardous Soil Case-By-Case Capacity Variance (HSWA) [57 FR 47772, 10/20/92] (Checklist 116).	R315–13–1	07/30/93
Reissuance of the ''Mixture'' and ''Derived-From'' Rules (HSWA/ Non-HSWA) [57 FR 7628, 03/03/92; 57 FR 23062, 06/01/92; 57 FR 49278] (Checklist 117A).	R315–2–3(a)–(d)(2)	07/30/93
Toxicity Characteristic Amendment [57 FR 23062, 06/01/92] (Checklist 117B).	R315–2–3(a)(2)(ii)	07/30/93
Liquids in Landfills [57 FR 54452, 11/18/92] (Checklist 118).	R315–8–2.4; R315–8–14.8(a)(2); R315–8–14.8(b); R315–8–14.8(d)(1)(ii); R315–8–14.8(e)–(f)(2); R315–8–14.10(b)&(c); R315–7–9.4; R315–7–21.7(a)(2); R315–7–21.7(b); R315–7–21.7(c)(1)(ii); R315–7–21.7(f)–(g)(2); R315–7–21.9(b)&(c).	07/30/93
Toxicity Characteristic Revision; TCLP Correction (HSWA) [57 FR 55114, 11/24/92] (Checklist 119).	R315–50–7	07/30/93
Wood Preserving; Revisions to Listings and Technical Requirements (HSWA/Non-HSWA) [57 FR 61492, 12/24/92] (Checklist 120).	R315–2–10(e); R315–8–19; R315–7–28	07/30/93
Corrective Action Management Units and Temporary Units (HSWA) [58 FR 8658, 02/16/93] (Checklist 121).	R315–1–1(b); R315–8–1.2; R315–8–6.12(b); R315–8–21; R315–7–8.1(b); R315–13–1; R315–1–1(d); R315–3–15(d).	07/30/93
Recycled Used Oil Management Standards; Technical Amendments and Corrections I (HSWA/Non-HSWA) [58 FR 26420, 05/03/93] (Checklist 122).	R315–2–4(b)(13)&(14); R315–2–5; R315–8–1(e)(9); R315–7–8.1(c)(3); R315–1–1(b); R315–15–1.1(b)(2); R315–15–1.1(b)(2)(ii)&(iii); R315–15–1.1(c)–(e)(4); R315–15–1.1(i); R315–15–1.2, Table 1, note 3; R315–15–1.3(c)(3); R315–15–2.2(a); R315–15–2.3; R315–15–2.4; R315–15–2.4(a)–(c); R315–15–4.1(a)(4); R315–15–4.1(d)(4); R315–15–4.3(a)–(b)(1); R315–15–4.4(b); R315–15–4.6; R315–15–4.6(d)(1)(ii)&(iii); R315–15–5.2(a); R315–15–5.3(b)(6)(viii)(C); R315–15–15–5.5; R315–15–5.5(a); R315–15–5.5 (c)(1)(ii)&(iii); R315–15–6.1(b)(1); R315–15–6.3(a); R315–15–6.5; R315–15–7.1(a); R315–15–7.3(a); R315–15–7.4(a); R315–15–7.5(a).	02/10/94
Land Disposal Restrictions; Renewal of the Hazardous Waste Debris Case-By-Case Capacity Variance (HSWA) [58 FR 28506, 05/14/93] (Checklist 123).	R315–13–1	11/15/94
Land Disposal Restrictions for Ignitable and Corrosive Characteristic Wastes Whose Treatment Standards Were Vacated (HSWA) [58 FR 29860, 05/24/93] (Checklist 124).	R315–8–1(e)(7); R315–7–8.1(c)(7); R315–13–1; R315–50–16	11/15/94
Boilers and Industrial Furnaces; Changes for Consistency with New Air Regulations (HSWA/Non-HSWA) [58 FR 38816, 07/20/93] (Checklist 125).	R315–1–2; R315–14–7	11/15/94
Testing and Monitoring Activities (HSWA/Non-HSWA) [58 FR 46040, 08/31/93; 59 FR 47080, 09/19/94] (Checklist 126).	R315–1–2; R315–2–16; R315–2–9(e); R315–2–9(g); R315–50; R315–50–7; R315–50–8; R315–8–10; R315–8–14.8(c); R315–7–17; R315–7–21.7(d); R315–13–1; R315–1–2(a); R315–3–6.5(c)(1)(iii)&(iv); R315–3–20(b)(2)(i)(C)&(D); R315–3–37.	11/15/94
Boilers and Industrial Furnaces; Administrative Stay and Interim Standards for Bevill Residues (HSWA) [58 FR 59598, 11/09/93] (Checklist 127).	R315–14–7	11/15/94
Wastes From the Use of Chlorophenolic Formulations in Wood Surface Protection (Non-HSWA) [59 FR 458, 01/04/94] (Checklist 128).	R315–1–2(a); R315–50–10	11/15/94
Revision of Conditional Exemption for Small Scale Treatability Studies (Non-HSWA) [59 FR 8362, 02/18/94] (Checklist 129).	R315–2–4(e)(2)(i)&(ii); R315–2–4(e)(3); R315–2–4(e)(3)(i)–(iii)(E); R315–2–4(f)(3)–(5).	11/15/94
Recycled Used Oil Management Standards; Technical Amendments and Corrections II (HSWA/Non-HSWA) [59 FR 10050, 03/04/94] (Checklist 130).	R315–1–1(b); R315–15–1.1(b)(1)(ii); R315–15–1.1(b)(2)(iii); R315–15–1.1(g); R315–15–1.1(g) (1)–(6); R315–15–2.1(b)(2)(i)–(ii)(E); R315–15–4.2(c); R315–15–4.5(c); R315–15–4.7(a)(5)(i)&(ii); R315–15–4.7(b)(5)(i)&(ii); R315–15–5.4(c); R315–15–6.4(c).	09/01/94
Recordkeeping Instructions; Technical Amendment (Non-HSWA) [59 FR 13891, 03/24/94] (Checklist 131).	R315–50–2	11/15/94
Wood Surface Protection; Correction (Non-HSWA) [59 FR 28484, 06/02/94] (Checklist 132).	R315–1–2(a)	02/15/96
Letter of Credit Revision (Non-HSWA) [59 FR 29958, 06/10/94] (Checklist 133).	R315–8–8	02/15/96

Federal citation	State analog [1]	Effective date [1]
Correction of Beryllium Powder (P015) Listing (Non-HSWA) [59 FR 31551, 06/20/94] (Checklist 134).	R315–2–11(e); R315–50–10; R315–13–1	02/15/96
Recovered Oil Exclusion (Non-HSWA) [59 FR 38536, 07/28/94] (Checklist 135).	R315–2–3(c)(2)(ii)(B); R315–2–4(a)(12); R315–2–6; R315–14–7	02/15/96
Removal of the Conditional Exemption for Certain Slag Residues (HSWA) [59 FR 43496, 08/24/94] (Checklist 136).	R315–14–2; R315–13–1	02/15/96
Universal Treatment Standards and Treatment Standards for Organic Toxicity Characteristic Wastes and Newly Listed Wastes (HSWA/Non-HSWA) [59 FR 47982, 09/19/94; 60 FR 242, 01/03/95] (Checklist 137).	R315–2–18; R315–2–19; R315–2–20; R315–2–21; R315–2–2(e)(1)(iii); R315–8–1(e)(7); R315–7–8.1(c)(7); R315–14–2; R315–14–7; R315–13–1.	01/05/95
Testing and Monitoring Activities Amendment I (Non-HSWA) [60 FR 3089, 01/13/95] (Checklist 139).	R315–1–2(a)	02/15/96
Carbamate Production Identification and Listing of Hazardous Waste (HSWA) [60 FR 7824, 02/09/95; 60 FR 25619, 05/12/95] (Checklist 140).	R315–2–3(a)(2)(iv)(E)–(G); R315–2–3(c)(2)(ii) (D); R315–2–10(f); R315–2–11(e); R315–2–11 (f); R315–50–9; R315–50–10.	02/15/96 07/15/97
Testing and Monitoring Activities Amendment II (Non-HSWA) [60 FR 17001, 04/04/95] (Checklist 141).	R315–1–2(a)	02/15/96
Universal Waste Rule (Non-HSWA) [60 FR 25492, 05/11/95] (Checklist 142A–E).	R315–2–5; R315–2–6; R315–2–17; R315–2–17 (b); R315–2–25; R315–2–25(a)–(c); R315–3–3(n) (8); R315–3–3(n)(8)(i)–(iii); R315–7–8.1(c)(12); R315–7–8.1(c)(12)(i)–(iii); R315–8–1(e)(10); R315–8–1(e)(10)(i)–(iii); R315–13–1; R315–14–6; R315–16.	02/15/96

[1] Utah Hazardous Waste Management Rules and Regulations, revised February 20, 1998.

EPA considers Utah's listing of all P999 and some F999 wastes (specifically: nerve, military, and chemical agents) as more stringent than the Federal rule. To the extent that unused chemical agents, as produced, exhibit a hazardous waste reactivity characteristic, they are considered hazardous waste and, thus, are regulated under Federal rule. Utah's listing of these wastes enhances the degree of regulatory control regarding these wastes. EPA also considers Utah's rule as broader-in-scope than the federal rule for those F999 process wastes which do not exhibit a characteristic for hazardous waste and would not be regulated under Federal rule. Utah is also more stringent at the following provisions: R315–15–1.3(c); R315–15–2.1(a)(1) & (4); R315–15–2.3(d); R315–15–2.4(a), (d) & (e); R315–15–3.1(b); R315–15–3.2(b)(3) & (b)(3)(i–iv); R315–15–4.4(c); R315–15–4.6(d)(1)(iii); R315–15–4.6(f); R315–15–4.7(e); R315–15–5.1(a); R315–15–5.3(b)(6)(iv)(B); R315–15–5.5(c)(1)(iii); R315–15–5.5(g); R315–15–5.8(a)(2)(iii); R315–15–5.8(b); R315–15–6.5(c)(1)(iii); R315–15–6.5(g); R315–15–9.1(c); R315–15–11; and R315–15–13.5(d). In addition, Utah is broader-in-scope at the following provisions: R315–2–10; R315–15–10 through 15; and R315–16–1.1(a).

EPA shall administer any RCRA hazardous waste permits, or portions of permits, that contain conditions based on the Federal program provisions for which the State is applying for authorization and which were issued by EPA prior to the effective date of this authorization. EPA will suspend issuance of any further permits under the provisions for which the State is being authorized on the effective date of this authorization. EPA has previously suspended issuance of permits for other provisions on October 24, 1984, the effective date of Utah's Final Authorization for the RCRA base program.

Indian Reservations

These program revisions do not extend to ''Indian Country'' as defined in 18 U.S.C. 1151, including lands within the exterior boundaries of the following Indian reservations located within or abutting the State of Utah:

1. Goshute Indian Reservation
2. Navajo Indian Reservation
3. Northwestern Band of Shoshoni Nation of Utah (Washakie) Indian Reservation
4. Paiute Indian Tribe of Utah Indian Reservation
5. Skull Valley Band of Goshute Indians of Utah Indian Reservation
6. Uintah and Ouray Indian Reservation
7. Ute Mountain Indian Reservation

The Agency is cognizant that the State of Utah and the United States Government differ as to the exact geographical extent of Indian Country within the Uintah and Ouray Indian Reservation and are currently litigating this question in Federal Court. Until that litigation is completed and this question is resolved, the Agency will enter into discussions with the Ute Indian Tribe of the Uintah and Ouray Indian Reservation and the State of Utah to determine the best interim approach to managing this program in the disputed area. The Agency will notify the public of the outcome of these discussions.

In excluding Indian Country from the scope of this program revision, EPA is not making a determination that the State either has adequate jurisdiction or lacks jurisdiction over sources in Indian Country. Should the State of Utah choose to seek program authorization within Indian Country, it may do so without prejudice. Before EPA would approve the State's program for any portion of Indian Country, EPA would have to be satisfied that the State has authority, either pursuant to explicit Congressional authorization or applicable principles of Federal Indian law, to enforce its laws against existing and potential pollution sources within any geographical area for which it seeks program approval and that such approval would constitute sound administrative practice.

C. Decision

I conclude that Utah's applications for program revision authorization meet all of the statutory and regulatory requirements established by RCRA. Accordingly, EPA grants Utah Final Authorization to operate its Hazardous Waste Program as revised. Utah now has responsibility for permitting treatment, storage, and disposal facilities within its borders (except in Indian Country) and for carrying out the aspects of the RCRA program described in its revised program applications, subject to the limitations of HSWA. Utah also has primary enforcement responsibilities, although EPA retains the authority to conduct inspections under section 3007 of RCRA and to take enforcement actions, including, but not limited to, actions that may be in addition to State actions, under sections 3008, 3013, and 7003 of RCRA.

D. Codification in Part 272

EPA uses 40 CFR part 272 for codification of the decision to authorize Utah's program and for incorporation by reference of those provisions of its statutes and regulations that EPA will enforce under sections 3008, 3013, and 7003 of RCRA. EPA reserves amendment of 40 CFR part 272, subpart TT, until a later date.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of certain regulatory actions on State, local, and tribal governments and the private sector. Under sections 202 and 205 of UMRA, EPA generally must prepare a written statement of economic and regulatory alternatives analyses for proposed and Final rules with Federal mandates, as defined by UMRA, 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.

EPA has determined that section 202 and 205 requirements do not apply to today's action because this rule does not contain a Federal mandate that may result in annual expenditures of $100 million or more for State, local, and/or tribal governments in the aggregate, or the private sector. Costs to State, local and/or tribal governments already exist under the Utah program, and today's action does not impose any additional obligations on regulated entities. In fact, EPA's approval of State programs generally may reduce, not increase, compliance costs for the private sector. Further, as it applies to the State, this action does not impose a Federal intergovernmental mandate because UMRA does not include duties arising from participation in a voluntary federal program.

The requirements of section 203 of UMRA also do not apply to today's action. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, section 203 of UMRA requires EPA to develop a small government agency plan. This rule contains no regulatory requirements that might significantly or uniquely affect small governments. Although small governments may be hazardous waste generators, transporters, or own and/or operate TSDFs, they are already subject to the regulatory requirements under the existing State laws that are being authorized by EPA, and, thus, are not subject to any additional significant or unique requirements by virtue of this program approval.

Certification Under the Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996), whenever an agency is required to publish a notice of rulemaking for any proposed or Final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (i.e., small businesses, small organizations, and small governmental jurisdictions). This analysis is unnecessary, however, if the agency's administrator certifies that the rule will not have a significant economic impact on a substantial number of small entities.

EPA has determined that this authorization will not have a significant economic impact on a substantial number of small entities. Such small entities which are hazardous waste generators, transporters, or which own and/or operate TSDFs are already subject to the regulatory requirements under the existing State laws that are now being authorized by EPA. EPA's authorization does not impose any significant additional burdens on these small entities. This is because EPA's authorization would simply result in an administrative change, rather than a change in the substantive requirements imposed on these small entities.

Pursuant to the provision at 5 U.S.C. 605(b), the Agency hereby certifies that this authorization will not have a significant economic impact on a substantial number of small entities. This authorization approves regulatory requirements under existing State law to which small entities are already subject. It does not impose any new burdens on small entities. This rule, therefore, does not require a regulatory flexibility analysis.

Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the United States prior to publication of the rule in today's FR. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Compliance With Executive Order 12866

The Office of Management and Budget has exempted this rule from the requirements of Executive Order 12866.

Compliance With Executive Order 12875

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

This rule does not create a mandate on State, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this rule.

Compliance With Executive Order 13045

Executive Order 13045, ''Protection of Children from Environmental Health Risks and Safety Risks,'' applies to any rule that: (1) the Office of Management and Budget determines is ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to E.O. 13045 because it is not an economically significant rule as defined by E.O. 12866 and because it does not involve decisions based on environmental health or safety risks.

Compliance With Executive Order 13084

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA provides to the Office of Management and Budget a description of the prior consultation and communications the agency has had with representatives of tribal governments and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities.

This rule is not subject to E.O. 13084 because it does not significantly or uniquely affect the communities of Indian tribal governments. Utah is not authorized to implement the RCRA hazardous waste program in Indian Country. This action has no effect on the hazardous waste program that EPA implements in Indian Country within the State.

Paperwork Reduction Act

Under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, Federal agencies must consider the paperwork burden imposed by any information request contained in a proposed rule or a Final rule. This rule will not impose any information requirements upon the regulated community.

National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (''NTTAA''), Public Law 104–113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This action does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

List of Subjects in 40 CFR Part 272

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous waste, Hazardous waste transportation, Incorporation by reference, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control, Water supply.

Authority: This document is issued under the authority of sections 2002(a), 3006, and 7004(b) of the Solid Waste Disposal Act as amended, 42 U.S.C. 6912(a), 6926, 6974(b).

Kerrigan G. Clough,

Acting Regional Administrator, Region 8.

[FR Doc. 99–667 Filed 1–12–99; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 0

[FCC 83–98]

Meeting Procedures

AGENCY: Federal Communications Commission

ACTION: Final rule.

SUMMARY: This document revises the Federal Communications Commission procedural rules pertaining to meeting procedures. The seven days notice requirement, generally applicable to Commission meetings, applied also to meetings whose only order of business was to decide whether to call a future meeting with shorter notice. In accordance with the Sunshine Act, the Commission exempted those kinds of meetings from the seven days notice requirement. The rule provision delineating the procedure to be followed in announcing meetings on short notice is also revised to eliminate any inconsistency in the text of the rules.

EFFECTIVE DATE: January 13, 1999.

FOR FURTHER INFORMATION CONTACT: Donna Viert, Office of General Counsel Federal Communications Commission, Washington, D.C. (202) 418–1725.

SUPPLEMENTARY INFORMATION: In 1983 the Federal Communications Commission revised its procedural rules pertaining to meeting procedures governed by the Government in the Sunshine Act, 5 U.S.C. § 552b. *See Amendment of Section 0.601(b) and Section 0.605(e) of the Commission's Rules and Regulations*, 93 FCC 2d 565 (1983). This Commission action amending Part 0 of the Commission's rules was inadvertently not published in the **Federal Register**. This omission is corrected by the attached rule change that will become effective immediately upon publication.

List of Subjects in 47 CFR Part 0

Organization and functions, (Government agencies).

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

Rule Changes

Part 0 of Title 47 of the Code of Federal Regulations are amended as follows:

PART 0—COMMISSION ORGANIZATION

1. The authority citation for Part 0 continues to read as follows:

Authority: Secs, 5, 48 Stat. 1068, as amended; 47 U.S.C. 155, 225, unless otherwise noted.

2. The first sentence of § 0.601(b) is revised to read as follows:

§ 0.601 Definitions.

* * * * *

(b) The term *meeting* means the deliberations among a quorum of the Commission, a Board of Commissioners, or a quorum of a committee of Commissioners, where such deliberations determine or result in the joint conduct or disposition of official

agency business, except that the term does not include deliberations to decide whether to announce a meeting with less than seven days notice, or whether a meeting should be open or closed.

* * *

3. The last sentence of § 0.605(e) is revised to read as follows:

§ 0.605 Procedures for announcing meetings.

* * * * *

(e) * * * In addition to other information, the announcement will contain the vote of each member of the agency who participated in the decision to give less than seven days notice, and the particular reason for that decision.

* * * * *

[FR Doc. 99–688 Filed 1–12–99; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Part 1

[OST Docket No. 1; Amendment 1–297]

Organization and Delegation of Powers and Duties; Delegations to the Maritime Administrator

AGENCY: Office of the Secretary, DOT.

ACTION: Final rule.

SUMMARY: The Secretary of Transportation (Secretary) is delegating his authority under sections 3602, 3603, and 3605 of Public Law 105–261 and under sections 427 and 428 of Public Law 105–383 to the Maritime Administrator. These sections authorize the Secretary to convey certain of the Maritime Administration's National Defense Reserve Fleet (NDRF) vessels and equipment to designated parties, or to parties selected under competitive procedures, as specified in the applicable section. The delegation should be made to the Maritime Administrator because the Maritime Administration has the interest, requisite expertise, capability and responsibility to dispose of merchant-type and similar vessels over 1,500 gross tons for the Federal Government.

EFFECTIVE DATE: January 13, 1999.

FOR FURTHER INFORMATION CONTACT: Richard Weaver, Chief, Division of Management and Organization, Maritime Administration, MAR–318, Room 7301, 400 Seventh Street, SW, Washington, DC 20590, Phone: (202) 366–2811; or Blane Workie, Office of General Counsel (C–50), Department of Transportation, Room 10424, 400 Seventh Street, SW, Washington, DC 20590, Phone: (202) 366–9314.

SUPPLEMENTARY INFORMATION: The Secretary of Transportation is delegating to the Maritime Administrator his authority under sections 3602, 3603, and 3605 of Public Law 105–261 and under sections 427 and 428 of Public Law 105–383. Specifically, under Public Law 105–261, titled the Strom Thurmond National Defense Authorization, and in accordance with the terms prescribed in the applicable section, the Secretary of Transportation may convey from the Maritime Administration's National Defense Reserve Fleet:

Sec. 3602—vessel M/V BAYAMON (United States official number 530007) to a purchaser for use as a self-propelled floating trade exposition to showcase United States technology, industrial products, and services.

Sec. 3603—vessels BENJAMIN ISHERWOOD (TAO–191) and HENRY ECKFORD (TAO–192) to a purchaser for reconstruction of those vessels for sale or charter to a North Atlantic Treaty Organization country for full use as an oiler.

Sec. 3605—vessel ex-USS LORAIN COUNTY (LST–1177) to the Ohio War Memorial, Inc., located in Sandusky, Ohio for use as a memorial to Ohio veterans; as well as any unneeded equipment from other vessels in the National Defense Reserve Fleet, for use to restore the vessel conveyed under section 3605 to museum quality.

In addition, under Public Law 105–383, titled the Coast Guard Authorization Act of 1998, and in accordance with the terms prescribed in the applicable section, the Secretary of Transportation may convey from the Maritime Administration's National Defense Reserve Fleet:

Sec. 427—vessels S.S. AMERICAN VICTORY (United States official number 248005) and S.S. HATTIESBURG VICTORY (United States official number 248651) to the Victory Ship, Inc., located in Tampa, Florida for use as a memorial to the Victory class of ships; as well as any unneeded equipment from other vessels in the National Defense Reserve Fleet to restore the vessel(s) conveyed under section 427 to museum quality.

Sec. 428—vessel JOHN HENRY (United States official number 599294) to a purchaser for use in humanitarian relief efforts, including the provision of water and humanitarian goods in developing nations.

The Secretary is delegating his authority to convey certain of the Maritime Administration's National Defense Reserve Fleet vessels to the Maritime Administrator because the Maritime Administration has the necessary expertise to dispose of merchant-type and similar vessels over 1,500 gross tons for the Federal Government.

Since this amendment relates to departmental organization, procedure and practice, notice and comment are unnecessary under 5 U.S.C. 553(b). Further, since the amendment expedites the Maritime Administration's ability to meet the statutory intent of the sections covered by this delegation, the Secretary finds good cause under 5 U.S.C. 553(d)(3) for the final rule to be effective on the date of publication in the **Federal Register**.

List of Subjects in 49 CFR Part 1

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

In consideration of the foregoing, Part 1 of Title 49, Code of Federal Regulations, is amended, effective upon publication, to read as follows:

PART 1—[AMENDED]

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

Authority: 49 U.S.C. 322; Public Law 101–552, 28 U.S.C. 2672; 31 U.S.C. 3711(a)(2).

2. In § 1.66 (Delegations to Maritime Administrator) the following section (bb) is added at the end thereof.

§ 1.66 Delegations to Maritime Administrator.

* * * * *

(bb) Carry out the functions and exercise the authorities vested in the Secretary by sections 3602, 3603, and 3605 of Public Law 105–261, titled the Strom Thurmond National Defense Authorization; and sections 427 and 428 of Public Law 105–383, titled the Coast Guard Authorization Act of 1998.

Issued at Washington, DC., this 4th day of January, 1999.

Rodney E. Slater,

Secretary of Transportation.

[FR Doc. 99–715 Filed 1–12–99; 8:45 am]

BILLING CODE 4910–62–P

Proposed Rules

Federal Register
Vol. 64, No. 8
Wednesday, January 13, 1999

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

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Parts 300 and 319

[Docket No. 97–110–4]

RIN 0579–AA92

Importation of Grapefruit, Lemons, and Oranges From Argentina

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule; notice of additional public hearing.

SUMMARY: We are advising the public that we have scheduled a public hearing in Orlando, FL, for our proposed rule regarding the importation of grapefruit, lemons, and oranges from Argentina. This hearing will be held in addition to a previously scheduled hearing in Thousand Oaks, CA. The purpose of these hearings is to provide interested persons an opportunity for the oral presentation of data, views, and arguments regarding the proposed rule.

DATES: Consideration will be given only to comments on Docket No. 97–110–1 that are received on or before February 11, 1999. We will also consider comments made at public hearings that will be held in Orlando, FL, on February 5, 1999, and in Thousand Oaks, CA, on February 8, 1999. The hearings in both locations will be held from 9 a.m. to 5 p.m.

ADDRESSES: Please send an original and three copies of your comments to Docket No. 97–110–1, Regulatory Analysis and Development, PPD, APHIS, suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comments refer to Docket No. 97–110–1. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are requested to call ahead on (202) 690–2817 to facilitate entry into the comment reading room.

The February 5, 1999, public hearing will be held at the Radisson Barcelo Hotel, 8444 International Drive, Orlando, FL. The February 8, 1999, public hearing will be held at Thousand Oaks Civic Arts Plaza, Fred Kavli Theatre, 2100 East Thousand Oaks Boulevard, Thousand Oaks, CA.

FOR FURTHER INFORMATION CONTACT: Mr. Ron Campbell, Import Specialist, Phytosanitary Issues Management Team, PPQ, APHIS, 4700 River Road Unit 140, Riverdale, MD 20737–1236; (301) 734–6799; e-mail: Ronald.C.Campbell@usda.gov.

SUPPLEMENTARY INFORMATION:

Background

On August 12, 1998, the Animal and Plant Health Inspection Service (APHIS) published a proposed rule in the **Federal Register** (63 FR 43117–43125, Docket No. 97–110–1) to amend the citrus fruit regulations by recognizing a citrus-growing area within Argentina as being free from citrus canker. In that document, we also proposed to amend the fruits and vegetables regulations to allow the importation of grapefruit, lemons, and oranges from the citrus canker-free area of Argentina under conditions designed to prevent the introduction into the United States of two other diseases of citrus, sweet orange scab and citrus black spot, and other plant pests. These proposed changes would allow grapefruit, lemons, and oranges to be imported into the United States from Argentina subject to certain conditions.

On October 16, 1998, we published in the **Federal Register** (63 FR 55559, Docket No. 97–110–2) a notice advising the public that we were extending the comment period for the proposed rule by 120 days and that we had scheduled a public hearing to give interested persons the opportunity for the oral presentation of data, views, and arguments regarding the proposed rule. In our October 16, 1998, notice, we announced that the public hearing would be held on December 17, 1998, in Thousand Oaks, CA. On December 4, 1998, we published in the **Federal Register** (63 FR 67011, Docket No. 97–110–3) a notice advising the public that we had changed the date and location of the public hearing in Thousand Oaks, CA. As indicated in the December 4, 1998, notice, that hearing is now scheduled for February 8, 1999, and will be held at the Fred Kavli Theatre in the Thousand Oaks Civic Arts Plaza, Thousand Oaks, CA.

In response to requests that we provide Florida citrus growers and other interested persons an opportunity for the oral presentation of data, views, and arguments regarding the proposed rule, we have scheduled an additional public hearing to be held in Orlando, FL, on February 5, 1999.

The purpose of the hearings is to give interested persons the opportunity for the oral presentation of data, views, and arguments. Questions about the content of the proposed rule may be part of the commenters' oral presentations. However, neither the presiding officer nor any other representative of APHIS will respond to the comments at the hearings, except to clarify or explain provisions of the proposed rule.

A representative of APHIS will preside at each public hearing. Any interested person may appear and be heard in person, by attorney, or by other representative. Written statements may be submitted and will be made part of the hearing record. Persons who wish to speak at a public hearing will be asked to provide their name and organization. We ask that anyone who reads a statement or submits a written statement provide two copies to the presiding officer at the hearing.

Each public hearing will begin at 9 a.m. and is scheduled to end at 5 p.m., local time. However, either hearing may be terminated at any time after it begins if all persons desiring to speak have been heard. If the number of speakers at a hearing warrants it, the presiding officer may limit the time for presentations so that everyone wishing to speak has the opportunity.

Done in Washington, DC, this 7th day of January 1999.

Craig A. Reed,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 99–759 Filed 1–12–99; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Farm Service Agency

7 CFR Part 782

RIN 0560–AF64

End-Use Certificate Program

AGENCY: Farm Service Agency, Agriculture.

ACTION: Proposed rule

SUMMARY: The Farm Service Agency (FSA) is proposing to amend regulations governing the End-Use Certificate Program for imported Canadian wheat to allow FSA to collect additional information regarding distinguishing characteristics of imported wheat. The proposal also will revise the definition of importer to include only the importer of record as recognized by the U.S. Customs Service. Lastly, FSA proposes to revise the deadline for submission of the End-Use Certificate from 15 work days to 10 work days after the date of entry. These changes are necessary to facilitate a cooperative effort between FSA and the U.S. Customs Service to make End-Use Certificates a part of the official entry summary package. These changes will also help ensure that Canadian wheat will not benefit from U.S.-export programs.

DATES: Comments must be submitted on or before January 25, 1999 to be assured of consideration. The comment period is limited to 10 days because on January 1, 1999, the United States Customs Service implemented changes to the Harmonized Tariff Schedule relating to wheat. The changes in this proposed rule are intended to compliment these Harmonized Tariff Schedule changes and must coincide with them as soon as possible.

ADDRESSES: FSA invites interested parties to submit written comments on this proposed rule to: Steve Gill, Director, Warehouse and Inventory Division, Farm Service Agency, STOP 0553, 1400 Independence Avenue, SW, Washington, D.C. 20250–0553; telephone (202) 720–2121; FAX (202) 690–3123; or E-mail CCClist@wdc.fsa.usda.gov.

All written comments received in response to this proposed rule will be available for public inspection in Room 5968, South Building, U.S. Department of Agriculture, 1400 Independence Avenue, SW, Washington, D.C., between 8:00 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Timothy R. Murray, Chief, Inventory Management Branch, U.S. Department of Agriculture, Farm Service Agency, STOP 0553, 1400 Independence Avenue, SW, Washington, DC 20250–0553; telephone (202) 720–6125; FAX (202) 690–0014; E-mail Tim__Murray@usda.gov.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This proposed rule is issued in conformance with Executive Order 12866 and has been determined not to be significant and therefore has not been reviewed by the Office of Management and Budget under Executive Order 12866.

Executive Order 12778

This proposed rule has been reviewed in accordance with Executive order 12778. The provisions of this final rule do not preempt State laws, are not retroactive, and do not involve administrative appeals.

Environmental Evaluation

It has been determined by an environmental evaluation that this action will not have a significant impact of the quality of the human environment. Therefore, neither an Environmental Assessment nor an Environmental Impact Analysis is needed.

Executive Order 12372

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

Paperwork Reduction Act

The amendments to 7 CFR part 782 set forth in this proposed rule involve a change in the existing information collection requirements which were previously cleared by OMB under the provisions of 44 U.S.C. 35. In accordance with section 3507(j) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection and recordkeeping requirements included in this proposed rule have been submitted for emergency approval to the Office of Management and Budget (OMB). OMB has assigned control number 0560–0151 to the information collection and recordkeeping requirements. Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with a collection of information, subject to the requirements of the Paperwork Reduction Act, unless that collection of information displays a currently valid OMB Control Number. Please send written comments to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for Agriculture, Washington, DC 20503. Please state that your comments refer to Control Number 0560–0151. Additionally, please send a copy of your comments to Timothy R. Murray, Warehouse and Inventory Division, FSA, USDA, STOP 0553, 1400 Independence Avenue, SW, Washington, DC 20250–0553. Comments may be submitted to Timothy Murray by e-mail to tmurray@wdc.fsa.usda.gov. All comments regarding this information collection will be summarized and included in the request for OMB approval. All comments will also become public records.

OMB is required to make a decision concerning the collection(s) of information contained in these proposed regulations between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication. This does not affect the deadline for the public to comment to the Department on the proposed regulations.

Abstract: The information collected under OMB Control Number 0560–0151, insures that Canadian wheat does not benefit from USDA or Commodity Credit Corporation assisted export programs. To comply with the provisions of the North American Free Trade Agreement Implementation Act, FSA requires information from the importers, subsequent buyers, and end-users that will assist in tracking the Canadian wheat within the U.S. Marketing System.

Estimate of Burden: Public reporting burden for this information collection is estimated to average 0.26 hours per response.

Respondents: Wheat importers and traders.

Estimated Number of Respondents: 154.

Estimated Number of Responses per Respondent: 73.

Estimated Total Annual Burden on Respondents: 2,942 hours.

Proposed topics for comment on the information collection include: (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; (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. Copies of the information collection may be obtained from Timothy Murray at the address shown above.

Regulatory Flexibility Act

On January 26, 1995, FSA published a final rule that established program requirements for the End-Use Certificate Program. A copy of this Regulatory Flexibility Analysis is available upon request from Timothy Murray, Warehouse and Inventory Division, FSA, STOP 0553, 1400 Independence Avenue, Washington, DC 20250–0553; telephone (202) 690–4321.

Because these changes will not have an adverse impact on a substantial number of small businesses, a Regulatory Flexibility Assessment is not required.

Background

This proposal will amend the regulations at 7 CFR Part 782 with respect to the U.S. End-Use Certificate Program. Since February 27, 1995, the effective date for the implementation of the End-Use Certificate Program, several items have been identified that could improve the effectiveness and the efficiency of the End-Use Certificate Program. To further ensure that Canadian wheat does not benefit from U.S. export programs, End-Use Certificates will include distinguishing characteristics of grade, protein content, moisture content, dockage and date of sale in addition to the class and/or varietal information currently collected for each shipment. These additional data are deemed necessary because imported wheat may benefit from U.S. export programs even if the imported wheat itself is not directly eligible for use under such programs. Such benefit may accrue if wheat of the type or quality used under U.S. export programs (including humanitarian assistance programs) is imported into the United States in anticipation of, or as a result of use of a similar type or quality of U.S. wheat under the U.S. program. Indeed, the Department of Agriculture is frequently implored not to take action to facilitate sales of U.S. wheat out of a concern that such sales will only encourage off-setting imports of Canadian wheat. The proposed rule will provide necessary information to monitor for such an occurrence and potentially allow appropriate actions to minimize such an occurrence. In addition, these additional data will help facilitate effective program audits while minimizing the burden on importers of Canadian wheat.

FSA also proposes to replace the current definition used for ''Importer'' found at 7 CFR 782.2 with the same definition used by the U.S. Customs Service and found at 19 U.S.C. 1484(a).

The U.S. Customs Service has informed the Department of Agriculture officials that it will be amending the provisions of their basic import bond to allow for the assessment of damages if there is a failure to provide the End-Use Certificate in the time period provided by FSA.

List of Subjects in 7 CFR Part 782

Administrative practice and procedure, Barley, Reporting and recordkeeping requirements, Wheat.

Accordingly, it is proposed that 7 CFR part 782 be amended as follows:

PART 782—END-USE CERTIFICATE PROGRAM

1. The authority citation for part 782 continues to read as follows:

Authority: 19 U.S.C. 3391(f).

2. Amend § 782.2 to revise the definition for ''Importer'' to read as follows:

§ 782.2 Definitions.

* * * * *

Importer means a party qualifying as an Importer of Record pursuant to 19 U.S.C. 1484(a).

* * * * *

3. Amend § 782.12(a) as follows:

A. Revise the first sentence to read as follows:

''Each entity that imports wheat originating in Canada shall, for each entry into the U.S., obtain form FSA–750, End-Use Certificate for Wheat, from Kansas City Commodity Office, Warehouse Contract Division, P.O. Box 419205, Kansas City, MO 64141–6205, and submit the completed original form FSA–750 to KCCO within 10 workdays following the date of entry or release.''

B. Redesignate paragraphs (a)(6) through (a)(9) as paragraphs (a)(8) through (a)(11), and add new paragraphs (a)(6) and (a)(7) to read as follows:

§ 782.12 Filing FSA–750, End-Use Certificate for Wheat.

(a) * * *

(6) Grade, protein content, moisture content, and dockage level of wheat being imported,

(7) Date of sale,

* * * * *

Signed at Washington, DC, on January 8, 1999.

Keith Kelly,

Administrator, Farm Service Agency.

[FR Doc. 99–798 Filed 1–11–99; 10:02 am]

BILLING CODE 3410–05–P

SMALL BUSINESS ADMINISTRATION

13 CFR Parts 121 and 125

Government Contracting Programs

AGENCY: Small Business Administration.

ACTION: Proposed rule.

SUMMARY: The Small Business Administration (SBA) proposes to add regulatory language addressing contract bundling, due to changes set forth in sections 411–417 of the Small Business Reauthorization Act of 1997 (Public Law 105–135). In addition, this rule restates SBA's current authority to appeal to the head of a procuring agency, decisions made by the agency that SBA believes to adversely affect small businesses. The statutory amendments recognize that the consolidation of contract requirements may be necessary and justified, in some cases, but require that each Federal agency, to the maximum extent practicable, take steps to avoid unnecessary and unjustified bundling of contract requirements that precludes small business participation as prime contractors as well as to eliminate obstacles to small business participation as prime contractors. Section 414 of Public Law 105–135 requires that the Federal Procurement Data System (FPDS) be modified to collect data regarding bundling of contracts when a contracting officer anticipates that the resulting contract price will exceed $5 million, including options. The SBA will confer with the Federal Procurement Data Center and analyze the data reported in the FPDS on all bundled contracts expected to exceed $5 million in order to determine the impact on small business resulting from contract bundling and generate a report on the extent to which individual agencies are engaging in the practice of contract bundling.

DATES: Submit comments on or before March 15, 1999.

ADDRESSES: Address comments concerning this proposed rule to Judith Roussel, Associate Administrator for Government Contracting, U.S. Small Business Administration, 409 Third Street, SW., Mail Code 6250, Washington, DC, 20416.

FOR FURTHER INFORMATION CONTACT: Anthony Robinson, Office of Government Contracting, (202) 205–6465.

SUPPLEMENTARY INFORMATION: Section 15(a) of the Small Business Act, 15 U.S.C. 644(a), authorizes SBA to appeal to the head of a procuring agency certain decisions made by the agency that SBA believes to adversely affect small businesses, including proposed procurements that include ''goods or services currently being performed by a small business'' and which are in a ''quantity or estimated dollar value the magnitude of which renders small business prime contract participation unlikely.'' Section 413(b)(1) of Pub. L. 105–135 *added* an appeal right to section 15(a) of the Small Business Act for ''an unnecessary or unjustified bundling of contract requirements.'' It left intact, however, SBA's current appeal rights. In this regard, the Joint Explanatory Statement of the bundling provisions contained in Public Law 105–135 as set forth in the Congressional Record specifically provided that ''[n]othing in [the bundling amendments] is intended to amend or change in any way the existing obligations imposed on a procuring activity or the authority granted to the Small Business Administration under section 15(a) of the Small Business Act.'' 143 Cong. Rec. S11522, S11526 (daily ed. Oct. 31, 1997).

Consistent with the statutory amendments, this rule defines ''bundling,'' identifies the circumstances under which such ''bundling'' may be necessary and justified, and permits SBA to appeal bundling actions that it believes to be unnecessary and unjustified to the head of the procuring agency. It also authorizes two or more small businesses to form a contract team and for that team to be considered a small business for purposes of a bundled procurement requirement, provided that each small business partner to the teaming arrangement individually qualifies as a small business under the SIC code for the requirement. Finally, the rule restates SBA's current authority to appeal to the head of an agency other procurement decisions made by procuring activities that SBA believes will adversely affect small business.

The rule reorganizes and amends 13 CFR 125.2 to more clearly explain SBA's current rights under section 15(a) of the Small Business Act. The rule sets forth a procuring activity's current responsibilities to submit a proposed procurement to SBA for review whenever the procurement includes in its statement of work, goods or services currently being performed by a small business and the magnitude of the quantity or estimated dollar value of the proposed procurement would render small business prime contract participation unlikely. It also requires a procuring activity to submit a proposed procurement to SBA for review where a proposed procurement for construction seeks to package or consolidate discrete construction projects. In addition it authorizes SBA to appeal disagreements over the suitability of a particular acquisition for a small business set-aside first to the head of the contracting activity, and then to the head of the agency. This authority is currently granted to SBA by section 15(a) of the Small Business Act and was not affected by the addition of new rights regarding ''bundling.'' This rule does not apply to contracts to be *awarded and performed* entirely outside the United States.

In implementing the new statutory bundling provisions, the rule also requires a procuring activity to submit a proposed procurement to SBA for review whenever the procurement includes in its statement of work ''bundled'' requirements, and authorizes SBA to appeal to the head of the contracting activity, and then to the head of the agency, ''bundled'' requirements that SBA believes not to be necessary and justified. Whenever the procurement includes in its statement of work a ''substantial bundling'' of contract requirements, Section 15(a)(3) of the Small Business Act requires that the procuring activity must document that the benefits to be derived from the bundled contract justify its use.

The Small Business Act does not define ''substantial bundling.'' SBA seeks public comments on appropriate ways to define substantial bundling (e.g., in terms of a threshold contract value, or a threshold number of geographic locations and SIC codes).

The rule defines what ''measurably substantial benefits'' are for purposes of determining whether bundling is necessary and justified. The rule defines ''measurably substantial benefits'' to include, in any combination, or in the aggregate, cost savings; quality improvements that will save time, improve or enhance performance or efficiency; reduction in acquisition cycle times; better terms and conditions; or any other quantifiably substantial benefits. In assessing whether cost savings would be achieved through bundling, the analysis must compare the cost that has been charged by small businesses for the work that they have performed and, where available, the cost that could have been or could be charged by small businesses for the work not previously performed by small business. In order to proceed with a bundled procurement a procuring activity must quantify the identified benefits and explain how their impact would be substantial.

The statute recognizes that in some circumstances bundling should be permitted because of the benefits that flow to the Government because of it. Congress has made a determination that those benefits overcome any impact on small business in certain circumstances. However, it is also clear from the statutory language requiring contracting officers to demonstrate ''measurably substantial benefits'' and from the Joint Explanatory Statement cited above that Congress intends that meaningful controls should be in place that are capable of enforcement to preclude unnecessary and unjustified bundling. Pursuant to the statute, there are two requirements that must be satisfied. The benefits to be derived by the Government must be ''measurable'' and they must be ''substantial.'' In order to be ''measurable,'' the benefits must be quantifiable. Pursuant to the statutory language, however, quantifiable benefits are not sufficient to justify bundling unless they are also ''substantial.'' As an example, OMB Circular A–76 sets forth a measure of substantial savings when determining whether the government will convert to or from in-house or contracted performance of certain commercial support activities. SBA is committed to developing objective and quantifiable criteria for determining when a consolidation of procurements will provide ''measurably substantial benefits,'' and, thus, when bundling will be necessary and justified.

The proposed regulation identifies areas in which there may be ''measurably substantial benefits,'' including cost savings or price reduction, quality improvements that will save time or improve or enhance performance or efficiency, reduction in acquisition cycle times, or better terms and conditions. The proposed rule does not however, set forth specific criteria for measuring whether these benefits or improvements, which are to be derived, are ''substantial.'' SBA specifically requests comments on appropriate measurements that PCRs may use to gauge whether or not a benefit is ''substantial.''

The proposed regulation also reiterates the statutory requirement that the reduction of administrative or personnel costs alone cannot be a justification for bundling unless the

administrative or personnel costs are expected to be ''substantial'' in relation to the dollar value of the procurement (including options) to be consolidated. In determining whether the reduction of administrative or personnel costs are ''substantial,'' the statute clearly requires a comparison between the administrative or personnel costs without bundling to those anticipated with bundling. As with defining substantial benefits. SBA is committed to implementing a quantifiable test for determining whether administrative or personnel cost savings are expected to be ''substantial.'' SBA specifically requests comments on how best to define ''substantial'' administrative or personnel cost savings.

SBA is concerned that bundled contracts will render small business participation as prime contractors unlikely. SBA has proposed in § 125.2(b)(5), that its Procurement Center Representatives (PCR), in recommending alternative procurement methods to agencies, include, under appropriate circumstances, (1) breaking up the procurement into smaller discrete procurements to render them suitable for small business set-asides; (2) breaking out discrete components, where practicable, to be set aside for small business; or (3) when issuing multiple awards against a single solicitation, reserving one or more awards for small companies. SBA invites the public to offer suggestions on other creative strategies which may enhance small business participation as prime contractors.

Compliance With Executive Orders 12612, 12788 and 12866, the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), and the Paperwork Reduction Act (44 U.S.C. Chapter 3501 et seq.)

SBA certifies that this rule, if adopted in final form, would not be a significant rule within the meaning of Executive Order 12866. The rule does not impose costs upon the businesses which may be affected by it. It is not likely to have an annual economic impact of $100 million or more, result in a major increase in costs or prices, or have a significant adverse effect on competition or the United States economy.

SBA has determined that this rule may have a significant beneficial economic impact on a substantial number of small entities with the meaning of the Regulatory Flexibility Act, 5 U.S.C. SS 601–612. The proposed rule can potentially apply to all small businesses that are performing or may want to perform on the prime contract opportunities of the Federal Government. In Fiscal Year 1996, all categories of small businesses were responsible for 314,965, or 68 percent, of the total number of contract actions in excess of $25,000. While there is no precise estimate of the number of small entities or the extent of the economic impact, SBA believes that a significant number of small businesses would be affected. SBA has submitted a complete Initial Regulatory Flexibility Analysis of this proposed rule to the Chief Counsel for Advocacy of the Small Business Administration. For a copy of this analysis, please contact Anthony Robinson at (202) 205–6465.

For the purpose of the Paperwork Reduction Act, 44 U.S.C. Ch. 35, SBA certifies that this rule would not impose new reporting or record keeping requirements, other than those required on the Government by law.

For purposes of Executive Order 12612, SBA certifies that this rule does not have any federalism implications warranting the preparation of a Federalism Assessment.

For purposes of executive Order 12778, the SBA certifies that this rule is drafted, to the extent practicable, in accordance with the standards set forth in section 2 of this order.

List of Subjects

13 CFR Part 121

Government procurement, Government property, Grant programs-business, Individuals with disabilities, Loan programs-business, Small businesses.

13 CFR Part 125

Government contracts, Government procurement, Reporting and recordkeeping requirements, Small businesses, Technical assistance.

For the reasons set forth above, SBA proposes to amend Title 13, Code of Federal Regulations (CFR), as follows:

PART 121—[AMENDED]

1. The authority citation for 13 CFR part 121 continues to read as follows:

Authority: 15 U.S.C. 632(a), 634(b)(6), 637(a), 644(c), and 662(5); and Sec. 304, Pub. L. 103–403, 108 Stat. 4175, 4188.

2. Section 121.103 is amended by revising paragraph (f)(3)(i) to read as follows:

§ 121.103 What is affiliation?

* * * * *

(f) *Affiliation based on joint venture arrangements.* * * *

(3) *Exclusion from affiliation.* (i) A joint venture or teaming arrangement of two or more business concerns may submit an offer as a small business for a Federal procurement without regard to affiliation under paragraph (f) of this section so long as each concern is small under the size standard corresponding to the SIC code assigned to the contract, provided:

(A) The procurement qualifies as a ''bundled'' requirement, at any dollar value, within the meaning of § 125.2(d)(1)(i) of this chapter; or

(B) The procurement is other than a ''bundled'' requirement within the meaning of § 125.2(d)(1)(i) of this chapter, and:

(*1*) For a procurement having a revenue-based size standard, the dollar value of the procurement, including options, exceeds half the size standard corresponding to the SIC code assigned to the contract; or

(*2*) For a procurement having an employee-based size standard, the dollar value of the procurement, including options, exceeds $10 million.

* * * * *

PART 125—[AMENDED]

3. The authority citation for 13 CFR part 125 continues to read as follows:

Authority: 15 U.S.C. 634(b)(6), 637 and 644; 31 U.S.C. 9701, 9702.

4. Section 125.2 is amended by redesignating paragraphs (a) and (b) as paragraphs (b) and (c), respectively, by revising newly designated paragraph (b), and by adding new paragraphs (a) and (d) to read as follows:

§ 125.2 Prime contracting assistance.

(a) *General.* Small business concerns must receive any award or contract, or any contract for the sale of Government property, that SBA and the procuring or disposal agency determine to be in the interest of:

(1) Maintaining or mobilizing the Nation's full productive capacity;

(2) War or national defense programs;

(3) Assuring that a fair proportion of the total purchases and contracts for property, services and construction for the Government in each industry category are placed with small business concerns; or

(4) Assuring that a fair proportion of the total sales of Government property be made to small business concerns.

(b) *PCR and procuring activity responsibilities.* (1) SBA Procurement Center Representatives (PCRs) are generally located at Federal agencies and buying activities which have major contracting programs. PCRs review all acquisitions not set aside for small businesses to determine whether a set-aside is appropriate.

(2) A procuring activity must provide a copy of a proposed acquisition

strategy (e.g., Department of Defense Form 2579, or equivalent) to the applicable PCR (or to the SBA Office of Government Contracting Area Office serving the area in which the buying activity is located if a PCR is not assigned to the procuring activity) at least 30 days prior to a solicitation's issuance whenever a proposed acquisition strategy:

(i) Includes in its description goods or services currently being performed by a small business and the magnitude of the quantity or estimated dollar value of the proposed procurement would render small business prime contract participation unlikely;

(ii) Seeks to package or consolidate discrete construction projects; or

(iii) Meets the definition of a bundled requirement as defined in paragraph (d)(1)(i) of this section.

(3) Whenever any of the circumstances identified in paragraph (b)(2) of this section exist, the procuring activity must also submit to the applicable PCR (or to the SBA Office of Government Contracting Area Office serving the area in which the buying activity is located if a PCR is not assigned to the procuring activity) a written statement explaining why:

(i) If the proposed acquisition strategy involves a bundled requirement, the procuring activity believes that the bundled requirement is necessary and justified under the analysis required by paragraph (d)(3)(iii) of this section; or

(ii) If the description of the requirement includes goods or services currently being performed by a small business and the magnitude of the quantity or estimated dollar value of the proposed procurement would render small business prime contract participation unlikely, or if a proposed procurement for construction seeks to package or consolidate discrete construction projects,

(A) The proposed acquisition cannot be divided into reasonably small lots to permit offers on quantities less than the total requirement;

(B) Delivery schedules cannot be established on a basis that will encourage small business participation;

(C) The proposed acquisition cannot be offered so as to make small business participation likely; or

(D) Construction cannot be procured as separate discrete projects.

(4) In conjunction with their duties to promote the set-aside of procurements for small business, PCRs will identify small businesses that are capable of performing particular requirements, including teams of small business concerns for larger or bundled requirements (see § 121.103(f)(3) of this chapter).

(5)(i) If a PCR believes that a proposed procurement will render small business prime contract participation unlikely, or if a PCR does not believe a bundled requirement to be necessary and justified, the PCR may recommend to the procurement activity alternative procurement methods which would increase small business prime contract participation. Such alternatives may include:

(A) Breaking up the procurement into smaller discrete procurements;

(B) Breaking out one or more discrete components, for which a small business set-aside may be appropriate; and

(C) When issuing multiple awards under task order contracts, reserving one or more awards for small companies.

(ii) Where bundling is necessary and justified, the PCR will work with the procuring activity to tailor a strategy that preserves small business prime contract participation to the maximum extent practicable.

(6) In cases where there is disagreement between a PCR and the contracting officer over the suitability of a particular acquisition for a small business set-aside, whether or not the acquisition is a bundled or substantially bundled requirement within the meaning of paragraph (d) of this section, the PCR may initiate an appeal to the head of the contracting activity. If the head of the contracting activity agrees with the contracting officer, SBA may appeal the matter to the secretary of the department or head of the agency. The time limits for such appeals are set forth in 19.505 of the Federal Acquisition Regulation (FAR) (48 CFR 19.505).

(7) PCRs will work with a procuring activity's Small and Disadvantaged Business Utilization Specialist (SADBUS) to identify proposed solicitations that involve bundling, and with the agency acquisition officials to revise the acquisition strategies for such proposed solicitations, where appropriate, to increase the probability of participation by small businesses, including small business contract teams, as prime contractors. If small business participation as prime contractors appears unlikely, the SADBUS and PCR will facilitate small business participation as subcontractors or suppliers.

* * * * *

(d) *Contract bundling*—(1) *Definitions*—(i) *Bundled requirement or bundling.* The term ''bundled requirement or bundling'' refers to the consolidation of two or more procurement requirements for goods or services previously provided or performed under separate smaller contracts into a solicitation of offers for a single contract that is likely to be unsuitable for award to a small business concern due to—

(A) The diversity, size, or specialized nature of the elements of the performance specified;

(B) The aggregate dollar value of the anticipated award;

(C) The geographical dispersion of the contract performance sites; or

(D) Any combination of the factors described in paragraphs (d)(1)(i) (A), (B), and (C).

(ii) *Separate smaller contract:* A separate smaller contract is a contract that has previously been performed by one or more small business concerns or was suitable for award to one or more small business concerns.

(2) *Requirement to foster small business participation:* The Small Business Act requires each Federal agency to foster the participation of small business concerns as prime contractors, subcontractors, and suppliers in the contracting opportunities of the Government. To comply with this requirement, agency acquisition planners must:

(i) Structure procurement requirements to facilitate competition by and among small business concerns, including small disadvantaged, 8(a) and women-owned business concerns; and

(ii) Avoid unnecessary and unjustified bundling of contract requirements that inhibits or precludes small business participation in procurements as prime contractors.

(3) *Requirement for market research.* (i) In addition to the requirements of paragraph (b)(2) of this section and before proceeding with an acquisition strategy that could lead to a contract containing bundled or substantially bundled requirements, an agency must conduct market research to determine whether bundling of the requirements is necessary and justified. During the market research phase, the acquisition team should consult with the applicable PCR (or if a PCR is not assigned to the procuring activity, the SBA Office of Government Contracting Area Office serving the area in which the buying activity is located).

(ii) The procuring activity must notify each small business which is performing a contract that it intends to consolidate that requirement with one or more other requirements at least 30 days prior to the issuance of the solicitation for the bundled or substantially bundled requirement. The procuring activity, at that time, should

also provide to the small business the name, phone number and address of the applicable SBA PCR (or if a PCR is not assigned to the procuring activity, the SBA Office of Government Contracting Area Office serving the area in which the buying activity is located).

(iii) When the procuring activity intends to proceed with an acquisition involving bundled or substantially bundled procurement requirements, it must document the acquisition strategy to include a determination that the bundling is necessary and justified, when compared to the benefits that could be derived from meeting the agency's requirements through separate smaller contracts.

(A) The procuring activity may determine a consolidated requirement to be necessary and justified if, as compared to the benefits that it would derive from contracting to meet those requirements if not consolidated, it would derive measurably substantial benefits. The procuring activity must quantify the identified benefits and explain how their impact would be substantial. Measurably substantial benefits include any one, or more, of the following in any combination, or in the aggregate:

(*1*) Cost savings and/or price reduction;

(*2*) Quality improvements that will save time or improve or enhance performance or efficiency;

(*3*) Reduction in acquisition cycle times;

(*4*) Better terms and conditions; or

(*5*) Any other quantifiably substantial benefits.

(B) The reduction of administrative or personnel costs alone shall not be a justification for bundling of contract requirements unless the administrative or personnel cost savings are expected to be substantial, in relation to the dollar value of the procurement to be consolidated (including options).

(C) In assessing whether cost savings and/or a price reduction would be achieved through bundling, the procuring activity and SBA must compare the price that has been charged by small businesses for the work that they have performed and, where available, the price that could have been or could be charged by small businesses for the work not previously performed by small business.

(4) *Substantial bundling.* Where a proposed procurement strategy involves a substantial bundling of contract requirements, the procuring agency must, in the documentation of that strategy, include a determination that the anticipated benefits of the proposed bundled contract justify its use, and must include, at a minimum:

(i) The analysis for bundled requirements set forth in paragraph (d)(3)(iii) of this section;

(ii) An assessment of the specific impediments to participation by small business concerns as prime contractors that will result from the substantial bundling;

(iii) Actions designed to maximize small business participation as prime contractors, including provisions that encourage small business teaming for the substantially bundled requirement; and

(iv) Actions designed to maximize small business participation as subcontractors (including suppliers) at any tier under the contract or contracts that may be awarded to meet the requirements.

(5) *Significant subcontracting opportunity.* (i) Where a bundled or substantially bundled requirement offers a significant opportunity for subcontracting, the procuring agency must designate the following factors as significant factors in evaluating offers:

(A) A factor that is based on the rate of participation provided under the subcontracting plan for small business in the performance of the contract; and

(B) For the evaluation of past performance of an offeror, a factor that is based on the extent to which the offeror attained applicable goals for small business participation in the performance of contracts.

(ii) Where the offeror for such a bundled contract qualifies as a small business concern, the procuring agency must give to the offeror the highest score possible for the evaluation factors identified in paragraph (d)(5)(i) of this section.

5. Section 125.6 is amended by adding the following new paragraph (g) at the end thereof:

§ 125.6 Prime contractor performance requirements (limitations on subcontracting).

* * * * *

(g) Where an offeror is exempt from affiliation under § 121.103(f)(3) of this chapter and qualifies as a small business concern, the performance of work requirements set forth in this section apply to the cooperative effort of the team or joint venture, not its individual members.

Dated: December 22, 1998.

Aida Alvarez,

Administrator.

[FR Doc. 99–560 Filed 1–12–99; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–CE–56–AD]

RIN 2120–AA64

Airworthiness Directives; Ayres Corporation S2R Series and Model 600 S2D Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to supersede Airworthiness Directive (AD) 97–17–03, which currently requires inspecting the ¼-inch and 5⁄16-inch bolt hole areas on the lower spar caps for fatigue cracking on Ayres S2R series and Model 600 S2D airplanes, and replacing any lower spar cap where fatigue cracking is found. That AD resulted from an accident on an Ayres S2R series airplane where the wing separated from the airplane in flight. The proposed AD would retain the initial inspection and possible replacement requirements of AD 97–17–03, would require the inspections to be repetitive, would add certain Ayres airplanes to the Applicability of the AD, would change the initial compliance time for all airplanes, and would arrange the affected airplanes into four groups instead of three based on usage and configurations. The actions specified by the proposed AD are intended to detect fatigue cracking of the lower spar caps, which could result in the wing separating from the airplane with consequent loss of control of the airplane.

DATES: Comments must be received on or before March 15, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 98–CE–56–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

Service information that applies to the proposed AD may be obtained from the Ayres Corporation, P.O. Box 3090, One Rockwell Avenue, Albany, Georgia 31706–3090. This information also may be examined at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Satish Lall, Aerospace Engineer, FAA, Atlanta Aircraft Certification Office,

One Crown Center, 1895 Phoenix Boulevard, Suite 450, Atlanta, Georgia 30349; telephone: (770) 703–6082; facsimile: (770) 703–6097.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 98–CE–56–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 98–CE–56–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

AD 97–17–03, Amendment 39–10105 (62 FR 43926, August 18, 1997), currently requires the following on Ayres S2R series and Model 600 S2D airplanes:

—Inspecting the ¼-inch and 5⁄16-inch bolt hole areas on the lower spar caps for fatigue cracking; and

—Replacing any lower spar cap where fatigue cracking is found.

AD 97–17–03 superseded AD 97–13–11 (62 FR 36978, July 10, 1997), which required the same actions but contained an incorrect designation of the Model S2R–R1340 airplanes.

Accomplishment of the inspection is required in accordance with Ayres Service Bulletin No. SB–AG–39, dated September 17, 1996. This inspection utilizes magnetic particle procedures and must follow American Society for Testing Materials (ASTM) E1444–94A, using wet particles meeting the requirements of the Society for Automotive Engineers (SAE) AMS 3046. This inspection is to be accomplished by a Level 2 or Level 3 inspector certified using the guidelines established by the American Society for Nondestructive Testing or MIL–STD–410.

Accomplishment of the replacement, if necessary, is required in accordance with the applicable maintenance manual.

That AD resulted from an accident on an Ayres S2R series airplane where the wing separated from the airplane in flight. Investigation of all resources available to the FAA at the time of the accident showed nine occurrences of fatigue cracking in the lower spar caps of Ayres S2R airplanes, specifically emanating from the ¼-inch and 5⁄16-inch bolt holes. Investigation of the above-referenced accident revealed that the cause can be attributed to fatigue cracks emanating from the ¼-inch and 5⁄16-inch bolt holes in the left lower spar cap. Because the Ayres Model 600 S2D airplanes have a similar type design to that of the S2R series airplanes, they were included in the Applicability of AD 97–17–03.

Data accumulated by the FAA indicates that the fatigue cracks on these Ayres S2R series airplanes become detectable at different times based upon the type of engines and design of the airplane. With this in mind, the FAA categorized these airplanes into three groups for the Applicability of AD 97–17–03:

—Group 1 airplanes have steel spar caps with aluminum webs. These airplanes are capable of carrying heavier loads and data indicated that the inspections in the affected areas of the lower spar caps required by AD 97–17–03 should begin upon the accumulation of 2,700 hours time-in-service (TIS);

—Group 2 airplanes have steel spar caps with steel webs. Because of the steel webs as opposed to aluminum, data indicated that the inspections in the affected areas of the lower spar caps required by AD 97–17–03 should begin upon the accumulation of 4,300 hours TIS; and

—Group 3 airplanes, which are the ones manufactured first, have steel spars with aluminum webs and low horsepower radial engines, and thus do not have the ability to carry as much weight as airplanes in the other two groups. Data indicated that the inspections in the affected areas of the lower spar caps required by AD 97–17–03 should begin upon the accumulation of 9,000 hours TIS.

Manufacture of the affected airplanes began in 1965 with the airplanes incorporating the lower horsepower radial engines. Many of the airplane models referenced in AD 97–17–03 are still currently in production. These airplanes are used in agricultural operations and average 500 hours TIS annually. With this in mind, some of the earlier manufactured airplanes could have as many as 16,000 hours total TIS.

Actions Since Issuance of Previous Rule

Since the issuance of both AD 97–13–11 and AD 97-17–03, the FAA has received data specifying 29 additional occurrences of fatigue cracks found in the lower spar caps of Ayres S2R and Model 600 S2D airplanes. The data from these occurrences indicate the following:

—Several of these occurrences involved airplanes that had not accumulated enough hours to require the initial inspection of AD 97–17–03;

—Detectable cracks could still develop after the initial inspection on the affected airplanes; and

—The following airplanes were recently manufactured and have a similar type design to that of the airplanes affected by AD 97–17–03:

Model	Serial numbers
S2R–T34 ...	T34–227 through T34–232, T34–234, and T34–236.
S2R–G6	G6–147.
S2R–G10 ...	G10–139, G10–140, and G10–141

Relevant Service Information

The Ayres Corporation has issued Service Bulletin No. SB–AG–39, Rev. 1, dated December 12, 1997, which adds the above-referenced airplanes, specifies that the inspection be repetitive, and references different compliance times for the repetitive inspections depending on whether the method used is magnetic particle, ultrasonic, or eddy current. Procedures for the inspection are contained in Ayres Service Bulletin No. SB–AG–39, dated September 17, 1996. Ayres Custom Kit No. CK–AG–29, dated December 23, 1997, includes procedures for reworking the spar cap if a small crack is found in the ¼-inch spar cap hole; and includes procedures for replacing the butterfly center splice

plate, part number 20211–3, from the aft surface of the wing spar join area.

The FAA's Determination

After examining the circumstances and reviewing all available information related to the incidents described above, the FAA has determined that:

—The above-referenced airplanes should be added to the Applicability of AD 97–17–03;
—The inspections should be repetitive;
—The initial compliance time should be changed for all airplanes;
—The affected airplanes should be arranged into four groups instead of three based on usage and configurations; and
—AD action should be taken to continue to detect fatigue cracking of the lower spar caps, which could result in the wing separating from the airplane with consequent loss of control of the airplane.

Explanation of the Provisions of the Proposed AD

Since an unsafe condition has been identified that is likely to exist or develop in other Ayres 600 S2D and S2R airplanes of the same type design, the FAA is proposing AD action to supersede AD 97–17–03. The proposed AD would retain the inspection and replacement (if necessary) of the lower spar caps that are currently required in AD 97–17–03; and would make these inspections repetitive, would add additional airplanes to the Applicability of the AD, would change the initial compliance time for all airplanes, and would arrange the affected airplanes into four groups instead of three based on usage and configurations.

Accomplishment of the actions specified in this NPRM would be required in accordance with the service information previously referenced, as applicable.

Cost Impact

The FAA estimates that 1,000 airplanes in the U.S. registry would be affected by the proposed AD, that it would take approximately 3 workhours per airplane to accomplish the proposed initial inspection, and that the average labor rate is approximately $60 an hour. Parts to accomplish the proposed initial inspection cost approximately $417 per airplane. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $597,000, or $597 per airplane. This figure only takes into account the cost of the proposed initial inspection and does not take into account the cost of proposed repetitive inspections. The FAA has no way of determining how many repetitive inspections each owner/operator of the affected airplanes would incur.

In addition, these figures are based upon the presumption that no affected airplane operator has accomplished the proposed inspection, and does not take into account the cost for replacement if a crack is found. The FAA has no way of determining the number of wing spar caps that may need to be replaced based upon the results of the proposed inspections.

Regulatory Impact

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

For the reasons discussed above, I certify that this action (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) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by removing Airworthiness Directive (AD) 97–17–03, Amendment 39–10105 (62 FR 43926, August 18, 1997), and by adding a new AD to read as follows:

Ayres Corporation: Docket No. 98–CE–56–AD; Supersedes AD 97–17–03, Amendment 39–10105.

Applicability: Airplanes with the following model and serial number designations with or without a -DC or -X suffix, certificated in any category:

GROUP 1 AIRPLANES

Model	Serial numbers
S–2R	5000R through 5099R, except 5010R, 5031R, 5038R, 5047R, and 5085R.
S2R–R1340	R1340–011, R1340–012, R1340–019, R1340–020, R1340–024, R1340–025, and R1340–027.
S2R–R1820	R1820–001 through 1820–035.
S2R–T34 ...	6000R through 6049R, T34–001 through T34–143, T34–145, T34–147 through T34–167, T34–171, T34–180, and T34–181*.
S2R–T15 ...	T15–001 through T15–033**.
S2R–T11 ...	T11–001 through T11–005.
S2R–G1	G1–101 through G1–106.

*The serial numbers of the Model S2R–T34 airplanes could incorporate T34-xxx, T36-xxx, T41-xxx, or T42-xxx. This AD applies to all of these serial number designations as they are all Model S2R–T34 airplanes.

**The serial numbers of the Model S2R–T15 airplanes could incorporate T15-xx and T27-xx. This AD applies to both of these serial number designations as they are both Model S2R–T15 airplanes.

GROUP 2 AIRPLANES

Model	Serial numbers
S2R–R1340	R1340–028 through R1340–035.
S2R–R1820	R1820–036.
S2R–T65 ...	T65–001 through T65–017.
S2RHG–T65.	T65–002 through T65–017.
S2R–T34 ...	T34–144, T34–146, T34–168, T34–169, T34–172 through T34–179, and T34–189 through T34–232, T34–234*.
S2R–T45 ...	T45–001 through T45–014.
S2R–G6	G6–101 through G6–147.
S2R–G10 ...	G10–101 through G10–138, G10–140, and G10–141**.
S2R–G5	G5–101 through G5–105.

*The serial numbers of the Model S2R–T34 airplanes could incorporate T34-xxx, T36-xxx, T41-xxx, or T42-xxx. This AD applies to all of these serial number designations as they are all Model S2R–T34 airplanes.

**The bolt holes in the Model S2R–G10 airplanes, S/N's G10–137, G10–140, and G10–141 only, have been cold worked at the Ayres factory. The repetitive inspection intervals for the airplanes incorporating these three serial numbers should follow those given for cold worked holes presented in the *Repetitive Inspections* chart in the Compliance section of this AD.

GROUP 3 AIRPLANES*

Model	Serial numbers
600 S2D	All serial numbers beginning with 600–1311D.
S–2R	1380R and 1416R through 4999R.
S2R–R1340	R1340–001 through R1340–010, R1340–013 through R1340–018, R1340–021 through R1340–023, and R1340–026.
S2R–R3S ...	R3S–001 through R3S–011.

*Any Group 3 airplane that has been modified with a hopper of a capacity over 410 gallons, a piston engine greater than 600 horsepower, or any gas turbine engine makes the airplane a Group 1 airplane for the purposes of this AD. The owner/operator must inspect the airplane at the Group 1 compliance time specified in the Compliance section of this AD.

GROUP 4 AIRPLANES

Model	Serial numbers
S–2R	5010R, 5031R, 5038R, 5047R, and 5085R.
S2R–T34 ...	T34–236.
S2R–G1	G1–107, G1–108.
S2R–G10 ...	G10–139.

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

Compliance: Initial and repetitive inspections required as indicated below, and any necessary replacement required prior to further flight as indicated in the body of this AD. The initial inspection may already have been accomplished in accordance with AD 97–17–03, which is superseded by this AD; or in accordance with AD 97–13–11, which was superseded by AD 97–17–03.

Initial Inspections

—*Group 1 Airplanes:* Required upon the accumulation of 2,000 hours time-in-service (TIS) on each lower spar cap or within 50 flight hours after the effective date of this AD, whichever occurs later, unless already accomplished (compliance with AD 97–17–03 or AD 97–13–11), and thereafter at intervals specified in the *Repetitive Inspections* chart in this section of the AD.

—*Group 2 Airplanes:* Required upon the accumulation of 2,200 hours TIS on each lower spar cap or within 50 flight hours after the effective date of this AD, whichever occur later, unless already accomplished (compliance with AD 97–17–03 or AD 97–13–11), and thereafter at intervals specified in the *Repetitive Inspections* chart in this section of the AD.

—*Group 3 Airplanes:* Required upon the accumulation of 6,400 hours TIS on each lower spar cap or within 50 flight hours after the effective date of this AD, whichever occurs later, unless already accomplished (compliance with AD 97–17–03 or AD 97–13–11), and thereafter at intervals specified in the *Repetitive Inspections* chart in this section of the AD.

—*Group 4 Airplanes:* As presented below.

For S/N's T34–236, G1–107, G1–108, and G10–139: Required upon the accumulation of 2,600 hours TIS on each lower spar cap or within the next 50 hours TIS after the effective date of this AD, whichever occurs later; and thereafter at intervals specified in the *Repetitive Inspections* chart in this section of the AD.

For S/N 5010R: Required upon the accumulation of 5,530 hours TIS on each lower spar cap or within the next 50 hours TIS after the effective date of this AD, whichever occurs later; and thereafter at intervals specified in the *Repetitive Inspections* chart in this section of the AD.

For S/N 5038R: Required upon the accumulation of 5,900 hours TIS on each lower spar cap or within the next 50 hours TIS after the effective date of this AD, whichever occurs later; and thereafter at intervals specified in the *Repetitive Inspections* chart in this section of the AD.

For S/N's 5031R and 5047R: Required upon the accumulation of 6,400 hours TIS on each lower spar cap or within the next 50 hours TIS after the effective date of this AD, whichever occurs later; and thereafter at intervals specified in the *Repetitive Inspections* chart in this section of the AD.

For S/N 5085R: Required upon the accumulation of 6,290 hours TIS on each lower spar cap or within the next 50 hours TIS after the effective date of this AD, whichever occurs later; and thereafter at intervals specified in the *Repetitive Inspections* chart in this section of the AD.

Repetitive Inspections

The following gives the required repetitive inspection intervals based on the situation found during the last inspection and the method of inspection utilized:

Situation	Magnetic particle (hours TIS)	Ultrasonic (hours TIS)	Eddy current (hours TIS)
No cracks	500	400	450
No cracks; and cold work accomplished per SB–AG–39*	1,500	1,200	1,300
No cracks; cold work accomplished per SB–AG–39; and butterfly plates, part number (P/N) 20211–09 and 20211–11 installed per CK–AG–29, Part II**	2,500	1,950	2,150
Small crack found; cold work to remove crack accomplished per SB–AG–39***, or CK–AG–29, Part I, accomplished to remove crack, and then cold work accomplished per SB–AG–39****.	950	750	825
Small crack found; cold work to remove crack accomplished per SB–AG–39***, or CK–AG–29, Part I, accomplished to remove crack, and then cold work accomplished per SB–AG–39; and butterfly plates, part number (P/N) 20211–09 and 20211–11, installed per CK–AG–29, Part II	1,550	1,200	1,350

*Aircraft S/N's G10–137, G10–140 and G10–141 were cold worked at the factory and may follow this repetitive inspection interval.

**Aircraft S/N's T34–236, G1–107, G1–108, and G10–139 were cold worked and had the butterfly plates installed at the factory and may follow this repetitive inspection interval.

***If a crack is small enough, it may be removed through the reaming associated with the cold work process.

****Some aircraft owners/operators were issued alternative methods of compliance with AD 97–17–03 to ream the ¼-inch bolt hole to a 5/16-inch diameter.

To detect fatigue cracking of the lower spar caps, which could result in the wing separating from the airplane with consequent loss of control of the airplane, accomplish the following:

(a) Inspect, using magnetic particle, ultrasonic or eddy current procedures, the ¼ inch and 5/16 inch bolt hole areas on each lower spar cap for fatigue cracking. Accomplish the inspection in accordance with Ayres Service Bulletin No. (SB) SB–AG–39, dated September 17, 1996, and SB SB–AG–39 Rev. 1, dated December 12, 1997. The cracks may emanate from the bolt hole on the face of the spar cap or they may occur in the shaft of the hole; both areas must be inspected.

(1) The magnetic particle inspection must follow American Society for Testing Materials (ASTM) E1444–94A, using wet particles meeting the requirements of the Society for Automotive Engineers (SAE) AMS 3046.

Caution: The wings must be firmly supported during the inspection to prevent movement of the spar caps when the splice

blocks are removed. This will allow easier realignment of the splice block holes and the holes in the spar cap for bolt insertion.

(2) Ultrasonic or eddy current inspection procedures must be approved by the FAA. To obtain FAA approval, send your proposed procedure to the Manager, Atlanta Aircraft Certification (ACO), One Crown Center, 1895 Phoenix Boulevard, Suite 450, Atlanta, Georgia 30349. Removal of the splice block is not required for either the ultrasonic or eddy current inspections, unless corrosion is visible.

(3) All inspections required by this AD shall be accomplished by a Level 2 or Level 3 inspector certified for that inspection method using the guidelines established by the American Society for Nondestructive Testing or MIL–STD–410.

(b) If any cracking is found during any inspection required by this AD and if the crack is too large to be removed by the reaming used in the cold work process of Ayres SB No. SB–AG–39, dated September 17, 1996, or by using the method specified in Part I of Ayres Custom Kit No. CK–AG–29, dated December 23, 1997, prior to further flight, replace the affected lower spar cap in accordance with the applicable maintenance manual. Upon replacement of a spar cap, total hours TIS starts over for that particular lower spar cap. Use the compliance time specified in the *Repetitive* Inspection chart in the Compliance section of this AD to determine when the inspection is required.

(c) If any cracking is found during the inspections required by this AD, submit a report of inspection findings to the Manager, Atlanta ACO, One Crown Center, 1895 Phoenix Boulevard, Suite 450, Atlanta, Georgia 30349; facsimile: (770) 703–6097; at the applicable time specified in paragraph (c)(1) or (c)(2) of this AD. The report must include a description of any cracking found; the airplane serial number and engine model number; the total number of flight hours on the lower spar cap that is found cracked; time since last inspection, if applicable; and the time on the spar cap when the bolt holes were cold worked or when the butterfly plate was installed, if applicable. Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2120–0056.

(1) For airplanes on which the inspection is accomplished after the effective date of this AD, submit the report within 10 days after performing the inspection required by paragraph (a) of this AD.

(2) For airplanes on which the inspection has been accomplished in accordance with AD 97–17–03, which is superseded by this AD; or by AD 97–13–11, which was superseded by AD 97–17–03, submit the report within 10 days after the effective date of this AD, unless already accomplished.

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location to accomplish the modification requirements of this AD provided the following is followed:

(1) The hopper is empty.

(2) Vne is reduced to 126 miles per hour (109 knots).

(3) Flight into known turbulence is prohibited.

(e) An alternative method of compliance or adjustment of the initial or repetitive compliance times that provides an equivalent level of safety may be approved by the Manager, Atlanta ACO, One Crown Center, 1895 Phoenix Boulevard, Suite 450, Atlanta, Georgia 30349.

(1) The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Atlanta ACO.

(2) Alternative methods of compliance approved in accordance with AD 97–17–03, which is superseded by this AD; or in accordance with AD 97–13–11, which was superseded by AD 97–17–03, are approved as alternative methods of compliance with this AD unless otherwise noted by this AD.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Atlanta ACO.

(f) All persons affected by this directive may obtain copies of the documents referred to herein upon request to Ayres Corporation, P.O. Box 3090, One Rockwell Avenue, Albany, Georgia 31706–3090; or may examine these documents at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

(g) This amendment supersedes AD 97–17–03, Amendment 39–10105.

Issued in Kansas City, Missouri, on January 6, 1999.

Michael K. Dahl,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–684 Filed 1–12–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–383–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 737 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to all Boeing Model 737 series airplanes. This proposal would require repetitive displacement tests of the secondary slide in the dual concentric servo valve of the power control unit (PCU) for the rudder, and replacement of the valve assembly with a modified valve assembly, if necessary. This proposal is prompted by reports of cracking found in PCU secondary servo valve slides. The actions specified by the proposed AD are intended to prevent failure of the secondary slide and consequent rudder hardover and reduced controllability of the airplane.

DATES: Comments must be received by February 12, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–383–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: R.C. Jones, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1118; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 98–NM–383–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–383–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The FAA has received reports of cracking found on Boeing Model 737 series airplanes on one of the two legs of the clevis of the secondary slide, which is a component of the dual servo valve in the power control unit (PCU) of the rudder. Most of the cracks were found during the manufacturing process by the PCU supplier. However, some of the cracks were found on servo valve assemblies by operators; those assemblies had not yet been installed in PCU's. Test results have indicated that a crack in one leg of the secondary slide is not in itself an unsafe condition. However, a crack in the other leg of that same slide could cause the slide to break apart and allow a loose part to jam both the primary and secondary slides within the valve assembly. This condition, if not corrected, could result in rudder hardover and reduced controllability of the airplane.

Other Relevant Rulemaking

Related AD 97–14–04, amendment 39–10061 (62 FR 35068, June 30, 1997), applicable to all Boeing Model 737–100, –200, –300, –400, and –500 series airplanes, requires the following actions:

- Tests of the main rudder PCU to detect excessive internal leakage of hydraulic fluid, stalling, or reversal, and to verify proper operation of the PCU;
- Replacement of the PCU with a unit having a different part number, if necessary (the new PCU incorporates a redesigned valve assembly);
- Replacement of the PCU and the vernier control rod bolts with newly designed units; and
- Leak tests of the PCU, and replacement of the PCU with a serviceable or newly designed unit, if necessary.

Explanation of Relevant Service Information

The FAA has reviewed and approved a draft of Boeing Alert Service Bulletin 737–27A1221, dated January 14, 1999 (for Boeing Model 737–100, –200, –300, –400, and –500 series airplanes); and a draft of Boeing Alert Service Bulletin 737–27A1222, dated January 14, 1999 (for Boeing Model 737–600, –700, and –800 series airplanes). [Although these alert service bulletins will not be published until after this proposed AD has been issued, they are not expected to be substantively different from the drafts that have been approved. Copies of these drafts have been placed in the rulemaking docket.] These draft alert service bulletins describe procedures for a displacement test of the secondary slide in the dual concentric servo valve of the rudder PCU, criteria for passing the test, and procedures for replacement of any discrepant valve assembly with one having a slide that passes the displacement test. Accomplishment of the actions specified in the draft alert service bulletins is intended to adequately address the identified unsafe condition.

Boeing Alert Service Bulletin 737–27A1222 refers to Parker Service Bulletin 381500–27–01, dated December 22, 1998, as an additional source of service information for accomplishment of the displacement test for Model 737–600, –700, –800, and –900 series airplanes.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require accomplishment of the actions specified in the draft alert service bulletins described previously, except as discussed in the ''Differences Between Proposed Rule and Draft Alert Service Bulletins'' section of this proposed AD. The proposed AD also would require that operators report results of inspection findings to the FAA and submit failed valve assemblies to Parker Hannifin Corporation (the PCU manufacturer).

Interim Action

This is considered to be interim action until final action is identified, at which time the FAA may consider further rulemaking.

Differences Between Proposed Rule and Draft Alert Service Bulletins

Operators should note that, while the draft alert service bulletins do not recommend that the displacement test be repeated, the FAA has determined that the proposed AD should be considered interim action until the root cause of the cracking can be determined or a final action identified. As a result, the proposed AD would require accomplishment of the displacement test at regular intervals.

In addition, while this proposed AD is applicable to all Boeing Model 737 series airplanes, the effectivity of the alert service bulletins is limited to airplanes with certain line numbers. Because this proposed AD is interim action and a final action has not yet been identified to adequately address the identified unsafe condition, it will be necessary to repeat the displacement test on all Model 737 series airplanes, including airplanes that are produced subsequent to those with line numbers specified in the draft alert service bulletins.

Further, although draft Boeing Alert Service Bulletin 737–27A1221 specifies that the manufacturer may be contacted for disposition of certain corrective actions, this proposal would require those corrective actions to be accomplished in accordance with a method approved by the FAA.

Cost Impact

There are approximately 3,059 airplanes of the affected design in the worldwide fleet. The FAA estimates that 1,334 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 1 work hour per airplane to accomplish the proposed displacement test, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $80,040, or $60 per airplane, per test cycle.

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

The proposed test requires that the PCU be removed from the airplane. It would take approximately 9 work hours to remove and reinstall or replace the PCU. For Model 737–100, –200, –300, –400, and –500 series airplanes, concurrent accomplishment of this proposed AD and AD 97–14–04 would preclude the necessity to accomplish this replacement action twice, thereby offsetting the cost impact on operators.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship

between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Boeing: Docket 98–NM–383–AD.

Applicability: All Model 737 series airplanes, certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the secondary servo valve slide in the rudder power control unit (PCU) due to cracking of the slide, and consequent rudder hardover and reduced controllability of the airplane, accomplish the following:

(a) Perform a displacement test of the secondary slide in the dual servo valve in the rudder PCU, in accordance with Boeing Alert Service Bulletin 737–27A1221, dated January 14, 1999 (for Model 737–100, –200, –300, –400, and –500 series airplanes); or 737–27A1222, dated January 14, 1999 (for Model 737–600, –700, –800, and –900 series airplanes); at the applicable time specified by paragraph (a)(1), (a)(2), (a)(3), (a)(4), or (a)(5) of this AD. Repeat the displacement test on that PCU thereafter at intervals not to exceed 12,000 flight hours.

(1) For Model 737–100, –200, –300, –400, and –500 series airplanes on which the PCU replacement required by paragraph (d)(1) of AD 97–14–04, amendment 39–10061 (62 FR 35068, June 30, 1997), has been accomplished prior to the effective date of this AD: Conduct the displacement test within 4 months after the effective date of this AD.

(2) For Model 737–100, –200, –300, –400, and –500 series airplanes on which the PCU installation required by paragraph (d)(1) of AD 97–14–04 has not been accomplished prior to the effective date of this AD: Prior to installing the PCU required by AD 97–14–04, conduct the displacement test on that PCU as required by this paragraph of this AD.

(3) For airplanes equipped with a PCU having part number 65–44861–12 and having serial number (S/N) 3509A or lower: Conduct the displacement test within 4 months after the effective date of this AD.

(4) For Model 737–600, –700, and –800 series airplanes having line numbers 1 through 222 inclusive: Conduct the displacement test within 4 months after the effective date of this AD.

(5) For all other airplanes: Conduct the displacement test prior to the accumulation of 12,000 flight hours on the PCU, or within 30 days after the effective date of this AD, whichever occurs later.

(b) If the results of the displacement test required by paragraph (a) of this AD are outside the limits specified by Boeing Alert Service Bulletin 737–27A1221, dated January 14, 1999 (for Model 737–100, –200, –300, –400, and –500 series airplanes), or 737–27A1222, dated January 14, 1999 (for Model 737–600, –700, –800, and –900 series airplanes): Prior to further flight, accomplish the actions specified in paragraphs (b)(1) and (b)(2) of this AD.

(1) Replace the valve assembly, in accordance with the applicable alert service bulletin, with a serviceable valve assembly. And

(2) Following installation of the replacement valve assembly in accordance with paragraph (b)(1) of this AD, perform the displacement test required by paragraph (a) of this AD on that assembly, in accordance with the applicable alert service bulletin. If the test results are outside the limits specified by the applicable alert service bulletin, prior to further flight, perform corrective action in accordance with a method approved by the Manager, Seattle Aircraft Certification Office, FAA, Transport Airplane Directorate.

Note 2: Boeing Alert Service Bulletin 737–27A1222 refers to Parker Service Bulletin 381500–27–01, dated December 22, 1998, as an additional source of service information for accomplishment of the displacement test for Model 737–600, –700, –800, and –900 series airplanes.

(c) As of the effective date of this AD, no person shall install on any airplane a main rudder PCU having serial number (S/N) 3509A or lower (for Model 737–100, –200, –300, –400, and –500 series airplanes) or S/N 0299 or lower (for Model 737–600, –700, –800, and –900 series airplanes) unless that PCU's nameplate has been vibro-engraved with the letter ''C'' following the serial number.

(d)(1) Within 10 days after accomplishing the displacement test required by paragraph (a) of this AD: Submit a report of inspection findings to the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; fax (425) 227–1181. The report must include the inspection results (both positive and negative findings), test data for any failed actuators, a description of any discrepancies found, the part number and serial number of each actuator tested, and the airplane serial number.

(2) Within 10 days after accomplishing the displacement test required by paragraph (a) of this AD: Submit failed valve assemblies for analysis to Parker Hannifin Corporation, Chief Engineer, Customer Support Operations, 16666 Von Karman Avenue, Irvine, California 92606.

(3) Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2120–0056.

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle ACO. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

(f) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on January 6, 1999.

John J. Hickey,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–682 Filed 1–12–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–209103–89]

RIN 1545–AN54

Group-Term Insurance; Uniform Premiums

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document contains proposed regulations that revise the uniform premium table used to calculate the cost of group-term life insurance coverage provided to an employee by an employer. These proposed regulations provide guidance to employers who must use the uniform premium table to calculate the cost of group-term insurance includible in the gross income of their employees. This document also provides notice of a public hearing on these proposed regulations.

DATES: Comments must be received by April 13, 1999. Requests to speak and outlines of topics to be discussed at the public hearing scheduled for May 6, 1999, must be received by April 15, 1999. The IRS requests comments on the clarity of the proposed rule and how it may be made easier to read.

ADDRESSES: Send submissions to: CC:DOM:CORP:R (REG–209103–89), room 5228, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered between the hours of 8 a.m. and 5 p.m. to CC:DOM:CORP:R (REG–209103–89), 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. The public hearing will be held in Room 2615, Internal Revenue Building, 1111 Constitution Avenue NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, Betty J. Clary, (202) 622–6070; 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 under section 79 of the Internal Revenue Code. These proposed regulations revise the uniform premium rates used to calculate the cost of group-term life insurance provided to employees. Section 79 generally permits an employee to exclude from gross income the cost of $50,000 of group-term life insurance coverage. The remaining cost of the group-term life insurance is included in the employee's gross income to the extent it exceeds the amount, if any, paid by the employee for the coverage. The cost of the group-term insurance is determined on the basis of five-year age brackets prescribed by regulations.

The uniform premiums are set forth in the regulations in Table I entitled ''Uniform Premiums for $1,000 of Group-term Life Insurance Protection.'' Section 1.79–3(d)(2). A table was initially published on July 6, 1966 (31 FR 9199), and the table was revised on December 6, 1983 (48 F R 54595). The December 6, 1983 revision was made to reflect changes in mortality since 1966, using 1975–1979 mortality experience reported by the Society of Actuaries. The December 6, 1983 revision extrapolated the reported mortality experience to 1982, and reflected a revised gender mix and load factor. For years after 1988, new factors were added to the table for ages above 64, pursuant to section 5013 of the Technical and Miscellaneous Revenue Act of 1988. See 57 F R 33635 (July 30, 1992).

The IRS and Treasury have concluded that the section 79 table should be revised because there has been a significant improvement in mortality since the 1975–1979 period (even after taking into account the projection to 1982). This conclusion is based on information on the group-term life mortality experience of 13 issuers covering the 1985–1989 period, as compiled by the Society of Actuaries, as well as other data on mortality trends. The IRS and Treasury contemplate continuing to monitor future changes in mortality experience and would expect to update the section 79 table when a significant change in the cost of group-term life insurance is evidenced.

Summary of Regulations

These proposed regulations revise the uniform premium table used to calculate the cost of group-term life insurance coverage provided to an employee by an employer. The proposed new table has been developed based on mortality experience for individuals covered by group-term life insurance during the 1985–1989 period, as reflected in a Society of Actuaries report. The mortality rates were adjusted for improvements in mortality from 1988 (the weighted midpoint for the data used in the1985–89 study) through 2000, based on the same rates of mortality improvement that were adopted by the Society of Actuaries Group Annuity Valuation Table Task Force for the period 1988–1994. Separate mortality rates were derived for males and females, and the section 79 table reflects a 50/50 blend of the male and female mortality rates. The resulting mortality projections have been adjusted to reflect a 10 percent load factor. The uniform premium rates under the proposed revision would be lower in all age groups than the rates under the current section 79 regulations.

Comments are requested regarding the proposed premium rates.

Proposed Effective Date

These regulations are proposed to be effective July 1, 1999. A special effective date rule applies to any policy of life insurance issued under a plan in existence before the proposed general July 1, 1999 effective date if the policy would not be treated as carried directly or indirectly by an employer under section 1.79–0 of the Income Tax Regulations using the current section 79 table. In this case, if the special rule applies, the policy would continue to be treated as not carried directly or indirectly by an employer until the first plan year that begins after July 1, 1999.

Because income imputed under section 79 is generally subject to FICA tax which is withheld from the employee's pay, and because the withholding often is applied periodically from payrolls during the year, many employers will need to modify their payroll-based withholding systems and related information collection procedures before the effective date. The proposed July 1, 1999 effective date is intended to provide the benefits of having the lower income inclusions take effect as early as possible while avoiding the additional costs that would arise if employers did not have adequate time to implement

the changes before the effective date (which would necessitate special adjustments to correct overwithholding that would have occurred after the effective date and before implementation of the new table).

Comments are requested regarding the proposed effective date.

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 these regulations do 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.

Comment and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to electronic and written comments (a signed original and eight (8) copies) that are timely submitted to the IRS. The IRS and Treasury specifically request comments on the clarity of the proposed regulations and how it may be made easier to understand. All comments will be available for public inspection and copying.

A public hearing has been scheduled for Thursday, May 6, 1999, at 10:00 a.m. in Room 2615, Internal Revenue Building, 1111 Constitution Avenue NW., Washington, DC. Due to building security procedures, visitors must enter the 10th Street entrance, located between Constitution and Pennsylvania Avenues, NW. In addition, all visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 15 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, see the **FOR FURTHER INFORMATION CONTACT** section of this preamble.

The rules of 26 CFR 601(a)(3) apply to the hearing. Persons who wish to present oral comments at the hearing must submit written comments and an outline of the topics to be discussed and the time devoted to each topic (a signed original and eight (8) copies) by April 15, 1999.

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 Betty J. Clary, Office of the Associate Chief Counsel (Employee Benefits and Exempt Organizations). However, other personnel from the IRS and the Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

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 continues to read in part as follows:

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

Par. 2. Section 1.79–3 is amended as follows:

1. Paragraph (d)(2) is revised.

2. Paragraphs (e) and (f) are redesignated as paragraphs (f) and (g), respectively.

3. New paragraph (e) is added.

The revision and addition read as follows:

§ 1.79–3 Determination of amount equal to cost of group-term life insurance.

* * * * *

(d) * * *

(2) For the cost of group-term life insurance provided after June 30, 1999, the following table sets forth the cost of $1,000 of group-term life insurance provided for one month, computed on the basis of 5-year age brackets. See 26 CFR 1.79–3(d)(2) in effect prior to [DATE FINAL REGULATIONS ARE EFFECTIVE] and contained in the 26 CFR, part 1, edition revised as of April 1, 1998 for a table setting forth the cost of group-term life insurance provided before July 1, 1999. For purposes of Table I, the age of the employee is the employee's attained age on the last day of the employee's taxable year.

TABLE I.—UNIFORM PREMIUMS FOR $1,000 OF GROUP-TERM LIFE INSURANCE PROTECTION

5-year age bracket	Cost per $1,000 of protection for one month
Under 25	$0.05
25 to 29	.06
30 to 34	.08
35 to 39	.09
40 to 44	.10
45 to 49	.15
50 to 54	.23
55 to 59	.43
60 to 64	.66
65 to 69	1.27
70 and above	2.06

* * * * *

(e) *Effective date*—(1) *General effective date for table.* Except as provided in paragraph (e)(2) of this section, the table in paragraph (d)(2) of this section is effective July 1, 1999.

(2) *Effective date for table for purposes of section 1.79–0.* A policy of life insurance issued under a plan in existence on June 30, 1999, which would not be treated as carried directly or indirectly by an employer under § 1.79–0, taking into account the Table I in effect on that date, shall continue to be treated as a policy that is not carried directly or indirectly by the employer until the first plan year beginning after the general effective date in paragraph (e)(1) of this section.

* * * * *

Robert E. Wenzel,

Deputy Commissioner of Internal Revenue.

[FR Doc. 99–452 Filed 1–12–99; 8:45 am]

BILLING CODE 4830–01–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 211–0116b; FRL–6214–2]

Approval and Promulgation of State Implementation Plans; California State Implementation Plan Revision, Antelope Valley Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is approving revisions to the California State Implementation Plan (SIP) which concern the rescission of three volatile organic compound rules for the Antelope Valley Air Pollution Control District (AVAPCD). The intended effect of this action is to bring the AVAPCD SIP up to date in accordance with the requirements of the Clean Air Act, as amended in 1990

(CAA or the Act). EPA is finalizing the approval of these rescissions from the California SIP under provisions of the CAA regarding EPA action on SIP submittals, SIPs for national primary and secondary ambient air quality standards and plan requirements for nonattainment areas. EPA is approving these revisions in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). In the Final Rules Section of this **Federal Register,** the EPA is approving the state's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision and anticipates no adverse comments. A detailed rationale for this approval is set forth in the direct final rule. If no adverse comments are received, no further activity is contemplated. 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. Any parties interested in commenting should do so at this time.

DATES: Written comments must be received by February 12, 1999.

ADDRESSES: Comments should be addressed to: Andrew Steckel, Chief, Rulemaking Office (AIR–4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Copies of the rule revisions and EPA's evaluation report of each rule are available for public inspection at EPA's Region 9 office during normal business hours. Copies of the submitted rule revisions are also available for inspection at the following locations:

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 ''L'' Street, Sacramento, CA 95812.

Antelope Valley Air Pollution Control District, 43301 Division Street, Suite 206, Lancaster, CA 93539–4409

FOR FURTHER INFORMATION CONTACT: Julie A. Rose, Rulemaking Office, AIR–4, Air Division, U.S. Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, CA 94105–3901, Telephone: (415) 744–1184.

SUPPLEMENTARY INFORMATION: This document concerns the rescission of Antelope Valley Air Pollution Control District, Rule 1106, Marine Coating Operations; Rule 1142, Marine Tank Vessel Operations; and Rule 1148, Thermally Enhanced Oil Recovery Wells. These rules were submitted by the California Air Resources Board to EPA on June 23, 1998. For further information, please see the information provided in the direct final action that is located in the rules section of this **Federal Register.**

List of Subjects in 40 CFR Part 52

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

Authority: 42 U.S.C. 7401 *et seq.*

Dated: December 17, 1998.

Laura Yoshii,

Acting Regional Administrator, Region IX.

[FR Doc. 99–16 Filed 1–12–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 272

[FRL–6217–6]

Utah: Final Authorization of State Hazardous Waste Management Program Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to grant final authorization to the hazardous waste program revisions (Addendums 7 & 8) submitted by Utah's Department of Environmental Quality. In the final rules section of this **Federal Register**, EPA is authorizing the State's program revisions as an immediate final rule without prior proposal because EPA views this action as noncontroversial and anticipates no adverse comments. If no adverse written comments are received on this action, the immediate final rule will become effective and no further activity will occur in relation to this proposal. If EPA receives adverse written comments, it will withdraw the immediate final rule before its effective date by publishing a notice of withdrawal in the **Federal Register**. EPA will then respond to public comments in a later final rule based on this proposal. EPA may not provide further opportunity for comment. Any parties interested in commenting on this action should do so at this time.

DATES: Written comments must be received on or before February 12, 1999.

ADDRESSES: Send written comments to Kris Shurr (8P–HW), EPA, 999 18th Street, Suite 500, Denver, Colorado 80202–2466, phone number: (303) 312–6139. Copies of the Utah program revision applications and the materials which EPA used in evaluating the revisions are available for inspection and copying at the following locations: EPA Region VIII Library, from Noon to 4:00 p.m., 999 18th Street, Suite 500, Denver, Colorado 80202–2466, contact: Environmental Information Service Center (EISC), phone number: (303) 312–6312; or Utah Department of Environmental Quality (UDEQ), from 8:00 a.m. to 5:00 p.m., 288 North 1460 West, Salt Lake City, Utah 84114–4880, contact: Susan Toronto, phone number: (801) 538–6776.

FOR FURTHER INFORMATION CONTACT: Kris Shurr, (8P–HW), EPA, 999 18th Street, Suite 500, Denver, Colorado 80202–2466, phone number: (303) 312–6139.

SUPPLEMENTARY INFORMATION: For additional information see the immediate final rule published in the Rules section of this **Federal Register**.

Kerrigan G. Clough,

Acting Regional Administrator, Region 8.

[FR Doc. 99–668 Filed 1–12–99; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Parts 3100, 3106, 3130, and 3160

[AA–610–08–4111–2410]

RIN 1004–AC54

Oil and Gas Leasing; Onshore Oil and Gas Operations

AGENCY: Bureau of Land Management.

ACTION: Correction: Proposed rule; reopening of comment period.

SUMMARY: The Bureau of Land Management (BLM) published in the **Federal Register** on December 3, 1998, (63 FR 66776), a notice to reopen the public comment period on the drainage proposed rule. This notice inadvertently requested comments be received on or before February 1, 1999. We are publishing this notice to amend the **DATES** section of the December 3, 1998, (63 FR 66776), notice to change the date when comments must be received to April 5, 1999.

DATES: Comments must be received on or before April 5, 1999.

ADDRESSES: If you wish to comment, you may submit your comments by any one of several methods. You may mail comments to the Bureau of Land Management, Administrative Record, 1849 ''C'' Street, NW, Room 401LS, Washington, DC 20240. You may also

comment via the Internet to WOComment@wo.blm.gov. Please submit comments as an ASCII file avoiding the use of special characters and any form of encryption. Please also include ''Attn: AC54'' 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 on (202) 452–5030.

FOR FURTHER INFORMATION CONTACT: Donnie Shaw, Fluid Minerals Group, Bureau of Land Management, Mail Stop 401LS, 1849 ''C'' Street, NW, Washington, DC 20240; telephone (202) 452–0340 (Commercial or FTS). Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8:00 a.m. and 8:00 p.m., Eastern Time, Monday through Friday.

Dated: January 6, 1999.

Sylvia V. Baca,

Acting Assistant Secretary, Land and Minerals Management.

[FR Doc. 99–704 Filed 1–12–99; 8:45 am]

BILLING CODE 4310–84–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Reopening of Comment Period on the 90-Day Finding for a Petition To List the Bonneville Cutthroat Trout as Threatened

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of reopening of comment period on 90-day finding.

SUMMARY: The Fish and Wildlife Service provides notice of the reopening of the comment period on the 90-day finding for a petition to list the Bonneville cutthroat trout (Oncorhynchus clarki utah) as a threatened species under the Endangered Species Act of 1973, as amended. The initial comment period, as identified in the **Federal Register** notice of the finding (63 FR 67640) published December 8, 1998, closed on January 7, 1999. To accommodate several requests for extensions, the Service is reopening the comment period for an additional 30 days.

DATES: To be considered in the 12-month finding for this petition, written comments and materials should be submitted to the Service by February 12, 1999.

ADDRESSES: Information, data, or comments concerning this petition should be submitted to the Field Supervisor, Ecological Services, Utah Field Office, U.S. Fish and Wildlife Service, 145 East 1300 South, Suite 404, Salt Lake City, Utah 84115. The petition, finding, support data, and comments are available for public inspection, by appointment, during normal business hours, at the above address.

FOR FURTHER INFORMATION CONTACT: Janet A. Mizzi, Utah Field Office, at the above address, or telephone 801/524–5001.

SUPPLEMENTARY INFORMATION:

Background

The Bonneville cutthroat trout is native to the Bonneville Basin in Utah, Idaho, Nevada, and Wyoming. Its habitat is widely distributed and variable and includes both river and lake ecosystems. The subspecies occurs in streams with coniferous and deciduous riparian trees at 3,500 meters (m) (11,483 feet (ft)) above mean sea level, to streams in sage-steppe grasslands with herbaceous riparian zones at 1000 m (3281 ft) above mean sea level, to lake environments.

On February 26, 1998, the Fish and Wildlife Service (Service) received a petition to list the Bonneville cutthroat trout as a threatened species pursuant to the Endangered Species Act (Act) of 1973, as amended (16 U.S.C. 1531 et seq.). On December 8, 1998, the Service published a 90-day notice on this petition, finding that it presented substantial information indicating that listing this species may be warranted, and initiating a status review of the species.

Public Comments Solicited

The Service is soliciting information primarily on (1) genetic variability and purity of the various subpopulations, (2) population status and trends, (3) management policies and conservation plans affecting Bonneville cutthroat trout, and (4) threats to the species, including those identified in the petition. The original comment period for this action expired January 7, 1999. With this notice, the comment period is reopened for an additional 30 days, until February 12, 1999. Comments, information and data should be submitted to the Service's Utah Field Office (see **ADDRESSES** above.)

Author

The author of this notice is Janet A. Mizzi, Utah Field Office (see **ADDRESSES** above), telephone 801/524–5001.

Authority

Authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: January 7, 1999.

Elliott Sutta,

Acting Regional Director.

[FR Doc. 99–720 Filed 1–12–99; 8:45 am]

BILLING CODE 4310–70–M

Notices

Federal Register

Vol. 64, No. 8

Wednesday, January 13, 1999

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

Economic Research Service

Notice of Intent To Seek Approval To Collect Information

AGENCY: Economic Research Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. No. 104–13) and Office of Management and Budget (OMB) regulations at 5 CFR 1320 (60 FR 44978, August 29, 1995), this notice announces the Economic Research Service's (ERS) intention to request approval for a new information collection, the Application for Agriculture Market Information Survey, 1999, to analyze the market for economic information on agricultural commodities. The data will be used to assess how customers of agricultural economic information use and value information from a variety of government and private information sources. From this assessment, the ERS hopes to determine the most effective future role for USDA and ERS in economic information markets.

DATES: Comments on this notice must be received by March 19, 1999, to be assured of consideration.

ADDITIONAL INFORMATION OR COMMENTS: Contact John Dunmore, Deputy Director for Program Management, Market and Trade Economics Division, Economic Research Service, U.S. Department of Agriculture, 1800 M Street NW, Room N5124, Washington, D.C. 20036–5831, 202–694–5200.

SUPPLEMENTARY INFORMATION:

Title: Application for Agriculture Market Information Survey, 1999.

Type of Request: Approval to collect information on the uses, types, and sources of economic information on agricultural markets.

Abstract: Title 7, Section 1622 of the United States Code authorizes the Secretary of Agriculture to collect and disseminate marketing information for the purpose of anticipating and meeting consumer requirements. Such requirements include economic and marketing information on a variety of agriculture markets including those for commodities, farm inputs, and financial services. There are signs, however, that consumer demands for such information may be changing. These signs include the changing structure of commodity markets, the declining importance of commodity programs, rapidly evolving technology for information delivery, and the globalization of U.S. agriculture. To better identify the changes in these information needs, the ERS developed the Agricultural Market Information Project. The goals of this project are to analyze the current market for agricultural economic information and to determine the most effective role that the USDA and ERS should play in such information markets. By providing the marketing and economic information that agricultural decision-makers need, the USDA and ERS hope to better ensure that the U.S. food and agriculture sector effectively adapts to changing market structures, domestic policy reforms, and international trade conditions. Phase I of the Agricultural Market Information Project, to understand the use of and need for economic information within USDA, is largely complete. The ERS is now ready to enter Phase II of the project, a study of the market for economic information for users outside USDA. The ERS proposes the design and distribution of a survey instrument to collect information from consumers of economic information on commodity markets. The ERS has contracted with a private research firm with extensive experience in survey design and implementation, Mathematica Policy Research Inc., to design and conduct the survey. The survey will ask respondents how they use economic information, the types of information that they use, specific sources of information (USDA as well as other government and non-government sources), and how they value such information. Surveys will be mailed to members of several producer associations. Nonrespondents may be followed up by telephone interviews. Any information linking survey responses to individuals will be kept confidential and will not be disclosed to anyone.

Estimates of burden: Public reporting burden for this data collection is estimated to average 20 minutes per response.

Respondents: A sample of members from agricultural producer associations.

Estimated number of respondents: 1,120.

Estimated Total Annual Burden on respondents: 373 hours.

Copies of the information to be collected can be obtained from John Dunmore, Deputy Director for Program Management, Market and Trade Economics Division, Economic Research Service, U.S. Department of Agriculture, 1800 M Street NW, Room N5124, Washington, D.C. 20036–5831, 202–694–5200.

Comments: Comments are invited on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; (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; (d) ways to minimize the burden of the collection of information on those who are to respond, such as through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to John Dunmore, Deputy Director for Program Management, Market and Trade Economics Division, Economic Research Service, U.S. Department of Agriculture, 1800 M Street NW, Room N5124, Washington, D.C. 20036–5831, 202–694–5204. All responses to this notice will be considered and included in the request for OMB approval. All comments will also become a matter of public record.

Dated: January 6, 1999.

Katherine Smith,

Director, Market and Trade Economics Division.

[FR Doc. 99–711 Filed 1–12–99; 8:45 am]

BILLING CODE 3410–18–P

DEPARTMENT OF COMMERCE

Submission for OMB Review: Comment Request

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act of 1995, Public Law 104–13.

Bureau: International Trade Administration.

Title: Information Services Order Form.

Agency Form Number: ITA–4096P.

OMB Number: 0625–0143.

Type of Request: Reinstatement.

Burden: 483 hours.

Number of Respondents: 2,675.

Avg. Hours per Response: 10 minutes.

Needs and Uses: The International Trade Administration's U.S. & Foreign Commercial Service Export Assistance Centers offer their clients DOC programs, market research, and services to enable the client to begin exporting or to expand existing exporting efforts. The Information Services Order Form is used by US&FCS trade specialists in the Export Assistance Center to collect information about clients in order to determine which programs or services would best help clients meet their export goals. This form is required for clients to order US&FCS programs and services. Certain programs are tailored for individual clients, e.g., the Agent Distributor Service, which identifies potential overseas agents or distributors for a particular U.S. manufacturer. The form is being revised because some of the product names have changed or have been discontinued.

Affected Public: Businesses or other for profit, not-for-profit institutions.

Frequency: On occasion.

Respondent's Obligation: Requried to obtain or retain a benefit, voluntary.

OMB Desk Officer: David Rostker, (202) 395–7340.

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

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

Dated: January 8, 1999.

Linda Engelmeier,

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

[FR Doc. 99–763 Filed 1–12–99; 8:45 am]

BILLING CODE 3510–FP–M

DEPARTMENT OF COMMERCE

Submission for OMB Review: Comment Request

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act of 1995, Public Law 104–13.

Bureau: International Trade Administration.

Title: Commercial News USA.

Agency Form Number: ITA–4063P.

OMB Number: 0625–0061.

Type of Request: Reinstatement.

Burden: 733 hours.

Number of Respondents: 2,200.

Avg. Hours Per Response: 20 minutes.

Needs and Uses: Commercial News USA (CNUSA), published twelve times a year by a private sector firm, is the Department of Commerce's export catalogue-magazine. The product information in CNUSA reaches more than 145,000 distributors, government officials, and potential buyers overseas through direct distribution from U.S. embassies and consulates. Firms use the form to request that their product information be published in CNUSA, a service for which they pay a minimum of $445.

This information collection item allows the U.S. Department of Commerce to promote U.S. products and services available for export as well as part of the USDOC's trade promotion activities. CNUSA is a unique export promotion service for U.S. manufacturers, service firms, and publishers of trade and technical literature; nothing similar is available to them through the private sector. The product promotions in CNUSA differ from paid advertisements in that they must meet program criteria. Because U.S. embassies and consulates handle distribution, the product information reaches a vast, screened readership not only through direct dissemination but also through counseling by commercial officers and through walk-in visits to commercial libraries where CNUSA is displayed. Further, American Chambers of Commerce, local business editors, and other trade entities that reprint information from CNUSA or display or disseminate the entire magazine provide a multiplier effect.

Affected Public: Business or other for-profit institutions.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain a benefit, voluntary.

OMB Desk Officer: David Rostker, (202) 395–7340.

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

Written comments and recommendations for the proposed information collection should be sent to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington D.C. 20503 within 30 days of the publication of this notice in the **Federal Register**.

Dated: January 8, 1999.

Linda Engelmeier,

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

[FR Doc. 99–764 Filed 1–12–99; 8:45 am]

BILLING CODE: 3510–FP–P

DEPARTMENT OF COMMERCE

Submission for OMB Review: Comment Request

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act of 1995, Public Law 104–13.

Bureau: International Trade Administration.

Title: User Satisfaction Surveys.

OMB Number: 0625–0217.

Form Number: ITA–4107P, ITA–4110P, etc.

Type of Request: Reinstatement.

Burden: 3,560 hours.

Number of Respondents: 22,188.

Avg. Hours Per Response: 5–15 minutes.

Needs and Uses: The International Trade Administration (ITA) provides a multitude of export promotion programs to help U.S. businesses. These programs include information products, services, and trade events. To accomplish its mission effectively, ITA needs ongoing feedback on its programs. This information collection item allows ITA to solicit clients' opinions about the use of ITA products, services, and trade events. The information is used for program improvement, strategic planning, allocation of resources, and performance measures.

The surveys are part of ITA's effort to implement objectives of the National

Performance Review (NPR) and Government Performance and Results Act (GPRA). Responses to the surveys will meet the needs of ITA performance measures based on NPR and GPRA guidelines. These performance measures will serve as a basis for justifying and allocating human and financial resources.

Survey responses will acquaint ITA managers with firms' perceptions and assessments of export-assistance products and services. Also, the survey will enable ITA to track the performance of overseas posts. This information is critical for improving the programs. Survey responses are used to assess client satisfaction, assess priorities, and identify areas where service levels and benefits differ from client expectations. Clients benefit because the information is used to improve services provided to the public. Without this information, ITA is unable to systematically determine client perceptions about the quality and benefit of its export-promotion programs.

Affected Public: ITA clients that purchased products or services.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

OMB Desk Officer: David Rostker, (202) 395–7340.

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

Written comments and recommendations for the proposed information collection should be sent to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20503.

Dated: January 8, 1999.

Linda Engelmeier,

Department Forms Clearance Officer, Office of Chief Information Officer.

[FR Doc. 99–765 Filed 1–12–99; 8:45 am]

BILLING CODE 3510–FP–P

DEPARTMENT OF COMMERCE

Materials Technical Advisory Committee; Notice of Open Meeting

The Materials Technical Advisory Committee (MTAC) will meet on January 27, 1999, 10:30 a.m., in the Herbert C. Hoover Building, Room 3884, 14th Street between Constitution & Pennsylvania Avenues, NW, Washington DC. The Committee advises the Office of the Assistant Secretary for Export Administration with respect to technical questions that affect the level of export controls applicable to advanced materials and related technology.

Agenda

1. Opening remarks.
2. Election of a Co-Chair.
3. Discussion of the Biological Weapons Convention implementation protocol.
4. Presentation of papers or comments by the public.

The meeting will be open to the public and a limited number of seats will be available. Reservations are not required. To the extent that time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting. However, to facilitate distribution of public presentation materials to Committee members, the Committee suggests that presenters forward the public presentation materials to the following address: Ms. Lee Ann Carpenter, Advisory Committees MS: 3886C 15th St. & Pennsylvania Ave., NW, U.S. Department of Commerce, Washington, DC 20230.

For more information contact Lee Ann Carpenter on (202) 482–2583.

Dated: January 7, 1999.

Lee Ann Carpenter,

Committee Liaison Officer.

[FR Doc. 99–770 Filed 1–12–99; 8:45 am]

BILLING CODE 3510–33–M

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 1–99]

Foreign-Trade Zone 72—Indianapolis, IN; Application for Subzone; Tetra Pak Parts Americas, Inc. (Distribution of Parts for Liquid Food Processing and Packaging Equipment), Greenwood, IN

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Indianapolis Airport Authority, grantee of FTZ 72, requesting special-purpose subzone status for the liquid food processing and packaging equipment parts distribution facility of Tetra Pak Parts Americas, Inc. (Tetra Pak), located in Greenwood, Indiana, some 10 miles south of Indianapolis. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on January 6, 1999.

The Tetra Pak facility (10,784 sq. ft. on .3 acres) is located at 200 South Park Blvd., Greenwood, Indiana. The facility (14 employees) is used for storage, inspection, packaging and distribution of a wide variety of parts and components for liquid food processing and packaging equipment. The products are distributed throughout North, Central and South America. About 80 percent of the parts are sourced from abroad and over 65 percent are exported. No authority is being sought for activity conducted under FTZ procedures that would result in a change in tariff classification.

Zone procedures would exempt Tetra Pak from Customs duty payments on foreign parts that are reexported. On its domestic sales, the company would be able to defer duty payments until merchandise is shipped from the facility. The application indicates that the savings from zone procedures would help improve the facility's international competitiveness.

In accordance with the Board's regulations, a member of the FTZ staff has been appointed examiner to investigate the application and report to the Board.

Public comment is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is March 15, 1999. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period March 29, 1999.

A copy of the application and accompanying exhibits will be available for public inspection at each of the following locations:

U.S. Department of Commerce Export Assistance Center, 11405 N. Pennsylvania St., Ste 106, Carmel, Indiana 46032

Office of the Executive Secretary, Foreign-Trade Zones Board, Room 3716, U.S. Department of Commerce, 14th & Pennsylvania Avenue, N.W., Washington, DC 20230.

Dated: January 6, 1999.

Dennis Puccinelli,

Acting Executive Secretary.

[FR Doc. 99–695 Filed 1–12–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1012]

Expansion of Foreign-Trade Zone 92 Harrison, Jackson and Hancock Counties, MS

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, the Greater Gulfport Biloxi Foreign Trade Zone, Inc., grantee of Foreign-Trade Zone 92, submitted an application to the Board for authority to expand FTZ 92 (currently located at sites in Harrison County) to include nine new sites in Jackson and Hancock Counties, Mississippi, within the Pascagoula and Gulfport Customs ports of entry (FTZ Docket 1–98; filed 1/6/98);

Whereas, notice inviting public comment was given in **Federal Register** (63 FR 2660, 1/16/98) and the application has been processed pursuant to the FTZ Act and the Board's regulations; 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 the proposal is in the public interest;

Now, therefore, the Board hereby orders:

The application to expand FTZ 92 is approved, subject to the Act and the Board's regulations, including Section 400.28, and subject to the Board's standard 2,000-acre activation limit.

Signed at Washington, DC, this 5th day of January 1999.

Robert S. LaRussa,

Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

Attest:

Dennis Puccinelli,

Acting Executive Secretary.

[FR Doc. 99–696 Filed 1–12–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–827]

Certain Cased Pencils From the People's Republic of China; Final Results of Antidumping Duty Administrative Review

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

ACTION: Notice of final results of antidumping duty administrative review.

SUMMARY: On September 11, 1998, the Department of Commerce (the Department) published the preliminary results and partial rescission of administrative review of the antidumping duty order on certain cased pencils from the People's Republic of China (59 FR 66909 (December 28, 1994)), covering the period December 1, 1996, through November 30, 1997 (63 FR 48697). We gave interested parties an opportunity to comment on our preliminary results. We received one comment from the petitioners, the Pencil Section of the Writing Instrument Manufacturers Association and its members (domestic producers of pencils). We received no comments from respondents or other interested parties. Based on our analysis of the comment received, there are no changes to these final results of review from the preliminary results of review, where we determined the existence of a country-wide dumping margin of 53.65 percent for this period of review (POR).

EFFECTIVE DATE: January 13, 1999.

FOR FURTHER INFORMATION CONTACT: Jack K. Dulberger or Wendy Frankel, Antidumping/Countervailing Duty Enforcement Group II, Office Four, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW Washington, DC 20230, telephone (202) 482–5505 and 482–5849, respectively.

SUPPLEMENTARY INFORMATION:

The Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations set forth at 19 CFR part 351, 62 FR 27296 (May 19, 1997).

Period of Review

The POR is December 1, 1996 through November 30, 1997.

Scope of the Review

The products covered by this review are certain cased pencils of any shape or dimension which are writing and/or drawing instruments that feature cores of graphite or other materials encased in wood and/or man-made materials, whether or not decorated and whether or not tipped (*e.g.*, with erasers, etc.) in any fashion, and either sharpened or unsharpened. The pencils subject to this review are classified under subheading 9609.10.00 of the Harmonized Tariff Schedule of the United States (HTSUS). Specifically excluded from the scope of this order are mechanical pencils, cosmetic pencils, pens, non-case crayons (wax), pastels, charcoals, and chalks. Although the HTSUS subheading is provided for convenience and customs purposes, our written description of the scope of this review is dispositive.

Background

The antidumping duty order on pencils from the People's Republic of China (PRC) was published on December 28, 1994 (59 FR 66909). On September 11, 1998, the Department published in the **Federal Register** the preliminary results of its review of this order for the POR December 1, 1996 through November 30, 1997, (*see* 63 FR 48697) (Preliminary Results). In the Preliminary Results, we rescinded the review as to the companies which reported that they had no shipments of subject merchandise during the POR (*i.e.*, China First Pencil Company, Ltd. (China First) and Guangdong Provincial Stationery & Sporting Goods Import and Export Corporation (Guangdong)).

With respect to these companies, we confirmed, by conducting a data query of the U.S. Customs Service (Customs) database, (*see* Preliminary Results at 48698), that the only subject merchandise exported by the exporters China First and Guangdong, respectively, to the United States during the POR was merchandise excluded from the order (*i.e.*, merchandise manufactured by the factories which received zero margins in the less-than-fair-value (LTFV) investigation).[1]

[1] China First exports of merchandise produced by China First itself were originally excluded from this order. However, in litigation brought to challenge the *Notice of Final Determination of Sales at Less Than Fair Value: Certain Cased Pencils from the People's Republic of China*, 59 FR 55625 (November 8, 1994), the Department issued a remand determination which was subsequently affirmed by

Continued

Therefore, these final results apply only to the PRC-wide entity, which includes the remaining respondents in this review that did not reply to our questionnaire and demonstrate that they are entitled to a rate separate from the PRC entity. In response to an opportunity to comment on our preliminary results, the petitioners submitted one comment on October 13, 1998. We received no other comments from respondents or other interested parties.

Analysis of Comment Received

Comment

Petitioners assert that the Department's proposal to use the recalculated petition rate as the facts available (FA) is inappropriate. Petitioners argue that agency practice and the applicable statutory provisions require that the FA rate be both reliable and relevant. According to petitioners, the recalculated petition rate applied by the Department in the preliminary results fails to meet the reliability requirement because it is based on legal error.

According to the petitioners, in calculating the revised petition rate, the Department erred in failing to exclude data regarding certain U.S. wood prices which were untimely submitted, with the result that the recalculation of the ''petition rate'' was based on a fundamental procedural flaw, thus rendering the exporter-specific rates and the ''PRC rate,'' which were premised on such recalculation, unreliable.

In the litigation arising from the LTFV investigation, the petitioners have alleged this error, among others, in an appeal currently pending in the U.S. Court of Appeals for the Federal Circuit. The petitioners further contend that if they obtain a favorable decision in this appeal, the recalculated ''PRC rate'' would be found by the court to be in error and thus render the Department's use of such rate illegal, in accordance with the ruling of *D&L Supply Co.* v. *United States,* 113 F.3d 1220 (Fed. Cir. 1997) (*D&L Supply*), which states ''that it is improper for Commerce to continue to use, as the BIA [best information available] rate, an antidumping duty rate that has been vacated as erroneous.''

Department's Position

We disagree with petitioners that the newly recalculated petition rate is an inappropriate basis for FA in this case. Where the Department must rely on FA because a respondent failed to cooperate to the best of its ability in responding to a request for information, section 776(b) of the Act authorizes the Department to make an inference adverse to the interests of that respondent in choosing FA. Section 776(b) of the Act also authorizes the Department to use as adverse FA information derived from the petition, the final determination in the investigation, a previous administrative review, or other information placed on the record. Because information from prior proceedings constitutes secondary information, section 776(c) of the Act provides that the Department shall, to the extent practicable, corroborate that secondary information from independent sources reasonably at its disposal. *See also,* Statement of Administrative Action (SAA) (H. Doc. 316, 103d Cong., 2nd Sess. 870), providing that ''corroborate'' means that the Department will satisfy itself that the secondary information to be used has probative value. The SAA, at page 870, clarifies that the petition is ''secondary information.''

The Department, as indicated in the preliminary results of review, has decided to use the petition in the LTFV investigation as the basis for adverse FA. The Department ''recalculated'' the petition rate for the first time during the LTFV investigation. Later, in litigation arising out of that investigation, we requested that the CIT remand to us two issues for further consideration: (1) Basswood prices; and (2) valuation of slats and logs. In performing this remand, the Department revised certain calculations; these revisions led to a change in the recalculated petition rate (from 44.66 percent to 53.65 percent). This second recalculation of the petition rate was then affirmed by the CIT in *Writing Instrument Manufacturers.* We have therefore used this second recalculation petition rate as the basis of FA, rather than the original petition rate or the petition rate as adjusted by the Department in making its final LTFV determination. This decision is in accordance with the ruling by the U.S. Court of Appeals for the Federal Circuit in *D&L Supply,* which states that it is inappropriate to use as FA a rate determined to be inaccurate. *See D&L Supply,* 113 F.3d at 1222. We have ignored rates found to be inaccurate and have used a rate that has been affirmed by the CIT. Thus, contrary to petitioners' argument, our selection of FA is appropriate.

We have determined that there is no evidence on the record of this case which would cause us to question the reliability of the newly recalculated petition rate. Petitioners' claims against this rate, which are based on evidence which is contained in the administrative record of the LTFV investigation, are not properly before the Department in this segment of the proceeding.

Final Results of the Review

Based on our analysis of this comment, we have determined that no changes to the preliminary results are warranted for purposes of these final results, and a margin of 53.65 percent exists for the PRC entity for the period December 1, 1996 through November 30, 1997. This rate applies to all exports of pencils from the PRC other than those produced and exported by China First (because China First's exports produced by China First were excluded from the order), those produced by Three Star and exported by Guangdong (because Three Star's exports produced by Guangdong were also excluded from the order), and those exported by Shanghai Foreign Trade Corporation (SFTC), an exporter which was previously determined to be entitled to a separate rate. The weighted-average dumping margin for the period December 1, 1996, through November 30, 1997 is as follows:

Manufacturer/producer/exporter	Weighted average margin percent
PRC Rate	53.65

Customs shall assess antidumping duties on all appropriate entries. The Department will issue appraisement instructions concerning the respondent directly to Customs. Furthermore, the following deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of these final results of administrative review, as provided for by section 751(a)(1) of the Act: (1) The cash deposit rate for all Chinese exporters (including China First (with respect to merchandise produced by anyone other than China First) and Guangdong (with respect to merchandise produced by anyone other than Three Star)), except for SFTC, will

the U.S. Court of International Trade (CIT). *See Writing Instrument Manufacturers Ass'n Pencil Section, et al.,* v. *United States,* 984 F.Supp. 629 (CIT 1997) (*Writing Instrument Manufacturers*). In this remand determination, the Department determined, among other things, that merchandise exported and produced by China First was, in fact, sold at less than fair value. Therefore, as we stated in the Preliminary Results, (*see* Preliminary Results at 48698, footnote 1), for entries of merchandise exported and produced by China First and entered on or after November 23, 1997, there has been suspension of liquidation pending final and conclusive disposition of the remand determination. *See also* the Department's *Notice of Court Decision: Certain Cased Pencils from the People's Republic of China,* 62 FR 65243 (December 11, 1997).

be the rate indicated above; (2) for merchandise exported by SFTC, the cash deposit rate will continue to be the rate published in the final LTFV determination; and (3) for non-PRC exporters of subject merchandise from the PRC, the cash deposit rate will be the rate of their suppliers. These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

Upon completion of this review, we will direct Customs to assess an ad valorem rate of 53.65 percent against the entered value of each entry of subject merchandise during the POR for all firms except those firms excluded from the order or entitled to a separate rate.

Notification to Interested Parties

This notice serves as a final reminder to importers of their responsibility under section 19 CFR 351.402(f) of the Department's regulations to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this POR. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d). Timely written notification of the return, destruction, or conversion to judicial protective order of APO materials is hereby requested. Failure to comply with the regulations and the terms of the APO is a sanctionable violation.

This administrative review and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. section 1675(a)(1)) and 19 CFR 351.221.

Dated: January 5, 1999.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 99–694 Filed 1–12–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–122–822, A–122–823]

Certain Corrosion-Resistant Carbon Steel Flat Products and Certain Cut-to-Length Carbon Steel Plate From Canada: Final Results of Antidumping Duty Administrative Reviews and Determination To Revoke in Part

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

ACTION: Notice of final results of the antidumping duty administrative review of certain corrosion-resistant carbon steel flat products and certain cut-to-length carbon steel plate from Canada and determination to revoke in part.

SUMMARY: On July 10, 1998, the Department of Commerce (''the Department'') published the preliminary results of its administrative reviews of the antidumping duty orders on certain corrosion-resistant carbon steel flat products and certain cut-to-length carbon steel plate from Canada. These reviews cover six manufacturers/exporters of the subject merchandise to the United States (three manufacturers/exporters of corrosion-resistant carbon steel and four manufacturers/exporters of cut-to-length carbon steel plate), and the period August 1, 1996, through July 31, 1997. We gave interested parties an opportunity to comment on our preliminary results. As a result of these comments, we have changed the results from those presented in the preliminary results of review.

EFFECTIVE DATE: January 13, 1999.

FOR FURTHER INFORMATION CONTACT: Rebecca Trainor (Dofasco, Inc. and Sorevco Inc. (collectively, Dofasco)); Eric Scheier (Continuous Colour Coat (CCC)); Lesley Stagliano (Algoma Inc. (Algoma)); Gideon Katz, (Gerdau MRM Steel (MRM)), A.J. Forsyth and Co., Ltd. (Forsyth) and Stelco, Inc. (Stelco) corrosion resistant); Laurel LaCivita (Stelco plate); or Maureen Flannery, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–4733.

SUPPLEMENTARY INFORMATION:

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), are to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to 19 CFR part 351 (1998).

Background

On July 10, 1998, we published in the **Federal Register** (63 FR 37320) the preliminary results of the administrative reviews of the antidumping duty orders on certain corrosion-resistant carbon steel flat products and certain cut-to-length carbon steel plate from Canada (Preliminary Results). We gave interested parties an opportunity to comment on our preliminary results. We received written comments from Algoma, CCC, Dofasco, Stelco, and Forsyth, and from the petitioners (Bethlehem Steel Corporation, U.S. Steel Group (a unit of USX Corporation), Inland Steel Industries, Inc., Gulf States Steel Inc. of Alabama, Sharon Steel Corporation, Geneva Steel, and Lukens Steel Company). We have now completed these administrative reviews in accordance with section 751(a) of the Act.

Scope of Reviews

The products covered by these administrative reviews constitute two separate ''classes or kinds'' of merchandise: (1) Certain corrosion-resistant carbon steel flat products, and (2) certain cut-to-length carbon steel plate.

The first class or kind, certain corrosion-resistant steel, includes flat-rolled carbon steel products, of rectangular shape, either clad, plated, or coated with corrosion-resistant metals such as zinc, aluminum, or zinc-, aluminum-, nickel- or iron-based alloys, whether or not corrugated or painted, varnished or coated with plastics or other nonmetallic substances in addition to the metallic coating, in coils (whether or not in successively superimposed layers) and of a width of 0.5 inch or greater, or in straight lengths which, if of a thickness less than 4.75 millimeters, are of a width of 0.5 inch or greater and which measures at least 10 times the thickness or if of a thickness of 4.75 millimeters or more are of a width which exceeds 150 millimeters and measures at least twice the thickness, as currently classifiable in the HTS under item numbers 7210.30.0030, 7210.30.0060, 7210.41.0000, 7210.49.0030, 7210.49.0090, 7210.61.0000, 7210.69.0000, 7210.70.6030, 7210.70.6060, 7210.70.6090, 7210.90.1000, 7210.90.6000, 7210.90.9000, 7212.20.0000, 7212.30.1030, 7212.30.1090, 7212.30.3000, 7212.30.5000,

7212.40.1000, 7212.40.5000, 7212.50.0000, 7212.60.0000, 7215.90.1000, 7215.90.3000, 7215.90.5000, 7217.20.1500, 7217.30.1530, 7217.30.1560, 7217.90.1000, 7217.90.5030, 7217.90.5060, 7217.90.5090. Included in this review are corrosion-resistant flat-rolled products of non-rectangular cross-section where such cross-section is achieved subsequent to the rolling process (i.e., products which have been ''worked after rolling'')—for example, products which have been beveled or rounded at the edges. Excluded from this review are flat-rolled steel products either plated or coated with tin, lead, chromium, chromium oxides, both tin and lead (''terne plate''), or both chromium and chromium oxides (''tin-free steel''), whether or not painted, varnished or coated with plastics or other nonmetallic substances in addition to the metallic coating. Also excluded from this review are clad products in straight lengths of 0.1875 inch or more in composite thickness and of a width which exceeds 150 millimeters and measures at least twice the thickness. Also excluded from this review are certain clad stainless flat-rolled products, which are three-layered corrosion-resistant carbon steel flat-rolled products less than 4.75 millimeters in composite thickness that consist of a carbon steel flat-rolled product clad on both sides with stainless steel in a 20%–60%–20% ratio.

The second class or kind, certain cut-to-length plate, includes hot-rolled carbon steel universal mill plates (i.e., flat-rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 millimeters but not exceeding 1,250 millimeters and of a thickness of not less than 4 millimeters, not in coils and without patterns in relief), of rectangular shape, neither clad, plated nor coated with metal, whether or not painted, varnished, or coated with plastics or other nonmetallic substances; and certain hot-rolled carbon steel flat-rolled products in straight lengths, of rectangular shape, hot rolled, neither clad, plated, nor coated with metal, whether or not painted, varnished, or coated with plastics or other nonmetallic substances, 4.75 millimeters or more in thickness and of a width which exceeds 150 millimeters and measures at least twice the thickness, as currently classifiable in the HTS under item numbers 7208.40.3030, 7208.40.3060, 7208.51.0030, 7208.51.0045, 7208.51.0060, 7208.52.0000, 7208.53.0000, 7208.90.0000, 7210.70.3000, 7210.90.9000, 7211.13.0000, 7211.14.0030, 7211.14.0045, 7211.90.0000, 7212.40.1000, 7212.40.5000, 7212.50.0000. Included in this review are flat-rolled products of non-rectangular cross-section where such cross-section is achieved subsequent to the rolling process (i.e., products which have been ''worked after rolling'')—for example, products which have been beveled or rounded at the edges. Excluded from this review is grade X–70 plate. Also excluded is cut-to-length carbon steel plate meeting the following criteria: (1) 100% dry steel plates, virgin steel, no scrap content (free of Cobalt-60 and other radioactive nuclides); (2) .290 inches maximum thickness, plus 0.0, minus .030 inches; (3) 48.00 inch wide, plus .05, minus 0.0 inches; (4) 10 foot lengths, plus 0.5, minus 0.0 inches; (5) flatness, plus/minus 0.5 inch over 10 feet; (6) AISI 1006; (7) tension leveled; (8) pickled and oiled; and (9) carbon content, 0.3 to 0.8 (maximum).

With respect to both classes or kinds, the HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive of the scope of these reviews.

Fair Value Comparisons

To determine whether sales of subject merchandise from Canada to the United States were made at less than fair value, we compared the Export Price (EP) to the Normal Value (NV), as described in the ''Export Price'' and ''Normal Value'' sections of the preliminary results of review notice. On January 8, 1998, the Court of Appeals for the Federal Circuit issued a decision in *CEMEX* v. *United States*, 133 F.3d 897 (Fed Cir. 1998). In that case, based on the pre-URAA version of the Act, the Court discussed the appropriateness of using constructed value (CV) as the basis for foreign market value when the Department finds home market sales to be outside the ''ordinary course of trade.'' This issue was not raised by any party in this proceeding. However, the URAA amended the definition of sales outside the ''ordinary course of trade'' to include sales below cost. See section 771(15) of the Act. Consequently, the Department has reconsidered its practice in accordance with this court decision and has determined that it would be inappropriate to resort directly to CV, in lieu of foreign market sales, as the basis for NV if the Department finds foreign market sales of merchandise identical or most similar to that sold in the United States to be outside the ''ordinary course of trade.'' We will match a given U.S. sale to foreign market sales of the next most similar model when all sales of the most comparable model are below cost. The Department will use CV as the basis for NV only when there are no above-cost sales that are otherwise suitable for comparison. Therefore, in this proceeding, when making comparisons in accordance with section 771(16) of the Act, we considered all products sold in the home market as described in the ''Scope of Review'' section of this notice, above, that were in the ordinary course of trade for purposes of determining appropriate product comparisons to U.S. sales. Where there were no sales of identical merchandise in the home market made in the ordinary course of trade to compare to U.S. sales, we compared U.S. sales to sales of the most similar foreign like product made in the ordinary course of trade, based on the characteristics listed in Sections B and C of our antidumping questionnaire. We have implemented the Court's decision in this case, to the extent that the data on the record permitted.

Determination Not To Revoke in Part: Stelco Cut-to-Length Carbon Steel Plate and Corrosion-Resistant Carbon Steel Flat Products, and Determination To Revoke in Part: Algoma Cut-to-Length Carbon Steel Plate

On August 28, 1997, Algoma submitted a request, in accordance with 19 CFR 351.222(b), that the Department revoke the order covering cut-to-length carbon steel plate from Canada with respect to its sales of this merchandise. On August 29, 1997, Stelco submitted a request that the Department revoke the orders covering cut-to-length carbon steel plate and corrosion-resistant steel from Canada with respect to its sales of this merchandise. In accordance with 19 CFR 351.222(b)(2)(iii), these requests were accompanied by certifications from Algoma and Stelco that they had not sold the subject merchandise at less than NV for a three-year period, including this review period, and would not do so in the future. Algoma and Stelco also agreed to their immediate reinstatement in the relevant antidumping order, as long as any firm is subject to the order, if the Department concludes under 19 CFR 351.216 that, subsequent to revocation, they sold the subject merchandise at less than NV.

The Department conducted verifications of Algoma's and Stelco's responses for this period of review. In the two prior reviews of this order we determined that Algoma and Stelco sold cut-to-length carbon steel plate from Canada at not less than NV or at *de minimis* margins. We determine that

both Algoma and Stelco sold cut-to-length carbon steel plate at not less than NV during the instant review period.

On August 10, 1998, petitioners submitted argumentation opposing Algoma's and Stelco's revocation requests. On December 4, 1998, we placed on the record of this review the results of research that we conducted to help us determine the likelihood of resumed dumping, and opened the record for further comment on this issue. See memorandum to the file, dated December 4, 1998.

In determining whether to revoke an antidumping order in part, we must conclude pursuant to § 351.222(b)(2), that: (1) The company has sold subject merchandise at not less than normal value to the United States in commercial quantities for three consecutive reviews; (2) it is not likely that the companies eligible for revocation will in the future sell the subject merchandise at less than NV; and (3) the company agrees to its immediate reinstatement in the order if the Department concludes that the company, subsequent to the revocation, sold the subject merchandise at less than NV.

In the present case, the Department has found that Stelco has had zero or *de minimis* dumping margins for three consecutive reviews. However, in determining whether the three years of no dumping are a sufficient basis to make a revocation determination, the Department must be able to determine that the company has continued to participate meaningfully in the U.S. market during each of the three years at issue. *See Pure Magnesium from Canada*, 63 FR 26147 (May 12, 1998). This practice has been codified by § 351.222(d)(1) of the Department's regulations, which state that, ''before revoking an order or terminating a suspended investigation, the Secretary must be satisfied that, *during each of the three (or five) years*, there were exports to the United States *in commercial quantities* of the subject merchandise to which a revocation or termination will apply.'' 19 CFR 351.222(d)(1) (emphasis added). For purposes of revocation, the Department must be able to determine that past margins are reflective of a company's normal commercial activity. Sales during the POR which, in the aggregate, are an abnormally small quantity do not provide a reasonable basis for determining that the discipline of the order is no longer necessary to offset dumping.

Based on the current record, we find that Stelco did not sell merchandise in the United States in commercial quantities during the second administrative review (one of the three consecutive reviews cited by Stelco to support its request for revocation). During the POR covered by that review (August 1994 though July 1995), Stelco made only one sale in the United States. Moreover, this sale was only for 36 tons of subject merchandise. By contrast, during the period covered by the antidumping investigation, which was only six months long, Stelco made several thousand sales totaling approximately 30,000 tons. In other words, Stelco's sales for the *entire year* covered by the second review period were only 0.12% of its sales volume during the *six-months* covered by the investigation. Similarly, during the current POR, Stelco sold approximately 2000 tons of subject merchandise in the United States. While this amount is small in comparison to the amount sold prior to issuance of the order, it is over 50 times greater than the amount sold during the period covered by the second administrative review. Consequently, although Stelco received a *de minimis* margin during the second administrative review, this margin was not based on commercial quantities within the meaning of the revocation regulation. The number of sales and total sales volume is so small, both in absolute terms, and in comparison with the period of investigation and other review periods, that it does not provide any meaningful information on Stelco's normal commercial experience. Therefore, we find that Stelco does not qualify for revocation from the order on steel plate under § 351.222(b)(1)(i) and (d)(1).

We find that Algoma has met all of the requirements for revocation under § 351.222(b)(1) of the Department's regulations. As we explained in *Dynamic Random Access Memory Semiconductors of One Megabyte or Above From the Republic of Korea, Notice of Final Results of Antidumping Duty Administrative Review and Determination Not To Revoke Order In Part*, 62 FR 39809, 39810 (July 24, 1997) (*DRAMS from Korea*), in evaluating the issue of likelihood, the Department has considered three years of sales in the United States with no dumping margins, plus an agreement to reinstatement in the order, to be indicative of expected future behavior. Absent other evidence, the Department considers such facts to be determinative of the likelihood issue.

Algoma has sold merchandise in the United States at not less than NV for three consecutive reviews. Moreover, during each of these periods, Algoma's aggregate sales were made in commercial quantities. Algoma has also agreed to its immediate reinstatement in the order if we conclude, subsequent to the revocation, that Algoma has sold the subject merchandise at less than NV. Finally, no party has argued that Algoma is not eligible for revocation based on likelihood under § 351.222(b)(2)(ii), and we find that there is not sufficient support for such a conclusion. Therefore, based on its consecutive years of zero or *de minimis* margins, and reinstatement agreement, and in the absence of evidence to the contrary, we conclude that it is not likely that Algoma will sell subject merchandise in the United States at less than fair value.

Regarding Stelco's request for revocation with respect to corrosion-resistant steel, we note that in the last two administrative reviews we determined that Stelco sold corrosion-resistant steel at less than NV. *See Certain Corrosion-Resistant Carbon Steel Flat Products and Certain Cut-to-Length Carbon Steel Plate From Canada: Final Results of Antidumping Duty Administrative Reviews*, 62 FR 12725 (March 16, 1998) and *Certain Corrosion-Resistant Carbon Steel Flat Products and Certain Cut-to-Length Carbon Steel Plate From Canada: Final Results of Antidumping Duty Administrative Reviews*, 62 FR 18448 (April 15, 1997)(*1994/95 Canadian Steel*). Although the final results of these reviews are subject to litigation, that litigation is not yet complete. Additionally, as discussed below, we have determined that Stelco sold corrosion-resistant steel at less than NV during the period covered by this review. Consequently, we determine that because Stelco does not have three consecutive years of zero or *de minimis* margins on corrosion-resistant steel, Stelco is not eligible for revocation of the order on corrosion-resistant steel under 19 CFR 351.222(b).

Facts Available

As we explained in the preliminary results, we determine that the use of facts available is appropriate for Forsyth in accordance with section 776(a) of the Act, because it failed to report all of its home market sales made during the POR.

Where necessary information is missing from the record, the Department may apply facts available under section 776 of the Act. Further, where that information is missing because a respondent has failed to cooperate to the best of its ability, section 776(b) of the Act authorizes the Department to use facts available that are adverse to the interests of that respondent, which may include information derived from the petition, the final determination, a

previous administrative review, or other information placed on the record. Forsyth did not respond to our repeated requests that it report all of its home market sales; rather, it presented arguments as to why it could omit many of those sales. As we explained in the preliminary determination, we disagree with these arguments. Therefore, we conclude that Forsyth has failed to cooperate to the best of its ability.

As adverse facts available for Forsyth, we are using the highest dumping margin from any segment of this proceeding, 68.70 percent. This is the rate used as facts available in the LTFV final determination, and is found in the petition. *See Memorandum to the File ''Preliminary Results of Cut-to-Length Carbon Steel Plate from Canada; Corroboration of Antidumping Duty Margin Used as Facts Available for A.J. Forsyth''* July 2, 1998 (Corroboration Memo).

Section 776(c) provides that the Department shall, to the extent practicable, corroborate ''secondary information'' by reviewing independent sources reasonably at its disposal. The Statement of Administrative Action (SAA) accompanying the URAA at 870, clarifies that ''secondary information'' includes information from the petition in the LTFV investigation, the final determination, or information from a previous section 751 review of the subject merchandise. The SAA also provides that ''corroborate'' means simply that the Department will satisfy itself that the secondary information to be used has probative value. *Id.*

In accordance with this requirement, we corroborated the LTFV margin to the extent practicable. We examined the basis of the rates contained in the petition. Petitioners based both U.S. price and normal value on actual prices from price quotations to U.S. customers and price lists for plate sold by respondents. *See Petition Requesting the Imposition of Antidumping Duties on Imports of Cut-to-Length Carbon Steel Plate from Canada*, June 30, 1992 and July 14, 1992 (amended petition). The price lists and price quotes that support the petition margin are independent sources. Furthermore, the Department did not receive any information or comment from the respondent or other interested parties in this review concerning the U.S. prices and normal values contained in the petition, and is aware of no other independent sources of information that would enable us to further corroborate the margin calculated in the petition. We note that the SAA, at 870, specifically states that where ''corroboration may not be practicable in a given circumstance,'' the Department may nevertheless apply an adverse inference. Based on these reasons, the Department considers the LTFV rate used as adverse facts available to be corroborated.

Changes From the Preliminary Results

The Department is implementing a change in this review in the calculation of U.S. credit expense for Algoma, CCC, MRM, and Dofasco, to be consistent with the Department's current practice, as outlined in *Import Administration Bulletin 98.2: Imputed Credit Expenses And Interest Rate* (February 23, 1998) (Policy Bulletin 98.2).

It is the Department's practice to calculate the U.S. credit expense using a short-term interest rate tied to the currency in which the sales are denominated. This interest rate should be based on the respondent's weighted-average short-term borrowing experience in the currency of the transaction. In cases, such as these, where Algoma, CCC, MRM and Dofasco have no short-term borrowings in the currency of the transaction, we will use publicly available information to establish a short-term interest rate applicable to the currency of the transaction. Since we are addressing the U.S. dollar transactions for these companies, for these final results we have used the average short-term lending rates calculated by the Federal Reserve to impute credit expenses. Specifically, we have used the Federal Reserve's weighted-average data for commercial and industrial loans maturing between one month and one year from the time the loan is made. *See* Final Analysis Memoranda for Algoma, CCC, MRM, and Dofasco, on file in room B–099 of the Commerce Department.

Interested Party Comments

Algoma

Comment 1: Credit Expenses

Petitioners allege that the errors found in the reported credit expenses at verification indicate that the information cannot be verified. Petitioners also contend that Algoma did not report credit expenses to the best of its ability and that, therefore, the Department should apply adverse facts available. Petitioners argue that the Department cannot rely on Algoma's data to conclude that the credit expense errors were isolated because, rather than the Department verifying this assertion itself, the Department relied on Algoma to independently verify that there were no other errors in its reporting of payment dates. Petitioners argue that, unlike in *Melamine Institutional Dinnerware from Indonesia: Final Determination of Sales at Less Than Fair Value*, 62 FR 1719, 1723 (January 13, 1997), where the Department corrected errors found at verification after verifying that the errors were isolated, the Department did not verify that the errors in Algoma's reporting of credit expenses were isolated.

Petitioners contend that the errors discovered by the Department during verification were significant because Algoma reported credit expenses where it actually received advance payments. Thus, petitioners argue, Algoma failed verification, and the Department should apply facts available, as it did in *Stainless Steel Bars from Spain; Final Results of Admin. Review*, 59 FR 66931, 66935 (December 28, 1994), *Circular Welded Non-Alloy Steel Pipe and Tube from Mexico; Final Results of Admin. Review*, 62 FR 37014, 37016 (July 10, 1997), and *Svenskt Stal AV* v. *United States*, Ct. No. 96–05–01372 Slip Op., 97–123 (August 29, 1997). Petitioners also cite section 776(a) of the Act, which states that if information provided by a respondent cannot be verified, the Department shall use facts available in reaching its determination.

Petitioners assert that Algoma failed to report to the best of its ability at verification because it did not disclose the errors in its reported credit expenses for the affected home market sales either prior to, or at the outset, of verification. Citing 19 U.S. C. 1677e(b), petitioners state that if a party fails to cooperate by not acting to the best of its ability to comply with a request for information, the Department may draw an adverse inference in its selection of facts otherwise available. *In Cut-to-Length Steel Plate from South Africa: Final Results of Admin. Review*, 62 FR 61731, 61739 (November 19, 1997), the Department applied the highest credit expense reported on a U.S. sale to all U.S. sales when the respondent failed to report to the best of its ability.

Algoma disagrees with petitioners. Algoma notes that the Department found two discrepancies at verification involving reported payment dates, neither of which was significant. The first error was a typographical error in the reported date of payment for a pre-selected home market sale. In the second error, Algoma's accounting department posted the payment against the date on which the amount was due instead of the date on which the cash was received for a sale in which there was an advance payment by the customer. Algoma argues that, contrary to petitioners' allegation, the other advance payment errors were not uncovered by the Department's verification team, but were discovered

when Algoma searched its entire submission for transactions where the customer prepayment was received. Algoma determined that other errors of the same type existed and voluntarily disclosed this information to the Department on its own initiative during verification.

Algoma argues that the Department's Sales Verification Report at pages 13–14 shows that the Department verified the extent of Algoma's credit errors by examining the results of a computer query conducted on the sales database, and verified the corrected information. Algoma points out that the errors could not have been included in the corrections memorandum provided at the beginning of verification because Algoma was not aware of them at that time. Algoma further argues that the errors at issue were both small in effect and isolated in scope. Algoma argues that, because the Department corrected the transactions at issue, verified the remainder of Algoma's file, and used the corrected information in its preliminary results of review, no further action by the Department is appropriate or necessary.

Department's Position: We agree with Algoma. At verification, we reviewed the method by which Algoma searched its database for the payment date errors, and we examined the full universe of sales in which these errors occurred. Since all of these credit expense errors occurred in sales where there were advance payments, we consider these errors to be isolated in nature. Therefore, we are making no changes to our calculations for the final results of review other than permitting Algoma to correct the errors. For further discussion of this issue, refer to the November 3, 1998 *Memorandum to the File: Final Results of the Antidumping Administrative Review of Cut-to-Length (CTL) Carbon Steel Plate from Canada (Algoma's Issues Memo).*

Comment 2: Freight Expenses

Petitioners argue that there are a number of U.S. sales for which Algoma reported having received freight revenue but for which it did not report a corresponding freight expense. Petitioners state that the Department should apply to these sales the highest U.S. freight expense reported for any U.S. sale as adverse facts available.

Petitioners argue that it was only after verification was underway that Algoma ran an ''internal edit check'' and identified deleted freight expense data for some of these sales. Petitioners argue that Algoma should have reported this data to the Department before verification, since the freight charges for these sales were reported in Algoma's November 21, 1997 sales tape, but were ''inexplicably'' deleted from its later submissions. Petitioners allege that when Algoma deleted the freight charges from its sales tapes in its subsequent responses, it did not report the freight expenses to the best of its ability. As with Algoma's credit expenses, petitioners argue that Algoma's independent analysis of its database provides no justification to conclude that the error is ''isolated,'' and that the sample of sales verified cannot be considered to be representative of Algoma's reporting as a whole. Petitioners contend that because Algoma failed to report to the best of its ability, the Department should draw an adverse inference and apply the highest U.S. freight expense reported for any U.S. sale to the sales in question. Petitioners cite *Welded Carbon Steel Pipe and Tube from Turkey: Final Results of Administrative Antidumping Review,* 61 FR 69067, 69073 (December 31, 1996), and *Foam Extruded PVC from the United Kingdom: Final Results of Administrative Antidumping Review,* 61 FR 51411, 51414 (October 2, 1996).

Algoma contends that the Department has already rejected petitioners' argument that U.S. freight expenses were misreported. Algoma explains that, in unusual instances, a carrier may neglect to bill Algoma for transport provided. In these instances, Algoma incurs no freight expense, and the proper accounting treatment is to show no freight expense. The proper treatment of freight revenue is to report it whenever the customer pays for freight. Therefore, Algoma claims, for some of the sales petitioners reference, freight expense and revenue were correctly reported.

With respect to sales for which a freight expense was incurred but not reported, Algoma further maintains that it was not aware of the computer error prior to verification because none of the sales preselected by the Department raised the issue. Algoma did not discover the error until it began preparing its response to petitioners' allegations, after verification commenced. On the night before verification, it received petitioners' letter asking the Department to examine certain transactions where no freight charges were reported. Algoma found that in one of the transactions mentioned in the letter, freight revenue was reported, but there was no corresponding freight expense. Algoma then conducted a search to identify other such transactions. Algoma maintains that the correct information was verified by the Department and that no ''discrepancy'' existed because the correct data was on the record prior to verification.

Department's Position: We agree with Algoma. Algoma reported the freight expense errors to the best of its ability at verification and disclosed them to the Department on its own initiative. At verification, we examined the method by which Algoma determined that the reported freight expense was in error, and found no reason to believe that the errors were indicative of a corrupt database. We also found that some of the sales in question were indeed reported correctly, and that other sales at issue were correctly reported prior to verification. Finally, reliability of these expenses is enhanced by the fact that Algoma reported all of them in its initial submission, which is on the record. The apparently inadvertent omissions only showed up in later submissions of the same information. Since the Department found Algoma's database to be reliable, we believe that the freight expense errors were isolated in nature. Therefore, we will include the corrected data for the freight expense in our final calculations. *See Algoma's Issues Memo* for further discussion of this issue.

Comment 3: Inclusion of Certain Sales

Petitioners argue that certain sales should be included as part of the sales database due to a date of sale issue, the details of which are proprietary.

Algoma contends that the Department should continue to exclude certain transactions as part of its margin calculation because the product type and quantity shipped for these sales (under an agreement) was not fixed until the date of shipment (and invoicing). Algoma states that these transactions were removed from the original sales tape and thereafter reported in a separate data file because their dates of sale (invoice date) fell outside of the contemporaneous reporting window. Algoma argues that it originally included these sales in its November 21, 1997 sales listing in the belief that they had been made pursuant to a long-term contract that fixed the material terms of sale (e.g., product description, price, and quantity) on the date of initial agreement between the parties. Algoma alleges, however, that as demonstrated at verification, the material terms of sale (i.e., the product description and quantities) were amended several times after that date.

Algoma maintains that, in accordance with the Department's long-standing ''date of sale'' methodology, it is improper to use the date of initial agreement as the date of sale for these

transactions because the material terms of sale were not established with finality on that date.

Department's Position: We agree with Algoma. The material terms of these sales were amended, and the date on which these terms became fixed (i.e., the date of sale), falls outside of the period of review (''POR''). Because this issue is not subject to further summarization, see *Algoma's Issues Memo* for a more detailed proprietary discussion.

Comment 4: Date of Sale

Petitioners argue that Algoma's date of sale is the order entry date rather than the invoice date, because, they claim, both price and quantity terms of sale are fixed on the order entry date for both U.S. and home market sales. Petitioners maintain that, under § 351.401(i) of the Department's regulations, the Secretary may use a date of sale other than the date of invoice if the Secretary is satisfied that an alternative date more accurately reflects the date on which the exporter or producer established the material terms of sale. Petitioners base their contention on a reference in the Department's verification report to a chart examined at verification in which Algoma compared the quantity of merchandise ordered to the quantity of merchandise shipped. The report stated, ''there does not appear to be a significant difference between the number of pieces shipped and the number of pieces ordered.'' (*Memorandum to the File: Report on the Sales Verification of Algoma Steel Corporation in the 8/1/96–7/31/97 Administrative Review of the Antidumping Duty Order on Cut-to-Length Carbon Steel Plate from Canada* (May 22, 1998) (*Algoma Sales Verification Report*)). Petitioners also cite *Stainless Steel Bar from India: Final Results,* 63 FR 3536, 3537 (January 23, 1998), in which the Department used the purchase order date as the date of sale because no material changes occurred between the purchase order date and the invoice date. Petitioners also cite *Canned Pineapple Fruit from Thailand: Final Results,* 63 FR 7392, 7394 (February 13, 1998), and *Circular Welded Non-Alloy Steel Pipe from Korea: Final Results*, 63 FR 32833, 32836 (June 16, 1998), in which the Department used the contract date as the date of sale.

Algoma argues that the Department's presumption in favor of using the invoice date as the date of sale in the preliminary results notice is justified. Algoma disagrees with petitioners' argument in favor of the order entry date because it relies exclusively on a statement made by the Department in the Algoma Sales Verification Report relating to a chart that Algoma prepared, and it ignores the facts on which the Department based its conclusion. Algoma asserts that the verification report also states that the verifiers ''found no discrepancies with their (Algoma's) date of sale.'' According to Algoma, the data show that the quantity shipped differs from the quantity ordered on a regular basis, which is sufficient to sustain the use of invoice date in accordance with the Department's practice. Algoma cites the preamble to the Department's regulations, published in the **Federal Register** on May 19, 1997, in which the Department stated:

> A preliminary agreement on terms, even if reduced to writing, in an industry where renegotiation is common does not provide any reliable indication that the terms are truly ''established'' in the minds of the buyer and seller. This holds even if, for a particular sale, the terms were not renegotiated.

62 FR 27349.

Algoma concludes that, because the terms of sale, in particular the quantity shipped, are commonly subject to further negotiation up to the date of shipment, the Department's use of the invoice date as the date of sale is justified in this case.

Department's Position: We agree with Algoma. As stated in § 351.401(i) of the Department's regulations, we normally use the invoice date as the date of sale. At verification, we examined a chart comparing the quantity ordered to the quantity shipped/invoiced for a certain number of sales, and found that the quantity changed between the order date and the invoice date for a number of sales; *see* Exhibit 40, page S6506, of the *Algoma Sales Verification Report.* Therefore, we have continued to use Algoma's invoice date as the date of sale in accordance with our normal practice. *See Memorandum to the File: Analysis for Algoma Steel Inc. for the Final Results of the Fourth Administrative Review,* on file in room B–099 of the Commerce Department.

Comment 5: Imputed Credit

Algoma argues that the Department should include banking fees in the Canadian dollar-denominated interest rate used to impute credit expenses for home market sales, even though Algoma did not include them in its calculations prior to verification. Algoma points out that, at the outset of verification, it disclosed to the Department that it had omitted certain banking fees that were paid in connection with the short-term revolving credit facility from its calculation of the Canadian dollar short-term interest expense factor. Algoma claims that page 36 of the annual report submitted as part of its Section A Response identifies the following bank charges related to short-term borrowing made during the POR under Algoma's ''revolving credit facility'' which opened in 1995: an amortized ''issuance cost,'' ''annual fees,'' and ''fees determined by the amount of the unused portion of the facility during the course of a given month.''

Algoma claims that the Department should not consider this information as ''new'' because Algoma established on the record well before verification that it incurred such banking fees as part of its actual total cost of short-term Canadian borrowings under the credit facility in question. Algoma claims that it identified the total amount of such ''interest and fees on operating line'' incurred during the 1997 calendar year (overlapping half of the POR) in its first supplemental questionnaire response, and reconciled the reported amount of these bank charges to its audited financial statement in the second supplemental questionnaire response.

Algoma maintains that petitioners were aware of the credit line, and specifically asked the Department to examine the issue at verification, and to place the entire credit agreement on the record. Furthermore, Algoma argues that the information is not ''new'' because not only is it on the record, but it was examined at verification. Algoma cites both the Department's sales verification report and cost verification report in making its claim that the amount of the bank fees was verified in order to reconcile the reported interest payment amounts to Algoma's audited financial statements at verification. Algoma states that the Department examined and verified the bank fees in the cost verification for six of the twelve months of the POR.

Algoma adds that the Department's normal practice requires it to include these costs in Algoma's home market credit expenses, and that not doing so would understate Algoma's actual cost of short-term borrowing. Algoma cites *Certain Cold-Rolled Carbon Steel Plate Products from Korea; Final Results of Antidumping Duty Administrative Review, Comment 2,* 62 FR 781801 (January 7, 1998), and *Large Power Transformers from Italy; Final Results of Antidumping Duty Administrative Review,* 52 FR 46806 (December 10, 1987), where the Department included bank charges incurred as part of respondent's credit expense calculation. Algoma also cites *Nylon Impression Fabric from Japan; Final Results,* 51 FR 15816 (April 28, 1986).

Petitioners contend that because Algoma's home market credit expenses failed verification, whether the bank fees are included in calculating Algoma's home market credit expenses is irrelevant.

Petitioners also dispute Algoma's contention that the information regarding bank fees was on the record before verification. Petitioners claim that the information from Algoma's 1996 Annual Report that was included in Algoma's Section A Response did not include data for six months of the POR (January 1997 to July 1997). In addition, petitioners argue that, in its January 29, 1998 supplemental questionnaire response, Algoma referred to the data as ''interest and other fees on the operating line'' without detailing the nature of the ''fees.'' Petitioners also argue that the only figure that was reconciled was Algoma's ''Net Financing Expenses'' for calendar year 1996, and cite Algoma's Response to the Department's Second Supplemental Questionnaire (March 20, 1998) at Attachment D–43.

Petitioners contend that the Department neither accepted the information on the bank fees, nor verified the data during Algoma's sales verification. *See Algoma Sales Verification Report* at 15. Petitioners state that the Department specifically refused to examine the fees because they constituted untimely new information, and cite the Department's *Analysis Memorandum for Algoma for the Preliminary Results of the Fourth Administrative Review of Certain Cut-to-Length Carbon Steel Plate from Canada for the period August 1, 1996—July 31, 1997* (July 10, 1998). Petitioners argue that the fact that the Department examined the bank fees during the cost verification is of no consequence, because the fees were examined solely to confirm Algoma's net financing expenses during the 1996 calendar year, not to confirm Algoma's short-term interest expenses during the POR (July 31, 1997 through August 1, 1997).

Department's Position: We agree with Algoma. The Department considers Algoma's revolving credit facility to be short-term borrowings. Consequently, the banking fees associated with the revolving credit facility are part of the total cost to Algoma of short-term Canadian borrowings and therefore, should be included in the short-term interest rate used to calculate imputed credit expenses. Although the banking fees were not included in Algoma's credit expense calculation prior to verification, information pertaining to the nature of these banking fees was recorded in Algoma's Annual Reports which Algoma submitted prior to verification. In addition, we examined these banking fees during verification. Thus, we do not consider the information pertaining to the banking fees to be ''new'' information. We have recalculated Algoma's imputed home market credit expenses to include these banking fees. When we corrected the home market credit expense, we noted that there were several missing payment dates in Algoma's sales tape. For these sales, we applied the verified average number of days between the shipment date and the payment date.

Comment 7: Clerical Errors

Petitioners claim that the Department made three clerical errors in the preliminary results, and therefore should correct them in the final results. These errors pertain to the calculation of certain credit expenses, the deduction for early payments, and the freight movement calculation. In the home market credit expense calculation, petitioners claim that the Department omitted billing adjustments, freight revenue, and other discounts as part of the gross unit price. Petitioners state that, in the definition statement of the total discounts and rebates in the model match program, the Department omitted early payments. Petitioners point out that, in the margin program, the Department placed the parenthesis in the wrong part of the calculation string for movement expenses.

Department's Position: We agree with petitioners regarding all three ministerial errors. We have corrected these errors for the final results.

Dofasco

Comment 1: Use of ''Partial'' Freight Data

Petitioners argue that, as in the third review, the Department should reject the actual freight data Dofasco submitted for some of its sales in favor of the minimum and maximum freight rates to each destination, which Dofasco has provided for all sales. Petitioner contends that the Department's practice is to disregard sales information reported on a selective basis, as stated in *Stainless Steel Wire Rod from Sweden,* 63 FR 40449, 40455 (July 29, 1998) (*SSWR from Sweden*). Petitioner adds that using such ''partial'' information would ''encourage (respondent) to selectively disclose only that information which would benefit its position.'' (*Final Results of Administrative Review; Tapered Roller Bearings and Parts Thereof, Finished and Unfinished From Japan,* and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, from Japan, 63 FR 20585, 20591 (April 27, 1998) (*TRBs 1998*)). Petitioner also states that, if the Department used this information, there would be no incentive for respondents to provide complete information (*TRBs 1998,* citing *Nippon Pillow Block Sales Co., Ltd. and FYH Bearing Units USA, Inc.* v. *United States,* 903 F. Supp. 89, 95 (CIT 1995) and *Persico Pizzamiglio, S.A.* v. *United States,* No. 92–11–00783, Slip Op. 94–61 at 23 (April 14, 1994)).

Finally, petitioner claims that the potential for manipulation requires that the Department reject ''selectively disclosed information * * * even when there is no direct evidence that such manipulation actually occurred.'' In support, petitioner cites *Final Results of Antidumping Duty Administrative Review, Tapered Roller Bearings, Four Inches or Less in Diameter, and Components Thereof, from Japan,* 59 FR 56035, 56049 (November 10, 1994) (*TRBs 1994*), *Final Results of Antidumping Duty Administrative Review; Certain Cold-Rolled Carbon Steel Flat Products from Germany,* 60 FR 65264, 65274 (December 19, 1995) (*Steel from Germany*), and *C.F. Koenig & Bauer-Albert AG* v. *United States,* No. 96–10–02298, Slip Op. 98–83 (CIT 1998) at 6.

Dofasco argues that the Department does not require respondents to report freight on an actual sales-specific basis, but in many instances has allowed respondents to report freight using alternate methodologies when necessary. Dofasco points out that the questionnaire specifically allows respondents to report freight on something other than an actual sale-by-sale basis ''when to do otherwise would create a significant burden because of the manner in which your (the respondent's) accounting records are maintained.'' Dofasco adds that, in the third administrative review of this order, the Department allowed respondents to report estimated freight expenses as long as they were reasonable and any differences between the estimated amounts and actual freight charges were minor. Respondent cites *Final Results of Antidumping Administrative Review; Certain Corrosion-Resistant Carbon Steel Flat Products and Certain Cut-to-Length Carbon Steel Plate from Canada,* 63 FR 12725, 12740 (March 16, 1998) (*Third Review Final Results*) and *Final Determination of Sales at Less Than Fair Value; Small Diameter Circular Seamless Carbon and Alloy Steel, Standard, Line and Pressure Pipe from Italy,* 60 FR 31981, 31987 (June 19, 1995).

Dofasco denies that it has selectively reported actual freight, arguing that it has been consistently forthcoming with the Department about its inability to track actual freight for all of its sales. Dofasco asserts that it has reported actual freight for those carriers that bill Dofasco through an electronic data interface system, which enables Dofasco to calculate via computer the actual cost for each coil shipped to these companies. Because some carriers do not use this system, Dofasco states, it would be burdensome to report actual freight for all those carriers not using the system. Furthermore, Dofasco adds, the Department has verified these facts, and found no discrepancies. Therefore, petitioners' allegations with respect to ''potential manipulation'' are misplaced.

Department's Position: We disagree with petitioners. In the third administrative review, we did not use respondents's actual freight data because we found that the computerized system it used to bill its customers for freight was not working properly, and there was nothing on the record to demonstrate the accuracy of the freight expenses as reported. *See Third Review Final Results*, 63 FR at 12739. In the current review, we verified the accuracy of Dofasco's response regarding its freight billing system and found no discrepancies. Thus, we have used Dofasco's reported actual freight expenses for those sales for which this data was available. Because we verified this expense to our satisfaction, we do not consider Dofasco's data to be ''selective'' or ''partial,'' nor do we believe that Dofasco attempted to manipulate the margin outcome by reporting its freight data in the manner that it did.

We note that in the TRBs cases cited by petitioners, the Department had reason to believe that the respondents' data was incomplete, unlike here. In *SSWR from Sweden*, we found at verification that the respondent could have reported transaction-specific data, but reported average figures instead. We therefore rejected the reported average figures in favor of transaction-specific information. In contrast, we have concluded that Dofasco has reported transaction-specific data for as many sales as possible, as stated above. We therefore have not changed the preliminary results with respect to freight expenses.

Comment 2: EP vs. CEP Sales

Petitioners argue that the Department should treat all sales made through Dofasco's U.S. subsidiary as constructed export price (CEP) sales, in accordance with the Department's practice when an affiliate involved in the sales process as something more than a ''processor of sales-related documentation'' or a ''communications link.'' In support, petitioners cite: *Final Determination of Sales at Less Than Fair Value; Stainless Steel Wire Rod from Spain*, 63 FR 40391, 40395 (July 29, 1998) (*Stainless Steel Wire Rod from Spain*); and *Preliminary Results of Antidumping Duty Administrative Review; Roller Chain Other than Bicycle from Japan*, 63 FR 25457 (May 18, 1998)(*Roller Chain from Japan*). Petitioners detail evidence from the proprietary record, specifically the Department's Report on the Sales Verification of Dofasco Inc. (May 28, 1998) (*Dofasco Sales Verification Report*), which they claim demonstrates that Dofasco USA (DUSA) performed sales functions that render CEP treatment appropriate.

Petitioners point out that, in the *Final Results of Antidumping Duty Administrative Reviews: Certain Cold-Rolled and Corrosion-Resistant Carbon Steel Flat Products from Korea (Steel from Korea*), 63 FR 13170 (March 18, 1998), the Department found that just because the affiliate's role ''is not autonomous with respect to the sales process,'' this does not mean that its ''role in the process is ancillary.'' Thus, petitioners state, even if the Department were to find that DUSA had no independent sales negotiating authority, that fact would not be dispositive. Furthermore, petitioners state, the Department has recently made clear that it will ''consider the sale to be CEP unless the record demonstrates that the U.S. affiliate's involvement in making the sale is incidental or ancillary.'' (*Steel from Korea*, 63 FR at 13177, 13182–83.) Petitioners conclude that Dofasco has failed to submit any evidence to support such a finding.

Dofasco argues that the Department correctly determined that Dofasco properly classified its U.S. sales through DUSA as export price (EP) sales. Dofasco points out that the Department has made the same determination in all three previous reviews. As the facts during this review are almost exactly the same as in the previous reviews, Dofasco argues, the Department should continue to classify the DUSA sales as EP sales.

Dofasco cites the preamble to the Department's new regulations, which states that the Department considers transactions to be EP whenever: (1) The producer or exporter ships the merchandise directly to the unaffiliated purchaser without it being introduced into the U.S. affiliate's inventory; and (2) the affiliated entity acts only as a processor of documentation and a communication link between the foreign respondent and the unaffiliated purchaser (62 FR 27296, 27351). Dofasco maintains that the last factor has been interpreted by the Department as turning largely upon the extent to which the affiliate is involved in negotiating the sales, a role which the Department has stated must be ''incidental or ancillary.'' *Steel from Korea* at 63 FR 13183. Furthermore, Dofasco states, the Department has never suggested that merely signing contracts is sufficient to characterize the U.S. subsidiary's role as being more than ''incidental or ancillary.'' Rather, the Department has recently elucidated that this threshold is passed only when the U.S. affiliate is ''substantially involved in the sales process (*e.g.*, negotiating prices), or if the affiliate ''played a major role in negotiating and bringing about the sale, from the bidding stage through the final contract.'' *See Roller Chain from Japan*, 63 FR at 25457, and *Certain Cut-to-Length Carbon Steel Plate from Germany*, 62 FR 18390, 18391–92 (April 15, 1997), respectively.

Dofasco states that, unlike the respondents in these cases, the Department consistently has found that DUSA's role in the sales process is not ''substantial'' or more than ''incidental or ancillary.'' Respondent cites the *Dofasco Sales Verification Report* at 4. Respondent argues that petitioners mischaracterized proprietary sections of the verification report in order to support their position that DUSA's role in the sales process was substantial enough to warrant CEP treatment. Dofasco concludes that nothing has changed since the first, second, and third administrative reviews that should alter the Department's previous determination that sales through DUSA were EP sales.

Department's Position: We have not changed our preliminary results with respect to this issue. As we stated in the third review final results, we do not believe that the criteria for CEP treatment as stated in *Steel from Korea* have been met in this case. In that notice, we explain that CEP treatment is appropriate where certain facts indicate ''that the subject merchandise is first sold in the United States by or for the account of the producer or exporter.'' Such a finding requires that: (1) The merchandise was shipped directly from the manufacturer to the unaffiliated U.S. customer; (2) this was the customary commercial channel between the parties; and (3) the function of the U.S. affiliate is limited to that of a ''processor of sales-related documentation'' and a ''communications link'' with the

unrelated U.S. buyer. We also stated that where the factors indicate that the activities of the U.S. affiliate are ancillary to the sale (e.g., arranging transportation or customs clearance, and invoicing), we will treat the transactions as EP sales. Furthermore, when the U.S. affiliate has more than an incidental involvement in making sales (e.g. solicits sales, negotiates contracts or prices) or providing customer support, we treat the transactions as CEP sales. *See Third Review Final Results*, discussing *Steel from Korea*. We do not find that DUSA has more than an incidental involvement in the sales process.

We agree with petitioners' argument that, pursuant to *Steel from Korea*, even if the Department were to find that DUSA had no independent sales negotiating authority, that fact would not be dispositive that DUSA's role in the sales process was ancillary. As in *Steel from Korea*, we have considered the totality of the evidence regarding Dofasco's sales process. Unlike in *Roller Chain from Japan* and *Stainless Steel Wire Rod from Spain*, cited by petitioners, we find that the evidence does not suggest that DUSA's role in the selling process was anything beyond an ancillary role. In those cases we found that the U.S. selling agents' involvement in the sales process was extensive when compared to that of the exporters, and that the majority of selling functions occurred in the United States. As much of the information regarding DUSA's selling functions is proprietary, see the *Final Results Analysis Memorandum* on file in room B–099 of the Commerce Department.

Finally, we note that petitioners have not presented any new arguments with respect to this issue, nor is the fact pattern with respect to sales made through DUSA significantly different from past reviews. We again verified Dofasco's sales and distribution process, and found nothing to support petitioners' arguments. Therefore, we have treated Dofasco's sales to the United States as EP sales in these final results.

Comment 3: Clerical Error—Movement Expenses

Petitioners argue that, for certain sales, the Department failed to include, in U.S. movement expenses per unit freight expenses Dofasco incurred when shipping subject merchandise from a warehouse or processor to its U.S. customers. For certain sales, Dofasco reported these freight expenses in the computer field INLFWCU, a variable petitioners allege the Department failed to include in its calculation of total movement expenses. Respondents agree with petitioners.

Department's Position: We agree that we failed to account for this additional freight variable in the calculation, and have made the necessary correction for the final results of review.

Comment 4: Clerical Error—Freight Expenses

Petitioners claim that, for certain sales, the Department's computer program incorrectly calculates movement expenses. Petitioner states that the program is meant to deduct actual freight in lieu of maximum freight, unless actual freight is set to missing. For certain observations, however, the program fails to correctly execute this operation.

Respondent agrees with petitioners, stating that, for both U.S. and home market variables, Dofasco mistakenly set the actual freight variables to zero instead of setting them to missing in the computer program.

Department's Position: We agree, and have revised the computer program accordingly.

Comment 5: Clerical Error—Packing

Petitioners claim that U.S. packing expenses were twice multiplied by the rate for conversion to U.S. dollars in the Department's margin calculation program. Respondent agrees with petitioners.

Department's Position: We agree, and have revised the computer program accordingly.

CCC

Comment 1: Valuation of Major Input

Petitioners argue that CCC improperly reported the value of steel substrate purchased from Stelco by reporting transfer prices rather than market prices, and that the Department should therefore adjust the value of CCC's steel substrate to reflect market prices. Petitioners claim that CCC's questionnaire response indicates that CCC purchased identical substrate from an affiliated and unaffiliated party. Therefore, petitioners state, section 773(f)(2) of the Act requires the Department to disregard the transfer price paid for the major input, and to base the value of the input ''on the information available as to what the amount would have been if the transaction had occurred between persons who are not affiliated.'' Petitioners argue that the Department should therefore adjust the price reported by CCC to reflect the difference between the transfer and market prices shown on these two invoices, as it did in *Final Determination of Sales at Less Than Fair Value: Ferrosilicon from Brazil*, 61 FR 59411 (November 22, 1996); *Notice of Final Determination of Sales at Less Than Fair Value: Fresh Atlantic Salmon From Chile* (*Salmon from Chile*), 63 FR 31434 (June 9, 1998); and *Final Results of Antidumping Duty Administrative Reviews on Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, Germany, Italy, Japan, Romania, Singapore, Sweden and the United Kingdom* (*AFBs January 1997*), 62 FR 2081 (January 15, 1997).

Petitioners claim that the evidence on the record shows that the substrate CCC purchased from Stelco, an affiliated party, and from a third, unaffiliated party were identical. Petitioners argue that CCC has neither explained the differences it claims existed between the Stelco and third-party substrate, nor cited to any part of the record where the differences are reflected.

CCC argues that, as stated in its January 29, 1998 questionnaire response, it does not purchase identical merchandise from Stelco and from other suppliers. CCC claims that the invoices provided in the questionnaire response were the only two that CCC could find that would show the comparability of Stelco and third-party substrate, and argues that one cannot infer from the two invoices alone that all Stelco substrate was sold at below-market prices. Therefore, CCC argues, the Department should continue to use transfer prices to value substrate purchased by CCC.

CCC argues that a closer examination of the two invoices shows that Stelco offered CCC an allowance or discount on this purchase and that, without this discount, the Stelco and the third-party invoice prices are equal. CCC claims that the Department accepted respondent's argument that a price differential between transfer price and market price was due to a verified early payment discount, and continued to calculate costs using the discounted transfer price even though the transfer price was lower than the related market price in *Final Determination of Sales at Less Than Fair Value: Porcelain-On-Steel Cookware from Mexico*, 63 FR 38373 (July 16, 1998) (*Cookware from Mexico*).

Department's Position: We agree with petitioners, in part, and have adjusted all transfer prices reported by CCC to reflect market prices.

Sections 773 (f)(2) and (3) of the Act stipulate that major inputs purchased from affiliated parties may be valued at the highest of market value, transfer price or the affiliate's cost of

production. In *AFBs January 1997*, the Department found that ''in the case of a transaction between affiliated persons involving a major input, we will use the highest of the transfer price between the affiliated parties, the market price between unaffiliated parties, and the affiliated supplier's cost of producing the major input.'' 62 FR 2081; *see also* 19 CFR 351.407(b).

CCC has argued that the substrates on the two invoices it provided are not identical and cannot be compared. It is unclear whether the differences between the products on the invoices are substantial enough that they cannot be compared without adjustment. However, assuming the differences between the merchandise on the two invoices is significant, it is CCC that provided these invoices in order to substantiate its claim that its transfer price from its affiliate Stelco was equivalent to a market price. CCC now attempts to impeach the very comparison of invoices it urged the Department to make. If the differences between the merchandise covered by the two invoices were significant enough that the invoice prices should only have been compared after some adjustment, then CCC should have quantified the difference or provided some other means for the Department to adjust for the difference and make the comparison. *See* § 351.401(b)(1). If the Department cannot make this comparison, then there is no evidence on the record to support CCC's claim that its inputs purchased from Stelco were at or above market value, and this claim must be rejected. If, on the other hand, petitioners are correct that there are no differences between the merchandise on the two invoices which would preclude comparison, then a comparison of the two shows that prices of the Stelco input are lower than the price from the unaffiliated supplier.

With regard to CCC's claim that we should use the price of the input from Stelco because, disregarding a discount Stelco granted, the Stelco price is the same as the price from the unaffiliated supplier, we disagree. The Department has long recognized that discounts must be taken into account in determining what the true price is. For example, in *AFBs January 1997*, 62 FR at 2090, we explained that, in identifying the true starting price, the Department must first adjust the gross price for any discounts, rebates, or other price adjustments. As discussed in adjusting our final regulation, the Department must consider discounts in identifying the ''net outlay of funds by the purchaser.'' *See Antidumping Duties, Countervailing Duties; Final Rule*, 62 FR 27296, 27300 (*Final Rule*) and 19 CFR 351.102 (definition of price adjustment) and 19 CFR 351.401(c). The same principles apply when identifying the actual transfer price for the major input rule; such transfer price must reflect any discounts, rebates or other price adjustments in order to determine CCC's net outlay of funds for the input.

CCC's reliance on *Cookware from Mexico* is misplaced. In that case the Department clearly stated that it was not accounting for price adjustments because it could only determine that they had been offered, and not whether they had actually been granted. By contrast, in the present case it is clear that Stelco actually granted the discount to CCC.

Since the final price for the Stelco invoice is less than the final price on the third-party, market price invoice, we have valued CCC's steel input for these final results by adjusting CCC's reported transfer prices to reflect the ratio between the final prices on these two invoices.

Comment 2: Imputed U.S. Credit

Petitioners argue that the surrogate interest rate used by the Department to value CCC's U.S. credit expense should be increased by a premium to reflect CCC's actual borrowing experience in the home market. Petitioners argue that, in *LMI-LaMettali Industriale, S.p.A.* v. *United States* 912 F.2d 455 (Fed. Cir. 1990) (*LMI*), the Court ruled that the surrogate U.S. dollar-denominated interest rate used by the Department to impute U.S. credit expense must conform with ''commercial reality.'' Petitioners note that the Department's *Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from Sweden*, 61 FR 15772 (April 9, 1996) explains that determining whether a surrogate rate conforms with commercial reality takes into account the many ''varied factors that determine at what rate a firm can borrow funds, such as the size of the firm, its creditworthiness, and its relationship with the lending bank.'' Petitioners argue that, based on CCC's home market borrowing history (as explained in CCC's November 17 and January 30 questionnaire responses), CCC would not have received the prime rate in the United States, defined by the International Monetary Fund as the ''(r)ate that the largest banks charge their most creditworthy business customers on short-term loans.'' Therefore, petitioners argue that basing CCC's imputed U.S. credit expenses on the prime rate would not conform with ''commercial reality.'' Petitioners argue that the Department should add a premium to the average U.S. prime rate and recalculate CCC's imputed U.S. credit expense accordingly. Petitioners state that in the *Final Determination of Sales at Less Than Fair Value: Oil Country Tubular Goods from Austria*, 60 FR 33555 (June 28, 1995) (*OCTG*), the Department used the New York State prime rate plus one percent as a surrogate rate to impute U.S. credit expenses where the respondent had no U.S. dollar-denominated borrowings.

Finally, petitioners claim that the Department's calculation of the average U.S. prime interest rate was erroneous. Petitioners argue that the calculation should be based on a 360-day year, not a 365-day year.

CCC disagrees that the Department should add a premium to CCC's surrogate interest rate and that the Department should use the average U.S. prime rate as a basis upon which to calculate CCC's imputed credit. CCC notes that the Department's Policy Bulletin 98.2 instructs the Department to use ''the Federal Reserve's weighted-average data for commercial and industrial loans maturing between one month and one year from the time the loan is made,'' rather than the prime rate when a respondent has no short-term borrowings in the United States. CCC adds that the Department used the Federal Reserve's weighted-average data for commercial and industrial loans for CCC in the previous review of corrosion-resistant steel from Canada. CCC argues that use of the Federal Reserve's weighted-average data for commercial and industrial loans would conform with petitioners' demands that the rate used ''comport with 'commercial reality,' '' as it was the prime rate's failure to meet with commercial reality that led the Department to reject its use in the Policy Bulletin, and adopt a more realistic average of commercial and industrial loan rates.

CCC states that the Department should also reject petitioners' suggestion to increase the prime rate by a premium. First, CCC argues that the premium was derived from CCC's proprietary home market borrowing rate, and therefore has no bearing on what CCC's rate would be in the United States. CCC cites *LMI* and the Department's Policy Bulletin 98.2, which it claims establishes clear guidelines against the use of an interest rate in the home market as a surrogate for the calculation of credit in the U.S. market. Further, CCC argues that *OCTG* is factually unique in several ways: (1) It was the exporter's U.S. sales agent who customarily charged customers an interest rate of prime plus a one percent premium for late revenue; (2) the rate

had no connection to interest rates offered to the company in the home market; and (3) this rate represented the rate commonly used in the United States at that time. CCC also notes that the Department in *OCTG* rejected the possibility of using the home market interest rate.

Department's Position: We agree with CCC. For these final results, we have used the Federal Reserve's weighted-average data for commercial and industrial loans, instead of the prime rate, which we used for the preliminary results.

As discussed in Policy Bulletin 98.2, prior to a 1990 ruling by the Court of Appeals for the Federal Circuit (CAFC) in *LMI*, the Department had a practice of using a respondent's home market borrowing rates to impute both U.S. and home market credit expenses. In *LMI*, the CAFC ruled that the cost of credit ''must be imputed on the basis of usual and reasonable commercial behavior.'' In ruling on the specific facts of *LMI*, the CAFC did set forth certain general principles; it stated that ''the imputation of credit cost * * * is a reflection of the time value of money,'' that it ''must correspond to a * * * figure reasonably calculated to account for such value during the gap period between delivery and payment,'' and that it should conform with ''commercial reality.''

In developing a consistent, predictable policy establishing a preferred surrogate U.S. dollar interest rate in all cases where respondents have no U.S. dollar short-term loans, we have employed three criteria: (1) The surrogate rate should be reasonable; (2) it should be readily obtainable and predictable; and (3) it should be a short-term interest rate actually realized by borrowers in the course of ''usual commercial behavior'' in the United States. The Policy Bulletin states that the use of unadjusted home market borrowing rates to impute credit expenses on U.S. sales does not recognize the effect of currency changes between date of shipment and date of payment on repatriating revenue and that therefore, unadjusted home market borrowing rates are not an accurate measure of the value of the loan made by the seller to the purchaser if the sale (the loan) is made in U.S. dollars.

In *Steel from Sweden* and in *Certain Corrosion-Resistant Carbon Steel Flat Products from Australia; Final Results of Antidumping Duty Administrative Reviews*, 61 FR 14049, 14054 (March 29, 1996), the Department selected the average short-term lending rates calculated by the Federal Reserve as surrogate U.S. interest rates. Each quarter, the Federal Reserve collects data on loans made during the first full week of the mid-month of each quarter by sampling 340 commercial banks of all sizes. The sample data are used to estimate the terms of loans extended during that quarter at all insured commercial banks. These Federal Reserve rates meet the three criteria discussed above. They represent a reasonable surrogate for respondents' U.S. dollar borrowing rates because they are calculated based on a variety of actual dollar loans to U.S. customers, and because they are readily available to all interested parties and are easy to obtain. Therefore, we have used the Federal Reserve's weighted-average data for commercial and industrial loans maturing between one month and one year from the time the loan is made to impute credit during the POR for CCC.

We disagree with petitioners' argument that CCC's rate should be increased by a premium based on home market borrowings. In support of their claim that the rate should be increased by a premium, petitioners cite to *OCTG*. However, the methodology used in *OCTG* has limited applicability because it was developed using facts specific to that particular case. In *OCTG*, the Department found that the New York prime rate plus one percent reflected the manner in which the respondent's related U.S. sales agent measured the time value of late revenue as an ordinary business practice. Additionally, as stated in the Policy Bulletin, home market borrowings should not be used to impute U.S. credit.

We disagree with petitioners' argument that the calculation should be based on a 360-day year rather than a 365-day year. Petitioners made no substantive argument in favor of a 360-day year or against a 365-day year. Because the Department has no policy that would compel such a change, we have continued to calculate imputed credit based on a 365-day year.

Comment 3: Allocation of Post-Sale Price Adjustments

Petitioners argue that the Department should not accept CCC's post-sale price adjustments (PSPAs) in either the home market or the U.S. market. Petitioners argue that PSPAs must be allocated over only those sales on which they were incurred in order to qualify as an adjustment to price in the Department's antidumping calculations, and that CCC did not comply satisfactorily with the Department's information requests. Petitioners argue that the Department should reject CCC's claim that its PSPAs have been reported on a transaction-specific basis. Petitioners argue that CCC has failed to satisfy its burden to document and support its entitlement to report PSPAs on an allocated basis. They claim that in some cases CCC allocated PSPAs on invoices or work orders regardless of whether the adjustment applied to all transactions recorded on the invoice or work order. Furthermore, petitioners claim that CCC has failed to demonstrate that it was not feasible to report the PSPAs on a transaction-specific basis, and has, in fact, tied some PSPAs to specific sales transactions. Petitioners maintain that because CCC was able to report some of its PSPAs on a transaction-specific basis, CCC could therefore have reported all of its PSPAs in this manner. Because CCC did not do so, petitioners contend that CCC did not act to the best of its ability in responding to the Department's request for information. Petitioners argue that CCC failed to demonstrate its entitlement to those adjustments and, therefore, the Department should deny the PSPAs sought by CCC to home market and U.S. prices based on *Timken Co.* v. *United States*, 673 F. Supp. at 513 (*Timken*) and sections 782(d) and (e) of the Act. Petitioners claim that section 782(d) of the Act allows the Department to disregard information submitted by a respondent when it does not comply satisfactorily with a request for information after being informed of the deficiency and being provided an opportunity to remedy it. Petitioners also state that section 782(e) of the Act provides that the respondent must demonstrate that ''it acted to the best of its ability in providing the information'' and that ''the information can be used without undue difficulties.'' Petitioners claim that when a respondent has improperly allocated PSPAs for home market sales, it is the Department's practice to disallow all claimed adjustments to price for those sales, as indicated in: *Final Results of Antidumping Duty Administrative Reviews; Antifriction Bearings (Other than Tapered Roller Bearings) and Parts Thereof from France, Germany, Italy, Japan, Singapore, and the United Kingdom (AFBs 1996)*, 61 FR 66472, 66498 (December 17, 1996); *Final Results of Antidumping Duty Administrative Reviews; Antifriction Bearings (Other than Tapered Roller Bearings) and Parts Thereof from France*, 63 FR 33320 (June 18, 1998) (*AFBs 1998*); and *TRBs 1998*.

Petitioners maintain that the Court's decision in *AK Steel Corp., et al.* v. *United States*, Court No. 96–05–01312, Slip Op. 98–106 (CIT July 23, 1998) (*AK Steel*) to uphold CCC's method of

reporting PSPAs demonstrates the Court's presumption that allocations of PSPAs are suspect because of the possible distortion to prices and dumping margins caused by such allocations. Petitioners argue that the Court upheld CCC's method of reporting PSPAs only after finding that documentation obtained at verification allowed the Department to analyze the details of the allocations to determine whether they were distortive, and that because no such documentation has been provided in this review, the Department should not allow CCC's reporting methodology.

Petitioners claim that the ability to report some, but not all, PSPAs on a transaction-specific basis creates the potential for manipulation, and cite the CIT's ruling in *Koenig & Bauer-Albert AG* v. *United States,* Court No. 96–10–02298, Slip. Op. 98–83, that the Department may deny favorable adjustments sought by a respondent based not only on actual evidence of price manipulation, but also on the potential for manipulation. Petitioners also cite *Steel from Germany* and *Tapered Roller Bearings, Four Inches or Less in Diameter, and Components Thereof, from Japan,* 59 FR 56035 (November 10, 1994) to this effect. Petitioners assert that, for some customers, CCC applied adjustments across all sales (including subject and non-subject merchandise) when they could only tie the credit or debit note to a particular customer. Petitioners claim that this reporting methodology has increased the potential for distortion.

Petitioners claim that the Department's new regulations (*see Final Rule*, 62 FR 27296) concerning allocated PSPAs are contrary to the Department's longstanding practice and the URAA which, petitioners state, nowhere permits respondents to report inaccurate prices. However, petitioners argue that, even under its new regulations, the Department must continue to deny CCC its claimed PSPAs.

Petitioners claim that an allocation of a PSPA over several sales or invoices could distort the prices if the sales covered were of different control numbers (CONNUMs) or were made in different months. In such a situation, the prices of the sales receiving their share of the allocated credit would not be weight-averaged in calculating normal value for a particular month. Thus, all sales that receive an allocation of credit would have an incorrect gross unit price, which will in turn distort the dumping margin. Petitioners argue that because each of the adjustments is a given percentage of the unit price, all those sales which have had the adjustment allocated to them, even though they were not in the group of sales to which the adjustment is correctly attributed, have been modified by that percentage. Petitioners maintain that the potential for distortion by allowing credit to be allocated over sales with different CONNUMS or months of sale is present in CCC's case as well. Petitioners argue that the criteria applied in *AFBs 1998* is flawed because it puts the burden on the petitioners to prove the existence of distortions.

CCC argues that its reported PSPAs should again be accepted by the Department as they were in the second and third administrative reviews because they are allocated as specifically as possible and are not distortive. CCC notes that the Department rejected petitioners' arguments concerning CCC's PSPAs in the second and third administrative reviews. CCC states that the Department verified CCC's methodology in the second administrative review and found that CCC applied its PSPAs using the most precise methodology possible, and in a manner not unreasonably distortive.

CCC disagrees with petitioners' assertion that CCC never explained why it was able in some instances to tie credit and debit notes to specific invoices and work orders, and in others it was not. CCC notes that it stated in its November 17, 1997 questionnaire response, and its January 29, 1998 and March 23, 1998 supplemental questionnaire responses, that in instances where a credit or debit note is allocated over all sales to a customer rather than to a specific invoice or work-order, it is because the credit or debit note only referenced a customer and did not reference a work order or invoice. CCC maintains that its PSPAs are transaction-specific, stating that when a specific credit or debit note was applied to more than one invoice and/or work order, it was because the credit or debit note applied to those invoices and/or work orders, and that the information available to CCC on the credit or debit note permitted no more specific allocation. CCC cites *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from Japan and Tapered Roller Bearings, Four Inches or Less in Outside Diameter and Components Thereof, from Japan,* 63 FR 2558 (January 15, 1998) as an instance in which the Department accepted respondent's explanations of why more specific reporting was not possible as evidence of fact.

CCC maintains that there is no evidence, as petitioners allege, that CCC is attempting to manipulate that data, and that the record evidence such as the number of positive adjustments in the home market and negative adjustments in the U.S. market shows that, on the contrary, CCC is not trying to manipulate the data. CCC cites the Department's regulations at § 351.401(g)(1) as stating that the Department ''may consider allocated expenses and PSPAs when transaction-specific reporting is not feasible provided (that) * * * the allocation method does not cause inaccuracies or distortions' and at § 351.401(g)(3) as stating that ''(i)n determining the feasibility of transaction-specific reporting or whether an allocation is calculated on as specific a basis as is feasible, the Secretary will take into account the records maintained by the party in question in the ordinary course of business.''

CCC argues that the Department's decision to accept CCC's claimed PSPAs is consistent with its decisions in numerous other cases, including *AFBs 1998*, and *Certain Cut-To-Length Carbon Steel Plate From Brazil: Final Results of Antidumping Duty Administrative Review,* 63 FR 12744 (March 16, 1998).

CCC disagrees that the Court in *AK Steel* upheld the Department's acceptance of the adjustments only after finding that the documentation obtained at verification allowed the Department to analyze the details of the allocations.

Furthermore, CCC argues that such argumentation is moot because it submitted all of the requested documentation in this review, and because a verification was not conducted. CCC states that the Department's methodology was upheld in *The Timken Co.* v. *United States,* Court No. 97–04–00562, Slip. Op. 98–92 (CIT July 2, 1998) (*Timken 1998*). CCC also disagrees with petitioners that the Department's current practice is at odds with the URAA, stating that the Department noted in *AK Steel* that the URAA reaffirmed the Department's practice of allowing allocated post-sale PSPAs. CCC argues that in the *Timken 1998* case, the Department stated that (1) post-URAA law directs it to accept information that may not have met its previous requirements and that (2) it had determined, based in part on previous verifications, that CCC was incapable of providing data on a transaction-specific basis and that CCC's reported data was reliable. CCC concludes that, based on evidence on the record in this proceeding as well as the precedents in this proceeding and the law, the Department should accept CCC's PSPAs.

Department's Position: We agree with CCC. In light of the Department's determinations in recent cases and the

facts on the record, we accept CCC's price adjustments.

Section 351.401(c) of the Department's regulations states that the Department, ''(i)n calculating export price, constructed export price, and normal value (where normal value is based on price), will use a price that is net of any price adjustment, as defined in § 351.102(b), that is reasonably attributable to the subject merchandise or the foreign like product (whichever is applicable).'' PSPAs are defined in the regulations at § 351.102(b) as ''any change in the price charged for subject merchandise or the foreign like product, such as discounts, rebates and post-sale PSPAs, that are reflected in the purchaser's net outlay.''

With regard to the fact that CCC allocated these adjustments, we note that § 351.401(g)(1) of the Department's regulations directs us to ''consider allocated expenses and PSPAs when transaction-specific reporting is not feasible, provided (we are) satisfied that the allocation method used does not cause inaccuracies or distortions.'' This policy has been upheld in *Timken 1998*. Although CCC allocated price adjustments on a customer invoice- or work order-specific basis, we determine that CCC acted to the best of its ability in reporting this information. While the Department stated in *Final Rule* 62 FR at 27344 that respondents should not be ''allowed to eliminate dumping margins by providing PSPAs 'after the fact,' '' there is no evidence on the record in these reviews that demonstrates that this is occurring.

In recent AFBs cases, we addressed the relevance of *Torrington Co.* v. *United States*, 82 F.3d 1039, 1047–51 (Fed. Circ 1996) (*Torrington I*), to the allocation of adjustments. We noted that, while the CAFC in its decision in *Torrington I* questioned whether PSPAs constituted expenses (see *Torrington I* at n.15), the Court maintained that, if the adjustments were expenses, they had to be treated as direct selling expenses. Significantly, ''the CAFC did not find that such PSPAs could not be based on allocations'' (*AFBs October 1997* 62 FR at 54050).

We have not found CCC's allocation methodologies to be unreasonably distortive. During the POR, CCC granted credit or debit notes to certain customers. CCC calculated adjustment factors by dividing the total price adjustments paid to a given customer by the total POR sales to that customer. CCC grants these price adjustments to customers in two ways: (1) On the basis of their overall sales to the particular customer; or, (2) over a specific invoice to a customer.

Where CCC granted the price adjustment to a customer on the basis of its overall sales, then there is no distortion in attributing the adjustment to the sales on which it was earned. *See, Final Rule*, 62 FR at 27347 and *Smith Corona*, 713 F.2d at 1580.

Where CCC granted the price adjustment on an invoice, CCC has claimed that it cannot tie the credit/debit note to the particular invoice. Therefore, it has allocated such notes by customer. First, where a price adjustment is granted on an entire invoice, it is appropriate to attribute the amount of the adjustment to all merchandise on the invoice. Where an invoice covers several articles of merchandise, an adjustment granted on the entire invoice cannot be tied to any specific article.

Further, where a respondent has acted to the best of its ability, and cannot provide information about adjustments on a basis more narrow than customer-specific allocations, the Department has concluded that such an allocation may be reasonable. *See e.g., AFBs January 1997*, at 2096 (comment 9).

We disagree with petitioner's interpretation of the applicability of section 782(d) and 782(e) of the Act to CCC's reporting methodology. In explaining why it was not able to tie credit notes to individual transactions, CCC has complied satisfactorily with the request for that information. Thus, there is no longer a deficiency in CCC's data. CCC also demonstrated that ''it acted to the best of its ability in providing the information.'' Lastly, the information can clearly be used ''without undue difficulties.''

We agree with petitioners that the burden lies with respondents to place necessary information on the record. It is the responsibility of the respondent to demonstrate that its methodology is not unreasonably inaccurate or distortive. However, we believe that CCC has met that burden with the explanations provided in their submissions for this review period, and through verification of sales made in the second administrative review. CCC has stated that adjustments are allocated across the invoices, work orders, or customers to which they apply, and that it cannot report adjustments on a more specific basis. There is nothing on the record to indicate that either of these statements is not based in fact.

With regards to CCC's allocations of these price adjustments over nonsubject merchandise, we have in the past accepted allocations over nonsubject merchandise as provided for in 19 CFR 351.401(g)(4). First, if a respondent grants and reports a price adjustment as a fixed percentage of the sales to which it pertains, the fact that this pool of sales may include non-scope merchandise does not distort the amount of the adjustment the respondent granted and reported on sales of subject merchandise because the same adjustment percentage applied to both scope and non-scope merchandise. Second, with respect to CCC's price adjustments granted on invoices, CCC's in-scope and out-of-scope merchandise is sufficiently similar in terms of its value, physical characteristics, and the manner in which it is sold that we cannot presume the adjustments would be granted disproportionately between the two. Consequently, even if an invoice covered out-of-scope merchandise, CCC's allocation is still reasonable and not distortive. *See Final Rule*, 62 FR at 27348 (May 19, 1997).

We disagree with petitioners argument that the Court's decision in *AK Steel* upholding CCC's method of reporting PSPAs demonstrates the Court's presumption that allocations of PSPAs are suspect because of the possible distortion to prices and dumping margins caused by such allocations. In *AK Steel*, the Court upheld the Department's finding that CCC's allocation of the credit note across sales made pursuant to the work-order identified on the form was sufficiently specific, and that based on the facts on the record, a more specific methodology was not possible. In this review we again conclude, based on the information on the record, that CCC's allocation of the credit note across sales made pursuant to the work-order identified on the form was sufficiently specific.

The Court in *AK Steel* also disagreed with plaintiff's argument that the flaw in CCC's allocation methodology caused it to report all sales involved incorrectly. Plaintiffs in *AK Steel* claimed there that the methodology used by CCC had an averaging effect on prices, i.e., the transactions that did not involve the coil received price reductions when there was in fact no reduction in price, and the transaction that did involve the coil did not receive the full amount of the credit.

The Court, however, found plaintiffs' arguments unpersuasive and agreed with the Department that CCC's PSPA methodology was acceptable under the circumstances.

We disagree with petitioners' claim that because CCC's allocations were not verified in this review, they are not acceptable.

The fact that CCC was not verified in this review does not require an adverse inference in this case. Furthermore, we

found at verification during the second review that CCC's methodology was reasonable and not distortive, and that CCC's reporting was as specific as possible. Since CCC's reporting methodology is the same as it has been in the past, we are accepting CCC's allocations. This concurs with the Court's ruling in *Timken* that the Department may determine, based in part on institutional knowledge attained in previous verifications, that a respondent is incapable of providing data on a transaction-specific basis, and that its data is reliable.

We find that CCC's allocation methodologies are not unreasonably distortive, nor are they potentially distortive, as we are satisfied that each adjustment was granted in proportion to the value of each sale to which it applied.

Comment 4: Currency Conversion Error

Petitioners note that the Department made a currency conversion error in calculating PACKINGU and, as a result, in the calculation of CVPROFIT, TOTCV and FUPDOL.

Department's Position: We agree with petitioners and have corrected the currency conversion accordingly.

Forsyth

Comment 1: Adverse Facts Available

Forsyth claims that the Department's decision to assign the margin based on total adverse FA did not reflect the level-of-trade information that Forsyth provided on the record, and did not take into account any meaningful consideration of either Forsyth's ability to provide corporate sales-specific data on a large number of small transactions or Forsyth's request that the Department conduct verification. Forsyth claims that the Department's rejection of Forsyth's level-of-trade argument, which characterized Forsyth's distribution division services as product-related rather than sales-related, is not supported by the record. Forsyth claims that its distribution division services are intimately linked to the ability of those divisions to sell products to a unique class of customers.

Petitioners argue that the Department correctly applied adverse facts available since Forsyth repeatedly refused to report its distribution division sales. Petitioners argue that the Department only excludes home market sales from a respondent's reporting requirements due to level of trade differences, if ever, in the context of downstream sales, and that Forsyth's distribution division sales are not downstream sales. Petitioners cite *Certain Cut-to-Length Carbon Steel Plate From Brazil: Final Results of Antidumping Duty Administrative Review,* 62 FR 18486, 18491 (April 15, 1997).

While petitioners claim that the Department's level-of-trade analysis was unnecessary, since all home market sales were not reported, they argue that record evidence supports the Department's level-of-trade determination. They cite section 773(a)(7)(A) of the Act and § 351.412 of the Department's regulations to argue that a difference in level of trade can only exist where there is a difference in selling functions. Petitioners further cite *SSWR from Sweden* at 40455, which states that the burden is on respondent to demonstrate that its categorizations of level of trade are correct.

Department's Position: We agree with petitioners. Forsyth failed to report a majority of its home market sales of subject merchandise and did not prove a difference in level of trade between its U.S. sales and its home market distribution division sales. We have thus continued to base Forsyth's antidumping duty margin on adverse facts available. *See* ''Facts Available'' section of this notice, and *Certain Corrosion-Resistant Carbon Steel Flat Products and Certain Cut-to-Length Carbon Steel Plate from Canada: Preliminary Results of Antidumping Duty Administrative Reviews and Intent to Revoke in-Part,* 63 FR 37320, 37327 (July 10, 1998).

Stelco

Comment 1: The Time Frame for Making a Request for Revocation

Petitioners argue that the Department should deny Stelco's request for revocation since Stelco did not file its request for revocation during the anniversary month of the publication of the antidumping order, as required by § 351.222(e) of the Department's regulations. Petitioners argue that § 351.222(f) allows the Department to consider such a request only if the request is timely.

Petitioners argue that *Samsung Elec. Co.* v. *United States (Samsung),* 946 F. Supp. 5, 8 (CIT 1996) establishes the obligation to request revocation during the anniversary month as a ''*mandatory, bright line requirement.*'' (Emphasis added by petitioners.) Petitioners note that not only did Stelco fail to make its request in a timely fashion, but that it also failed to request an extension or provide any explanation for its failure to meet the statutory deadline for a revocation request. Therefore, since Stelco failed to pass the bright line test established in *Samsung,* petitioners argue that the Department should deny Stelco's request for revocation.

Petitioners point out that the Department highlighted the importance of submitting timely requests in *Electrolytic Manganese Dioxide from Japan; Final Results of Antidumping Duty Administrative Review,* 58 FR 28551 (May 14, 1993) *(EMD).* In *EMD,* petitioners failed to file a timely cost of production (COP) allegation because the Department had failed to process their administrative protective order (APO) application in a timely fashion. Although the Department acknowledged the delay in processing the petitioners' APO applications, the Department refused to consider the petitioners' untimely COP allegation because the petitioners could have preserved their right to submit a timely COP allegation by requesting an extension of the regulatory deadline. Since petitioners elected not to request an extension of the deadline for filing a COP allegation, the Department did not examine the untimely allegation, but merely enforced the regulatory deadlines. Petitioners conclude that the Department should reject Stelco's request for revocation as untimely just as it rejected petitioners' cost allegation in the EMD case.

Petitioners note that Stelco contends in its June 12, 1998 submission that the Department considered an untimely request for revocation on the part of Frutopic, a respondent in *Frozen Concentrated Orange Juice from Brazil; Final Results and Termination in Part of Antidumping Duty Administrative Review; Revocation in Part of the Antidumping Duty Order,* 56 FR 52510 (October 21, 1991) (*Orange Juice*). Stelco contends that the untimely request was considered because it was filed only four days after the regulatory deadline. Petitioners point out, on the contrary, that Frutopic filed an extension request on the last day of the anniversary month in question, explained why it needed the extension, and was granted an ''explicit extension of time to submit the revocation request.'' *See, Orange Juice,* 56 FR 52510 (October 21, 1991). Petitioners further point out that Frutopic in effect demonstrated ''good cause'' when requesting its extension by explaining in detail why it needed one, even though the regulations explicitly allowing extensions for ''good cause'' was not introduced until 1997.

Petitioners argue that the necessity of showing ''good cause'' to obtain an extension under § 351.302(b) is not a toothless requirement. Petitioners point out that in *Stainless Steel Bar from India; Final Results of Antidumping Duty Administrative Review,* 63 FR

13622 (March 20, 1998), Mukand, the respondent, requested a one-day extension to file its case brief on the day the brief was due. Petitioners note that the Department was not satisfied with Mukand's explanation that it was not able to file the brief in a timely fashion due to ''technical difficulties'' and requested and received a more extensive explanation before granting the extension. Petitioners argue that the Department should not hold Stelco to a lesser standard for requesting a revocation than it held Mukand for filing a case brief.

Finally, petitioners contend that Stelco's September 8, 1998 request for revocation should not be considered an ''amendment'' to Stelco's August 29, 1997 request for an administrative review. Petitioners point out that the Department's regulations [no cite given] allow a timely revocation request to be considered to include a request for administrative review, but there is no similar provision allowing a request for review to automatically include a revocation request.

Therefore, petitioners contend that the Department cannot ignore the time limits imposed by its own regulations. Since Stelco did not comply with the deadlines for requesting a revocation in accordance with § 351.222(e) or requesting an extension in accordance with § 351.302(b) of the Department's regulations, petitioners argue that the Department should reject Stelco's untimely request for a revocation.

Stelco argues that both the antidumping statute and the Department's regulations are silent as to the time frame for accepting requests for revocation. Stelco notes that section 751(d)(1) of the Act, the only relevant statutory provision, states: ''the administrative authority may revoke, in whole, or in part, a countervailing duty or antidumping duty order for finding * * * after a review under subsection (a) or (b) of this section.'' Therefore, Stelco argues that Congress did not specify any procedure, or identify any criteria that must be considered, other than conducting a review, in determining whether to revoke a particular antidumping duty order.

Stelco claims that the regulations are also silent as to the issue of how the Department should handle a revocation request made outside of the anniversary month. They note that § 351.222(e)(1) of the Department's regulations states: ''During the third and subsequent anniversary months of the publication of the antidumping order or suspension of an antidumping investigation, an exporter or producer *may* request in writing that the Secretary revoke an order or terminate a suspended investigation.'' Stelco argues that section provides the month within which an exporter or producer *may* choose to request revocation, and is silent as to how revocation requests received during other months should be handled. Stelco notes that there are no requirements in the regulations that the Department reject an untimely request for revocation.

Stelco argues that the Department has discretion to accept an untimely revocation request. It notes that *Samsung* states that ''Commerce has not *routinely* accepted revocation requests under 19 CFR 353.23 [now 19 CFR 351.222] after the regulatory deadline'' *Samsung*, 946 F.Supp. at 9 (emphasis added), and interprets this passage to indicate that on some occasions the Department does accept late requests for revocation.

Stelco argues that the following cases demonstrate that the Department has discretion to accept untimely requests for revocation: *Certain Fresh Cut Flowers from Colombia; Final Results of Antidumping Duty Administrative Reviews*, 61 FR 42833, 42863 (August 19, 1996), in which the Department declined to revoke not because the request was untimely (emphasis added by Stelco) but because the respondent failed to meet all substantive criteria for revocation; *Polyethylene Terephthalate Film from Korea: Preliminary Results of Antidumping duty Administrative Review, Intent to Revoke the Order in Part and Termination in Part*, 61 FR 36032, 36033 (July 9, 1996), in which the Department permitted the respondent to amend its timely revocation request one year after making the original request; *EMDs*, in which Stelco claims that the Department pointed out that its regulatory deadline ''is a *discretionary, not a mandatory, deadline*'' (emphasis added by Stelco) (*see EMDs*, 58 FR 2855, 28553 (May 14, 1993).

Finally, Stelco notes that petitioners' contention that the Department should reject Stelco's request for revocation rests on procedural technicalities, without providing any substantive factors which the Department should weigh in deciding whether to accept the request for consideration. Stelco notes that the request for revocation was submitted five working days late, and did not pose an administrative burden since it was submitted well before the publication of the notice of initiation. Stelco further notes that petitioners did not raise any objections to the timeliness of the revocation request until June 5, 1998, nine months after the revocation was made.

Department's Position: We disagree with petitioners that the Department should automatically deny Stelco's request for a revocation solely on the basis that the request for revocation was filed one week after the end of the anniversary month.

Petitioners argue that *Samsung* established the obligation to request revocation during the anniversary month as a ''mandatory, bright line requirement'' without distinguishing between the facts in the *Samsung* litigation and in the current review. However, the *Samsung* case involved a revocation request which was four-and-one-half years late. The underlying rationale for the Court's decision was based on administrative efficiency. *Samsung* states ''(t)he burden placed on Commerce by the submission of factual information after a deadline is relatively light compared to the administrative burden imposed on Commerce by an untimely request for revocation.'' The Court goes on to note that in response to a request for revocation, Commerce must initiate and conduct an entire investigation and that ''(i)f the plaintiff could command Commerce to conduct such an investigation at its whim rather than only once per year, Commerce's administrative efficiency would be adversely affected.''

Stelco's situation is clearly distinguished from the plaintiff's in *Samsung*. Unlike the situation in *Samsung*, the reviews of this order have been conducted in a timely fashion. At the time of the initiation of this fourth review, Stelco had established a history of a zero and a *de minimis* margin in the second and third reviews. Both the Department and petitioners were, and had been, aware of that history, and thus were aware that Stelco could be eligible for revocation. Stelco amended its request for review to include a request for revocation five working days, not four-and-one-half years, after a timely request for review. The amendment was accepted by the Department and its timeliness was not even questioned by petitioners until nine months after initiation (*Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part*, 62 FR 50292, (September 25, 1998)). On July 10, 1998, the Department issued its preliminary results of review, noting that Stelco made a request for revocation in an amendment to its request for review on September 8, 1998. *See Preliminary Results*, 63 FR at 37321. In that notice, we set forth the arguments and record evidence concerning Stelco's revocation and expressed our intention to revoke the

order with respect to Stelco if the preliminary findings were upheld in the final results of review (*Preliminary Results* at 37321).

Consequently, by initiating the review without rejecting the untimeliness of Stelco's request for revocation, and by giving full consideration to Stelco's request in the preliminary results of review, the Department effectively granted Stelco an extension of its deadline to file its request for revocation as permitted under 19 CFR 351.302(b). In addition, because Stelco's request for revocation was filed well before the review was initiated, it did not impose an additional burden on the conduct of the administrative review and petitioners were not deprived of effective notification of Stelco's request. Finally, the fairness of considering Stelco's untimely request for revocation in the face of two years of de minimis margins, outweighs the burden imposed by Stelco's untimely and unopposed request for revocation.

We disagree with Stelco's contention that both the antidumping statute and the Department regulations are silent as to the time for accepting requests for revocation. Section 351.222 of the Department's regulations clearly specifies that a producer or exporter may request revocation during the ''third and subsequent annual anniversary months of the publication of the antidumping order * * *'' (*Final Rule*, 62 FR 27296 (May 19, 1997).) Section 351.222(f) reinforces the importance of the timeliness of the request for revocation by stating: ''(u)pon receipt of a *timely* request for revocation * * *'' (*Final Rule* 62 FR at 27400). *Samsung* further argues that, ''even if the regulation does not provide a bright line requirement as to the year of filing, it still provides a bright line test as to the month of filing and Commerce also would retain discretion to discount stale information.'' Therefore, both the Department's regulations and practice have established the anniversary month as the time period in which to file a request for revocation. In this instance, however, the Department has effectively granted an extension by accepting Stelco's amended request for review.

Comment 2: The Merits of Stelco's Request for Revocation

Petitioners argue that if the Department considers Stelco's request for revocation, it should deny the request on the merits of its case. Petitioners claim that Stelco cannot demonstrate that it is not likely to sell the subject merchandise at less than NV in the future as required by section 351(b)(2)(ii) of the Department's regulations.

Petitioners allege that before the Department can conclude that Stelco is not likely to dump if the order is revoked, Stelco must show that it can successfully export normal commercial quantities without resorting to dumping. Petitioners note that the preamble to the Department's final regulations states: the underlying assumption behind a revocation based on the absence of dumping or countervailable subsidization is that a respondent, by engaging in fair trade for a specified period of time, has demonstrated that it will not resume its unfair trade practice following the revocation of an order. If the respondent is not selling in commercial quantities characteristic of that company for the duration of the specified period, petitioners argue, this assumption becomes weaker. (*See Final Rule*, 62 FR 27296, 27326 (May 19, 1997).)

Petitioners additionally point out that § 351.222(d)(1) of the Department's regulations requires that ''(B)efore revoking an order * * *, the Secretary must be satisfied that, during each of the three * * * years, there were exports to the United States in commercial quantities of the subject merchandise to which a revocation * * * will apply.'' (*See Final Rule*, 62 FR 27296, 27400 (May 19, 1997).) Petitioners contend that Stelco cannot demonstrate that it is not likely to resume dumping in accordance with this regulation because it cannot demonstrate that it made sales in commercial quantities during each of the past three years. Petitioners have provided proprietary charts demonstrating the volume and value of the subject merchandise sold in the United States during each of the four administrative reviews which quantify the extreme decline in Stelco's sales since the original investigation.

Petitioners also note that the Department has refused to revoke an antidumping duty order with respect to a particular respondent because that respondent's U.S. sales of the subject merchandise fell substantially after the imposition of the antidumping duty order. *(See Brass Sheet and Strip from Germany; Final Results of Antidumping Duty Administrative Review and Determination Not to Revoke in Part (BSS Germany)*, 61 FR 49727, 49731 (September 23, 1996) and *Pure Magnesium from Canada; Preliminary Results of Antidumping Administrative Review and Notice of Intent not to Revoke Order in Part (Pure Magnesium)*, 63 FR 26147 (May 12, 1998).)

Petitioners point out that the Department's memoranda to the file show that the Bureau of Labor Statistics producer price index (BLS index) for carbon steel plate dropped by 3.2 percent from September to October of this year, and the Statistics Canada producer price index for carbon steel sheet, strip, and plate dropped 2 percent from August to September of this year and remained at a depressed level in October. Petitioners add that this weakening in both the U.S. and Canadian markets occurred just as Stelco is reportedly completing a substantial upgrade of its plate mill that will double its current plate production capacity. Petitioners cite a *Calgary Herald* newspaper article describing the project (''Stelco to Revamp Main Hamilton Mill,'' *Calgary Herald* at D5 (March 19, 1997).) Petitioners claim that Stelco's doubling of capacity at a time when U.S. and Canadian prices are falling places pressure on Stelco to dump plate in the U.S. market. Thus, petitioners argue, revocation of the order would make resumed dumping likely.

Petitioners claim that Stelco cannot demonstrate that it is not likely to resume dumping in the future based on the information which is currently on the record in the instant administrative review. Consequently, petitioners contend that the Department must solicit information from petitioners and Stelco concerning: (1) The total quantity by weight and by value and numbers of Stelco's U.S. plate sales for the second and third review periods and the period for the initial investigation; (2) currency movements between the U.S. dollar and the Canadian dollar; and (3) conditions and trends in the U.S. and Canadian steel industries.

Stelco disputes petitioners' contention that it did not import ''normal commercial quantities'' over the past three successive review periods. Stelco claims that each and every one of its sales made after the imposition of the antidumping order were ''bona fide'' transactions.

Stelco contends that petitioners' argument that the Department must deny Stelco's revocation request because it did not import ''normal commercial quantities'' over the past three successive review periods is incorrect for two reasons. First, Stelco contends that the Department has never defined ''normal commercial quantities'' and has held commercial quantities to constitute as little as a single shipment (*See BSS Germany*). Second, Stelco argues that a decrease in the volume of merchandise following the imposition of an antidumping duty order is relevant only in determining whether a respondent is able to compete in the

U.S. market without dumping, and does not automatically require the Department to reject a revocation request. Stelco argues that the Department's examination of a respondent's ''ability to compete in the U.S. market without dumping'' is only one factor in a multi-factor {revocation} analysis, including the ''respondent's prices and margins in the preceding periods * * *, the conditions and trends in the domestic and home market industries, (and) currency movements.'' (*See Brass Sheet and Strip from Canada: Preliminary Results of Antidumping Duty Administrative Review and Notice of Intent to Revoke Order in Part,* 63 FR 6519, (February 9, 1998) (*BSS Canada*); *BSS Germany,* and *Pure Magnesium*.

Stelco argues that the Department has often noted that a respondent's lack of dumping over the course of three years is ''generally predictive of future behavior.'' (*See Pure Magnesium,* 63 FR 26147, 26149 (May 12, 1998).) However, Stelco admits that in some prior cases, the Department has also examined other factors when determining the likelihood of future dumping, such as: (1) Conditions and trends in the domestic and home market industries, (2) currency movements, and (3) the ability of a respondent to compete in the U.S. market without dumping. Stelco argues that the record supports its contention that it is unlikely to resume dumping in the future.

Stelco contends that factual information and forecasts by industry analysis on the record demonstrates unequivocally strong demand in the U.S. and Canadian markets eliminating any economic reason for Stelco to sell the subject merchandise at depressed prices in the U.S. market.

Stelco also argues that exchange rate information on the record indicates that the Canadian dollar has been stable or depreciating, thereby making it unlikely that Stelco will sell merchandise to the U.S. at dumped prices.

Finally, Stelco argues that its recent pricing trends (i.e. its three-year history of not dumping), which is also on the record, indicate that Stelco is able to compete in the U.S. market without selling at dumped prices.

Additional comments and information regarding the likelihood of future dumping by Stelco were added to the record on December 4 and December 9, 1998. See ''Determination Not to Revoke,'' above.

Department's Position: We agree with petitioners that Stelco has not sold subject merchandise in commercial quantities at not less than normal value for three consecutive years, as required by § 351.222(b)(2)(i) and (d)(1) of the Department's regulations. Therefore, we are not revoking the antidumping order on steel plate with respect to Stelco. For further details, see the ''Determination Not to Revoke'' section above.

Stelco's argument that, in *BSS Germany,* the Department determined a single sale to be in commercial quantities is not determinative in the instant case. First, the determination of what constitutes commercial quantities must be made on a case-specific basis. Here, a single sale of only 36 tons of steel plate is so insignificant in comparison with the volume of sales prior to the imposition of the antidumping order, as well as in comparison with subsequent review periods, as to fail to constitute a commercial quantity. Second, the determination in BSS Germany was based on a finding of ''likelihood'' of resumed dumping, and not on a finding that the company did not have three consecutive years of sales in commercial quantities at not less than NV.

Stelco has argued that the Department examines a number of items in determining whether to revoke an antidumping order. However, respondents must meet the threshold criterion of three consecutive years of sales in commercial quantities at not less than NV in order to be eligible for revocation. When that criterion has been met, and the record contains evidence regarding the likelihood of resumption of dumping, then the Department looks to additional indicators, such as the condition of the U.S. and domestic markets. See *BSS Germany* and *BSS Canada.* As noted above, this additional step was not necessary in this case.

Because Stelco is ineligible for revocation under § 351.222(b)(2)(i), based on the fact that it has not had three consecutive years of sales in commercial quantities at not less than NV, we need not address comments regarding U.S. and Canadian market conditions, or Stelco's planned mill expansion.

Regarding Stelco's request for revocation with respect to corrosion-resistant steel, we note that, in the last two administrative reviews, we determined that Stelco sold corrosion-resistant steel at less than NV. *See* Certain Corrosion-Resistant Carbon Steel Flat Products and Certain Cut-to-Length Carbon Steel Plate From Canada: Final Results of Antidumping Duty Administrative Reviews, 62 FR 12725 (March 16, 1998) and Certain Corrosion-Resistant Carbon Steel Flat Products and Certain Cut-to-Length Carbon Steel Plate From Canada: Final Results of Antidumping Duty Administrative Reviews, 62 FR 18448 (April 15, 1997)(1994/95 Canadian Steel). Although the final results of these reviews are subject to litigation, that litigation is not yet complete. Additionally, as discussed below, we have determined that Stelco sold corrosion-resistant steel at less than NV during the period covered by this review. Consequently, we determine that, because Stelco does not have three consecutive years of zero or *de minimis* margins on corrosion-resistant steel, Stelco is not eligible for revocation of the order on corrosion-resistant steel under 19 CFR 351.222(b).

Comment 3: Clerical Errors

Petitioners claim that the model match program used to calculate the results of review does not account for all plate qualities that Stelco has reported. Petitioners proposed the addition of two lines of computer code to remedy the omission.

DOC position: We agree and have corrected the error to include all qualities of plate that were reported by Stelco.

Comment 4: Major Input Rule

Stelco argues that there is no factual or legal basis for the Department's decision to increase Stelco's submitted actual costs of production for painting services supplied by Baycoat for corrosion-resistant products. Stelco maintains that the Department erroneously used the transfer price from Baycoat instead of Baycoat's reported cost of production to value Baycoat's painting services. Stelco asserts that the WTO Antidumping Agreement and section 773(f)(1) of the Act provide that the Department must examine and calculate a particular exporter's cost of manufacture.

Stelco also claims that its actual cost for Baycoat's painting services is not equal to the total invoice price, but rather that it is equal to the total invoice price minus half of Baycoat's profits, since Baycoat is jointly owned by Stelco and Dofasco. Stelco points to a draft remand determination on this issue in which the Department states that the return of profit is independent of the number or value of sales of painting services to Stelco.

Stelco argues that the statutory language of the ''major input rule'' does not require the Department to increase an affiliated supplier's actual cost of production in valuing its major inputs. Stelco claims that in *1994/95 Canadian Steel,* the Department determined that the major input rule required the Department to value inputs supplied by affiliates at the transfer price provided

that the transfer price reflects market value and was not below the cost of production. Stelco also refers to the Draft Remand Determination for Article 1904 Binational Panel Review USA–97–1904–03 (August 4, 1998), in which the Department stated that ''the normal application of these provisions dictates that transfer price is the appropriate basis for Stelco's cost of production with respect to the Baycoat inputs.'' Stelco argues that in H.R. Rep. No. 40, 100th Cong., 1st Sess., pt. 1, at 137 (1987), Congress did not intend for this provision to be used to increase costs beyond a company's actual cost of production. In addition, Stelco claims that *Torrington Co.* v. *United States* (''Torrington'') (881 F. Supp 622, 642–643 (CIT 1995)) and *SKF USA Inc.* v. *United States* (''SKF'') (888 F. Supp 152, 156 (CIT 1995)) supports its contention that a COP valuation is appropriate when it is below transfer price.

Stelco further argues that the major input rule does not apply to affiliated suppliers that are collapsed with the respondent. Stelco refers to C. Marsh and J. Miller, *Use and Measurement of Production Costs Under U.S. Antidumping Law* (September 19, 1995) to illustrate that pursuant to consolidation rules under generally accepted accounting principles, companies within a consolidated group record actual costs incurred for inter-company purchases and sales. Stelco also refers to *Certain Forged Steel Crankshafts from the United Kingdom*, 61 FR 54613, 54614 (October 21, 1996) (*Crankshafts*) and *Steel from Korea* in which the Department did not apply the major input rule with regard to transactions between divisions of the same corporation. To show that Department precedent mandates the collapsing of Stelco and Baycoat, Stelco cites *Preliminary Results of Antidumping Administrative Review: Sulfanilic Acid from the People's Republic of China*, 61 FR 25196, 25197 (May 20, 1996); *Final Determinations of Sales at LTFV: Certain Hot-Rolled Carbon Steel Flat Products, Certain Cold-Rolled Carbon Steel Flat Products, Certain Corrosion-Resistant Carbon Steel Flat Products, and Certain Cut-to-Length Carbon Steel Flat Products from Japan*, 58 FR 37154 (July 9, 1993); *Nihon Cement Co., Ltd.* v. *United States*, 17 C.I.T. 400 (1993).

Finally, Stelco argues that a June 4, 1998 binational panel ruling specifically rejected the Department's use of invoice prices from Baycoat as the value of the painting service that Stelco obtains from Baycoat. *See* Decision of the Panel: North American Free Trade Agreement, Article 1904 Binational Panel Review, USA–97–1904–3 (June 4, 1998) at 10 (*Panel Decision*) (Public Document).

Petitioners argue that the Department correctly used the transfer price to value the painting services received from Baycoat. Petitioners further ague that the statute makes no provision for the rejection of transfer price where such price exceeds the input's cost of production and there is no evidence that the transfer price is below market value. They further argue that the legislative history of the major input rule shows that the phrase ''amount represented as the value of [the] input'' refers to the transfer price, and that a conference committee report gives a similar definition. *See* H. Conf. Rep. No. 100–576 at 595, reprinted in 1988 U.S.S.C.A.N. 1547, 1628. Petitioners also contend that the Court of International Trade, has construed subsections (f)(2) and (f)(3) to require a comparison of market value and cost with transfer price. *See Timken Co.* v. *United States*, Consol. Court No. 96–12–02686, Slip Op. 97–164 (CIT Dec. 3, 1997) at 30–31. Petitioners argue that the binational review unequivocally sustained the discretion of the Department to use the unadjusted Baycoat invoice price as the valuation of Baycoat's painting services.

Petitioners contend that the transfer price is the appropriate valuation under the Department's regulations, specifically 19 CFR 351.407(b), which says that the Department will determine the value of a major input purchased from an affiliated person based on the higher of the price paid, the market value, or the cost of production. Furthermore, petitioners argue that there is no provision in the statute or any precedent that would permit any adjustment for profit made to the transfer price. Petitioners also note that in the normal course of business Stelco records its costs for the Baycoat services at the transfer price.

Petitioners argue that Stelco's assertion that the Department should treat Stelco and its affiliated suppliers as a single entity is baseless. Petitioners state that Stelco has failed to establish that Baycoat is a ''division'' of Stelco, and that the requirements for collapsing Baycoat and Stelco into one entity have not been satisfied. Finally, petitioners assert that there is no precedent for any exceptions to the application of the major input rule.

Department's Position: We agree with petitioners that it is appropriate to use the transfer price to value Stelco's major inputs. Under section 773(f)(2) of the Act, the Department's current practice is to request information on both the transfer price and the market value of the input and to choose the higher of the two valuations. Pursuant to section 773(f)(3) of the Act, the Department may alter this valuation only in those cases where the input is ''major'' and the value determined under section 773(f)(2) is lower than the COP of the inputs. All parties agree that the inputs in question are major inputs within the meaning of section 773(f)(3); we have determined that the value determined under section 773(f)(2) is not lower than the COP of the inputs.

In *Torrington* and *SKF*, which concerned the calculation of CV, the Department had not requested or received information on the transfer prices of the inputs. The CIT did not say that the Department was prohibited from requesting the transfer prices of the inputs; rather, it said that the Department was within its discretion to choose to rely on cost information. Here, because of the Department's current policy, the Department requested and received the transfer prices of the inputs. These transfer prices are greater than Baycoat's COP.

The policy applied here was the policy applied by the Department in the second review of this case and is currently reflected in 19 CFR 351.403(b). The Department held in the second administrative review that the statute directs it ''to value inputs supplied by affiliated persons at the transfer price between the entities provided that such a price reflects the price commonly charged in the market and, for major inputs, is not below the cost of producing the input.'' *See 1994/95 Canadian Steel* at 62 FR 18464.

Stelco also argues that it and Baycoat should be treated as a single entity for determining cost of production. However, Stelco has not established either that Baycoat is a ''division'' of Stelco or that the requirements for ''collapsing,'' under 19 CFR 351.401(f), have been satisfied with respect to Baycoat. In *Crankshafts*, respondent argued that because it and its affiliated supplier were ''both unincorporated operating divisions within a single entity, * * * they are parts of the same company and share a common steel COP.'' The Department ruled that the record evidence indicated that they were divisions of the same corporation, as opposed to distinct, although affiliated, legal entities, and found that the major input rule did not apply on that basis. Unlike the respondent in *Crankshafts*, Stelco does not contend that Baycoat is an actual division of Stelco with no independent legal existence. Rather, Stelco contends that it and Baycoat should be treated as a single entity solely for purposes of the

major input rule. As petitioners point out, the Department rejected a similar argument in *Mechanical Transfer Presses from Japan* 55 FR 335 (January 4, 1990) in which respondent maintained that its wholly-owned subsidiaries ''function(ed) as divisions.'' The Department noted that the ''wholly-owned subsidiaries are separate legal entities,'' as opposed to mere divisions, and thus applied the major input rule. The subsidiary in question here, Baycoat, is clearly a separate legal entity and thus the rule of *Crankshafts* does not apply.

Steel from Korea represents another instance where we have determined that the major input rule does not apply. In that case we disregarded the major input rule for transactions between producers of the subject merchandise where we had determined that such producers should be collapsed for purposes of analyzing sales. The criteria applied for determining whether sales collapsing is appropriate do not apply, however, in cases where the affiliated supplier does not have the capacity to produce the subject merchandise. *See* 19 CFR 351.401(f). In this review, it is clear that Baycoat does not produce subject merchandise. We agree with petitioners that Stelco has not established a basis for the treatment of Stelco's affiliated suppliers as ''collapsed'' entities. Furthermore, a year-end profit distribution does not function as an adjustment to price. The entitlement to a profit distribution arises from the ownership interest, not from the sale.

The binational panel agreed with the Department ''that subsection (f)(3) does not require the rejection of the transfer price'' and ruled that ''on the face of the statute, the Department is within its discretion to utilize the transactions between Stelco and Baycoat'' as the cost for Baycoat's services. *See Panel Decision* at 10. For these reasons, the Department has allowed no adjustments to the transfer price between Stelco and Baycoat.

Comment 5: Clerical Errors

Both Stelco and petitioners claim that the Department made clerical calculation errors in the preliminary determination. Stelco argues that the Department failed to apply reported billing adjustments, the CEP offset adjustment, and appropriate currency conversions for advertising expenses and inventory carrying costs. With regard to the recalculation of Stelco's painting costs, Stelco claims that the Department incorrectly recalculated Stelco's yield loss, used an incorrect TCOM variable, and did not complete the programming language needed to ensure that the Baycoat adjustment was applied only to Baycoat orders.

Petitioners claim that the Department neglected to include the home market interest revenue variable in the arm's length test, incorrectly defined the DIFFCODE variable used for matching in the model match, and incorrectly converted U.S. packing expense into U.S. dollars.

Department's Position: We agree with Stelco and with petitioners and have corrected the clerical errors described above.

Final Results of Review

As a result of our review, we determine the dumping margins (in percent) for the period August 1, 1996, through July 31, 1997 to be as follows:

Manufacturer/exporter	Margin (percent)
Corrosion-Resistant Steel:	
Dofasco	0.98
CCC	2.26
Stelco	2.73
Cut-to-Length Plate:	
Algoma	*0.23
MRM	0.00
Stelco	0.00
Forsyth	68.70

* *De minimis.*

The Department will determine, and the U.S. Customs Service shall assess, antidumping duties on all appropriate entries. For assessment purposes, we have calculated importer-specific ad valorem duty assessment rates for the merchandise based on the ratio of the total amount of antidumping duties calculated for the examined sales during the POR to the total quantity of sales examined during the POR. Individual differences between U.S. price and normal value may vary from the percentages stated above. The Department will issue appraisement instructions directly to the Customs Service.

Furthermore, the following deposit requirements will be effective upon publication of these final results for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date as provided by section 751(a)(1) of the Act: (1) The cash deposit rate for each reviewed company will be the rates stated above (except that no deposit will be required for firms with zero or *de minimis* margins, i.e., margins less than 0.5 percent); (2) for exporters not covered in this review, but covered in the LTFV investigation or a previous review, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a previous review, or the original LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be the ''all others'' rate established in the LTFV investigations, which were 18.71 percent for corrosion-resistant steel products and 61.88 percent for plate (*see* Amended Final Determination, 60 FR 49582 (September 26, 1995)). These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative reviews.

We are revoking the antidumping duty order on certain cut-to-length carbon steel plate from Canada with respect to Algoma and Stelco, in accordance with section 751(d) of the Act and 19 CFR 353.25(a)(2). This revocation applies to all entries of the subject merchandise from Canada entered, or withdrawn from warehouse, for consumption on or after August 31, 1997. The Department will order the suspension of liquidation ended for all such entries and will instruct the Customs Service to release any cash deposit or bonds. The Department will further instruct the Customs Service to refund with interest any cash deposits on entries made on or after August 31, 1997.

Notification of Interested Parties

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of the antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective orders (APOs) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d)(1)(1997). Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

These administrative reviews and notices are in accordance with section

751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and 19 CFR 351.213 and 19 CFR 351.221(b)(5).

Dated: January 4, 1999.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 99–691 Filed 1–12–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–588–824]

Certain Corrosion-Resistant Carbon Steel Flat Products From Japan: Extension of Time Limit for Final Results of the Antidumping Duty Administrative Review

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

ACTION: Notice of extension of time limit for final results of antidumping duty administrative review.

SUMMARY: The Department of Commerce (''the Department'') is extending the time limit for the final results of the review of certain corrosion-resistant carbon steel flat products from Japan. This review covers the period August 1, 1996 through July 31, 1997. The preliminary results of this review notice was published in the **Federal Register** on September 8, 1998 (63 FR 47465).

EFFECTIVE DATE: January 13, 1999.

FOR FURTHER INFORMATION CONTACT: Doreen Chen or Rick Johnson at (202) 482–0408 or (202) 482–3818, respectively; Office of AD/CVD Enforcement, Group III, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

The Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930 (''the Act'') are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act.

Extension of Final Results

The Department has determined that it is not practicable to issue its final results within the original time limit. *See* Decision Memorandum from Joseph A. Spetrini, Deputy Assistant Secretary, Enforcement Group III to Robert LaRussa, Assistant Secretary for Import Administration, January 6, 1999. The Department is extending the time limit for completion of the final results until February 5, 1999 in accordance with section 751(a)(3)(A) of the Act.

Dated: Janauary 6, 1999.

Joseph A. Spetrini,

Deputy Assistant Secretary for Enforcement Group III.

[FR Doc. 99–697 Filed 1–12–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–501]

Natural Bristle Paintbrushes and Brush Heads From The People's Republic of China; Preliminary Results and Partial Recission of Antidumping Duty Administrative Review

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

ACTION: Notice of preliminary results and partial recission of the antidumping duty administrative review of natural bristle paintbrushes and brush heads from the People's Republic of China.

SUMMARY: The Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on natural bristle paintbrushes and brush heads (paintbrushes) from the People's Republic of China (PRC) in response to a request by petitioner, the Paint Applicator Division of the American Brush Manufacturers Association (the Paint Applicator Division) and by a PRC exporter of subject merchandise, the Hebei Animal By-Products Import & Export Corp. (HACO). This review covers shipments of this merchandise to the United States during the period February 1, 1997 through January 31, 1998. We are now rescinding this review in part with respect to the respondent who had no shipments of the subject merchandise during the period of review (POR).

We have preliminarily determined that sales by HACO have been made below normal value (NV). If these preliminary results are adopted in our final results, we will instruct the U.S. Customs Service to assess antidumping duties equal to the difference between export price and NV.

Interested parties are invited to comment on these preliminary results. Parties who submit arguments are requested to submit with each argument (1) a statement of the issue and (2) a brief summary of the argument.

EFFECTIVE DATE: January 13, 1999.

FOR FURTHER INFORMATION CONTACT: Eric Scheier, Laurel LaCivita, or Maureen Flannery, Antidumping/Countervailing Duty Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, DC. 20230; telephone (202) 482–4052, 482–4236, or 482–3020, respectively.

Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations refer to the regulations codified at 19 CFR part 351 (April 1998).

Background

On February 18, 1986, the Department published in the **Federal Register** an antidumping duty order on paintbrushes from the PRC. *See* 51 FR 5580. On February 4, 1998, the Department published in the **Federal Register** (63 FR 5930) a notice of opportunity to request an administrative review of the antidumping order on paintbrushes from the PRC covering the period February 1, 1997, through January 31, 1998.

On February 27, 1998, in accordance with 19 CFR 351.213(b)(1), petitioner, the Paint Applicator Division, requested that we conduct an administrative review of Hunan Provincial Native Produce & Animal By-Products I/E Corporation (Hunan). On February 27, 1998, HACO submitted a request for a review. We published a notice of initiation of this antidumping duty administrative review on March 23, 1998 (63 FR 13837). The Department is conducting this administrative review in accordance with section 751 of the Act.

Partial Rescission

We initiated a review of HACO and Hunan. However, on March 5, 1998, Hunan informed the Department that it had no shipments of the subject merchandise to the United States during the POR. We have independently confirmed with the United States Customs Service that there were no shipments from Hunan during the POR. Therefore, in accordance with § 351.213(d)(3) of the Department's regulations and consistent with Department practice, we are rescinding our review of Hunan (*see, e.g., Certain Welded Carbon Steel Pipe and Tube*

from Turkey: Final Results and Partial Rescission of Antidumping Administrative Review, 63 FR 35191 (June 29, 1998) and *Certain Fresh Cut Flowers From Colombia; Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 62 FR 53287, 53288 (October 14, 1997).

Scope of Review

Imports covered by this review are shipments of natural bristle paint brushes and brush heads from the PRC. Excluded from the order are paint brushes and brush heads with a blend of 40% natural bristles and 60% synthetic filaments. The merchandise under review is currently classifiable under item 9603.40.40.40 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheading is provided for convenience and customs purposes, the Department's written description of the merchandise is dispositive.

This review covers the period February 1, 1997, through January 31, 1998.

Verification

As provided in section 782(i) of the Act, we conducted a verification of information provided by HACO and its supplier by using standard verification procedures, including on-site inspection of the manufacturer's facilities, the examination of relevant sales and financial records, and the seclection of original documentation containing relevant information. Our verification results are outlined in the public version of the verification report.

Adverse Facts Available

We preliminarily determine, in accordance with sections 776(b) and (c) of the Act, that the use of adverse facts available (FA) is appropriate for HACO. *See Determination of Adverse Facts Available Based on Verification Failure in the Administrative Review of Natural Bristle Paintbrushes and Brush Heads from the People's Republic of China (Adverse Facts Available Memorandum),* dated December 30, 1998.

From September 28 through September 30, 1998, the Department conducted a verification of HACO's questionaire response at HACO's sales office and its supplier's factory in the PRC. We were unable to verify substantial sections of the questionnaire response at HACO's supplier, including the statutorily required factors of production information, such as the number of labor hours worked and the per unit quantities consumed of primary material inputs. These discrepancies are detailed in HACO's verification report, dated December 30, 1998. These discrepancies are so significant as to constitute a failure of verification.

Where a party provides information requested by the Department but the information cannot be verified as required by section 782(i) of the Act, section 776(a)(2)(D) of the Act requires the Department to use facts otherwise available in reaching the applicable determination. Therefore, in accordance with section 776(a) of the Act, the use of FA is appropriate for HACO. *See Extruded Rubber Thread from Malaysia, Final Results of Antidumping Duty Administrative Review,* 62 FR 33588 (June 9, 1997).

Section 776(b) of the Act authorizes the Department to use adverse FA whenever it finds that an interested party has failed to cooperate by not acting to the best of its ability to comply with the Department's requests for information. Because HACO failed to substantiate large portions of its questionnaire response, including the statutorily required factors of production information, such as the number of labor hours worked and the per unit quantities consumed of primary material inputs, we determine that HACO did not cooperate to the best of its ability with our requests for information. *See Adverse Facts Available Memorandum*. Therefore, pursuant to section 776(b) of the Act, we are using adverse FA to determine HACO's margin. Under section 776(b) of the Act, adverse facts available may include reliance on information derived from : (1) The petition, (2) a final determination in the investigation, (3) any previous review under section 751 of the Act or determination under section 753 of the Act, or (4) any other information placed on the record. We have found that the adverse FA rate appropriate for HACO is the highest rate from a previous review or the original LTFV investigation, which in this case is 351.92 percent, the rate calculated for HACO in the review covering the period February 1, 1994 through January 31, 1995 (the 1994–1995 review).

Section 776(c) of the Act provides that the Department shall, to the extent practicable, corroborate secondary information from independent sources reasonably at its disposal. The Statement of Administrative Action, H.R. Doc. 316, Vol. 1, 103d Cong., 2d Sess. 870 (1994) (SAA) provides that ''corroborate'' means simply that the Department will satisfy itself that the secondary information to be used has probative value. *See* SAA at 870.

To corroborate secondary information, the Department will, to the extent practicable, examine the reliability and relevance of the information to be used. However, unlike other types of information, such as surrogate values, there are no independent sources for calculated dumping margins. The only source for calculated margins is an administrative determination. Thus, in an administrative review, if the Department chooses as adverse FA a calculated dumping margin from a prior segment of the proceeding, it is not necessary to question the reliability of the margin for that time period. With respect to the relevance aspect of corroboration, however, the Department will consider information reasonably at its disposal as to whether there are circumstances that would render a margin not relevant. Where circumstances indicate that the selected margin is not appropriate as adverse facts available, the Department will disregard the margin and determine an appropriate margin. (*See e.g., Fresh Cut Flowers from Mexico; Preliminary Results of Antidumping Duty Administrative Review*, 60 FR 49567, 49568 (September 26, 1995), where the Department disregarded the highest margin as best information available because that margin was based on an extraordinarily high business expense resulting from uncharacteristic investment activities, which resulted in the high margin.)

In this case, we have used the highest rate from any prior segment of the proceeding, 351.92 percent, which was the rate calculated for HACO in the 1994–1995 review. Because this margin is based on the rate calculated for the relatively recent 1994–95 review using HACO's own price data, and because there is no information that indicates that this rate is not appropriate, we have determined that a margin of 351.92 percent is appropriate to use as facts available.

Separate Rates

We have conducted a separate rate analysis of HACO despite its overall verification failure for the following reasons: (1) The separate rate test is exporter-specific; (2) the verification failure as described above resulted from the Department's inability to verify the information provided by HACO's supplier, the producer of the subject merchandise imported into the U.S. during the POR, and not from any discrepancies in the information provided by HACO, the exporter of the subject merchandise imported into the U.S. during the POR; (3) our verification of the separate rate information provided in HACO's responses revealed that a separate rate is warranted and; (4) the Department granted HACO a

separate rate for the 1994–95 review of paintbrushes from the PRC, which is the most recent review in which HACO participated. *See Natural Bristle Paint Brushes and Brush Heads From the People's Republic of China; Final Results of Antidumping Duty Administrative Review,* 61 FR 52917 (October 1, 1996). *See* also *Verification of Sales for Hebei Animal By-Products Import and Export Corporation (HACO) in the Antidumping Administrative Review of Natural Bristle Paintbrushes and Brush Heads from the People's Republic of China (PRC) (Verification Report).*

To establish whether a company operating in a state-controlled economy is sufficiently independent to be entitled to a separate rate, the Department analyzes each exporting entity under the test established in the *Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China,* 56 FR 20588 (May 6, 1991) (*Sparklers*), as amplified by the *Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China,* 59 FR 22585 (May 2, 1994) (*Silicon Carbide*). Under this policy, exporters in non-market economies (NMEs) are entitled to separate, company-specific margins when they can demonstrate an absence of government control, both in law and in fact, with respect to export activities. Evidence supporting, though not requiring, a finding of *de jure* absence of government control over export activities includes: (1) An absence of restrictive stipulations associated with an individual exporter's business and export licenses; (2) any legislative enactments decentralizing control of companies; and (3) any other formal measures by the government decentralizing control of companies. *See Sparklers* at 20589. A *de facto* analysis of absence of government control over exports is based on four factors: (1) Whether each exporter sets its own export prices independently of the government or without the approval of a government authority; (2) whether each exporter retains the proceeds from its export sales and makes independent decisions regarding the disposition of profits or financing of losses; (3) whether each exporter has the authority to negotiate and sign contracts and other agreements; and (4) whether each exporter has autonomy from the government regarding the selection of management. *See Silicon Carbide* at 22587, and *Sparklers* at 20589.

With respect to the absence of *de jure* government control over export activities, evidence on the record indicates that HACO is a collectively-owned enterprise. The ''All People's Ownership Business Law'' of the PRC identifies rules and regulations pertaining to collectively-owned enterprises, and gives collective enterprises the right to sell the subject merchandise for export without any restrictive stipulations. (*See* Exhibits 3 and 4 of HACO's August 27, 1998, questionnaire response.)

Additionally, HACO has reported in its May 13, 1998 questionnaire response that the subject merchandise does not appear on any government list regarding export provisions or export licensing, and that there are no export quotas on the subject merchandise or export licenses required to export subject merchandise. (*See* Questionnaire Response of May 13, 1998, at A–5.)

With respect to the absence of *de facto* control over export activities, HACO's management is elected by HACO's staff, and is responsible for all decisions, such as the determination of its export prices, profit distribution, employment policy, marketing strategy, and contract negotiations. HACO has also reported that it maintains an independent foreign exchange account at the Bank of China. At verification we found that the provincial government has no control over pricing, business practices, salary, payroll, or bonuses. At verification we also found that HACO's relevant department head negotiated sales of paintbrushes, that HACO did not coordinate prices with other exporters, and that employees could be fired and salaries could be reduced. *See Separate Rate Analysis in the Administrative Review of Natural Bristle Paintbrushes and Brush Heads from the People's Republic of China* dated December 30, 1998 (*Separate Rate Memorandum*), and the public version of *Verification Report* dated December 30, 1998, which is on file in the Central Records Unit (room B099 of the Main Commerce Building).

Because evidence on the record demonstrates an absence of government control, both in law and in fact, over HACO's export activities, the Department preliminarily grants HACO a separate rate. For further discussion of the Department's preliminary determination that HACO is entitled to a separate rate, *see Separate Rate Memorandum*.

Preliminary Results of Review

We preliminarily determine that the following dumping margin exists:

Manufacturer/exporter	Time period	Margin (percent)
Hebei Native, Product & Animal By-Products I/E Corp	02/01/97–01/31/98	351.92

Parties to the proceeding may request disclosure within 5 days of the date of publication of this notice in accordance with 19 CFR 351.224(b). Any interested party may request a hearing within 30 days of publication in accordance with 19 CFR 351.310(c). Any hearing, if requested, will be held 37 days after the publication of this notice, or the first workday thereafter. Interested parties may submit case briefs within 30 days of the date of publication of this notice in accordance with 19 CFR 351.309(c)(2). Rebuttal briefs, which must be limited to issues raised in the case briefs, may be filed not later than 35 days after the date of publication. The Department will publish a notice of final results of this administrative review, which will include the results of its analysis of issues raised in any such comments, within 120 days from the publication of these preliminary results.

The Department shall determine, and the U.S. Customs Service shall assess, antidumping duties on all appropriate entries. For assessment purposes, we intend to instruct Customs to collect duties equal to 351.92 percent of the entered value of the subject merchandise. Furthermore, the following deposit rates will be effective upon publication of the final results of this administrative review for all shipments of paintbrushes from the PRC entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(2)(C) of the Act: (1) For HACO, which has a separate rate, the cash deposit rate will be 351.92 percent; (2) for previously-reviewed PRC and non-PRC exporters with separate rates, the cash deposit rate will be the company-specific rate established for the most recent period; (3) for all other PRC exporters, the rate will be the PRC country-wide rate, which is 351.92 percent; and (4) for all other non-PRC exporters of subject merchandise from the PRC, the cash deposit rate will be

the rate applicable to the PRC supplier of that exporter.

These deposit rates, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.401(f) of the Department's regulations to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and notice are published in accordance with section 751(a)(1) of the Act and §§ 351.213 and 351.221 of the Department's regulations.

Dated: December 30, 1998.

Richard W. Moreland,

Acting Assistant Secretary for Import Administration.

[FR Doc. 99–692 Filed 1–12–99; 8:45 am]

BILLING CODE 3510–DS–M

DEPARTMENT OF COMMERCE

International Trade Administration

State University of New Jersey; Notice of Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made 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). Related records can be viewed between 8:30 a.m. and 5 p.m. in Room 4211, U.S. Department of Commerce, 14th and Constitution Avenue, NW, Washington, DC.

Docket Number: 98–053. *Applicant:* The State University of New Jersey, Piscataway, NJ 08855. *Instrument:* Superfine Mill and Crushing Ring, Model MIC–2. *Manufacturer:* NARA Machinery Co. Ltd., Japan. *Intended Use:* See notice at 63 FR 63292, November 12, 1998.

Comments: None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States. *Reasons:* The foreign instrument provides synthesis of materials from powders at room temperature using mechanochemical reaction in a high stress field. The National Institute of Standards and Technology advised December 21, 1998 that (1) this capability is pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

We know of no other instrument or apparatus of equivalent scientific value to the foreign instrument which is being manufactured in the United States.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 99–693 Filed 1–12–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–423–809, C–475–823, C–580–832, and C–791–806]

Countervailing Duty Investigations of Stainless Steel Plate in Coils From Belgium, Italy, the Republic of Korea, and the Republic of South Africa; Notice of Extension of Time Limit for Final Determinations

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

ACTION: Notice of extension of time limit.

SUMMARY: The Department of Commerce is extending the time limit for the final determinations of the investigations of stainless steel plate in coils from Belgium, Italy, the Republic of Korea, and the Republic of South Africa. This extension is made pursuant to section 705(a)(1) of the Tariff Act of 1930, as amended by the Uruguay Round Agreements Act.

EFFECTIVE DATE: January 13, 1999.

FOR FURTHER INFORMATION CONTACT: Zak Smith (Belgium), Craig Matney (Italy), Chris Cassel (Republic of Korea), or Dana Mermelstein (Republic of South Africa), Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington D.C. 20230; telephone (202) 482–0189, (202) 482–1778, (202) 482–4847, or (202) 482–0984, respectively.

SUPPLEMENTARY INFORMATION: Because these investigations have been aligned with the concurrent antidumping duty investigations of stainless steel plate in coils from Belgium, Italy, the Republic of Korea, and the Republic of South Africa, and the final determinations in those investigations were extended (November 4, 1998, 63 FR 59532 (Belgium), 63 FR 59530 (Italy), 63 FR 59535 (Republic of South Korea), 63 FR 59540 (Republic of South Africa)), the Department of Commerce is extending the time limit for completion of the final determinations in the above-mentioned countervailing duty cases to not later than March 19, 1999. This notice is in accordance with section 705(a)(i) of the Tariff Act of 1930, as amended, and 19 CFR 351.210(b)(4).

Dated: January 5, 1999.

Richard W. Moreland,

Deputy Assistant Secretary for AD/CVD Enforcement.

[FR Doc. 99–698 Filed 1–12–99; 8:45 am]

BILLING CODE 3510–DS–P

COMMISSION OF FINE ARTS

Notice of Meeting

The next meeting of the Commission of Fine Arts is scheduled for 21 January 1999 at 10:00 AM in the Commission's offices at the National Building Museum (Pension Building), Suite 312, Judiciary Square, 441 F Street, NW, Washington, DC 20001. Items of discussion will include designs for projects affecting the appearance of Washington, DC including buildings and parks.

Inquiries regarding the agenda and requests to submit written or oral statements should be addressed to Charles H. Atherton, Secretary, Commission of Fine Arts, at the above address or call 202–504–2200. Individuals requiring sign language interpretation for the hearing impaired should contact the Secretary at least 10 days before the meeting date.

Dated in Washington, DC, January 8, 1999.

Charles H. Atherton,

Secretary.

[FR Doc. 99–743 Filed 1–12–99; 8:45 am]

BILLING CODE 6330–01–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of an Import Restraint Limit for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Fiji

January 7, 1999.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs reducing a limit.

EFFECTIVE DATE: January 13, 1999.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.ustreas.gov. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The 1999 limit for Categories 338/339/638/639 is being reduced for carryforward applied to the 1998 limit. The 1999 sublimit for Categories 338–S/339–S/638–S/639–S remains unchanged.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 62 FR 66057, published on December 17, 1997). Information regarding the 1999 CORRELATION will be published in the **Federal Register** at a later date. Also see 63 FR 54451, published on October 9, 1998.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

January 7, 1999.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on October 2, 1998, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton and man-made fiber textile products, produced or manufactured in Fiji and exported during the twelve-month period beginning on January 1, 1999 and extending through December 31, 1999.

Effective on January 13, 1999, you are directed to decrease the limit for Categories 338/339/638/639, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month limit
338/339/638/639	1,374,158 dozen of which not more than 1,104,203 dozen shall be in Categories 338–S/339–S/638–S/639–S [1].

[1]Category 338–S: only HTS numbers 6103.22.0050, 6105.10.0010, 6105.10.0030, 6105.90.8010, 6109.10.0027, 6110.20.1025, 6110.20.2040, 6110.20.2065, 6110.90.9068, 6112.11.0030 and 6114.20.0005; Category 339–S: only HTS numbers 6104.22.0060, 6104.29.2049, 6106.10.0010, 6106.10.0030, 6106.90.2510, 6106.90.3010, 6109.10.0070, 6110.20.1030, 6110.20.2045, 6110.20.2075, 6110.90.9070, 6112.11.0040, 6114.20.0010 and 6117.90.9020; Category 638–S: all HTS numbers except 6109.90.1007, 6109.90.1009, 6109.90.1013 and 6109.90.1025; Category 639–S: all HTS numbers except 6109.90.1050, 6109.90.1060, 6109.90.1065 and 6109.90.1070.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 99–737 Filed 1–12–99; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Malaysia

January 7, 1999.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs reducing limits.

EFFECTIVE DATE: January 13, 1999.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.ustreas.gov. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The 1999 limits for Categories 338/339 and 638/639 are being reduced for carryforward applied to the 1998 limits.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 62 FR 66057, published on December 17, 1997). Information regarding the 1999 CORRELATION will be published in the **Federal Register** at a later date. Also see 63 FR 59945, published on November 6, 1998.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

January 7, 1999.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 3, 1998, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool and man-made fiber textiles and textile products and silk blend and other vegetable fiber apparel, produced or manufactured in Malaysia and exported during the period beginning on January 1, 1999 and extending through December 31, 1999.

Effective on January 13, 1999, you are directed to reduce the limits for the following categories, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month limit
338/339	1,235,883 dozen.
638/639	512,960 dozen.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 99–736 Filed 1–12–99; 8:45 am]

BILLING CODE 3510–DR–F

CONSUMER PRODUCT SAFETY COMMISSION

Sunshine Act Meeting

TIME AND DATE: Tuesday, January 19, 1999, 2:00 p.m.

LOCATION: Room 410 B/C, East West Towers, 4330 East West Highway, Bethesda, Maryland.

STATUS: Closed to the Public.

MATTER TO BE CONSIDERED:

COMPLIANCE STATUS REPORT

The staff will brief the Commission on the status of various compliance matters.

For a recorded message containing the latest agenda information, call (301) 504–0709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sadye E. Dunn, Office of the Secretary, 4330 East West Highway, Bethesda, MD 20207 (301) 504–0800.

Dated: January 7, 1999.

Sadye E. Dunn,

Secretary.

[FR Doc. 99–859 Filed 1–11–99; 2:41 pm]

BILLING CODE 6355–01–M

DEPARTMENT OF DEFENSE

Department of the Air Force

Air Force A–76 Initiatives Cost Comparisons and Direct Conversions (As of October 1998)

Air Force is in the process of conducting the following A–76 initiatives. Cost comparisons are public-private competitions. Direct conversions are functions that may result in a conversion to contract without public competition. These initiatives were announced and in-progress as of October 1998, include the installation and state where the cost comparison or direct conversion is being performed, the total authorizations under study, public announcement date and actual or anticipated solicitation date. The following initiatives are in various stages of completion.

Installation	State	Function(s)	Total authorizations	Public announcement date	Solicitation issued or scheduled date
Cost Comparisons					
MULTIPLE INSTLNS		GENERAL LIBRARY	24	29–Jul–97	20–Jul–98.
PETERSON	CO				
PATRICK	FL				
F E WARREN	WY				
MALMSTROM	MT				
VANDENBERG AFB	CA				
MULTIPLE INSTLNS		PRECISION MEASUREMENT EQUIPMENT LABORATORY (PMEL).	1516	24–Sep–98	22–Mar–99.
MULTIPLE INSTLNS		TECHNICAL TRAINING-ELECTRONIC PRINCIPLES TRAINING.	157	03–Dec–96	12–Sep–97.
LACKLAND	TX				
KEESLER	MS				
MULTIPLE INSTLNS		EDUCATION/TRAINING AND PERSONNEL	94	25–Mar–98	15–Jan–99.
BUCKLEY	CO				
F E WARREN	WY				
PATRICK	FL				
PETERSON	CO				
FALCON	CO				
VANDENBERG	CA				
MULTIPLE INSTLNS		ADMINISTRATIVE SWITCHBOARD	94	19–Jun–97	10–Dec–98.
RAMSTEIN	GERMY				
SEMBACH	GERMY				
SPANGDAHLEM	GERMY				
MILDENHALL	UK				
EIELSON	AK	HOUSING MANAGEMENT	16	17–Nov–97	01–Dec–98.
ELMENDORF	AK	ADMINISTRATIVE TELEPHONE SWITCHBOARD	16	28–Jul–97	10–Nov–98.
ELMENDORF	AK	HOUSING MANAGEMENT	22	19–Sep–96	19–May–98
MAXWELL	AL	MULTIPLE SUPPORT FUNCTIONS	821	28–Apr–98	04–Jan–99.
LOS ANGELES	CA	COMMUNICATIONS OPERATIONS AND MAINTENANCE FUNCTIONS.	85	01–Jul–97	16–Nov–98.
LOS ANGELES	CA	HOUSING MANAGEMENT	10	01–Jul–97	24–Aug–98.
LOS ANGELES	CA	SERVICES ACTIVITIES	8	01–Jul–97	29–Jan–99.
MARCH	CA	BASE OPERATING SUPPORT	219	06–Jan–98	11–Apr–99.
TRAVIS	CA	VEHICLE OPERATIONS AND MAINTENANCE	135	15–Jul–98.	01–Sep–99.
VANDENBERG AFB	CA	TRAINER FABRICATION	12	24–Nov–97	01–Jan–99.
BUCKLEY	CO	CIVIL ENGINEERING	55	24–Nov–97	01–Jan–99.
BUCKLEY	CO	AIRFIELD MANAGEMENT	34	22–Mar–95	18–Mar–99.
CHEYENNE MTN	CO	CIVIL ENGINEERING AND COMMUNICATIONS	540	08–May–98	02–Apr–99.
USAF ACADEMY	CO	BASE OPERATING SUPPORT	112	08–May–98	21–May–99.
USAF ACADEMY	CO	FOOD SERVICES	299	08–May–98	13–Apr–99.
USAF ACADEMY	CO	SERVICES ACTIVITIES	90	08–May–98	24–Sep–99.
EGLIN	FL	CIVIL ENGINEERING	96	03–Dec–96	21–Jul–98.
HOMESTEAD	FL	BASE OPERATING SUPPORT	131	06–Jan–98	11–May–99.
HURLBURT COM FL	FL	BASE SUPPLY	38	15–Jul–98	01–Jan–00.
HURLBURT COM FL	FL	COMMUNICATION FUNCTIONS	45	31–Jul–98.	24–Sep–99.
HURLBURT COM FL	FL	UTILITIES PLANT	13	23–Sep–97	20–Nov–98.
MACDILL	FL	CIVIL ENGINEERING	310	06–Nov–97	26–Jan–99.
PATRICK	FL	SUPPLY AND TRANSPORTATION	43	14–May–98	30–Dec–98.
DOBBINS	GA	BASE OPERATING SUPPORT	113	06–Jan–98	09–Feb–98.
ROBINS	GA	EDUCATION SERVICES	29	28–Feb–97	03–Mar–98.
RAMSTEIN	GERMY	MILITARY FAMILY HOUSING MAINTENANCE	142	19–Jun–97	06–Nov–98.
ANDERSEN	GUAM	SUPPLY AND TRANSPORTATION	384	25–Jun–98	01–Jan–99.

Installation	State	Function(s)	Total authorizations	Public announcement date	Solicitation issued or scheduled date
SCOTT	IL	COMMUNICATIONS OPERATIONS AND MAINTENANCE FUNCTIONS.	178	19–Mar–98	16–Aug–99.
SCOTT	IL	BASE SUPPLY	102	03–Jun–97	28–Aug–98.
SCOTT	IL	MEDICAL FACILITY MAINTENANCE	8	09–Jan–98	05–Aug–98.
GRISSOM	IN	BASE OPERATING SUPPORT	155	06–Jan–98	08–Jan–99.
NEW ORLEANS NAS	LA	BASE OPERATING SUPPORT	59	13–Jun–96	10–Aug–99.
HANSCOM AFB	MA	COMMUNICATION FUNCTIONS	93	28–Feb–97	01–Jul–98.
HANSCOM AFB	MA	DATA PROCESSING	18	28–Feb–97	01–May–98.
WESTOVER	MA	BASE OPERATING SUPPORT	182	06–Jan–98	05–May–98.
ANDREWS	MD	AIRCRAFT MAINTENANCE AND SUPPLY	831	25–Jul–97	21–Dec–98.
ANDREWS	MD	MEDICAL FACILITY MAINTENANCE	11	09–Oct–97	02–Jan–99.
MINN/ST PAUL	MN	BASE OPERATING SUPPORT	87	06–Jan–98	11–Aug–98.
KEESLER	MS	TECHNICAL TRAINING CENTER EQUIPMENT MAINTENANCE.	253	13–Jun–96	02–Sep–97
MALMSTROM	MT	FURNISHINGS MANAGEMENT	10	24–Nov–97	01–Jan–99.
MALMSTROM	MT	BASE COMMUNICATIONS	153	06–Oct–97	01–Jan–99.
MALMSTROM	MT	HEATING SYSTEMS	26	24–Nov–97	01–Jan–99.
OFFUTT	NE	BASE OPERATING SUPPORT	1609	30–Sep–98	TBD.
OFFUTT	NE	DATA AUTOMATION	357	24–Sep–97	27–May–98.
NEW BOSTON	NH	BASE OPERATING SUPPORT	48	03–Dec–97	16–Dec–98.
CANNON	NM	MILITARY FAMILY HOUSING MAINTENANCE	21	16–Apr–96	29–Sep–97
HOLLOMAN AFB	NM	MILITARY FAMILY HOUSING MAINTENANCE	66	12–May–97	01–Dec–98.
KIRTLAND	NM	BASE COMMUNICATIONS	228	06–Nov–97	09–Nov–98.
NIAGRA FALLS IAP	NY	BASE OPERATING SUPPORT	21	06–Jan–98.	16–Mar–98.
WRIGHT PATTERSON	OH	CIVIL ENGINEERING	104	21–Aug–98	21–May–99.
WRIGHT PATTERSON	OH	LABORATORY SUPPORT SERVICES	129	21–Aug–98	21–May–99.
WRIGHT PATTERSON	OH	CIVIL ENGINEERING	698	15–Aug–97	25–Sep–98.
WRIGHT PATTERSON	OH	COMMUNICATION FUNCTIONS	319	21–Aug–98	21–May–99.
WRIGHT PATTERSON	OH	ACADEMIC AND PLATFORM INSTRUCTIONS	115	15–Aug–97	08–Sep–98.
YOUNGSTOWN MUNI	OH	BASE OPERATING SUPPORT	86	13–Jun–96	11–Oct–98.
TINKER	OK	CIVIL ENGINEERING	567	15–Apr–97	26–Mar–98.
GREATER PITTSBURG	PA	BASE OPERATING SUPPORT	91	13–Jun–96	09–Feb–99.
WILLOW GROVE	PA	BASE OPERATING SUPPORT	67	13–Jun–96	11–Nov–98.
CHARLESTON	SC	MILITARY FAMILY HOUSING MAINTENANCE	14	23–Sep–97	24–Nov–98.
SHAW	SC	MILITARY FAMILY HOUSING MAINTENANCE	33	09–Jul–97	20–Aug–98.
CARSWELL	TX	BASE OPERATING SUPPORT	80	13–Jun–96	06–Feb–99.
RANDOLPH	TX	INFORMATION MANAGEMENT	26	12–May–98	15–Jan–99.
HILL AFB	UT	BASE OPERATING SUPPORT	731	30–Sep–98	20–Sep–00.
LANGLEY	VA	ADMINISTRATIVE TELEPHONE SWITCHBOARD	18	05–Feb–98	01–Oct–98.
LANGLEY	VA	MILITARY FAMILY HOUSING MAINTENANCE	16	24–Nov–97	01–Nov–98.
MCCHORD	WA	MILITARY FAMILY HOUSING MAINTENANCE	15	23–Sep–97	23–Oct–98.
MCCHORD	WA	HEATING SYSTEMS	11	23–Sep–97	23–Nov–98.
GENERAL MITCHELL	WI	BASE OPERATING SUPPORT	81	13–Jun–96	20–Apr–98.
F E WARREN	WY	BASE COMMUNICATIONS	126	30–Oct–97	01–Jan–99.
Direct Conversions					
MULTIPLE INSTLNS	??	TRANSIENT AIRCRAFT MAINTENANCE	70	27–Aug–98	01–May–99.
ELMENDORF	AK	TRANSIENT AIRCRAFT MAINTENANCE	12	10–Nov–97	15–Nov–98.
MAXWELL	AL	EDUCATION SERVICES	35	31–Jul–98	01–Jul–99.
DAVIS MONTHAN	AZ	RAILROAD TRANSPORTATION SERVICES	2	11–Aug–98	11–Oct–99.
DAVIS MONTHAN	AZ	PROTECTIVE COATING	9	24–Jun–98	11–Oct–99.
DAVIS MONTHAN	AZ	GENERAL LIBRARY	6	24–Jan–97	13–Nov–98.
DAVIS MONTHAN	AZ	CIVIL ENGINEERING	5	24–Jan–97	06–Jul–98.
LOS ANGELES	CA	PACKING AND CRATING	4	01–Jul–97	11–Jan–99.
TRAVIS	CA	FACILITIES SERVICES MAINTENANCE	2	20–Apr–98	16–Dec–98.
TRAVIS	CA	HEATING SYSTEMS	5	20–Apr–98	04–Jan–99.
PETERSON	CO	PACKING AND CRATING	9	10–Sep–97	08–Oct–98.
SCHRIEVER	CO	ENGINEERING DATA CENTER	6	17–Nov–97	05–Jan–99.
USAF ACADEMY	CO	AIRFIELD OPERATIONS AND WEATHER	11	17–Apr–98	03–Feb–99.
USAF ACADEMY	CO	ADMINISTRATIVE SWITCHBOARD	7	30–Jul–98	30–Jul–98.
PATRICK	FL	TRANSIENT AIRCRAFT MAINTENANCE	11	10–Sep–97	05–Jan–99.
PATRICK	FL	RANGE MAINTENANCE	63	19–May–98	01–Feb–99.
PATRICK	FL	BASE WEATHER OBSERVING	5	17–Mar–98	01–Nov–98.
SCOTT	IL	FURNISHINGS MANAGEMENT	3	08–Jul–98	18–Feb–99.
SCOTT	IL	GROUNDS MAINTENANCE	1	17–Mar–97	01–Oct–98.
AVIANO	ITALY	WAR RESERVE MATERIEL MAINTENANCE (WRM)	30	16–Aug–96	N/A
BARKSDALE	LA	ADMINISTRATIVE SWITCHBOARD	10	04–Aug–98	01–Aug–99.
BARKSDALE	LA	HOSPITAL SERVICES	3	01–Dec–97	20–Feb–98.
BARKSDALE	LA	GENERAL LIBRARY	6	11–Jun–97	01–Nov–98.
ANDREWS	MD	SOFTWARE PROGRAMMING	10	18–Jun–97	06–Nov–98.
ANDREWS	MD	SOFTWARE PROGRAMMING	12	18–Jun–97	06–Nov–98.

Installation	State	Function(s)	Total authorizations	Public announcement date	Solicitation issued or scheduled date
SELFRIDGE	MI	BASE OPERATIONS	6	04–Jun–98	07–Jan–99.
SELFRIDGE	MI	COMMUNICATION FUNCTIONS	3	17–Aug–98	01–Apr–99.
SELFRIDGE	MI	FUELS MANAGEMENT	8	01–Jun–98	07–Jan–99.
SELFRIDGE	MI	TRANSIENT AIRCRAFT MAINTENANCE	8	04–Jun–98	07–Jan–99.
WHITEMAN	MO	HOSPITAL SERVICES	2	17–Apr–98	01–Oct–98.
POPE	NC	GENERAL LIBRARY	5	15–Sep–98	11–Dec–98.
SEYMOUR JOHNSON	NC	TRANSIENT AIRCRAFT MAINTENANCE	8	12–Nov–97	25–Nov–98.
GRAND FORKS	ND	SNOW REMOVAL	6	31–Jul–98	05–Oct–98.
GRAND FORKS	ND	MILITARY FAMILY HOUSING MAINTENANCE	9	06–Jul–98	05–Oct–98.
OFFUTT	NE	DATA AUTOMATION	67	27–Aug–98.	7–May–99.
OFFUTT	NE	PROTECTIVE COATING	8	11–Jun–97	01–May–98.
MCGUIRE	NJ	GENERAL LIBRARY	6	17–Mar–97	20–Aug–98.
KIRTLAND	NM	DORMITORY MANAGEMENT	6	28–Feb–97	26–Mar–98.
NELLIS	NV	GENERAL LIBRARY	9	16–Jul–98	01–Jan–99.
ALTUS	OK	MEDICAL STENOGRAPHY	2	17–Nov–97	01–Jul–98.
CHARLESTON	SC	HEATING SYSTEMS	9	14–Mar–97	11–Aug–98.
CHARLESTON	SC	GENERAL LIBRARY	5	11–Mar–97	28–Aug–97
NORTH FIELD	SC	GROUNDS MAINTENANCE	1	14–Mar–97	03–Mar–98.
SHAW	SC	LIBRARY	7	27–Aug–98	01–Jul–99.
ELLSWORTH	SD	GENERAL LIBRARY	7	16–Jul–98	01–Jul–99.
ELLSWORTH	SD	ADMINISTRATIVE TELEPHONE SWITCHBOARD	10	10–Jul–98	01–Jul–99.
INCIRLIK	TURKY	COMMUNICATION FUNCTIONS	56	08–Sep–97	25–Jun–98.
INCIRLIK	TURKY	BASE OPERATING SUPPORT	220	08–Sep–97	21–Jul–97
DYESS	TX	HOSPITAL SERVICES	3	26–Jun–98	15–Oct–98.
RANDOLPH	TX	FLYING TRAINING	26	01–Jun–98	14–May–99.
RANDOLPH	TX	FLYING TRAINING	45	20–Jan–98	03–Aug–98.
LANGLEY	VA	HOSPITAL SERVICES	6	01–Dec–97	01–Jun–98.
MCCHORD	WA	GROUNDS MAINTENANCE	9	17–Mar–97	28–Apr–98.
MCCHORD	WA	GENERAL LIBRARY	6	17–Mar–97	15–Nov–98.
F E WARREN	WY	BASE COMMUNICATIONS	22	30–Oct–97	01–Jan–99.
F E WARREN	WY	HOUSING MANAGEMENT	8	24–Nov–97	01–Jan–99.
F E WARREN	WY	FOOD SERVICES	17	29–Jul–97	01–Dec–98.

Carolyn A. Lunsford,

Air Force Federal Register Liaison Officer.

[FR Doc. 99–714 Filed 1–12–99; 8:45 am]

BILLING CODE 5000–01–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Leader, Information Management Group, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: An emergency review has been requested in accordance with the Act (44 U.S.C. Chapter 3507(j)), since public harm is reasonably likely to result if normal clearance procedures are followed. Approval by the Office of Management and Budget (OMB) has been requested by January 20, 1999. A regular clearance process is also beginning. Interested persons are invited to submit comments on or before March 15, 1999.

ADDRESSES: Written comments regarding the emergency review should be addressed to the Office of Information and Regulatory Affairs, Attention: Danny Werfel, Desk Officer: Department of Education, Office of Management and Budget; 725 17th Street, N.W., Room 10235, New Executive Office Building, Washington, D.C. 20503. Requests for copies of the proposed information collection request should be addressed to Patrick J. Sherrill, Department of Education, 600 Independence Avenue, S.W. , Room 5624, Regional Office Building 3, Washington, D.C. 20202–4651, or should be electronically mailed to the internet address *Pat__Sherrill@ed.gov*, or should be faxed to 202–708–9346.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill (202) 708–8196. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Director of OMB provide interested Federal agencies and the public an early opportunity to comment on information collection requests. The Office of Management and Budget (OMB) may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Information Management Group, Office of the Chief Information Officer, publishes this notice containing proposed information collection requests at the beginning of the Departmental review of the information collection. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. ED invites public comment at the address specified above. Copies of the requests are

available from Patrick J. Sherrill at the address specified above.

The Department of Education is especially interested in public comment addressing the following issues: (1) is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner, (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected, and (5) how might the Department minimize the burden of this collection on respondents, including through the use of information technology.

Dated: January 7, 1999.

Kent H. Hannaman,

Leader, Information Management Group, Office of the Chief Information Officer.

Office of Vocational and Adult Education

Type of Review: Reinstatement.

Title: Adult Education and Family Literacy Act State Plan (P.L. 105–220).

Abstract: The Adult Education and Family Literacy State Plan submission describes information requirements for an application for Federal education assistance.

Additional Information: The Adult Education and Family Literacy Act was enacted into law on August 7, 1998 and reauthorization of another component of this system, postsecondary vocational and technical education was enacted October 31, 1998. This emergency clearance will help meet statutory deadlines.

Frequency: Annually.

Affected Public: State, local or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 59

Burden Hours: 7,375

Office of Vocational and Adult Education

Type of Review: Revision.

Title: Carl D. Perkins Vocational and Technical Education Act (P.L. 105–332)—State Plans.

Abstract: P.L. 105–332 requires State Boards for Vocational Education to submit a 5-year State plan, with annual revisions as the Board deems necessary, in order to receive Federal funds. Program staff review the plans for compliance and quality.

Additional Information: The Carl D. Perkins Vocational and Technical Education Act of 1998 was enacted on October 31, 1998. The changes made by the legislation take effect in Fiscal Year 1999. This emergency clearance will help meet statutory deadlines.

Frequency: Annually.

Affected Public: State, local or Tribal Gov't, SEAs or LEAs

Reporting and Recordkeeping Hour Burden:

Responses: 56

Burden Hours: 28,560

[FR Doc. 99–716 Filed 1–12–99; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Advisory Committee on Student Financial Assistance; Meeting

AGENCY: Advisory Committee on Student Financial Assistance, Education.

ACTION: Notice of upcoming meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of the forthcoming meeting of the Advisory Committee on Student Financial Assistance. This notice also describes the functions of the Committee. Notice of this meeting is required under Section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public.

DATES AND TIMES: Tuesday, January 26, 1999, beginning at 8:30 a.m. and ending at approximately 5:30 p.m.; and Wednesday, January 27, 1999, beginning at 8:30 a.m. and ending at approximately 2:00 p.m.

ADDRESSES: Sheraton City Centre Hotel, the New Hampshire III Room, 1143 New Hampshire Avenue, NW, Washington, DC 20037.

FOR FURTHER INFORMATION CONTACT: Dr. Brian K. Fitzgerald, Staff Director, Advisory Committee on Student Financial Assistance, Portals Building, 1280 Maryland Avenue, SW, Suite 601, Washington, DC 20202–7582, (202) 708–7439.

SUPPLEMENTARY INFORMATION: The Advisory Committee on Student Financial Assistance is established under Section 491 of the Higher Education Act of 1965 as amended by Public Law 100–50 (20 U.S.C. 1098). The Advisory Committee serves as an independent source of advice and counsel to the Congress and the Secretary of Education on student financial aid policy. Since its inception, the Committee has been charged with providing technical expertise with regard to systems of need analysis and application forms, making recommendations that result in the maintenance of access to postsecondary education for low- and middle-income students; conducting a study of institutional lending in the Stafford Student Loan Program; assisting with activities related to the 1992 reauthorization of the Higher Education Act of 1965; conducting a third-year evaluation of the Ford Federal Direct Loan Program (FDLP) and the Federal Family Education Loan Program (FFELP) under the Omnibus Budget Reconciliation Act (OBRA) of 1993; and assisting Congress with the 1998 reauthorization of the Higher Education Act.

The congressional mandate requires the Advisory Committee to conduct objective, nonpartisan, and independent analyses on important aspects of the student assistance programs under Title IV of the Higher Education Act. The Committee traditionally approaches its work from a set of fundamental goals; promoting program integrity, eliminating or avoiding program complexity, integrating delivery across the Title IV programs, and minimizing burden on students and institutions.

Reauthorization of the Higher Education Act has provided the Advisory Committee with a significantly expanded agenda in six major areas, such as, Performance-based Organization (PBO); Modernization; Technology; Simplification of Law and Regulation; Distance Education; and Early Information and Needs Assessment. In each of these areas, Congress has asked the Committee to: monitor progress toward implementing the Amendments of 1998; conduct independent, objective assessments; and make recommendations for improvement to the Congress and the Secretary. Each of these responsibilities flows logically from and effectively implements one or more of the Committee's original statutory functions and purposes.

The proposed agenda includes: (a) Discussion sessions on implementing the provisions of the Higher Education Amendments of 1998 and their impact on all Title IV programs; and (b) discussion sessions regarding implementation of the Distance Education Demonstration Program and the Performance-based Organization including Systems Modernization and Technology. In addition, the Committee will discuss its plans for the remainder of fiscal year 1999 and address other Committee business. Space is limited and you are encouraged to register early if you plan to attend. You may register through Internet at ADV__COMSFA@ED.gov or Tracy__Deanna__Jones@ED.gov. Please include your name, title, affiliation, complete address (including Internet and e-mail—if available), and telephone and fax numbers. If you are unable to

register through Internet, you may mail or fax your registration information to the Advisory Committee staff office at (202) 401–3467. Also, you may contact the Advisory Committee staff at (202) 708–7439. The registration deadline is Wednesday, January 20, 1999.

The Advisory Committee will meet in Washington, DC on January 26, 1999, from 8:30 a.m. until approximately 5:30 p.m., and on January 27, from 8:30 a.m. until approximately 2:00 p.m.

Records are kept of all Committee proceedings, and are available for public inspection at the Office of the Advisory Committee on Student Financial Assistance, Portals Building, 1280 Maryland Avenue, SW, Suite 601, Washington, DC from the hours of 9:00 a.m. to 5:30 p.m., weekdays, except Federal holidays.

Due to administrative delays caused by the holiday, this notice is published less than 15 days prior to the meeting.

Dated: January 7, 1999.

Barbara L. McFall,

Associate Staff Director, Advisory Committee on Student Financial Assistance.

[FR Doc. 99–726 Filed 1–12–99; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Draft Environmental Impact Statement (EIS) for Savannah River Site (SRS) Spent Nuclear Fuel (SNF) Management, Savannah River Site, South Carolina

AGENCY: Department of Energy.

ACTION: Notice of availability and public meetings.

SUMMARY: The Department of Energy announces the availability of the Savannah River Site Spent Nuclear Fuel Management Draft Environmental Impact Statement (DOE/EIS–0279D). This draft EIS evaluates the potential impacts of reasonable alternatives for the safe and efficient management of spent nuclear fuel and targets stored and scheduled to be received at the Savannah River Site (SRS), including placing these materials in a form suitable for disposition.

DATES: The public comment period began on December 24, 1998 and extends through February 8, 1999. DOE will consider comments postmarked or submitted after February 8, 1999 to the extent practicable. Oral and written comments will be accepted at public meetings on the dates and at the locations given below. The Department will hold two public meetings, with two sessions each, to discuss the Draft EIS and receive comments:

1. Thursday, January 28, 1999, at the Holiday Inn Coliseum, 630 Assembly Street, Columbia, SC, (803) 799–7800. The first session begins at 1:00 p.m. and the second begins at 6:00 p.m.

2. Tuesday, February 2 at the North Augusta Community Center, 495 Brookside Drive, North Augusta, SC, (803) 441–4290. The first session begins at 1:00 p.m. and the second begins at 6:00 p.m.

ADDRESSES: Written comments, requests for further information on the draft EIS or public meetings, and requests for copies of the document should be directed to Andrew R. Grainger, NEPA Compliance Officer, Savannah River Site, Building 742–A, Room 185, Aiken, South Carolina 29802; orally by calling (800) 881–7292; or electronically to nepa@srs.gov. Addresses of locations where the Draft EIS is available for public review are listed in this notice under ''Availability of Copies of the Draft EIS.''

General information on the DOE National Environmental Policy Act (NEPA) process may be requested from Ms. Carol Borgstrom, Director, Office of NEPA Policy and Assistance (EH–42), U.S. Department of Energy, 1000 Independence Avenue, SW, Washington, DC 20585. Ms. Borgstrom may be contacted by telephone at (202) 586–4600 or by leaving a message at 1–800–472–2756.

SUPPLEMENTARY INFORMATION:

Background

The U.S. Atomic Energy Commission, a DOE predecessor agency, established the SRS in the early 1950s for the production of special radioactive isotopes to support national programs. Historically, the primary Site mission was the production of strategic isotopes (plutonium-239 and tritium) for use in the development and production of nuclear weapons. The SRS produced other isotopes (e.g., californium-252, plutonium-238, and americium-241) to support research in nuclear medicine, space exploration, and commercial applications. DOE produced these isotopes in the five SRS production reactors.

The material used to produce isotopes consisted of nuclear fuel and targets. The nuclear fuel was enriched uranium that was alloyed with aluminum and then clad in aluminum. The targets were either oxides or metallic forms of various isotopes such as neptunium-237 or uranium-238 that were clad with aluminum. Fuel and targets were fabricated at the SRS and placed in the reactors and then the reactors operated to create the neutrons necessary to transmute the target material. After irradiation, the fuel and targets (collectively referred to as spent nuclear fuel) were removed from the reactors and placed in water-filled basins for short-term storage, about 12 to 18 months, before they were chemically processed in the SRS separations facilities.

SNF was chemically dissolved in F or H Canyon to recover the uranium or transuranic isotopes for future use (''reprocessing''). The remaining residue from the fuel, high-level radioactive waste consisting primarily of fission products and cladding in liquid form, was transferred to large steel tanks for storage. The high-level waste is being vitrified in the Defense Waste Processing Facility at the SRS to prepare it for placement in a geologic repository.

In 1992, the Secretary of Energy directed that reprocessing operations to produce strategic nuclear materials be phased out throughout the DOE complex. However, unprocessed SNF and targets remained in storage. SRS also has accepted SNF from foreign and domestic research reactors. In the past, most of this material was reprocessed. With the end of the Site's strategic nuclear materials production mission, SNF from research reactors has been accumulating in the Receiving Basin for Offsite Fuels and the L-Reactor Disassembly Basin.

Stabilization

DOE has taken action to stabilize about 175 MTHM of the 195 MTHM of aluminum-based SNF that was in storage at SRS in 1995. DOE decided to stabilize this material following completion of the Interim Management of Nuclear Materials Environmental Impact Statement (DOE/EIS–0220). The primary purpose of the actions described in that environmental impact statement (EIS) was to correct or eliminate potential health and safety vulnerabilities related to some of the methods used to store nuclear materials (including SNF) at SRS. In that EIS, DOE identified the remaining 20 MTHM (out of 195 MTHM) of aluminum-based SNF at SRS as ''stable'' (i.e., the SNF likely could be safely stored for about 10 more years, pending decisions on final disposition). Thus, that 20 MTHM of aluminum-based SNF is included in this EIS.

On June 1, 1995, DOE decided (60 FR 28680) under the Department of Energy Programmatic Spent Nuclear Fuel Management and Idaho National Engineering Laboratory Environmental Restoration and Waste Management Programs Final Environmental Impact Statement to consolidate existing and

newly generated SNF at three existing Departmental sites (including SRS) based on the fuel type, pending future decisions on ultimate disposition. DOE designated the SRS as the site that would manage aluminum-based SNF. As a result, DOE will transfer 20 MTHM of non-aluminum-based SNF from SRS to Idaho National Engineering and Environmental Laboratory (INEEL) and will transfer about 5 MTHM of aluminum-based SNF at INEEL to SRS. Additionally, SRS could receive about 5 MTHM of aluminum-based SNF from domestic research reactors.

In May 1996, DOE announced a decision (61 FR 25092) under the Final Environmental Impact Statement on a Proposed Nuclear Weapons Nonproliferation Policy Concerning Foreign Research Reactor Spent Nuclear Fuel to accept about 18 MTHM of aluminum-based SNF containing uranium of U.S. origin from foreign research reactors for management in the United States at the SRS. The receipt of foreign research reactor SNF at SRS is now underway and receipts are scheduled to be completed by 2009. The 18 MTHM of foreign research reactor SNF that could be received at SRS is included in the scope of this EIS. (Recent decisions by some foreign research reactor operators have reduced the quantity of SNF expected to be shipped to SRS from about 18 MTHM to about 14 MTHM; however, for this EIS the 18 MTHM projection is used because foreign research reactor operators still have the option to ship to the United States.) Table S–1 summarizes the amount of SNF to be managed at SRS that is considered in this EIS.

TABLE 1.—QUANTITY OF SNF DISCUSSED IN THIS EIS

Aluminum-based SNF stored at SRS	20 MTHM
Domestic and DOE aluminum-based research reactor SNF to be received at SRS	10 MTHM
Foreign Research Reactor aluminum-based SNF to be received at SRS	18 MTHM
Non-aluminum-based SNF at SRS (to be shipped to INEEL)	20 MTHM

Purpose and Need for Action

DOE anticipates that it eventually will place most of its aluminum-based SNF inventory in a geologic repository after treatment or repackaging. DOE currently is conducting analysis leading to a decision whether to recommend the Yucca Mountain site in Nevada as the site of this nation's first geologic repository. Even if the Nuclear Regulatory Commission eventually were to license such a site, DOE does not expect a geologic repository to be available until at least 2010 and it is unclear when shipments from DOE sites could begin. Regardless of when a repository is available, the Department intends to develop and implement a safe and efficient SNF management strategy that includes preparing for ultimate disposition the aluminum-based SNF stored at SRS or expected to be shipped to SRS. DOE is committed to avoiding indefinite storage at the SRS of this nuclear fuel in a form that is unsuitable for final disposition. Therefore, DOE needs to identify management technologies and facilities for storing and treating this SNF in preparation for final disposition.

Scope

In this EIS, DOE is evaluating the treatment and storage of about 48 MTHM of aluminum-based SNF pending shipment to a geologic repository, including impacts from the construction and operation of facilities (either new or modified existing facilities) that would be used to receive, store, treat, and package SNF in preparation for ultimate disposition.

Onsite transportation impacts are considered; however, no impacts associated with transporting SNF to SRS are included, because these impacts have been assessed in other EISs.

The potential impacts of transporting SNF to a geologic repository are discussed for completeness but no decisions related to transporting SNF offsite will be made under this EIS. Transportation of SNF to a federal repository will be addressed in the EIS for a Geologic Repository for the Disposal of Spent Nuclear Fuel and High-Level Radioactive Waste at Yucca Mountain, Nye County, Nevada (Notice of Intent published in 60 FR 40164 on August 7, 1995). The Yucca Mountain EIS is being prepared in the event DOE decides to recommend Yucca Mountain as the site of the Nation's first geologic repository for SNF and high-level radioactive waste.

DOE also evaluates transferring 20 MTHM of non-aluminum-clad spent nuclear fuel currently stored in the Receiving Basin for Offsite Fuel at SRS to a new dry storage facility at SRS. This transfer would occur only if a dry storage facility were built as part of the implementation of a treatment technology to prepare aluminum-based spent nuclear fuel for disposition and if the dry storage facility became operational before the non-aluminum-clad fuel was transferred to the INEEL. The transfer to dry storage would occur after the fuel had been relocated from the Receiving Basin for Offsite Fuel to the L-Reactor Disassembly Basin in support of activities necessary to phase out the use of the Receiving Basin for Offsite Fuel by 2006.

This EIS does not evaluate the impacts of managing the non-aluminum-clad fuel at INEEL or of transporting the fuel to INEEL. These impacts were considered in the SNF programmatic EIS which served as the basis for DOE's decision to consolidate the storage of non-aluminum-clad spent nuclear fuel at the INEEL.

Additionally, in this EIS DOE evaluates alternative storage arrangements for Mark-51 and ''other'' targets currently located in the Receiving Basin for Offsite Fuel at the SRS. In addition to evaluating the continued use of wet storage, DOE considers transferring the targets to dry storage to provide flexibility in material management operations. The targets contain americium and curium isotopes that have potential programmatic use.

Decisions To Be Based on This EIS

DOE expects to make the following decisions on the management of SNF and preparation of SNF for ultimate disposition.

- Select the appropriate treatment or packaging technology to prepare for ultimate disposal of the aluminum-based SNF that is to be managed at SRS.
- Determine whether DOE should construct new facilities or use existing facilities to store and treat or package aluminum-based SNF that is expected to be managed at SRS in preparation for its ultimate disposition.
- Determine whether DOE should repackage and dry-store stainless-steel and zirconium-clad SNF pending shipment to INEEL, and whether DOE should repackage and dry-store americium/curium targets pending decisions on programmatic use. Repackaging and dry-storing these fuels would further DOE's plan to phase out the use of the Receiving Basin for Offsite Fuel at the SRS.

Proposed Action

DOE's proposed action is to safely manage SNF that is currently located or expected to be received at SRS, including treating or packaging aluminum-based fuel for offsite shipment and placement in a monitored geologic repository, and packaging non-aluminum-clad fuel and programmatic material for dry storage.

In the Record of Decision for the Foreign Research Reactor EIS (61 FR 25092—May 17, 1996), DOE stated that it would embark on an accelerated

program at SRS to identify, develop, and demonstrate one or more non-reprocessing, cost effective treatment or packaging technologies to prepare aluminum-based foreign research reactor spent nuclear fuel for ultimate disposition.

Based on that decision, DOE's strategy is to select a new non-chemical processing technology or a new packaging technology that would put aluminum-based foreign research reactor SNF into a form or container suitable for direct placement in a monitored geologic repository. The SNF would be treated or conditioned to address potential repository acceptance criteria or safety concerns. After implementing the new non-chemical processing treatment or packaging technology, DOE would manage the SNF in a road-ready condition at SRS in dry storage pending shipment to a geologic repository.

Because of the similarity of the materials, DOE proposes to manage the other aluminum-alloy SNF that is the subject of this EIS (domestic research reactor and DOE reactor fuels) in the same manner as the foreign research reactor fuels.

DOE has included chemical processing as a management alternative in this EIS. However, DOE's strategy and preference is to use non-chemical separations processes when practical. DOE proposes to use chemical separation processes when a potential health or safety vulnerability exists for aluminum-based SNF that DOE considers should be alleviated before a non-chemical separations process is in operation in about 2005. Additionally, such SNF in its current form would likely not be acceptable in a geologic repository.

Alternatives Considered

For analysis in this EIS, DOE has categorized the SNF at SRS into six groups based on characteristics such as fuel size, physical or chemical properties, and radionuclide inventories. To manage this SNF and prepare it for disposition, DOE identified six reasonable new technologies and one existing technology (conventional chemical processing) for analysis. Because of the differences in the characteristics of the SNF and the capabilities of the technologies, no single technology could be applied to all the SNF. Although there are many possible combinations of technologies and fuel groups, DOE evaluated a limited number of configurations as alternatives. The alternatives were chosen to illustrate the range of impacts that could occur and consist of: Preferred Alternative, Minimum Impact Alternative, Direct Disposal Alternative, Maximum Impact Alternative, and the No Action Alternative.

In the Preferred Alternative, DOE proposes to implement several technologies to manage the SNF at SRS. These include Melt and Dilute, Conventional Processing, and Repackage and Prepare to Ship. The Melt and Dilute option is the preferred method for treating most (about 97 percent by volume and 60 percent by mass) of the spent nuclear fuel. Conventional processing would be used for the remaining 3 percent by volume (40 percent by mass) because of the potential health and safety vulnerability of continuing wet storage of those fuels while awaiting the availability of Melt and Dilute technology and uncertainties associated with repository acceptance. DOE would continue to wet store the Higher Actinide Targets and the non-aluminum clad SNF. If this material has not been transferred offsite by the time a dry storage facility is in operation at the SRS, DOE could repackage this material and transfer it to dry storage.

Availability of Copies of the Draft EIS

Copies of the Draft EIS are being distributed to Federal, State and local officials and agencies; Tribes; and organizations and individuals that have indicated an interest in SRS or the Draft EIS. In addition, the Draft EIS is available on the Internet at the following address: http://www.eh.doe.gov/nepa/docs/docs.htm. Addresses of DOE Public Reading Rooms and libraries where the Draft EIS will be available for public review are listed below:

Freedom of Information Public Document Room, University of South Carolina at Aiken, SC, Gregg-Graniteville Library, 471 University Parkway, Aiken, SC 29801
Freedom of Information Reading Room, U.S. Department of Energy, Room 1E–190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585
Battelle-Pacific Northwest Laboratories, Technical Library, P.O. Box 999, Richland, WA 99352
Pullen Public Library, 100 Decatur Street, SE, Atlanta, GA 30303
Reese Library, Augusta College, 2500 Walton Way, Augusta, GA 30904
Georgia Institute of Technology, Bobby Dodd Way, Atlanta, GA 30332
Chatham-Effingham-Liberty Regional Library, 2002 Bull Street, Savannah, GA 31499–4301
Los Alamos Technical Association, 1200 Trinity Drive, Los Alamos, NM 87544
U.S. Department of Energy, FOIA Reading Room, 4700 Morris NE, Albuquerque, NM 87111
U.S. Department of Energy, Albuquerque Operations Office, National Atomic Museum, 20358 Wyoming Boulevard SE, Kirtland Air Force Base, P.O. Box 5400, Albuquerque, NM 87185
The Libraries, Colorado State University, Fort Collins, CO 80523
Erskine College, McCain Library, One Depot Street, Due West, SC 29639
Parsons Brinckeroff Library, 1660 Lincoln Street, Suite 2000, Denver, CO 80264
Public Reading Room, Chicago Operations Office, 9800 South Cass Avenue, Argonne, IL 60439
Argonne National Laboratory, Technical Library, P.O. Box 2528, Idaho Falls, ID 83403
Library of Congress, CRS–STR–LM413, Washington, DC 20540–7490
South Carolina State Library, 1500 Senate Street, Columbia, SC 29211
County Library, 404 King Street, Charleston, SC 29403
Savannah River Site Library, Savannah River Technology Center, 773–A, Savannah River Site, Aiken, SC 29808
Westinghouse Savannah River Site Company Library, 766–H, Savannah River Site, Aiken, SC 29808
U.S. Department of Energy, Public Reading Room, Oak Ridge Operations Office, 55 Jefferson Circle, Room 1123, Oak Ridge, TN 37831

Issued in Washington, DC on January 7, 1999.

David G. Huizenga,

Acting Deputy Assistant Secretary for Nuclear Material and Facility Stabilization, Office of Environmental Management.

[FR Doc. 99–750 Filed 1–12–99; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Opportunity for Leadership Entity: Beijing Energy-Efficiency and Renewable Energy Demonstration Building

AGENCY: Office of Policy and International Affairs, Department of Energy.

ACTION: Notice of extension of date for responses.

SUMMARY: The Department published a notice of opportunity on December 16, 1998 (63FR69267), to identify an entity to lead future activities for the Beijing Energy-Efficiency and Renewable Energy Demonstration Building, assuming the Department decides to proceed with this demonstration

project. This notice announces an extension of time for response.

DATES: Responses must now be postmarked no later than February 8, 1999.

ADDRESSES: Respond to: U.S. Department of Energy, Office of Energy Efficiency, Alternative Fuels and Oil Analysis, PO–62; Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT: O. Cleveland Laird, Jr., Phone (202) 586–0979, FAX (202) 586–4447, E-mail: Cleveland.Laird@hq.doe.gov; or Mary Beth Zimmerman, Phone (202) 586–7249, FAX (202) 586–4447, E-mail: MaryBeth.Zimmerman@hq.doe.gov

Abraham E. Haspel,

Deputy Assistant Secretary for Energy, Environmental and Economic Policy Analysis.

[FR Doc. 99–751 Filed 1–12–99; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Energy Research

Basic Energy Sciences Advisory Committee; Renewal

Pursuant to Section 14(a)(2)(A) of the Federal Advisory Committee Act and in accordance with title 41 of the Code of Federal Regulations, Section 101–6.1015, and following consultation with the Committee Management Secretariat, General Services Administration, notice is hereby given that the Basic Energy Sciences Advisory Committee has been renewed for a two-year period beginning in January 1999. The Committee will provide advice to the Director of Energy Research on the basic energy sciences program.

The Secretary has determined that the renewal of the Basic Energy Sciences Advisory Committee is essential to the conduct of the Department's business and in the public interest in connection with the performance of duties imposed upon the Department of Energy by law. The Committee will continue to operate in accordance with the provisions of the Federal Advisory Committee Act, the Department of Energy Organization Act (Public Law 95–91), and rules and regulations issued in implementation of those Acts.

Further information regarding this advisory committee can be obtained from Rachel Samuel at (202) 586–3279.

Issued in Washington, DC on January 6, 1999.

James N. Solit,

Advisory Committee Management Officer.

[FR Doc. 99–749 Filed 1–12–99; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER99–564–000]

AES NY, L.L.C.; Notice of Issuance of Order

January 7, 1999.

AES NY, L.L.C. (AES NY), a special purpose subsidiary of The AES Corporation, filed an application requesting that the Commission authorize it to engage in wholesale power sales at market-based rates, and for certain waivers and authorizations. In particular, AES NY requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liabilities by AES NY. On January 5, 1999, the Commission issued an Order Accepting For Filing Proposed Market-Based Rates (Order), in the above-docketed proceeding.

The Commission's January 5, 1999 Order granted the request for blanket approval under Part 34, subject to the conditions found in Ordering Paragraphs (C), (D), and (F):

(C) Within 30 days of the date of this order, any person desiring to be heard or to protest the Commission's blanket approval of issuances of securities or assumptions of liabilities by AES NY should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure, 18 CFR 385.211 and 385.214.

(D) Absent a request to be heard within the period set forth in Ordering Paragraph (C) above, AES NY is hereby authorized to issue securities and assume obligations and liabilities as guarantor, indorser, surety or otherwise in respect of any security of another person; provided that such issue or assumption is for some lawful object within the corporate purposes of AES NY, compatible with the public interest, and reasonably necessary or appropriate for such purposes.

(F) The Commission reserves the right to modify this order to require a further showing that neither public nor private interests will be adversely affected by continued Commission approval of AES NY's issuances of securities or assumptions of liabilities. * * *

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is February 1999.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, N.E., Washington, D.C. 20426.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–707 Filed 1–12–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99–138–000]

ANR Pipeline Company; Notice of Petition To Amend

January 7, 1999.

Take notice that on December 23, 1998, ANR Pipeline Company (ANR), 500 Renaissance Center, Detroit, Michigan 48243, filed in Docket No. CP99–138–000, a petition to amend the certificate of public convenience and necessity issued on July 12, 1950 to ANR's predecessor, Michigan Wisconsin Pipe Line Company in Docket No. G–1156,[1] pursuant to Section 7(c) of the Natural Gas Act and Part 157 of the Federal Energy Regulatory Commission's (Commission) Regulations to authorize ANR to withdraw base gas from the Austin Storage Field (Austin Field) and to replace that base gas by reinjecting an equal volume of nitrogen into the field, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

ANR seeks authorization to withdraw approximately 2.0 Bcf of base gas, over a period of approximately two years, from the Austin Field, located in Mecosta and Newaygo Counties, Michigan, and to replace that base gas by reinjecting an equal volume of nitrogen into the field. ANR also seeks approval of the existing storage field boundary at the Austin Field.

ANR states that replacement of the base gas with nitrogen will not affect the operation of the storage field. Maximum storage volumes and pressures, as well as deliverability from the field will remain unchanged so that service to customers will be unaffected. ANR further states that no construction of permanent facilities is anticipated, and

[1] 9 FPC 127 (1950).

that the costs of the project will be borne by the owners of the storage field.

Any person desiring to participate in the hearing process or to make any protest with reference to said application should on or before January 28, 1999, file with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. The Commission's rules require that protesters provide copies of their protests to the party or person to whom the protests are directed. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

A person obtaining intervenor status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents issued by the Commission, filed by the applicant, or filed by all other intervenors. An intervenor can filed for rehearing of any Commission order and can petition for court review of any such order. However, an intervenor must submit copies of comments or any other filing it makes with the Commission to every other intervenor in the proceeding, as well as filing an original and 14 copies with the Commission.

A person does not have to intervene, however, in order to have comments considered. A person, instead, may submit two copies of such comments to the Secretary of the Commission. Commenters will be placed on the Commission's environmental mailing list, will receive copies of environmental documents and will be able to participate in meetings associated with the Commission's environmental review process. Commenters will not be required to serve copies of filed documents on all other parties. However, commenters will not receive copies of all documents filed by other parties or issued by the Commission and will not have the right to seek rehearing or appeal the Commission's final order to a Federal court.

The Commission will consider all comments and concerns equally, whether filed by commenters or those requesting intervenor status.

Take further notice that, pursuant to their authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its 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 ANR to appear or be represented at the hearing.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–709 Filed 1–12–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project Nos. 6878–006, 9685–022, 9709–048, 9821–090, 4900–060, and 5000–057; Project No. 4639–019]

Trafalgar Power Inc., Christine Falls Corporation; Notice Establishing Comment Period for Complaint

January 7, 1999.

On December 28, 1998, Hydro Investors, Inc. filed a document entitled ''Complaint of Hydro Investors, Inc. Alleging Violations of Licensees, Section 8 of the Federal Power Act and the Uniform System of Accounts, and Request for Revocation of Qualifying Facility Status.'' The complainant requests, pursuant to 18 CFR 385.206 of the Commission's regulations, that the Commission find Trafalgar Power, Inc. and Christine Falls Corporation to be in violation of their licenses for failing to retain exclusive operation and control responsibilities under their licenses, for failing to obtain prior approval before allegedly transferring licenses to another entity (Algonquin Power Corporation, Inc. and/or one or more of its affiliates and/or Aetna Life Insurance Co.), and for treating incorrectly under the uniform system of accounts long term debt forgiven in refinancing. The complainant requests that the Commission revoke the licensees' qualifying facility certifications for the above-captioned projects retroactive to the date of alleged transfer.

Any person may file an answer, comments, protests, or a motion to intervene with respect to the complaint in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 385.210, 385.211, 385.213, and 385.214. In determining the appropriate action to take with respect to the complaint, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any answers, comments, protests, or motions to intervene must be received no later than 30 days after publication of this notice in the **Federal Register**.[1]

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–710 Filed 1–12–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99–134–000]

Williston Basin Interstate Pipeline Company; Notice of Request Under Blanket Authorization

January 7, 1999.

Take notice that on December 23, 1998, Williston Basin Interstate Pipeline Company (Williston Basin), 200 North Third Street, Suite 300, Bismarck, North Dakota 58501, filed in Docket No. CP99–134–000 a request pursuant to Sections 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.211) for authorization to construct and operate new metering and associated appurtenant facilities in Park County, Wyoming, under Williston Basin's blanket certificate issued in Docket No. CP82–487–000 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.

Williston Basin states that the new metering and associated appurtenant facilities will be used in providing delivery of transportation service gas to the Howell Petroleum (Howell) processing plant. Howell has requested installation of this metering facility to allow Williston Basin to make deliveries of up to 1,300 Mcf per day to the Howell processing plant. The new metering and

[1] *See* 18 CFR 385.213(d). *See also* 18 CFR 385.202.

associated appurtenant facilities will be installed within an existing building at the Howell processing plant located in Section 29, T58N, R99W, Park County, Wyoming. The facilities will consist of a positive rotary meter, a two-inch relief valve, a one-inch regulator/control valve and miscellaneous piping, all of which will be installed within the existing building. The estimated cost of the proposed metering facilities is $15,500 and the actual cost of these facilities is 100% reimbursable by Howell.

Williston Basin states that this proposal is not prohibited by its existing tariff and that it has sufficient capacity to accomplish deliveries without detriment or disadvantage to other customers. There will be no effect on Williston Basin's peak day and annual deliveries and the total volumes delivered will not exceed total volumes authorized prior to this request.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–708 Filed 1–12–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC99–10–000, et al.]

Cleco Corporation, et al.; Electric Rate and Corporate Regulation Filings

January 6, 1999.

Take notice that the following filings have been made with the Commission:

1. Cleco Corporation

[Docket No. EC99–10–000]

Take notice that on December 28, 1998, Cleco Corporation filed an informational filing relating to the Verified Application of Cleco Corporation for Authority to Implement Proposed Holding Company Structure.

Comment date: January 26, 1999, in accordance with Standard Paragraph E at the end of this notice.

2. Montaup Electric Company, Newport Electric Corporation and FPL Energy Wyman IV LLC

[Docket No. EC99–20–000]

Take notice that on December 31, 1998, Montaup Electric Company (Montaup), Newport Electric Corporation (Newport) and FPL Energy Wyman IV LLC (FPL Energy Wyman IV) (collectively, the Applicants) submitted for filing, pursuant to Section 203 of the Federal Power Act and Part 33 of the Commission's regulations, an application for the proposed sale by Montaup and Newport of facilities and other assets consisting of their interests in the Wyman IV generating plant located in Yarmouth, ME to FPL Energy Wyman IV, pursuant to an agreement dated July 24, 1998.

Copies of the filing have been served on the regulatory agencies of the Commonwealth of Massachusetts and the States of Rhode Island and Connecticut.

Comment date: January 28, 1999, in accordance with Standard Paragraph E at the end of this notice.

3. CET Marketing L.P.

[Docket No. EC99–21–000]

Take notice that on December 31, 1998, CET Marketing L.P. filed an Application under Section 203 of the Federal Power Act for authority to take partial assignment of the rights and obligations under the Power Put and Interconnection Agreement between Cogen Energy Technology L.P. and Niagara Mohawk Power Corporation and a request for expedited treatment.

A copy of this Application has been served upon the New York State Public Service Commission.

Comment date: January 28, 1999, in accordance with Standard Paragraph E at the end of this notice.

4. NGE Generation, Inc. and New York State Electric & Gas Corporation

[Docket No. EC99–22–000]

Take notice that on December 31, 1998, NGE Generation, Inc. (NGE Gen) and New York State Electric & Gas Corporation (NYSEG) tendered for filing pursuant to Section 203 of the Federal Power Act an application for Commission approval to effect a transfer of power sales agreements, a power sales tariff, and service agreements under that power sales tariff from NGE Gen to NYSEG.

Comment date: January 28, 1999, in accordance with Standard Paragraph E at the end of this notice.

5. Citizens Power & Light Corporation

[Docket No. ER89–401–037]

Take notice that on December 24, 1998, the above-mentioned power marketer filed a quarterly report with the Commission in the above-mentioned proceeding for information only. This filing is available for public inspection and copying in the Public Reference Room or on the internet under Records Information Management System (RIMS) for viewing and downloading.

6. Seagull Power Services Inc., XERXE Group, Inc., and Millennium Energy Corporation

[Docket Nos. ER96–342–010, ER98–1823–003, and ER98–174–003]

Take notice that on December 14, 1998, the above-mentioned power marketers filed quarterly reports with the Commission in the above-mentioned proceedings for information only. These filings are available for public inspection and copying in the Public Reference Room or on the internet under Records Information Management System (RIMS) for viewing and downloading.

7. Energy Sales Network, Incorporated, NGTS Energy Services, and Sandia Energy Resources Company

[Docket Nos. ER98–753–005, ER96–2892–008, and ER96–2538–010

Take notice that on December 31, 1998, the above-mentioned power marketers filed quarterly reports with the Commission in the above-mentioned proceedings for information only. These filings are available for public inspection and copying in the Public Reference Room or on the internet under Records Information Management System (RIMS) for viewing and downloading.

8. Midwest Independent Transmission System Operator, et al.

[Docket No. ER98–1438–000]

Take notice that on December 23, 1998, Alliant Energy filed a copy of their letter of withdrawal they sent to Midwest ISO.

Comment date: January 26, 1999, in accordance with Standard Paragraph E at the end of this notice.

9. Long Beach Generation LLC

[Docket No. ER98–2537–001]

Take notice that on December 30, 1998, Long Beach Generation LLC (Long Beach) tendered for filing in accordance with the Commission's November 30,

1998, order in the above-captioned docket, its compliance refund report for approval.

Comment date: January 19, 1999, in accordance with Standard Paragraph E at the end of this notice.

10. Public Service Company of New Mexico

[Docket Nos. ER98–2862–000 and ER98–3376–000]

Take notice that on December 21, 1998, Public Service Company of New Mexico (PNM), tendered for filing a corrected version of PNM's response letter to the additional information requests made by letter dated November 17, 1998.

Comment date: January 19, 1999, in accordance with Standard Paragraph E at the end of this notice.

11. California Independent System Corporation

[Docket No. ER98–3760–000]

Take notice that on December 30, 1998, the California Independent System Operator Corporation (ISO), tendered for filing a compliance filing in the above-referenced docket which includes a revision to the ISO Tariff. The ISO states that this filing was submitted to comply with the Commission's September 11, 1998 Order, 84 FERC ¶ 61,217 (1998), and the Commission's December 16, 1998 Order, 85 FERC ¶ 61,350 (1998), in the above-referenced docket.

The ISO states that this filing has been served on all parties listed on the official service list in the above-referenced docket.

Comment date: January 19, 1999, in accordance with Standard Paragraph E at the end of this notice.

12. MidAmerican Energy Company

[Docket No. ER99–202–000]

Take notice that on December 30, 1998, MidAmerican Energy Company (MidAmerican), P.O. Box 657, 666 Grand Avenue, Des Moines, Iowa 50303, tendered for filing an amendment to its initial filing in this proceeding.

The amendment changes the proposed effective date of the tariff sheets from January 1, 1999 to April 1, 1999.

Copies of the filing were served on all parties to this proceeding.

Comment date: January 19, 1999, in accordance with Standard Paragraph E at the end of this notice.

13. Ameren Services Company

[Docket No. ER99–310–000]

Take notice that on December 30, 1998, Ameren Services Company (ASC), the transmission provider, tendered for filing Amended Service Agreements for Long-Term Firm Point-to-Point Transmission Services between ASC and Ameren CIPS, Entergy Power Marketing Corporation and Wabash Valley Power Association. ASC asserts that the purpose of the Agreements is to permit ASC to provide transmission service to the parties pursuant to Ameren's Open Access Transmission Tariff filed in Docket No. ER96–677–004.

Copies of the revised transmission service agreements have been sent to each of the respective parties.

Comment date: January 19, 1999, in accordance with Standard Paragraph E at the end of this notice.

14. California Power Exchange Corporation

[Docket No. ER99–1079–000]

Take notice that on December 30, 1998, the California Power Exchange Corporation (PX), tendered for filing Amendment No. 7, to its FERC Electric Service Tariff to revise one section of its Power Exchange Market Monitoring and Information Protocol (PMMIP). The revision authorizes the PX's Board of Governors to appoint more than three independent and recognized electric industry experts to the PX's Market Monitoring Committee.

The PX states that it has served copies of its submittal on each of the PX participants and on the California Public Utilities Commission. The filing is also being posted on the PX's website at http://www.calpx.com.

Comment date: January 19, 1999, in accordance with Standard Paragraph E at the end of this notice.

15. Northern States Power Company (Minnesota) and Northern States Power Company (Wisconsin)

[Docket No. ER99–1080–000]

Take notice that on December 30, 1998, Northern States Power Company (Minnesota) and Northern States Power Company (Wisconsin) (jointly NSP), tendered for filing a Non-Firm Point-to-Point Transmission Service Agreement and a Short-Term Firm Transmission Service Agreement between NSP and PG&E Energy Trading—Power, L.P.

NSP requests that the Commission accept both the agreements effective December 17, 1998, and requests waiver of the Commission's notice requirements in order for the agreements to be accepted for filing on the date requested.

Comment date: January 19, 1999, in accordance with Standard Paragraph E at the end of this notice.

16. Northern States Power Company (Minnesota) and Northern States Power Company (Wisconsin)

[Docket No. ER99–1081–000]

Take notice that on December 30, 1998, Northern States Power Company (Minnesota) and Northern States Power Company (Wisconsin) (jointly NSP), tendered for filing a Non-Firm Point-to-Point Transmission Service Agreement between NSP and Enron Power Marketing.

NSP requests that the Commission accept the agreement effective December 21, 1998, and requests waiver of the Commission's notice requirements in order for the agreements to be accepted for filing on the date requested.

Comment date: January 19, 1999, in accordance with Standard Paragraph E at the end of this notice.

17. Wisconsin Public Service Corporation

[Docket No. ER99–1082–000]

Take notice that on December 30, 1998, Wisconsin Public Service Corporation (WPSC), tendered for filing a Partial Requirements Service Agreement with its affiliate, the Upper Peninsula Power Company (UPPCO), under WPSC's W–2A Partial Requirements Tariff.

WPSC requests that the Commission make the Service Agreement effective on January 1, 1999.

WPSC states that copies of this filing have been served on all customers served under the W–2A Tariff and on the Michigan Public Service Commission and the Public Service Commission of Wisconsin.

Comment date: January 19, 1999, in accordance with Standard Paragraph E at the end of this notice.

18. Electric Energy, Inc.

[Docket No. ER99–1083–000]

Take notice that on December 30, 1998, Electric Energy, Inc. (EEInc.), tendered for filing a Letter Supplement pursuant to Section 205 of the Federal Power Act. The Letter Supplement proposes changes to the filed Contract between the Department of Energy of the United States of America and EEInc., all as more fully described in the Letter Supplement.

EEInc., has requested an effective date of January 1, 1999.

Comment date: January 19, 1999, in accordance with Standard Paragraph E at the end of this notice.

19. Southwestern Public Service Company

[Docket No. ER99–1084–000]

Take notice that on December 30, 1998, New Century Services, Inc., on behalf of Southwestern Public Service Company (Southwestern), tendered for filing an executed umbrella service agreement under Southwestern's market-based sales tariff with Central & South West Services, Inc., (CSW). This umbrella service agreement provides for Southwestern's sale and CSW's purchase of power at market-based rates pursuant to Southwestern's market-based sales tariff.

Comment date: January 19, 1999, in accordance with Standard Paragraph E at the end of this notice.

20. Washington Water Power Company

[Docket No. ER99–1085–000]

Take notice that on December 30, 1998, Washington Water Power Company (WWP), tendered for filing, with the Federal Energy Regulatory Commission pursuant to 18 CFR 35.13, a executed Mutual Netting Agreement allowing for arrangements of amounts which become due and owing to one Party to be set off against amounts which are due and owing to the other Party with Duke Energy Trading and Marketing, L.L.C.

WWP requests waiver of the prior notice requirement and requests an effective date of December 1, 1998.

Comment date: January 19, 1999, in accordance with Standard Paragraph E at the end of this notice.

21. Carolina Power & Light Company

[Docket No. ER99–1086–000]

Take notice that on December 30, 1998, Carolina Power & Light Company (CP&L), tendered for filing a Service Agreement for Network Integration Transmission Service with the Town of Sharpsburg, NC. Service to this Eligible Customer will be in accordance with the terms and conditions of Carolina Power & Light Company's Open Access Transmission Tariff.

CP&L is requesting an effective date of January 1, 1999, for this Agreement.

Copies of the filing were served upon the North Carolina Utilities Commission and the South Carolina Public Service Commission.

Comment date: January 19, 1999, in accordance with Standard Paragraph E at the end of this notice.

22. DuPont Power Marketing, Inc.

[Docket No. ER99–1087–000]

Take notice that on December 30, 1998, DuPont Power Marketing, Inc., tendered for filing Notice of Succession pursuant to 18 CFR 35.16 and 35.151, Conoco Power Marketing, Inc., a Delaware Corporation, and a wholly-owned subsidiary of Conoco, Inc., hereby adopts, ratifies and makes its own, in every respect all applicable rate schedules, and supplements thereto, listed below, heretofore filed with the Commission by DuPont Power Marketing, Inc.

Comment date: January 19, 1999, in accordance with Standard Paragraph E at the end of this notice.

23. Select Energy, Inc.

[Docket No. ER99–1088–000]

Take notice that on December 30, 1998, Select Energy, Inc. (Select), tendered for filing, a Service Agreement with the Fitchburg Gas and Electric Company under the Select Energy, Inc., Market-Based Rates, Tariff No. 1.

Select states that a copy of this filing has been mailed to the Fitchburg Gas and Electric Company.

Select requests that the Service Agreement become effective December 4, 1998.

Comment date: January 19, 1999, in accordance with Standard Paragraph E at the end of this notice.

24. Select Energy, Inc.

[Docket No. ER99–1089–000]

Take notice that on December 30, 1998, Select Energy, Inc. (Select), tendered for filing, a Service Agreement with PG&E Energy Trading-Power, L.P. (PGET), under the Select Energy, Inc., Market-Based Rates, Tariff No. 1.

Select states that a copy of this filing has been mailed to the PGET.

Select requests that the Service Agreement become effective December 2, 1998.

Comment date: January 19, 1999, in accordance with Standard Paragraph E at the end of this notice.

25. Select Energy, Inc.

[Docket No. ER99–1090–000]

Take notice that on December 30, 1998, Select Energy, Inc. (Select), tendered for filing, a Service Agreement with HQ Energy Services US under the Select Energy, Inc., Market-Based Rates, Tariff No. 1.

Select Energy, Inc., states that a copy of this filing has been mailed to HQ Energy Services US.

Select requests that the Service Agreement become effective December 1, 1998.

Comment date: January 19, 1999, in accordance with Standard Paragraph E at the end of this notice.

26. Select Energy, Inc.

[Docket No. ER99–1091–000]

Take notice that Select Energy, Inc. (Select), on December 1, 1998, tendered for filing, a Service Agreement with Niagara Mohawk Energy Marketing under the Select Energy, Inc., Market-Based Rates, Tariff No. 1.

Select Energy, Inc., states that a copy of this filing has been mailed to Niagara Mohawk Energy Marketing.

Select requests that the Service Agreement become effective December 1, 1998.

Comment date: January 19, 1999, in accordance with Standard Paragraph E at the end of this notice.

27. Northeast Utilities Service Company

[Docket No. ER99–1092–000]

Take notice that on December 30, 1998, tendered for filing a Service Agreement with Boston Edison Company (BECO), under the Select Energy, Inc., Market-Based Rates, Tariff No. 1.

Select Energy, Inc., states that a copy of this filing has been mailed to the BECO.

Select requests that the Service Agreement become effective December 1, 1998.

Comment date: January 19, 1999, in accordance with Standard Paragraph E at the end of this notice.

28. Select Energy, Inc.

[Docket No. ER99–1093–000]

Take notice that on December 30, 1998, tendered for filing a Service Agreement with Central Vermont Public Service Corporation (CVPS), under the Select Energy, Inc., Market-Based Rates, Tariff No. 1.

Select states that a copy of this filing has been mailed to the CVPS.

Select requests that the Service Agreement become effective December 3, 1998.

Comment date: January 19, 1999, in accordance with Standard Paragraph E at the end of this notice.

29. Select Energy, Inc.

[Docket No. ER99–1094–000]

Take notice that on December 30, 1998, Select Energy, Inc., tendered for filing a Service Agreement with Duke Energy Trading and Marketing, L.L.C., under the Select Energy, Inc., Market-Based Rates, Tariff No. 1.

Select states that a copy of this filing has been mailed to the Sithe.

Select requests that the Service Agreement become effective December 1, 1998.

Comment date: January 19, 1999, in accordance with Standard Paragraph E at the end of this notice.

30. Select Energy, Inc.

[Docket No. ER99–1095–000]

Take notice that on December 30, 1998, Select Energy, Inc. (Select), tendered for filing, a Service Agreement with Sithe Power Marketing, Inc., (Sithe), under the Select Energy, Inc., Market-Based Rates, Tariff No. 1.

Select states that a copy of this filing has been mailed to the Sithe.

Select requests that the Service Agreement become effective December 1, 1998.

Comment Date: January 19, 1999, in accordance with Standard Paragraph E at the end of this notice.

31. Ohio Edison Company and Pennsylvania Power Company

[Docket No. ER99–1096–000]

Take notice that on December 30, 1998, Ohio Edison Company tendered for filing on behalf of itself and Pennsylvania Power Company, Service Agreements with PP&L Energy Plus Co., and FPL Energy Services, Inc., under Ohio Edison's Power Sales Tariff. This filing is made pursuant to Section 205 of the Federal Power Act.

Ohio Edison requests that the Commission waive the notice requirement and allow the Service Agreements to become effective on January 1, 1999.

Comment Date: January 19, 1999, in accordance with Standard Paragraph E at the end of this notice.

32. Ohio Edison Company and Pennsylvania Power Company

[Docket No. ER99–1097–000]

Take notice that on December 30, 1998, Ohio Edison Company tendered for filing on behalf of itself and Pennsylvania Power Company, a Service Agreement with Delmarva Power & Light Company (dba Conectiv Energy) under Ohio Edison's Power Sales Tariff. This filing is made pursuant to Section 205 of the Federal Power Act.

Ohio Edison requests that the Commission waive the notice requirement and allow the Service Agreement to become effective on January 1, 1999.

Comment Date: January 19, 1999, in accordance with Standard Paragraph E at the end of this notice.

33. FirstEnergy Corp., and Pennsylvania Power Company

[Docket No. ER99–1098–000]

Take notice that on December 30, 1999, FirstEnergy Corp., tendered for filing on behalf of itself and Pennsylvania Power Company, Service Agreements for Network Integration Service and Operating Agreements for the Network Integration Transmission Service under the Pennsylvania Electric Choice Program with Constellation Energy Source, Incorporated, Delmarva Power & Light Co. (d/b/a Connectiv Energy), DTE CoEnergy, L.L.C., DTE Edison America, Incorporated, FirstEnergy Services Corporation, Horizon Energy Company (d/b/a Exelon Energy), Penn Power Energy, Incorporated, PP&L EnergyPlus Company, PP&L, Inc. (d/b/a PP&L EnergyPlus), and West Penn Power (d/b/a Allegheny Energy) pursuant to the FirstEnergy System Open Access Tariff. These agreements will enable the parties to obtain Network Integration Service under the Pennsylvania Electric Choice Program in accordance with the terms of the Tariff.

The proposed effective date under these agreements is January 1, 1999.

Comment Date: January 19, 1999, in accordance with Standard Paragraph E at the end of this notice.

34. Central Vermont Public Service Corporation

[Docket No. ER99–1134–000]

Take notice that on December 30, 1998, Central Vermont Public Service Corporation (Central Vermont), tendered for filing a Service Agreement with Select Energy, Inc., under its FERC Electric Tariff No. 8.

Central Vermont requests waiver of the Commission's Regulations to permit the service agreement to become effective on January 1, 1999.

Comment Date: January 19, 1999, in accordance with Standard Paragraph E at the end of this notice.

35. Central Vermont Public Service Corporation

[Docket No. ER99–1135–000]

Take notice that on December 30, 1998, Central Vermont Public Service Corporation (Central Vermont), tendered for filing a Service Agreement with Cinergy Capital & Trading, Inc., under its FERC Electric Tariff No. 8.

Central Vermont requests waiver of the Commission's Regulations to permit the service agreement to become effective on January 1, 1999.

Comment Date: January 19, 1999, in accordance with Standard Paragraph E at the end of this notice.

36. Central Vermont Public Service Corporation

[Docket No. ER99–1136–000]

Take notice that on December 30, 1998, Central Vermont Public Service Corporation (Central Vermont), tendered for filing a Service Agreement with Johnson Electric Light Department under its FERC Electric Tariff No. 8.

Central Vermont requests waiver of the Commission's Regulations to permit the service agreement to become effective on January 1, 1999.

Comment Date: January 19, 1999, in accordance with Standard Paragraph E at the end of this notice.

37. Central Vermont Public Service Corporation

[Docket No. ER99–1137–000]

Take notice that on December 30, 1998, Central Vermont Public Service Corporation (Central Vermont), tendered for filing a Service Agreement with Town of Readsboro Electric Department under its FERC Electric Tariff No. 8.

Central Vermont requests waiver of the Commission's Regulations to permit the service agreement to become effective on January 1, 1999.

Comment Date: January 19, 1999, in accordance with Standard Paragraph E at the end of this notice.

38. Arizona Public Service Company

[Docket Nos. OA97–466–002 and OA97–466–004]

Take notice that on October 27, 1998, Arizona Public Service Company (APS) submitted revised standards of conduct in Docket No. OA97–466–002 in response to a Commission order issued on September 29, 1998.[1] On December 28, 1998, APS submitted a letter in OA97–466–004 stating that it had posted revised organizational charts and job descriptions on its OASIS in response to the September 29, 1998 order. APS attached page prints from the revised posted material.

Comment Date: January 21, 1999, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the

[1] Arizona Public Service Company, *et al.*, 84 FERC ¶ 61,320 (1998).

Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–706 Filed 1–12–99; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG99–56–000, et al.]

Entergy Nuclear Generation Company, et al.; Electric Rate and Corporate Regulation Filings

January 5, 1999.

Take notice that the following filings have been made with the Commission:

1. Entergy Nuclear Generation Company

[Docket No. EG99–56–000]

Take notice that on December 24, 1998, Entergy Nuclear Generation Company (Applicant), 1340 Echelon Parkway, Jackson, Mississippi 39213, filed with the Federal Energy Regulatory Commission an application for redetermination of exempt wholesale generator status pursuant to Part 365 of the Commission's Regulations.

The Applicant is a corporation that will engage directly or indirectly and exclusively in the business of owning and/or operating eligible facilities in the United States (consisting primarily, if not exclusively, of nuclear powered generating stations) and selling electric energy at wholesale. The Applicant has previously been determined to be an exempt wholesale generator 85 FERC ¶ 62,147. The Applicant now proposes to acquire the Pilgrim Nuclear Power Station (the Facility), a 670 MW nuclear power electric generating facility, from Boston Edison Company and, therefore, seeks a redetermination of its exempt wholesale generator status. Electric energy generated by the Facility will be sold exclusively at wholesale.

Comment date: January 26, 1999, in accordance with Standard Paragraph E at the end of this notice. The Commission will limits its consideration of comments to those that concern the adequacy or accuracy of the application.

2. The United Illuminating Company, Wisvest-Connecticut, LLC, and Fitchburg Gas and Electric Light Company

[Docket Nos. EC99–17–000 and ER99–977–000]

Take notice that on December 29, 1998, the United Illuminating Company (United Illuminating), Wisvest-Connecticut, LLC (Wisvest-Connecticut) and Fitchburg Gas and Electric Light Company (FG&E) (the Applicants) supplemented their previous filings in these dockets, made pursuant to Sections 203 and 205 of the Federal Power Act, and Parts 33 and 35 of the Commission's Regulations, of applications and rate schedules in connection with the divestiture by United Illuminating of substantially all of its fossil electric generation assets, as well as wholesale power sales agreements, by sale to Wisvest-Connecticut, all pursuant to a series of agreements dated October 2, 1998. The previous filings also seek approval of the transfer by FG&E to United Illuminating, for sale to Wisvest-Connecticut, of FG&E's 4.5% interest in the New Haven Harbor Station, one of the electric generation assets that United Illuminating is divesting.

In the supplemental filing, the Applicants provide the Commission with (1) a letter agreement dated December 18, 1998, clarifying certain terms in the October 2, 1998 Purchase and Sale Agreement between United Illuminating and Wisvest-Connecticut, clarifying the effective date of the Power Supply Agreement and Purchased Power Agreement attached to the Purchase and Sale Agreement, and setting forth a formula referenced in the Purchased Power Agreement; (2) an amendment, dated December 18, 1998, clarifying the timing of payment and the delivery of instruments of transfer pursuant to the October 30, 1998 Purchase and Sale Agreement between United Illuminating and FG&E; (3) FG&E's December 28, 1998 filing with the Connecticut Department of Public Utility Control for approval of FG&E's transfer to United Illuminating of FG&E's 4.5% ownership interest in the New Haven Harbor Station; and (4) FG&E's December 24, 1998 filing with the Massachusetts Department of Telecommunications and Energy for the findings required for a determination of exempt wholesale generator (EWG) status.

Copies of the supplemental filing have been served on the regulatory agencies in the State of Connecticut, Commonwealth of Massachusetts and State of New Hampshire.

Comment date: January 28, 1999, in accordance with Standard Paragraph E at the end of this notice.

3. PSEG PPN Operations Private Limited

[Docket No. EG99–53–000]

On December 30, 1998, PSEG PPN Operations Private Limited (PPN Operations), with its principal office at Prakash Presidium, II Floor, 110 Mahatma Gandhi Road, Nungambakkam, Chennai-600 034, India filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's Regulations.

PPN Operations is a company organized under the laws of the Republic of India. PPN Operations will be engaged directly or indirectly, through a Section 2(a)(11)(B) affiliate, and exclusively in operating a gas and/or naphtha-fired combined cycle generating facility; selling electric energy at wholesale and engaging in project development activities with respect thereto. The Facility will consist of one electric generating unit with a name plate rating of 347 megawatts and incidental facilities in Tamil Nadu, India.

Comment date: January 26, 1999, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

4. Seminole Electric Cooperative, v. Florida Power & Light Company

[Docket No. EL99–19–000]

Take notice that on December 21, 1998, Seminole Electric Cooperative, Inc. (Seminole) tendered for filing a complaint against Florida Power & Light Company (FPL). The complaint alleged that Seminole was entitled to transmission and reactive power credits as part of the network rates to be charged to Seminole by FPL commencing January 1, 1999.

Comment date: February 4, 1999, in accordance with Standard Paragraph E at the end of this notice.

5. LG&E-Westmoreland Southampton

[Docket No. ER97–656–002]

Take notice that on December 22, 1998, LG&E-Westmoreland Southampton (Southampton), tendered for filing its compliance report in the above-referenced docket. The report indicates the election made by Southampton with respect to its refund obligation under Article 2 of its October 1, 1998, Stipulation and Agreement with Virginia Electric and Power Company, which was approved in the Commission's December 11, 1998, letter order in Docket Nos. EL94–45–003, EL94–45–004, QF88–84–008, QF88–84–009, ER97–656–000 and ER97–656–001.

Comment date: January 11, 1999, in accordance with Standard Paragraph E at the end of this notice.

6. Southwestern Electric Power Company

[Docket No. ER99–1067–000]

Take notice that on December 29, 1998, Southwestern Electric Power Company (SWEPCO), tendered for filing a letter agreement, dated November 30, 1998, between SWEPCO and Northeast Texas Electric Cooperative, Inc. (NTEC) and East Texas Electric Cooperative, Inc., (ETEC). The letter agreement is a supplement to the Amended and Restated Power Supply Agreement, dated June 30, 1997, between SWEPCO and NTEC, and the Scheduling Agreement, dated April 22, 1992, between SWEPCO and NTEC. The letter agreement accommodates changes ETEC and NTEC have made in certain of NTEC's power resources.

SWEPCO seeks an effective date of December 1, 1998 and, accordingly, seeks waiver of the Commission's notice requirements.

Copies of the filing were served on NTEC, ETEC and the Public Utility Commission of Texas.

Comment date: January 15, 1999, in accordance with Standard Paragraph E at the end of this notice.

7. Central Power and Light Company, West Texas Utilities Company, Public Service Company of Oklahoma, and Southwestern Electric Power Company

[Docket No. ER99–1068–000]

Take notice that on December 29, 1998, Central Power and Light Company, Public Service Company of Oklahoma, Southwestern Electric Power Company and West Texas Utilities Company (collectively, the CSW Operating Companies), tendered for filing a service agreement establishing Electric Clearinghouse, Inc. (ECI) as a customer under the CSW Operating Companies' market-based rate power sales tariff.

The CSW Operating Companies request an effective date of December 1, 1998, for the agreement with ECI and, accordingly, seek waiver of the Commission's notice requirements.

The CSW Operating Companies state that a copy of the filing was served on ECI.

Comment date: January 15, 1999, in accordance with Standard Paragraph E at the end of this notice.

8. Carolina Power & Light Company

[Docket No. ER99–1069–000]

Take notice that on December 29, 1998, Carolina Power & Light Company (CP&L), tendered for filing a Service Agreement for Firm Point-to-Point Transmission Service with Carolina Power & Light Company-Wholesale Power Department. Service to this Eligible Customer will be in accordance with the terms and conditions of Carolina Power & Light Company's Open Access Transmission Tariff.

CP&L is requesting an effective date of January 1, 1999, for this Agreement.

Copies of the filing were served upon the North Carolina Utilities Commission and the South Carolina Public Service Commission.

Comment date: January 15, 1999, in accordance with Standard Paragraph E at the end of this notice.

9. The Montana Power Company

[Docket No. ER99–1070–000]

Take notice that on December 29, 1998, The Montana Power Company (Montana), tendered for filing with the Federal Energy Regulatory Commission pursuant to 18 CFR 35.13 an unexecuted Firm Point-To-Point Transmission Service Agreement with Ash Grove Cement West, Inc. (Ash Grove), under Montana's FERC Electric Tariff, Fourth Revised Volume No. 5 (Open Access Transmission Tariff).

A copy of the filing was served upon Ash Grove.

Comment date: January 15, 1999, in accordance with Standard Paragraph E at the end of this notice.

10. Puget Sound Energy, Inc.

[Docket No. ER99–1071–000]

Take notice that on December 29, 1998, Puget Sound Energy, Inc., as Transmission Provider, tendered for filing an unexecuted Service Agreement for Firm Point-To-Point Transmission Service (Firm Point-To-Point Service Agreement) and a Service Agreement for Non-Firm Point-To-Point Transmission Service (Non-Firm Point-To-Point Service Agreement) with Public Service Company of New Mexico (PNM), as Transmission Customer.

A copy of the filing was served upon PNM.

Comment date: January 15, 1999, in accordance with Standard Paragraph E at the end of this notice.

11. UtiliCorp United Inc.

[Docket No. ER99–1072–000]

Take notice that on December 29, 1998, UtiliCorp United Inc. (UtiliCorp), tendered for filing a service agreement with TransAlta Energy Marketing (U.S.) Inc., for service under its Non-Firm Point-to-Point open access service tariff for its operating division, WestPlains Energy-Colorado.

Comment date: January 15, 1999, in accordance with Standard Paragraph E at the end of this notice.

12. UtiliCorp United Inc.

[Docket No. ER99–1073–000]

Take notice that on December 29, 1998, UtiliCorp United Inc. (UtiliCorp), tendered for filing a service agreement with TransAlta Energy Marketing (U.S.) Inc., for service under its Short-Term Firm Point-to-Point open access service tariff for its operating division, WestPlains Energy-Colorado.

Comment date: January 15, 1999, in accordance with Standard Paragraph E at the end of this notice.

13. Southern Company Services, Inc.

[Docket No. ER99–1074–000]

Take notice that on December 29, 1998, Southern Company Services, Inc., acting on behalf of Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company, and Savannah Electric and Power Company (collectively referred to as Southern Company), tendered for filing an Agreement between Southern Company and the Tennessee Valley Authority (TVA) that amended the parties' Interchange Agreement, dated July 1, 1965 (Rate Schedule No. 33) to establish a temporary interconnection point (Interconnection Point) between the parties' systems. The Interconnection Point is located near Alpha, Georgia and became available for service on December 4, 1998. The facilities will be removed on the earlier of TVA's completion of its Rock Spring—Center Point 230 kV transmission line or November 1, 2003.

Comment date: January 15, 1999, in accordance with Standard Paragraph E at the end of this notice.

14. New England Power Company

[Docket No. ER99–1075–000]

Take notice that on December 29, 1998, New England Power Company (NEP), tendered for filing a supplement to an amendment to The Narragansett Electric Company's service agreement under NEP's FERC Electric Tariff, Original Volume No. 1.

NEP requests an effective date for the Supplement of January 1, 1999.

Comment date: January 15, 1999, in accordance with Standard Paragraph E at the end of this notice.

15. Puget Sound Energy, Inc.

[Docket No. ER99–1076–000]

Take notice that on December 29, 1998, Puget Sound Energy, Inc., as Transmission Provider, tendered for filing a Service Agreement for Firm Point-To-Point Transmission Service (Firm Point-To-Point Service Agreement) and a Service Agreement for

Non-Firm Point-To-Point Transmission Service (Non-Firm Point-To-Point Service Agreement) with TransAlta Energy Marketing (U.S.) Inc. (TEM(US)), as Transmission Customer.

A copy of the filing was served upon TEM(US).

Comment date: January 15, 1999, in accordance with Standard Paragraph E at the end of this notice.

16. Metropolitan Edison Company and Pennsylvania Electric Company

[Docket No. ER99–1077–000]

Take notice that on December 29, 1998, Metropolitan Edison Company and Pennsylvania Electric Company (collectively and each doing business as GPU Energy) tendered for filing a Notice of Cancellation of the Retail Transmission Service Agency Agreements between GPU Energy and the parties participating in their retail access pilot programs in Pennsylvania.

Cancellation will be effective the February 26, 1999.

Comment date: January 15, 1999, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.

Acting Secretary.

[FR Doc. 99–705 Filed 1–12–99; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY
DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Federal Transit Administration

[FRL–6218–8]

Transportation/Air Quality Public Information Initiative: ''It All Adds Up to Cleaner Air'' FY 99 Demonstration Communities; Request for Proposals

AGENCIES: Office of Mobile Sources, Environmental Protection Agency (EPA); Federal Highway Administration and Federal Transit Administration, Department of Transportation (DOT).

ACTION: Notice.

SUMMARY: A few years ago, the EPA's Office of Mobile Sources (OMS) and DOT's Federal Highway Administration (FHWA) and Federal Transit Administration (FTA) began a collaborative public education and partnership building program to be implemented at the community level. This effort, entitled ''It All Adds Up to Cleaner Air,'' is designed to inform the public about the connections between their transportation choices, traffic congestion, air pollution and public health. The initiative emphasizes the ability of individuals to make a difference when they are informed about the environmental consequences of their daily travel choices. Through this document, OMS, FHWA, and FTA are soliciting proposals from organizations and communities around the country who would benefit from participation as Demonstration Communities in the ''It All Adds Up to Cleaner Air'' initiative.

DATES: Deadline for Proposals is March 5, 1999.

ADDRESSES: This document can also be accessed at no cost by contacting:
Federal Register Web Page:
''http://www.access.gpo.gov/su_docs/aces/aces140.html''
DOT/Federal Highway Administration Web Page:
''www.fhwa.dot.gov/environment/pubout.htm''
EPA's Office of Mobile Sources Web Page:
''www.epa.gov/oms'' click on ''What's New''

FOR FURTHER INFORMATION CONTACT: Susan Bullard, Director of Outreach and Communication; EPA Office of Mobile Sources; 401 M Street SW (Mail code 6401); Washington, DC 20460; (Phone) 202/260–2614; (Fax) 202/260–6011; ''bullard.susan@epa.gov''.

TO REQUEST COPIES OF TV AND PRINT MATERIALS REFERENCED IN THIS NOTICE CONTACT: Kathy Daniel, Project Manager; US DOT Federal Highway Administration; 400 7th Street SW (HEP–40); Washington, DC 20590; (Phone) 202/366–6276; (Fax) 202/366–3409; ''kathleen.daniel@fhwa.dot.gov''

SUPPLEMENTARY INFORMATION:

Affected Entities: Communities and/or organizations interested in participating as Demonstration Communities in a public education/partnership building project addressing transportation choices and their impact on traffic congestion, air quality, and public health.

Title: Transportation/Air Quality Public Information Initiative: ''It All Adds Up To Cleaner Air''—FY 99 Demonstration Communities—Request For Proposals.

Abstract: At the request of state and local transportation and air quality management agencies charged with implementing the Transportation Equity Act for the 21st Century and the Clean Air Act, DOT's Federal Highway Administration and Federal Transit Administration, and EPA's Office of Mobile Sources have been collaborating on a public education and partnership building program to be implemented at the community level. This effort is designed to inform the public about the connection between transportation choices, traffic congestion, air pollution, and public health. It stresses an individual's ability to make a difference, once informed about the environmental consequences of daily travel choices. This goal is being accomplished by (1) providing national support for community-based public education efforts on the impact of transportation choices on air quality, traffic congestion, and public health, (2) encouraging and facilitating the expansion of partnerships and collaborations, both national and local, committed to raising awareness, understanding, acceptance, and action related to transportation/air quality issues, and (3) encouraging informed and responsible individual actions through public information. The theme of the initiative is ''It All Adds Up to Cleaner Air.''

The core messages of this initiative focus on actions that people can take which are convenient and can make a difference in air quality when they are practiced on a wide scale. The messages include: (1) Trip-chaining, or linking trips in the car to accomplish a number of trip purposes without letting the engine cool down completely, thus cutting down on ''cold-starts'' that produce much greater exhaust

emissions; (2) maintaining the car in top running condition, which also can have a large payoff, because out-of-tune vehicles account for a disproportionately large share of auto emissions; and (3) choosing alternate modes of transportation whenever possible. Sharing a ride with a friend, car- or vanpooling to work, taking mass transit, biking, walking—all of these options reduce congestion and transportation emissions by eliminating auto trips. The common thread in all these messages is that drastic changes in lifestyle aren't necessary in order to make a difference. When enough people are motivated to make small and manageable changes in their daily routines, the cumulative impact is improved air quality. This starts with raising awareness about the problems of transportation and air quality and then calling on individuals to do their part, because it does add up to cleaner air. Our two years of research and focus group testing indicate that, in order for people to be willing to listen to these messages, the tone must allow them to receive credit for actions they're already taking, while encouraging them to do more. See public service announcement scripts in Appendix 1.

Pilot Sites—Background

During 1998, the federal partners pilot-tested the program design and products in three diverse communities—Dover, Delaware; Milwaukee, Wisconsin; and San Francisco, California—in support of the long term effort. Pilot communities were selected so the federal agencies could learn from the experience of areas with diversity in size, existing transportation infrastructure, air quality problems, and degrees of public understanding of transportation and air quality issues. Because the approach and results differed from community to community, important and relevant lessons have been learned from each site. While a comprehensive evaluation of the pilot sites is nearing completion, dialogue with pilot site representatives will continue. Collaborations of organizations with a vested interest in transportation/air quality issues in each of the three pilot communities continue to be involved in public education campaigns on transportation choices and their effect on air quality, which will result in the sustainability of the effort beyond federal support.

"It All Adds Up to Cleaner Air"—Previous Public Notice

On October 26, 1998, the federal partners published a joint **Federal Register** Notice (63 FR 5721; Oct. 26, 1998) soliciting ''Letters of Interest'' from communities and organizations interested in becoming Demonstration Communities. One purpose of requesting Letters of Interest was to help the federal agencies prepare an efficient evaluation/selection process. The October 26 document also served as an opportunity for obtaining feedback and comments from stakeholders and potential participants on the design of this phase of the initiative. The federal partners received sixty-six (66) Letters of Interest from across the country. Comments expressed and concepts presented in those letters have been considered by the federal partners and are reflected in this document. Potential participants in the initiative should note that submitting a Letter of Interest did not commit an organization/community to proceed with an application, and those who did not submit a Letter of Interest may still apply by the March 5, 1999 deadline. Selection of Demonstration Communities begins with the submission of formal proposals based upon today's document. Any organization interested in participating has until March 5, 1999 to submit a proposal to the address found in the section, ''Submitting Proposals.''

Expansion of the "It All Adds Up to Cleaner Air" Initiative

Through this document, the federal partners are expanding the ''It All Adds Up to Cleaner Air'' effort to include as many as twelve (12) Demonstration Communities to begin in April 1999 and continue through October, 2000. FHWA, FTA and OMS are soliciting proposals from organizations and communities around the country who believe that their ongoing efforts would benefit from their participation as a Demonstration Community in ''It All Adds Up to Cleaner Air.'' Demonstration Communities will enter into cooperative agreements with the federal partners and will receive national support to further their public education and partnership building efforts on transportation and air quality. National support to be provided includes: (1) Market research; (2) consistent national themes (text of the ''It All Adds Up to Cleaner Air'' TV and radio announcements follows in Appendix 1); (3) limited funds ($25,000 per site); (4) a comprehensive resource ''tool kit,'' including promotional materials; high quality TV, radio, and print advertisements and other public education tools; transportation and air quality facts and figures; as well as ''how to'' information; and (5) technical assistance to create, expand, and support community partnerships committed to improving quality of life through reduction of traffic congestion and air pollution.

Initiative Themes

The three message themes which serve as the cornerstone of the ''It All Adds Up to Cleaner Air'' initiative focus on combining trips (trip chaining), car care (maintenance), and using alternative modes of transportation. The specific text of the message themes (broadcast public service announcements) to be used in the Demonstration Communities follows in Appendix 1. In order for the federal partners to expand our knowledge regarding the ability of these messages to motivate the public to change their transportation behavior, Demonstration Communities *will be required to use all three message themes and accompanying materials* in their public education efforts, at least for the duration of this demonstration period (Spring 1999—Fall 2000), as a condition of the agreement with the federal agencies.

Partnerships

Also critical to the overall initiative is building long-term partnerships among community members who will work together to integrate air quality and transportation decision-making into community planning and education. Successful partnerships will ensure that public education and investment in transportation and air quality will continue beyond the initial federal support of the Demonstration Communities. Partners could include (but certainly not be limited to) employers, non-profit organizations, health providers, public interest and business groups, youth, public utilities, consumers, and all levels of government. Based on the experience of the pilot communities, it is expected that local partners will be involved in information-sharing; program support through human, creative and financial resources; increasing message consistency; providing broad-based support for the initiative; decreasing duplication of effort; and developing new and effective approaches to working with the public on these issues.

Expectations for the 1999 Demonstration Communities

(1) Demonstration Communities will be required to use all three message themes of the ''It All Adds Up to Cleaner Air'' public service announcements and other materials developed and refined through the pilot sites. Demonstration Communities are encouraged to customize those materials

(e.g., adding their logo and specific ''calls to action'' for individuals and organizations) as appropriate to meet community needs.

(2) If Demonstration Communities develop new materials based on the ''It All Adds Up to Cleaner Air'' themes and products, they will be required to share those products for replication and use in other community-based efforts nationwide.

(3) Demonstration Communities will be expected to work closely with the federal partners as we track outreach activities, successes and challenges, market research, etc. to further our knowledge of public education methods that work to motivate the public to change their transportation behavior and those that don't.

(4) Demonstration Communities will be required to provide quarterly progress reports and a summary report including information and lessons learned about organizations and perspectives that must be involved in a collaborative effort, as well as resources required to ensure long-term success in addressing transportation choices and their impact on air quality.

Time Line

Request for Proposals Published—January 1999
Proposals Due—March 5, 1999
Evaluation/Selection Completed—March 1999
Agreements Awarded—April-May 1999
Demonstration Communities' Workshop—May 1999

Eligible Organizations

While cooperative agreements with federal agencies are available to a range of governmental and non-profit organizations, the ''It All Adds Up to Cleaner Air'' effort is primarily designed for public agencies with responsibility for planning and/or implementing transportation/air quality projects and programs (e.g., metropolitan planning organizations; state departments of transportation; state, local, and regional air management agencies; councils of government; and public transit agencies). These are in large part the organizations and agencies which requested the federal partners provide assistance that resulted in the ''It All Adds Up to Cleaner Air'' Initiative. All selected organizations will be expected to be working in partnership with other organizations actively involved in congestion mitigation and air quality improvement.

Priority consideration will be given to communities and organizations that can demonstrate a perceived air quality and traffic congestion problem, ongoing involvement of a wide range of organizations, a level of public understanding of transportation choices as solutions to traffic congestion and air quality problems, and the commitment to conduct public education linking transportation, air quality, public health and individual choices using the ''It All Adds Up to Cleaner Air'' themes and messages.

Content of Proposals

Proposals should be 7–10 pages long and must address the following:

(1) The community's commitment to raising public awareness about transportation/air quality issues;

(2) Project objectives, including the community's strategy for integrating ''It All Adds Up to Cleaner Air'' into existing public education efforts on transportation and air quality

—Please provide information on the transportation/air-quality-related messages currently being disseminated in the community
—Briefly describe activities that have been successful in reaching targeted audiences through media, community outreach and collaborative efforts;

(3) The community's perceived air quality and congestion problems;

(4) The existing transportation infrastructure which provides options for individuals in their daily travel choices;

(5) Commitment of resources, both personnel and funding, to implement ''It All Adds Up to Cleaner Air'';

(6) Existing partnerships addressing transportation and air quality issues

—List the partners involved in the community's collaboration (If the partnerships in the community are just being formed, please provide a *brief* note of commitment from prospective partners)
—Describe activities currently being undertaken by the partners;

(7) Use of the $25,000. The federal partners request that this funding be used for one or more of the following activities:

(a) Purchasing media time or space for the ''It All Adds Up to Cleaner Air'' public service announcements,

(b) Duplicating and distributing the ''It All Adds Up to Cleaner Air'' public information materials,

(c) Funding strategic planning for partnership building,

(d) Conducting supplemental market research which will be beneficial to the community and consistent with the national initiative goals, and/or

(e) Hiring a project manager to coordinate this effort; and

(8) Expectation for activities to continue beyond the period when federal support is being provided to the community.

Other Information Sought

Note: Information gathered under this section will be considered as research only and will not be included in the evaluation process.

(1) The federal partners are interested in the extent to which the community's public education and partnership building efforts regarding transportation and air quality are being funded through a combination of funding sources, including the DOT Congestion Mitigation and Air Quality Improvement Program (CMAQ), the Transportation and Community and Systems Preservation Pilot Program (TCSP) under the Transportation Equity Act for the 21st Century, and the EPA's section 105 Mobile Source Outreach Assistance Competition.

—Please provide information on the funding sources being used or sought to support public education and partnership building on transportation and air quality

(2) Ozone Action Days have typically been employed as one of the major public education methods to link transportation and air quality. The federal partners are interested in efforts to expand those public education activities beyond Ozone Action Days into a year-round program.

—If applicable, please describe plans to expand your community's program beyond Ozone Action Days

Additional Items of Interest

(1) In several instances, Letters of Interest were received from more than one organization in a community. Where appropriate, the federal partners encourage those organizations to join in the development of a single, potentially stronger, proposal. The list of organizations that submitted Letters of Interest follows in Appendix 2.

(2) The limited funding available is clearly insufficient to accomplish the goals of the overall initiative. In the final selection process, priority will be given to those who indicate a clear ability to undertake the initiative and commit resources beyond those provided by the federal partners. Participation as a Demonstration Community will clearly require a commitment of human as well as financial resources.

(3) Representatives from all selected Demonstration Communities will be required to attend an orientation workshop in Washington, DC as soon as possible after final selection. The workshop will be designed to provide

context for the effort, identify and open effective lines of communication between the Demonstration Communities and the federal partners, discuss reporting requirements, and provide valuable information on working with the media, measuring community awareness and strengthening local partnerships. Unfortunately, as of this time, it will not be possible for the federal agencies to provide financial assistance for travel to that workshop.

Future Availability of "It All Adds Up to Cleaner Air" Materials

The Federal Highway Administration, EPA's Office of Mobile Sources, and the Federal Transit Administration are eager to share materials developed through the "It All Adds Up to Cleaner Air" Transportation/Air Quality Initiative with as many communities as possible as quickly as possible. In that spirit, the federal partners intend to make the "It All Adds Up to Cleaner Air" toolkit available to communities not selected as Demonstration Communities. Information on obtaining the toolkit will be made available at a later date.

For General Information About "It All Adds Up to Cleaner Air" Contact

Joann Jackson-Stephens, Project Manager; EPA Office of Mobile Sources; 2000 Traverwood Drive; Ann Arbor, MI 48105; (Phone) 734/214–4276 (Fax) 734/214–4906; "jackson-stephens.joann@epa.gov"

Abbe Marner; Federal Transit Administration; 400 7th Street SW (TPL–12); Washington, DC 20590; (Phone) 202/366–4317 (Fax) 202/493–2478; "abbe.marner@fta.dot.gov"

Kathy Daniel, Project Manager; US DOT Federal Highway Administration; 400 7th Street SW (HEP–40); Washington, DC 20590; (Phone) 202/366–6276 (Fax) 202/366–3409; "kathleen.daniel@fhwa.dot.gov"

Submitting Proposals

Proposals must be postmarked or received by Friday, March 5, 1999.

Please mail an original + 5 copies (no binders please) to: Kathy Daniel; "It All Adds Up to Cleaner Air" Demonstration Communities; US DOT Federal Highway Administration; 400 7th Street SW (HEP–40); Washington, DC 20590.

APPENDIX 1: "It All Adds Up to Cleaner Air"—Text of TV/Radio Public Service Announcements

A. Trip Chaining

"The air * * * You breathe it * * * Feel it * * * And continue to protect it * * * Simply by doing what you're already doing. Combining your daily errands into one sensible trip. Trip chaining. It means more time in your life * * * Less traffic congestion * * * And less pollution * * * So keep it up because it all adds up to cleaner air."

B. Maintaining Your Car

"It's within us * * * It's all around us * * * The air * * * You can protect it simply by doing what you're already doing. Maintaining your car and keeping it in top running condition. It saves money and means less traffic congestion due to breakdowns. And it means less pollution. So keep it up because it all adds up to cleaner air."

C. Choosing Alternate Forms of Transportation

"All across the nation * * * People just like you are protecting the air * * * Simply by doing what they're already doing * * * Sharing rides, biking, walking, riding the bus, taking the train * * * It costs less and means less traffic congestion. And it means less pollution. So keep it up because it all adds up to cleaner air."

APPENDIX 2

Letters of Interest for "It All Adds Up to Cleaner Air" were received from:

Greater Boston Urban Resources Partnership (MA)
Connecticut Clean Cities Coalition (CT)
New York City DOT (NY)
Clean Communities of Western New York (NY)
RideWise (Raritan Valley, NJ)
The Partnership TMA (Northern PA region)
Allegheny County Health Department (Pittsburgh, PA)
Clean Air Council (Philadelphia, PA)
Airport Corridor Transportation Association (Pittsburgh, PA)
Dover/Kent County MPO (DE)
RideFinders (Richmond, VA)
ALA of Virginia (VA)
DC Department of Health (DC)
ENDZONE Partners (Washington/Baltimore)
Baltimore Metropolitan Council (MD)
Hattiesburg-Petal-Forrest-Lamar Metropolitan Planning Organization (MS)
Jefferson County Department of Health (AL)
North Carolina Division of Air Quality (NC)
Mecklenburg County DEP (NC)
Land-of-Sky Regional Council (NC)
Baton Rouge Clean Air Coalition (LA)
Jefferson County Air Pollution Control District (KY)
Lexington Area MPO (KY)
Pensacola Urbanized Area MPO (FL)
Manatee County Government (FL)
Georgia DOT (GA)
State of Tennessee (TN)
Green Hills Regional Activity Center (TN)
Northwestern Indiana Regional Planning Commission (IN)
State of Wisconsin Department of Natural Resources (WI)
TMACOG (Toledo Council of Governments) (OH)
Northeast Ohio Areawide Coordinating Agency (OH)
Greater Cleveland Safety Council (OH)
State of Illinois EPA (IL)
Laredo Clean Cities Coalition (TX)
VIA Metropolitan Transit (San Antonio, TX)
City of San Antonio (Alamo Area Council of Governments) (TX)
Houston/Galveston Area Council (TX)
North Central Texas Council of Governments (Dallas-Forth Worth, TX)
City of Corpus Christi (TX)
City of Santa Fe (NM)
INCOG (Tulsa association of local governments) (OK)
Association of Central Oklahoma Governments (ACOG) (OK)
Metroplan (Central Arkansas Council of Local Governments) (AR)
Bi-State Development Agency (St. Louis, MO)
Mid America Regional Council (MARC) (Greater Kansas City, MO)
East-West Gateway Coordinating Council (MO)
Utah Safety Council (UT)
Utah Division of Air Quality (UT)
Colorado Springs Transit and the Clean Air Campaign (CO)
Regional Air Quality Council (Denver, CO)
Arizona Department of Environmental Quality (AZ)
Maricopa Association of Governments (Phoenix, AZ)
City of Phoenix (AZ)
Pima Association of Governments (AZ)
Tucson Solar Alliance (AZ)
Cleaner Air Partnership (Sacramento, CA)
San Diego Air Pollution Control District (CA)
City of Portland—Office of Transportation (OR)
Lane Regional Air Pollution Authority (LRAPA) (OR)
Northwest Air Pollution Authority (Island, Skagit and Whatcom Counties, WA)
Discovery Institute (public policy center) (Seattle, WA)
Olympic Air Pollution Control Authority (OAPCA) (Thurston County, WA)
Spokane Air Pollution Control Authority (Clean the Air Spokane) (WA)
Washington State Department of Ecology (WA)
Bannock Planning Organization (Southeast Idaho COG)

Dated: January 6, 1999.

Margo T. Oge,

Director, Office of Mobile Sources, Environmental Protection Agency.

Dated: January 6, 1999.

James M. Shrouds,

Chief Environmental Analysis Division, Office of Environment and Planning Federal Highway Administration.

Dated: January 5, 1999.

Charlotte M. Adams,

Associate Administrator for Planning, Federal Transit Administration.

[FR Doc. 99–771 Filed 1–12–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–34160; FRL–6053–7]

Bromoxynil; Availability of the Reregistration Eligibility Decision Document for Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the availability of and starts a 60-day public comment period of the Reregistration Eligibility Decision (RED) document for the active ingredient bromoxynil. The RED for this chemical is the Agency's formal regulatory assessment of the health and environmental database of the subject chemical and presents the Agency's determination regarding which pesticidal uses are eligible for reregistration.

DATES: Written comments on the RED decisions must be submitted by March 15, 1999.

ADDRESSES: Three copies of comments identified with the docket control number ''OPP–34160'' and the case number (noted below), should be submitted to: By mail: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, deliver comments to the docket on the first floor (Room 119), Crystal Mall 2 (CM #2), 1921 Jefferson Davis Highway, Arlington, VA.

Comments and data may also be submitted electronically to opp-docket@epamail.epa.gov. Please see Unit III. of this notice for additional instructions for electronic submissions. No Confidential Business Information (CBI) should be submitted through e-mail.

Information submitted as a comment in response to this notice may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public docket. Information not marked confidential will be included in the public docket without prior notice (including comments and data submitted electronically). The public docket and docket index, including printed paper versions of electronic comments, which does not include any information claimed as CBI will be available for public inspection in Room 119 at the address given above, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: Technical questions on the RED document should be directed to the appropriate Chemical Review Manager:

Chemical Name	Case No	Chemical Review Manager	Telephone No.	e-mail Address
Bromoxynil	2070	Linda Werrell	703–308–8033.	Werrell.Linda@epamail.epa.gov

To request a copy of the above listed RED document, or the RED Fact Sheet, contact the OPP Pesticide Docket, Public Information and Records Integrity Branch, first floor (Room 119), at the address given above or call (703) 305–5805.

SUPPLEMENTARY INFORMATION:

I. Electronic Availability

Electronic copies of this document and various support documents are available from the EPA home page at the Federal Register-Environmental Documents entry for this document under ''Laws and Regulations'' (http://www.epa.gov/fedrgstr/).

Electronic copies of the REDs and RED fact sheets can be downloaded from the Pesticide Reregistration Eligibility Decisions (REDs) home page at: http://www.epa.gov/REDs.

II. Background

The Agency has issued a Reregistration Eligibility Decision (RED) document for the pesticidal active ingredient bromoxynil. Under the Federal Insecticide, Fungicide, and Rodenticide Act, as amended in 1988, EPA is conducting a reregistration program to reevaluate existing pesticides to make sure they meet current scientific and regulatory standards. The data base to support the reregistration of bromoxynil is substantially complete.

All registrants of products containing the above listed active ingredient have been sent the bromoxynil RED document and must respond to labeling requirements and product specific data requirements (if applicable) within 8 months of receipt. Products containing other active ingredients will not be reregistered until those other active ingredients are determined to be eligible for reregistration.

The reregistration program is being conducted under congressionally mandated time frames, and EPA recognizes both the need to make timely reregistration decisions and to involve the public. Therefore, EPA is issuing this RED as a final document with a 60-day comment period. Although the 60-day public comment period does not affect the registrant's response due date, it is intended to provide an opportunity for public input and a mechanism for initiating any necessary amendments to the RED. All comments will be carefully considered by the Agency.

III. Public Record and Electronic Submission

The official record for this notice, as well as the public version, has been established for this notice under docket control number ''OPP–34160'' (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The official record is located at the address in ''ADDRESSES'' at the beginning of this document.

Electronic comments can be sent directly to EPA at:

opp-docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comment and data will also be accepted on disks in Wordperfect 5.1/6.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket control number (OPP–34160). Electronic comments on this

notice may be filed online at many Federal Depository Libraries.

List of Subjects

Environmental protection, Pesticide, Bromoxynil.

Dated: December 22, 1998.

Jack E. Housenger,

Acting Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. 99–776 Filed 1–12–99; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6218–4]

Proposed Administrative Order on Consent; Portland Cement Site, Salt Lake County, Utah

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; proposed landowner and prospective purchaser settlements.

SUMMARY: Notice is hereby given of three proposed Settlement Agreements under the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. 9601 *et seq.*, and the inherent authority of the Attorney General of the United States concerning the Portland Cement Site in Salt Lake County, Utah (''Site''). The first proposed Settlement Agreement requires the settling parties (L. Clair Williamsen, Larry D. Williamsen, Shirley Williamsen and Southwest Investment Company, collectively) to pay $30,000 to resolve certain claims of the United States Environmental Protection Agency (''EPA'') in connection with the remediation of the Site and $4,000 to the United States Department of Interior (''DOI'') to resolve certain claims for natural resources affected by the contamination at the Site. In addition, the said collective parties will implement specific institutional controls to assure that the remediation performed at the Site is effective and permanent. The second proposed Settlement Agreement requires the settling party, Williamsen Investment Company, to pay $30,000 to resolve certain claims of EPA in connection with the remediation of the Site and $3,000 to DOI to resolve certain claims for damages to natural resources affected by contamination at the Site. In addition, Williamsen Investment Company will implement specific institutional controls to assure that the remediation performed at the Site is effective and permanent. The third proposed Settlement Agreement requires the settling party, BTLD Group LLC, to pay $30,000 to resolve certain claims of EPA in connection with the remediation of the Site and $3,000 to DOI to resolve certain claims for damages to natural resources effected by contamination at the Site.

DATES: Comments must be submitted to EPA on or before February 12, 1999.

ADDRESSES: Comments should be addressed to Matthew Cohn (8ENF–L), Senior Enforcement Attorney, U.S. Environmental Protection Agency, Region VIII, 999 18th Street, Suite 500, Denver, CO 80202–2466 and should refer to: ''In the Matter of Portland Cement Williamsen-BTLD Settlement Agreements.''

FOR FURTHER INFORMATION CONTACT: Matthew Cohn (8ENF–L), Senior Enforcement Attorney, U.S. Environmental Protection Agency, Region VIII, 999 18th Street, Suite 500, Denver, CO 80202–2466 or phone 303–312–6853.

SUPPLEMENTARY INFORMATION: Copies of the proposed Settlement Agreements may be obtained in person or by mail from Sharon Abendschan, Enforcement Specialist (8ENF–T), U.S. Environmental Protection Agency, Region VIII, 999 18th Street, Suite 500, Denver, CO 80202–2466 or phone 303–312–6957.

Dated: January 9, 1999.

Elisabeth Evans,

Acting Assistant Regional Administrator, Office of Enforcement, Compliance and Environmental Justice, Region 8.

[FR Doc. 99–774 Filed 1–12–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPPTS–51921; FRL–6055–5]

Certain Chemicals; Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5 of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical to notify EPA and comply with the statutory provisions pertaining to the manufacture or import of substances not on the TSCA Inventory. Section 5 of TSCA also requires EPA to publish receipt and status information in the **Federal Register** each month reporting premanufacture notices (PMN) and test marketing exemption (TME) application requests received, both pending and expired. The information in this document contains notices received from December 7, 1998 to December 16, 1998.

ADDRESSES: Written comments, identified by the document control number ''[OPPTS–51921]'' and the specific PMN number, if appropriate, should be sent to: Document Control Office (7407), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Rm. ETG–099 Washington, DC 20460.

Comments and data may also be submitted electronically by sending electronic mail (e-mail) to: oppt.ncic@epamail.epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect in 5.1/6.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number [OPPTS–51921]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic comments on this notice may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found under ''SUPPLEMENTARY INFORMATION'' of this document.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–531, 401 M St., SW., Washington, DC, 20460, (202) 554–1404, TDD (202) 554–0551; e-mail: TSCA-Hotline@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: Under the provisions of TSCA, EPA is required to publish notice of receipt and status reports of chemicals subject to section 5 reporting requirements. The notice requirements are provided in TSCA sections 5(d)(2) and 5(d)(3). Specifically, EPA is required to provide notice of receipt of PMNs and TME application requests received. EPA also is required to identify those chemical submissions for which data has been received, the uses or intended uses of such chemicals, and the nature of any test data which may have been developed. Lastly, EPA is required to provide periodic status reports of all chemical substances undergoing review and receipt of notices of commencement.

A record has been established for this notice under docket number ''[OPPTS–51921]'' (including comments and data submitted electronically as described

below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 12 noon to 3 p.m., Monday through Friday, excluding legal holidays. The public record is located in the TSCA Nonconfidential Information Center (NCIC), Rm. NEM–B607, 401 M St., SW., Washington, DC 20460.

Electronic comments can be sent directly to EPA at:
oppt.ncic@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this notice, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into printed, paper form as they are received and will place the paper copies in the official record which will also include all comments submitted directly in writing. The official record is the paper record maintained at the address in ''ADDRESSES'' at the beginning of this document.

In the past, EPA has published individual notices reflecting the status of section 5 filings received, pending or expired, as well as notices reflecting receipt of notices of commencement. In an effort to become more responsive to the regulated community, the users of this information and the general public, to comply with the requirements of TSCA, to conserve EPA resources, and to streamline the process and make it more timely, EPA is consolidating these separate notices into one comprehensive notice that will be issued at regular intervals.

In this notice, EPA shall provide a consolidated report in the **Federal Register** reflecting the dates PMN requests were received, the projected notice end date, the manufacturer or importer identity, to the extent that such information is not claimed as confidential and chemical identity, either specific or generic depending on whether chemical identity has been claimed confidential. Additionally, in this same report, EPA shall provide a listing of receipt of new notices of commencement.

EPA believes the new format of the notice will be easier to understand by the interested public, and provides the information that is of greatest interest to the public users. Certain information provided in the earlier notices will not be provided under the new format. The status reports of substances under review, potential production volume, and summaries of health and safety data will not be provided in the new notices.

EPA is not providing production volume information in the consolidated notice since such information is generally claimed as confidential. For this reason, there is no substantive loss to the public in not publishing the data. Health and safety data are not summarized in the notice since it is recognized as impossible, given the format of this notice, as well as the previous style of notices, to provide meaningful information on the subject. In those submissions where health and safety data were received by the Agency, a footnote is included by the Manufacturer/Importer identity to indicate its existence. As stated below, interested persons may contact EPA directly to secure information on such studies.

For persons who are interested in data not included in this notice, access can be secured at EPA Headquarters in the NCIC at the address provided above. Additionally, interested parties may telephone the Document Control Office at (202) 260–1532, TDD (202) 554–0551, for generic use information, health and safety data not claimed as confidential or status reports on section 5 filings.

Send all comments to the address listed above. All comments received will be reviewed and appropriate amendments will be made as deemed necessary.

This notice will identify: (I) PMNs received; and (II) Notices of Commencement to manufacture/import.

I. 19 Premanufacture Notices Received From: 12/07/98 to 12/16/98

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–99–0249	12/11/98	03/11/99	Grant Chemical, Division of Ferro Corporation	(G) Additive that retards polymer degradation-polymer stabilizer	(S) Phosphonous dichloride, (2-methylphenyl)-; phosphonous dichloride, (3-methylphenyl)-; phosphonous dichloride, (4-methylphenyl)-*
P–99–0250	12/07/98	03/07/99	Soltex	(S) Chemical intermediate for production of surfactants	(S) Benzene, mono-C_{20-24} - alkyl derives*
P–99–0253	12/08/98	03/08/99	CBI	(G) Polymer binder	(G) Acrylic polymer
P–99–0254	12/11/98	03/11/99	Grant Chemical, Division of Ferro Corporation	(G) Additive that retards polymer degradation - polymer stabilizer	(S) Phosphinic acid, (2-methylpheny)-, potassium salt; phosphinic acid, (3-methylphenyl)-, potassium salt; phosphinic acid, (4-methylphenyl)-, potassium salt*
P–99–0255	12/11/98	03/11/99	Grant Chemical, Division of Ferro Corporation	(G) Additive that retards polymer degradation - polymer stabilizer	(S) Phosphinic acid, (2-methylpheny)-; phosphinic acid, (3-methylphenyl)-; phosphinic acid, (4-methylphenyl)-*
P–99–0256	12/08/98	03/08/99	CBI	(G) Plasticizer	(G) Phtalic anhydride, polymer with diethyleneglycol, aliphatic alcohol esters
P–99–0257	12/08/98	03/08/99	BASF Corporation	(S) Plasticizer in concrete	(G) Modified polycarboxylate
P–99–0258	12/10/98	03/10/99	CBI	(S) Curing agent for epoxy coating and flooring systems	(G) Cycloaliphatic amine adducts
P–99–0259	12/10/98	03/10/99	CBI	(S) Curing agent for epoxy coating and flooring systems	(G) Cycloaliphatic amine adducts
P–99–0260	12/11/98	03/11/99	CBI	(G) Destructive use	(G) Organo aluminum halide
P–99–0261	12/11/98	03/11/99	CBI	(G) Destructive use	(G) Organo aluminum halide
P–99–0262	12/11/98	03/11/99	CBI	(G) Destructive use	(G) Organo aluminum halide

I. 19 Premanufacture Notices Received From: 12/07/98 to 12/16/98—Continued

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–99–0263	12/10/98	03/10/99	CBI	(G) Coating component	(G) Poly (aryl ketone) modified acrylate
P–99–0264	12/14/98	03/14/99	Shin-ETSU Silicones of America, Inc.	(S) Ingredient for emulsified; silicone resin coating agent	(S) Mixture of 2-butenoic acid, 4-oxo-4-[[3-(triethoxysilyl)propyl]amino]-, (*z*)- and 1-propanamine, 3-(triethoxysilyl)-, (*z*)-2-butenedioate (1:1)*
P–99–0265	12/14/98	03/14/99	Creanova Inc.	(S) Crosslinking agents for powder coatings	(G) Polymer of isophorone diisocyanate and aliphatic diol/aliphatic dicarboxylic acid
P–99–0266	12/14/98	03/14/99	GEO Specialty Chemicals	(G) Dispersant for agricultural products; dispersant for cementious products	(G) 1: residue (petroleum), catalytic reformer fractionator, sulfonate, polymers with formaldehyde, sodium salt; methylnaphthalene sulfonic acid, dimethyl-polymer with formaldehyde and methylnaphthalene sulfonic acid, sodium salt
P–99–0267	12/15/98	03/15/99	Dow Corning Corporation	(S) Adhesion promoter/coupling agent	(G) *N*-aryl (ethanediaminepropyl) trimethoxysilane
P–99–0268	12/16/98	03/16/99	CBI	(G) Additive for coating systems	(G) Triaryltin
P–99–0269	12/16/98	03/16/99	CBI	(G) Additive for coating systems	(G) Triaryltin

II. 15 Notices of Commencement Received From: 12/07/98 to 12/16/98

Case No.	Received Date	Commencement/Import Date	Chemical
P–97–0057	12/07/98	11/06/98	(G) Alkyl substituted, modified amine
P–97–0383	12/07/98	12/02/98	(G) *N*-ethyl, *N*–[4–(5-nitro-substituted)azophenyl]-substituted amine
P–98–0615	12/07/98	11/25/98	(G) Polyoxyalkylated alcohol
P–98–0674	12/07/98	11/20/98	(G) Acrylic monomer
P–98–0763	12/07/98	12/02/98	(G) Acetamide, *N*-[5[bis(substituted)amino]-2-[substituted)azo]phenyl]-*
P–98–0766	12/07/98	11/19/98	(G) Halogenated phenyl, boron complex
P–98–0796	12/14/98	12/01/98	(G) Methoxy substituted aliphatic amine
P–98–0853	12/14/98	12/07/98	(G) Amine functional epoxy curing agent
P–98–0914	12/11/98	11/16/98	(G) Polyurethane prepolymer
P–98–0941	12/07/98	11/24/98	(G) Graft acrylate, methacrylate hydrocarbon polymer
P–98–0942	12/15/98	12/02/98	(G) Polyester acrylate
P–98–1025	12/14/98	12/03/98	(G) Methylated, alkylated, aromatic acid chloride
P–98–1049	12/14/98	12/01/98	(G) Acrylic polymer
P–98–1094	12/15/98	11/13/98	(G) Alkyl alkoxylate

List of Subjects

Environmental protection, Premanufacture notices.

Dated: January 5, 1999.

Oscar Morales,

Acting Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. 99–772 Filed 1–12–99; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[OPPTS–51920; FRL–6053–1]

Certain Chemicals; Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5 of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical to notify EPA and comply with the statutory provisions pertaining to the manufacture or import of substances not on the TSCA Inventory. Section 5 of TSCA also requires EPA to publish receipt and status information in the **Federal Register** each month reporting premanufacture notices (PMN) and test marketing exemption (TME) application requests received, both pending and expired. The information in this document contains notices received from November 30, 1998 to December 4, 1998.

ADDRESSES: Written comments, identified by the document control number ''[OPPTS–51920]'' and the specific PMN number, if appropriate, should be sent to: Document Control Office (7407), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Rm. ETG–099 Washington, DC 20460.

Comments and data may also be submitted electronically by sending electronic mail (e-mail) to: oppt.ncic@epamail.epa.gov. Electronic comments must be submitted as an

ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect in 5.1/6.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number [OPPTS–51920]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic comments on this notice may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found under ''SUPPLEMENTARY INFORMATION'' of this document.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–531, 401 M St., SW., Washington, DC, 20460, (202) 554–1404, TDD (202) 554–0551; e-mail: TSCA-Hotline@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: Under the provisions of TSCA, EPA is required to publish notice of receipt and status reports of chemicals subject to section 5 reporting requirements. The notice requirements are provided in TSCA sections 5(d)(2) and 5(d)(3). Specifically, EPA is required to provide notice of receipt of PMNs and TME application requests received. EPA also is required to identify those chemical submissions for which data has been received, the uses or intended uses of such chemicals, and the nature of any test data which may have been developed. Lastly, EPA is required to provide periodic status reports of all chemical substances undergoing review and receipt of notices of commencement.

A record has been established for this notice under docket number ''[OPPTS–51920]'' (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 12 noon to 3 p.m., Monday through Friday, excluding legal holidays. The public record is located in the TSCA Nonconfidential Information Center (NCIC), Rm. NEM–B607, 401 M St., SW., Washington, DC 20460.

Electronic comments can be sent directly to EPA at:

oppt.ncic@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this notice, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into printed, paper form as they are received and will place the paper copies in the official record which will also include all comments submitted directly in writing. The official record is the paper record maintained at the address in ''ADDRESSES'' at the beginning of this document.

In the past, EPA has published individual notices reflecting the status of section 5 filings received, pending or expired, as well as notices reflecting receipt of notices of commencement. In an effort to become more responsive to the regulated community, the users of this information and the general public, to comply with the requirements of TSCA, to conserve EPA resources, and to streamline the process and make it more timely, EPA is consolidating these separate notices into one comprehensive notice that will be issued at regular intervals.

In this notice, EPA shall provide a consolidated report in the **Federal Register** reflecting the dates PMN requests were received, the projected notice end date, the manufacturer or importer identity, to the extent that such information is not claimed as confidential and chemical identity, either specific or generic depending on whether chemical identity has been claimed confidential. Additionally, in this same report, EPA shall provide a listing of receipt of new notices of commencement.

EPA believes the new format of the notice will be easier to understand by the interested public, and provides the information that is of greatest interest to the public users. Certain information provided in the earlier notices will not be provided under the new format. The status reports of substances under review, potential production volume, and summaries of health and safety data will not be provided in the new notices.

EPA is not providing production volume information in the consolidated notice since such information is generally claimed as confidential. For this reason, there is no substantive loss to the public in not publishing the data. Health and safety data are not summarized in the notice since it is recognized as impossible, given the format of this notice, as well as the previous style of notices, to provide meaningful information on the subject. In those submissions where health and safety data were received by the Agency, a footnote is included by the Manufacturer/Importer identity to indicate its existence. As stated below, interested persons may contact EPA directly to secure information on such studies.

For persons who are interested in data not included in this notice, access can be secured at EPA Headquarters in the NCIC at the address provided above. Additionally, interested parties may telephone the Document Control Office at (202) 260–1532, TDD (202) 554–0551, for generic use information, health and safety data not claimed as confidential or status reports on section 5 filings.

Send all comments to the address listed above. All comments received will be reviewed and appropriate amendments will be made as deemed necessary.

This notice will identify: (I) PMNs received; and (II) Notices of Commencement to manufacture/import.

I. 33 Premanufacture Notices Received From: 11/30/98 to 12/04/98

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–99–0216	11/30/98	02/28/99	Equistar Chemicals, LP	(G) Polymer catalyst	(G) Silica supported magnesium-titanium catalyst
P–99–0217	11/30/98	02/28/99	U.S. Polymers Inc.	(S) Binder for two component isocyanate	(G) Phthalic anhydride, trimethylolpropane, cyclic aliphatic anhydrides and cyclic aliphatic alcohols
P–99–0218	11/30/98	02/28/99	Kelmar Industries, Inc.	(S) Fabric treatment	(G) Aminoalkyl-functional polydimethylsiloxane with polyether groups
P–99–0219	11/30/98	02/28/99	CBI	(G) Automotive refinish paint	(G) Hydroxy acrylic polymer

I. 33 Premanufacture Notices Received From: 11/30/98 to 12/04/98—Continued

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–99–0220	11/30/98	02/28/99	The Dow Chemical Company	(S) Latex binder for ceiling tile; latex binder for decorative accent used in paper manufacture	(G) Propietary carboxylated styrene/acrylated polymer
P–99–0221	12/02/98	03/02/99	CBI	(G) Plastics additive	(G) Poly(ester-amide)
P–99–0222	12/01/98	03/01/99	CBI	(G) Component of adhesive, inks, and clear varnishes	(G) Polyester-polyether acrylate
P–99–0223	12/01/98	03/01/99	CBI	(G) Component of adhesive, inks and clear varnishes	(G) Polyester acrylate
P–99–0227	12/02/98	03/02/99	CIBA Specialty Chemicals Corporation USA - Additives	(G) Paper pulp additive	(G) Hydroxylamine citrate salt
P–99–0228	12/02/98	03/02/99	Cook Composites & Polymers Co.	(S) Polymer salt for use as electrocoating vehicle	(G) Salt of acrylic polymers resin
P–99–0229	12/02/98	03/02/99	Mona Industries, Inc.	(S) Metal working household, industrial and institutional surfactants, detergents, emilsifiers; personal care	(S) Amides, sunflower-oil, n-(hydroxyethyl), propoxylated*
P–99–0230	12/02/98	03/02/99	Mona Industries, Inc.	(S) Metal working household, industrial and institutional surfactants, detergents, emilsifiers; personal care	(S) Amides, rape-oil, n-(hydroxyethyl), propoxylated*
P–99–0231	12/02/98	03/02/99	Mona Industries, Inc.	(S) Metal working household, industrial and institutional surfactants, detergents, emilsifiers; personal care	(S) Amides, lard-oil, n-(hydroxyethyl), propoxylated*
P–99–0232	12/02/98	03/02/99	Mona Industries, Inc.	(S) Metal working household, industrial and institutional surfactants, detergents, emilsifiers; personal care	(S) Amides, castor-oil, *n*-(hydroxyethyl), propoxylated*
P–99–0233	12/02/98	03/02/99	Mona Industries, Inc.	(S) Metal working household, industrial and institutional surfactants, detergents, emilsifiers; personal care	(S) Amides, borage, *n*-(hydroxyethyl), propoxylated*
P–99–0234	12/02/98	03/02/99	Mona Industries, Inc.	(S) Metal working, household, industrial and institutional surfactants, detergents, emilsifiers personal care	(S) Poly[oxy(methyl-1,2-ethanediyl)], alpha-[2-[(1-oxooctyl)amino]ethyl]-omega-hydroxy-*
P–99–0235	12/02/98	03/02/99	Mona Industries, Inc.	(S) Metal working, household, industrial and institutional surfactants, detergents, emilsifiers personal care	(S) Poly[oxy(methyl-1,2-ethanediyl)], alpha-[2-[(1-oxodecyl)amino]ethyl]-omega-hydroxy-*
P–99–0236	12/02/98	03/02/99	Mona Industries, Inc.	(S) Metal working, household, industrial and institutional surfactants, detergents, emilsifiers personal care	(S) Poly[oxy(methyl-1,2-ethanediyl)], alpha-[2-[(1-oxododecyl)amino]ethyl]-omega-hydroxy-*
P–99–0237	12/02/98	03/02/99	Mona Industries, Inc.	(S) Metal working, household, industrial and institutional surfactants, detergents, emilsifiers personal care	(S) Poly[oxy(methyl-1,2-ethanediyl)], alpha-[2-[(1-oxotetradecyl)amino]ethyl]-omega-hydroxy-*
P–99–0238	12/02/98	03/02/99	Mona Industries, Inc.	(S) Metal working, household, industrial and institutional surfactants, detergents, emilsifiers personal care	(S) Poly[oxy(methyl-1,2-ethanediyl)], alpha-[2-[(1-hexadecyl)amino]ethyl]-omega-hydroxy-*
P–99–0239	12/02/98	03/02/99	Mona Industries, Inc.	(S) Metal working, household, industrial and institutional surfactants, detergents, emilsifiers personal care	(S) Poly[oxy(methyl-1,2-ethanediyl)], alpha-[2-[(1-oxooctadecyl)amino]ethyl]-omega-hydroxy-*
P–99–0240	12/02/98	03/02/99	Mona Industries, Inc.	(S) Metal working, household, industrial and institutional surfactants, detergents, emilsifiers personal care	(S) Poly[oxy(methyl-1,2-ethanediyl)], alpha-[2-[(1-oxo-9-octadecenyl)amino]ethyl]-omega-hydroxy-*
P–99–0241	12/02/98	03/02/99	Mona Industries, Inc.	(S) Metal working, household, industrial and institutional surfactants, detergents, emilsifiers personal care	(S) Amides, coco, *n*-(hydroxyethyl), propoxylated*
P–99–0242	12/02/98	03/02/99	Mona Industries, Inc.	(S) Metal working, household, industrial and institutional surfactants, detergents, emilsifiers personal care	(S) Amides, soya, *n*-(hydroxyethyl), propoxylated*

I. 33 Premanufacture Notices Received From: 11/30/98 to 12/04/98—Continued

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–99–0243	12/02/98	03/02/99	Mona Industries, Inc.	(S) Metal working, household, industrial and institutional surfactants, detergents, emilsifiers personal care	(S) Amides, tall-oil, *n*-(hydroxyethyl), propoxylated*
P–99–0244	12/02/98	03/02/99	Mona Industries, Inc.	(S) Metal working, household, industrial and institutional surfactants, detergents, emilsifiers personal care	(S) Amides, tallow, *n*-(hydroxyethyl), propoxylated*
P–99–0245	12/04/98	03/04/99	CBI	(G) Resin coating	(S) 2-propenoic acid, reaction products with ethanolamine and 2,2′-[oxybis[(methyl-2,1-ethanediy-l)oxymethylene]]bis[oxirane]*
P–99–0246	12/03/98	03/03/99	CBI	(G) Dye carrier	(G) Carboxylic acid fonctional polyester
P–99–0247	12/04/98	03/04/99	The Dow Chemical Company	(S) Chemical intermediate	(G) Alkali salt of branched alcohols
P–99–0248	12/03/98	03/03/99	CBI	(S) Laminating adhesive for flexible packaging	(G) Polyurethane laminating adhesive

II. 7 Notices of Commencement Received From: 11/30/98 to 12/04/98

Case No.	Received Date	Commencement/Import Date	Chemical
P–97–0873	12/04/98	11/12/98	(G) Water dispersible polyurethane
P–97–0994	11/30/98	11/17/98	(G) Oligomeric anhydride
P–98–0665	12/02/98	11/06/98	(G) Complex salt of sulfonic acid and primary alkyl ether amine
P–98–0818	12/02/98	11/06/98	(G) Complex salt of phthalocyanine sulfonic acid and quaternary alkyl ammonium
P–98–0872	12/04/98	11/10/98	(G) Polyester resin
P–98–0931	12/01/98	11/03/98	(G) Urethane modified polyester
P–98–0932	12/01/98	11/03/98	(G) Polyurethane

Environmental protection, Premanufacture notices.

Dated: January 5, 1999.

Oscar Morales,

Acting Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. 99–773 Filed 1–12–99; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than January 25, 1999.

A. Federal Reserve Bank of San Francisco (Maria Villanueva, Manager of Analytical Support, Consumer Regulation Group) 101 Market Street, San Francisco, California 94105-1579:

1. Monument Bancshares, Inc., Poland, Ohio; to become a bank holding company by acquiring 86.98 percent of the voting shares of Monument National Bank, Ridgecrest, California.

Board of Governors of the Federal Reserve System, January 7, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–690 Filed 1–12–99; 8:45 am]

BILLING CODE 6210–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Health Care Policy and Research

Meeting of the National Advisory Council for Health Care Policy, Research, and Evaluation

AGENCY: Agency for Health Care Policy and Research.

ACTION: Notice of public meeting.

SUMMARY: In accordance with section 10(a) of the Federal Advisory Committee Act, this notice announces a meeting of the National Advisory Council for Health Care Policy, Research, and Evaluation.

DATES: The meeting will be held on Friday, February 12, 1999, from 8:30 a.m. to 4:00 p.m.

ADDRESSES: The meeting will be held at 6010 Executive Boulevard, Fourth Floor, Rockville, Maryland, 20852.

FOR FURTHER INFORMATION CONTACT: Jackie Eder, Coordinator of the Advisory Council, at the Agency for Health Care Policy and Research, 2101 East Jefferson Street, Suite 600, Rockville, Maryland, 20852, (301) 594–6662. For press-related information, please contact Karen Migdail at 301/594–6120.

If sign language interpretation or other reasonable accommodation for a disability is needed, please contact Linda Reeves, Assistant Administrator for Equal Opportunity, AHCPR, on (301) 594–6662 no later than February 5, 1999.

SUPPLEMENTARY INFORMATION:

I. Purpose

Section 921 of the Public Health Service Act (42 U.S.C. 299c) established the National Advisory Council for Health Care Policy, Research, and Evaluation. In accordance with its statutory mandate, the Council provides advice to the Secretary and the Administrator, Agency for Health Care Policy and Research (AHCPR), on matters related to AHCPR activities to enhance the quality, appropriateness, and effectiveness of health care services and access to such services through scientific research and the promotion of improvements in clinical practice and in the organization, financing, and delivery of health care services. The Council is composed of members of the public appointed by the Secretary and Federal ex-officio members. Harold S. Luft, Ph.D., the Council chairman, will preside.

II Agenda

On Friday, February 12, 1999, the meeting will begin at 8:30 a.m., with the call to order by the Council Chairman. The Administrator, AHCPR, will present the status of the Agency's current research, programs and initiatives. Tentative agenda items include issues relating to health care quality, outcomes, cost, use and access. Agenda items are subject to change as priorities dictate. The official agenda will be available to AHCPR's website at *www.ahcpr.gov* no later than February 1, 1999. The meeting will adjourn at 4:00 p.m.

Dated: January 5, 1999.

John M. Eisenberg,

Administrator.

[FR Doc. 99–748 Filed 1–12–99; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Health Care Policy and Research

Notice of Meeting

In accordance with section 10(a) of the Federal Advisory Committee Act (5 U.S.C., Appendix 2) announcement is made of the following study section meeting scheduled during the month of January 1999:

Name: Health Care Research Training Study Section.

Date and Time: January 28–29, 1999, 8:00 a.m.

Place: Gaithersburg Hilton Hotel, 620 Perry Parkway, Room TBA, Gaithersburg, Maryland 20887.

Open January 28, 1999, 8:00 a.m. to 9:00 a.m.

Closed for remainder of meeting.

Purpose: This Study Section is charged with conducting the initial review of grant applications requesting dissertation support for health services research undertaken as part of an academic program to qualify for a doctorate. Also, individual post-doctoral fellowship applications will be reviewed.

Agenda: The open session of the meeting on January 28, from 8:00 a.m. to 9:00 a.m., will be devoted to a business meeting covering administrative matters. During the closed session, the study section will be reviewing and discussing grant applications dealing with health services research issues. In accordance with the Federal Advisory Committee Act, section 10(d) of 5 U.S.C., Appendix 2 and 5 U.S.C., 552b(c)(6), the Administrator, AHCPR, has made a formal determination that this latter session will be closed because the discussions are likely to reveal personal information concerning individuals associated with the grant applications. This information is exempt from mandatory disclosure.

Anyone wishing to obtain a roster of members or other relevant information should contact Jenny Griffith, Committee Management Officer, Agency for Health Care Policy and Research, Suite 400, 2101 East Jefferson Street, Rockville, Maryland 20852, Telephone (301) 594–1847.

Agenda items for this meeting are subject to change as priorities dictate.

Dated: January 5, 1999.

John M. Eisenberg,

Administrator.

[FR Doc. 99–747 Filed 1–12–99; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[INFO–99–06]

Proposed Data Collections Submitted for Public Comment and Recommendations

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 Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer on (404) 639–7090.

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 for other forms of information technology. Send comments to Seleda Perryman, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS–D24, Atlanta, GA 30333. Written comments should be received within 60 days of this notice.

Proposed Project

1. The Development and Implementation of a Theory-Based Health Communications Intervention to Decrease Silica Dust Exposure Among Masonry Workers—New—The National Institute for Occupational Safety and Health (NIOSH) Construction is the most frequently recorded industry on death certificates, and silicosis is the most frequently cause of death. Overexposure to crystalline silica is well documented in the construction industry, especially in brick laying and masonry. According to 1993 BLS data, there are 136,139 (at 24,362 establishments) masonry and brick laying workers in the U.S. and according to a recent study, approximately 17,400 masonry and plastering workers are exposed to at least five times the NIOSH recommended exposure limit (REL for

crystalline silica) and of these workers, an estimated 80 percent of them are exposed to at least 10 times the NIOSH REL.

To effectively prevent silicosis, not only must control measures be improved, but workers must be persuaded to protect themselves and employers must be motivated to provide workers with proper engineering controls and training. Previous research has too often focused on the behaviors and attitudes of workers and not on employers. Since employers have a tremendous influence on the health of workers and since their motivations may differ from workers', it is important to focus on them as well. Well-designed and theory-driven communication interventions have the capacity to promote protective health behaviors. To develop messages that will have the greatest success at motivating workers to protect themselves and employers to protect their workers from silicosis, information on workers' and employers' beliefs, attitudes, and behaviors regarding silicosis must be determined. A recently completed pilot-study indicated a need to motivate employers to provide appropriate engineering controls and respiratory protection and a need to persuade workers to protect themselves.

The goal of this project is to develop a health communication intervention program targeting both masonry contractors and workers that will increase the use of engineering controls (specifically, wet-sawing) and respiratory protection. The aforementioned pilot study will serve as a foundation upon which the intervention will be developed. The effectiveness of the intervention will be evaluated using a pre-post test questionnaire.

The study results will provide a basis for intervention programs that masonry contractors can use to educate their workers regarding risk of exposure to silica dust on masonry work sites. The methodology could be applied to other construction procedures such as jack hammering, sand blasting, and similar dust producing procedures to produce similar intervention programs. Eventually we would hope, silica exposures among construction workers would decrease significantly. The total cost to respondents is $0.00.

Respondents	Number of respondents	Number of responses/ respondent	Avg. burden per response	Total burden
Workers	200	2	0.33	132
Contractors	20	2	0.33	13.2
Total				145.2

2. Training Intervention Effectiveness Research of Vocational Education Safety and Health Instructional Materials—New—The National Institute for Occupational Safety and Health (NIOSH) is proposing to study the effectiveness of safety and health curricula to be made available for secondary vocational schools. Studies conducted by NIOSH suggest that over half of all young workers injured on-the-job believe that they did not receive adequate safety and health training in school or from their employers. The National Safety Council estimates that nearly one-half (48.1%) of all occupational injuries are sustained by employees with less than one year of work experience. Furthermore, feedback from end-users of past NIOSH vocational education materials indicates that these materials do not adequately meet the needs of vocational teachers and students. Given these considerations, further training intervention effectiveness research is needed to identify those educational approaches that are most effective in shaping the attitudes and behaviors of new workers.

Trade-specific safety and health materials will be tested for two vocations: electrical trades and cosmetology. Both sets of instruction are designed for vocational secondary school students enrolled in courses on either of these subjects. These curricula cover the following topics: hazard recognition and control, personal protection, safe work practices, and safe working environments. This instruction is expected to improve students' knowledge and attitudes in the area of occupational safety and health, thereby reducing the incidence of illness, injury, and death in tomorrow's workplace. Students will receive this instruction in a pedagogically conceived manner, within the classroom setting, as part of their overall vocational training. A variety of instructional approaches are available to convey information and affect attitudes. The purpose of this study is to identify approaches that readily and consistently produce desired outcomes among vocational students. The electrical safety curriculum, which contains a videotaped program, will be used to explore the effectiveness of television as a delivery mechanism. The cosmetology safety curriculum will be used to examine the effectiveness of problem solving exercises, especially with regard to group size.

The time-line for this study is approximately one year. In May of the 1998–99 school year, a baseline assessment of safety knowledge and attitudes of vocational secondary school students will be performed. The NIOSH training materials will not be used with this group of students. For the Fall of 1999, participating schools will each be assigned one of the instructional approaches under investigation. At the beginning of the 1999–2000 school year, knowledge and attitude pretests for both trades will be administered to students. During the school year, as the prescribed safety topics are taught, knowledge and attitudes will be assessed. Teachers and students will be surveyed regarding their perceptions of the instructional materials and their cognitive and attitudinal impacts. During this phase of the study, the most effective approaches will emerge.

A final assessment will be administered to all students in May 2000, allowing comparison with the assessments taken the previous May of students who had not been exposed to any of the curricular elements under study.

The identities and performances of individual students, teachers, and schools will be held in confidence. The total cost to respondents will be $0.00.

Respondents	Number of respondent	Number of responses/ respondent	Avg. burden per response	Total burden
Electrical teachers	80	1	1.00	80
Electrical students:				
Baseline data	1600	1	.50	800
Early video	800	4	.25	800
Late video	800	4	.25	800
Cosmetology teachers	80	1	1.00	80
Baseline data	1600	1	.50	800
All discussion groups	1600	3	.33	1,584
Total				4,944

Nancy Cheal,

Acting Associate Director for Policy, Planning and Evaluation, Centers for Disease Control and Prevention (CDC).

[FR Doc. 99–722 Filed 1–12–99; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30DAY–05–99]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 639–7090. Send written comments to CDC, Desk Officer; Human Resources and Housing Branch, New Executive Office Building, Room 10235; Washington, DC 20503. Written comments should be received within 30 days of this notice.

Proposed Project

1. Evaluating an Alert to Firefighters—New—National Institute of Occupational Safety and Health (NIOSH)—The mission of the National Institute of Occupational Safety and Health is to promote ''safety and health at work for all people through research and prevention.'' NIOSH not only investigates and identifies occupational safety and health hazards, the Institute also develops recommendations for controlling those hazards and in some cases, distributes those recommendations directly to affected workplaces.

One way that NIOSH accomplishes this kind of intervention is through the Alert. The Alert is usually a six to ten page document that outlines the nature of the hazard, the risks to workers, and the recommendations for controlling the hazard. Again, the Alert is mailed to workplaces potentially affected by the hazard.

It is unclear, however, whether the Alert is effective in communicating the need for and methods for adopting NIOSH's recommendations for controlling the hazard. To-date, none of the Alerts have been rigorously evaluated, but preliminary research indicates that the Alert could be more effective at encouraging safer workplace practices.

The Alert has traditionally followed a standard format that does not reflect current ''best practices'' in applied communications. In this study, NIOSH proposes incorporating several alternative communication strategies into an Alert and evaluating the effectiveness of these alternatives.

The Alert chosen for this study is concerned with firefighters and the injuries and fatalities that result from structural collapse. In 1998, Congress appropriated funds for NIOSH to conduct research and proceed with interventions that will reduce the number of fatalities among firefighters. Congress further instructed NIOSH to evaluate the effectiveness of any interventions. This Alert is intended to be directed at the 36,000 fire stations and 1.2 million career and volunteer firefighters across the country.

NIOSH will vary the content of the Alert and add channels of information to inform, educate, and help fire stations adopt safer work practices. The goals of the study are twofold: 1) to reduce the risks of injury and fatality among firefighters, 2) identify the more effective ways to deliver vital health and s afety information in NIOSH Alerts. The study design will allow NIOSH to minimize costs while identifying the most effective strategies. The total annual burden hours are 320.

Respondents	Number of respondents	Number of responses/respondent	Avg. burden per response (in hrs.)
Fire Chiefs	960	1	20/60

2. Surveillance for Bloodstream and Vascular Access Infections in Outpatient Hemodialysis Centers—New—National Center for Infectious Diseases (NCID). The Hospital Infections Program, NCID is proposing a study of bloodstream infections, vascular access infections, hospitalizations, and antimicrobial starts at U.S. outpatient hemodialysis centers. Although bloodstream and vascular access infections are common in hemodialysis patients, there is no existing system to record and track these complications. Participation in the proposed project is voluntary; it is estimated that 100 of the approximately 3,000 U.S. outpatient hemodialysis centers will participate. Participating centers may collect data continuously, or may discontinue participation at any time; we estimate that the average center will participate for six months. Each month, participating centers will record the number of hemodialysis patients they treat and maintain a log of all hospitalizations and intravenous (IV) antimicrobial starts. For each hospitalization or IV antimicrobial start, further information (e.g., type of

vascular access, clinical symptoms, presence of a vascular access infection, and blood culture results) will be collected. A computer program will be developed to allow dialysis center personnel to enter and analyze their own data; they will also transmit the data to CDC with all patient identifiers removed. CDC will aggregate this data and generate reports which will be sent to participating dialysis centers. Rates of bloodstream infection, vascular access infection, and antimicrobial use per 1000 patient-days will be calculated. Also, the percentage of antimicrobial starts for which a blood culture is performed will be calculated. Through use of these data, dialysis centers will be able to track rates of key infectious complications of hemodialysis. This will facilitate quality control improvements to reduce the incidence of infections, and clinical practice guidelines to improve use of antimicrobials. The total annual burden hours are 5,200.

Form	Number of respondents	Number of responses/ respondent	Avg. burden/ response (in hrs.)
Agreement to Participate	100	1	1
Census Form	100	12	.083
Log	100	[1] 10	1
Incident Form	100	[1] 200	0.2

[1] Estimated Mean.

3. Prevention of HIV Infection in Youth at Risk: Developing Community-Level Intervention Strategies that Work—New—The National Center for HIV, STD, and TB Prevention (NCHSTP) purpose of this survey is to evaluate the effectiveness of an intervention to reduce risk behaviors associated with HIV infection or transmission among young men of various race/ethnic groups. Across 10 cities, data will be collected in the intervention and comparison areas, and it will be used to assess risk behaviors associated with HIV acquisition and transmission, determinants of those behaviors, and to monitor awareness and contact with the intervention. It is hoped that this intervention study will result in lowering HIV risk behaviors among young men in the target audiences, and strengthening HIV prevention programs in these local communities. The total annual burden hours are 3,380.

TABLE 1.—PILOT TESTING (MARCH–APRIL 1999)

	Number of respondents	Number responses per respondent	Hrs/response	Response burden
Identify venues for sampling frames using Eligibility Screener (BSI)	2,340	1	1/60	39
Eligibility Screener (BSI)	858	1	1/60	15
Respondent informed consent	390	1	3/60	20
Full interview (QTI)	390	1	20/60	130

TABLE 2.—PRE-INTERVENTION ROUND OF DATA COLLECTION (MAY–AUGUST 1999)

	Number of respondents	Number responses per respondent	Hrs/response	Response burden
Eligibility Screener (BSI)	7,143	1	1/60	119
Respondent informed consent	3,250	1	3/60	163
Full interview (QTI)	3,250	1	20/60	1,084

TABLE 3.—MONITORING ROUND OF DATA COLLECTION (MAY–AUGUST 2000)

	Number of respondents	Number responses per respondent	Hrs/ response	Response burden
Eligibility Screener (BSI)	7,143	1	1/60	119
Respondent informed consent	3,250	1	3/60	163
Full interview (QTI)	3,250	1	20/60	1,084

TABLE 4.—MONITORING ROUND OF DATA COLLECTION (MAY–AUGUST 2001)

	Number of respondents	Number responses per respondent	Hrs/response	Response burden
Eligibility Screener (BSI)	7,143	1	1/60	119
Respondent informed consent	3,250	1	3/60	163
Full interview (QTI)	3,250	1	20/60	1,084

TABLE 5.—POST-INTERVENTION ROUND OF DATA COLLECTION (MAY–AUGUST 2002)

	Number of respondents	Number responses per respondent	Hrs/response	Response burden
Eligibility Screener (BSI)	7,143	1	1/60	119
Respondent informed consent	3,250	1	3/60	163
Full interview (QTI)	3,250	1	20/60	1,084

The State and Local Area Integrated Telephone Survey (SLAITS) (0920–0406)—Extension—The National Center for Health Statistics, (NCHS) is planning to expand from the short term pilot study phase to a long term integrated and coordinated survey system designed to collect needed health and welfare data at the state and local levels. Using the random-digit-dialing sampling frame from the ongoing National Immunization Survey (NIS) and Computer Assisted Telephone Interviewing (CATI), the State and Local Area Integrated Telephone Survey (SLAITS) can quickly collect and produce data to monitor health status, child and family well-being, health care utilization, access to care, program participation, and changes in health care coverage at the state and local levels. These efforts are conducted in cooperation with state and local officials. SLAITS offers a centrally administered data collection mechanism with standardized questionnaires and quality control measures which allow comparability of estimates between states, over time, and with national data. As demonstrated in the pilot study phase, SLAITS is designed to allow for oversampling of population subdomains and to meet federal, state and local needs for subnational estimates which are compatible with national data.

Questionnaire content is drawn from existing surveys such as the National Health Interview Survey (NHIS), the National Health and Nutrition Examination Survey (NHANES), the Current Population Survey (CPS), the Survey of Income and Program Participation (SIPP), the National Household Education Survey, and the National Survey of America's Families, as well as the three questionnaire modules that were developed for SLAITS during the pilot study phase. These modules include Health, Child Well-Being and Welfare, and Children's Health Insurance and Health Care Utilization.

The strategy of building on established survey systems provides several advantages. It is less costly than establishing a new system; the proposed questions have been thoroughly tested; and implementation can occur rapidly. Basing SLAITS on questions from the NHIS, CPS, and other national in-person surveys will allow for comparisons with national data. In addition, the quality of the estimates developed from the telephone survey can be improved with adjustments for households without telephones using health and socio-demographic information from telephone and non telephone households from the NHIS and other in-person surveys.

Funding for SLAITS is being sought through a variety of mechanisms including Foundation grants, State collaborations, and federal appropriation and evaluation monies. The level of implementation will depend on the amount of funding received and can be expanded as funding permits. Questionnaire modules will be compiled to address the data needs of interest to the federal, state or local funding agency or organization. The total annual burden hours are 30,870.

Respondents	Number of respondents	Number of responses/ respondents	Average burden/response (in hrs.)
Noninstitutionalized household population in 50 States and D.C.	102,000	1	0.30
Pretest modules	900	1	0.30

Nancy Cheal,

Acting Associate Director for Policy, Planning and Evaluation, Centers for Disease Control and Prevention (CDC).

[FR Doc. 99–724 Filed 1–12–99; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Vaccines and Related Biological Products Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). At least one portion of the meeting will be closed to the public.

Name of Committee: Vaccines and Related Biological Products Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on January 29, 1999, 8:30 a.m. to 6:30 p.m.

Location: Holiday Inn, Versailles Ballrooms III and IV, 8120 Wisconsin Ave., Bethesda, MD.

Contact Person: Nancy T. Cherry or Denise H. Royster, Center for Biologics Evaluation and Research (HFM–71), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852, 301–827–0314, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12391. Please call the Information Line for up-to-date information on this meeting.

Agenda: The committee will: (1) Discuss the influenza virus vaccine formulation for 1999 and 2000, and (2) hear an update on the status of influenza A H5N1 viruses.

Procedure: On January 29, 1999, from 8:30 a.m. to 5:30 p.m., the meeting is open to the public. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by January 22, 1999. Oral

presentations from the public will be scheduled between approximately 8:45 a.m. and 9:15 a.m., and between 3:30 p.m. and 4 p.m. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before January 22, 1999, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Closed Committee Deliberations: On January 29, 1999, from 5:30 p.m. to 6:30 p.m., the meeting will be closed to permit discussion and review of trade secret and/or confidential information (5 U.S.C. 552b(c)(4)). This portion of the meeting will be closed to discuss issues relating to pending or proposed investigational new drug applications.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: January 7, 1999.

Michael A. Friedman,

Deputy Commissioner for Operations.

[FR Doc. 99–740 Filed 1–12–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Inspector General

Solicitation of Information and Recommendations for Developing OIG Compliance Program Guidance for the Hospice Industry

AGENCY: Office of Inspector General (OIG), HHS.

ACTION: Notice.

SUMMARY: This **Federal Register** notice seeks the input and recommendations of interested parties into the OIG's development of a compliance program guidance for the hospice industry and its providers, especially those serving Medicare and Medicaid beneficiaries. Many providers and provider organizations have expressed an interest in better protecting their operations from fraud and abuse. Previously, the OIG has developed guidances for hospitals, clinical laboratories, home health agencies and third-party medical billing companies. In order to provide a clear and meaningful guidance to those segments of the health care industry involved in hospice operations, the OIG is soliciting comments, recommendations and suggestions from concerned parties and organizations on how best to develop a compliance program guidance and reduce fraud and abuse within the hospice industry.

DATES: To assure consideration, comments must be delivered to the address provided below by no later than 5 p.m. on March 15, 1999.

ADDRESSES: Please mail or deliver your written comments, recommendations and suggestions to following address: Department of Health and Human Services, Office of Inspector General, Attention: OIG–6–CPG, Room 5246, Cohen Building, 330 Independence Avenue, SW, Washington, DC 20201.

We do not accept comments by facsimile (FAX) transmission. In commenting, please refer to the file code OIG–6–CPG. Comments received timely will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, in Room 5541 of the Office of Inspector General at 330 Independence Avenue, SW, Washington, DC 20201 on Monday through Friday of each week from 8:00 a.m. to 4:30 p.m.

FOR FURTHER INFORMATION CONTACT: Michael Shaw, Office of Counsel to the Inspector General, (202) 619–2078.

SUPPLEMENTARY INFORMATION: The development of compliance program guidances has become a major initiative of the OIG in its effort to engage the private health care community in addressing and combating fraud and abuse. Recently, the OIG has developed and issued compliance program guidance directed at various segments of the health care industry.[1] New OIG guidance under consideration will be designed to provide clear direction and assistance to Medicare and Medicaid hospice providers that are interested in reducing and eliminating fraud and abuse within their organizations.

The guidances represent the culmination of the OIG's suggestions on how providers can most effectively establish internal controls and implement monitoring procedures to identify, correct and prevent fraudulent and wasteful activities. As stated in previous guidances, these guidelines are not mandatory for providers, nor do they represent an exclusive document of advisable elements of a compliance program.

In an effort to formalize the process by which the OIG receives public comments in connection with compliance program guidances, the OIG is seeking, through this **Federal Register** notice, formal input from interested parties as the OIG begins developing the compliance program guidance directed at the hospice industry and its providers. The OIG will give consideration to all comments, recommendations and suggestions submitted and received by the time frame indicated above.

We anticipate that the hospice guidance will contain seven elements that the OIG considers necessary for a comprehensive compliance program. These seven elements have been discussed in our previous guidances and include:

- The development of written policies and procedures.
- The designation of a compliance officer and other appropriate bodies.
- The development and implementation of effective training and education programs.
- The development and maintenance of effective lines of communication.
- The enforcement of standards through well-publicized disciplinary guidelines.
- The use of audits and other evaluation techniques to monitor compliance.
- The development of procedures to respond to detected offenses and to initiate corrective action.

The OIG would appreciate specific comments, recommendations and suggestions on (1) risk areas for the hospice industry, and (2) aspects of the seven elements contained in previous guidances that may need to be modified to reflect the unique characteristics of the hospice industry. Detailed justifications and empirical data supporting suggestions would be appreciated. We are also hopeful that any comments, recommendations and input be submitted in a format that addresses the above topics in a concise manner, rather than in the form of comprehensive draft guidance that mirrors previous guidances.

Dated: January 6, 1999.

June Gibbs Brown,

Inspector General.

[FR Doc. 99–689 Filed 1–12–99; 8:45 am]

BILLING CODE 4150–04–P

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[1] See 62 FR 9435 (March 3, 1997) for clinical laboratories, as amended in 63 FR 45076 (August 24, 1998); 63 FR 8987 (February 23, 1998) for hospitals; 63 FR 42410 (August 7, 1998) for home health agencies, and 63 FR 70138 (December 18, 1998) for third party medical billing companies. The guidances can also be found on the OIG web site at http://www.dhhs.gov/progorg/oig.

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4441–N–03]

Submission for OMB Review: Comment Request

AGENCY: Office of the Assistant Secretary for Administration HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: Comments due date: February 12, 1999.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments must be received within thirty (30) days from the date of this Notice. Comments should refer to the proposal by name and/or OMB approval number and should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708–1305. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Eddins.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: January 6, 1999.

David S. Cristy,

Director, IRM Policy and Management Division.

Title of Proposal: Project Applications and Review of Application Delegated Processing.

Office: Housing.

OMB Approval Number: 2502–0331.

Description of the Need for the Information and Its Proposed Use: The forms are used to estimate the value of properties insured by HUD. These forms may be used by fee appraisers, delegated processor appraisers, and/or staff appraisers HUD may use for estimating the value of the property.

Form Number: HUD–92264, 92264A, 92264T, 92273 and 92274, 92325, 92326, 92326A, 92329, 912331, 92485

Respondents: Individuals or Households, Business or Other-For-Profit, Not-For-Profit Institutions, State, Local, or Tribal Governments, and the Federal Government

Frequency of Submission: Annually.

Reporting burden	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
HUD–92264	230		1.25		114		32,775
HUD–92264A	230		1.75		16		6,440
HUD–92264T	230		1.00		1		230
HUD–92273	230		1.50		24		8,280
HUD–92274	230		1.00		16		3,680
HUD–92325	230		1.00		18		4,140
HUD–92326	230		1.0		4		920
HUD–92326A	230		1.00		18		4,140
HUD–92329	230		1.00		2		460
HUD–92331	230		1.00		16		3,680
HUD–922485	230		1.00		18		4,140

Total Estimated Burden Hours: 68,885.

Status: Reinstatement with changes.

Contact: Wendy Carter, HUD (202) 708–0624, Joseph F. Lackey, Jr., OMB (202) 395–7316.

Dated: January 6, 1999.

[FR Doc. 99–713 Filed 1–12–99; 8:45 am]

BILLING CODE 4210–01–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Scoping and Public Meetings on Proposed Withdrawal of Public Lands; Ash Meadows National Wildlife Refuge, Nevada

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of scoping and public meetings.

SUMMARY: The U.S. Fish and Wildlife Service has filed an application to withdraw 5,360 acres of reserved Federal minerals from mining and 9,459.66 acres of public lands from surface entry and mining as part of the Ash Meadows National Wildlife Refuge, Nye County, Nevada. This land has been and will remain open to mineral leasing. The reserved Federal minerals and public lands proposed for withdrawal are located within the existing boundary of the refuge. The withdrawal has been proposed for a period of 20 years to protect seeps, springs, and associated habitats for at least 24 plants and animals found nowhere else in the world. No private lands or valid existing mineral rights would be affected by the proposed withdrawal. This notice advises that the Service has scheduled a series of meetings to inform the public of the proposed withdrawal. The

Service is seeking suggestions and information from the public and other agencies on the scope of issues related to the proposed withdrawal, including the range of alternatives that should be considered in the environmental review documents required under the National Environmental Policy Act. The Service is also seeking comments on other elements related to the future of the refuge including, but not limited to, habitat and wildlife management, habitat protection, public use, cultural resources, refuge goals, long-range objectives, and strategies for achieving refuge purposes. Information on dates and deadlines is provided below.

DATES: Comments should be received on or before March 12, 1999. The meeting dates are:

5. Wednesday, February 17, 1999, 6:00 p.m. to 9:00 p.m., Las Vegas, NV.
2. Thursday, February 18, 1999, 3:00 p.m. to 5:00 p.m., Pahrump, NV.
3. Thursday, February 18, 1999, 7:00 p.m. to 9:00 p.m., Amargosa Valley, NV.

ADDRESSES: Comments regarding the scope of the environmental review document and other issue related to the future of the refuge should be sent to the Division of Refuge Planning (ARW/RPL), Fish and Wildlife Service , 911 N.E. 11th Avenue, Portland, Oregon 97232–4181. See **SUPPLEMENTARY INFORMATION** section for electronic access and filing addresses. The meeting locations are:

1. Las Vegas, NV—Las Vegas Field Office, Bureau of Land Management, 4765 Vegas Drive.
5. Pahrump, NV—Bob Ruud Community Center, 150 East Basin Road at Highway 160.
5. Amargosa Valley, NV—Amargosa Valley Community Center, 821 East Farm Road.

FOR FURTHER INFORMATION CONTACT: Charles J. Houghten, 503–232–2231.

SUPPLEMENTARY INFORMATION:

Background Information

On July 22, 1998 a petition was approved allowing the U.S. Fish and Wildlife Service to file an application to withdraw 5,360 acres of reserved Federal minerals from location and entry under the mining laws, but not the mineral leasing laws, subject to valid existing rights, and 9,459.66 acres of public lands from settlement, sale, location, or entry under the general land laws, including the mining laws, but not the mineral leasing laws, subject to valid existing rights. The legal description of these lands is as published in 63 FR 43190, August 12, 1998. A copy of the legal description is available by contacting Charles J. Houghten at the address or phone number listed above. The public lands and reserved minerals proposed for withdrawal are within the existing boundary of the Ash Meadows National Wildlife Refuge, Nye County, Nevada. Private lands within the existing boundary are not affected by the proposed withdrawal.

The Ash Meadows National Wildlife Refuge, located in the Amargosa Valley northwest of Pahrump, Nevada, was established in 1984. The primary purpose of the refuge is to provide for the protection and recovery of endangered fish and plants. At least 24 plants and animals that occur here are found nowhere else in the world. This diversity of native life distinguishes the Ash Meadows ecosystem as having a greater concentration of endemic species than any other local area in the United States, and the second greatest in all of North America. Twelve of these species are listed under the Endangered Species Act. The Service believes that settlement, sale, location, entry, and other mining activities would disturb, degrade, or destroy critical surface habitat within the refuge. The purpose of the proposed 20-year withdrawal is to protect seeps, springs, and associated habitats for the 24 plants and animals that are unique to the Ash Meadows ecosystem.

In addition, by Federal law all lands within the National Wildlife Refuge System are to be managed in accordance with an approved Comprehensive Conservation Plan (CCP). The CCP guides management decisions and identifies refuge goals, long-range objectives, and strategies for achieving refuge purposes. This planning process may consider many elements, including habitat and wildlife management, habitat protection, public use, and cultural resources. Public input into this planning process is essential. Although a decision to develop a CCP for this refuge at this time has not been made, the Service is soliciting information from the public regarding issues that should be addressed should the decision be made to proceed with the development of a CCP. A formal notice of any decision to prepare a CCP will be made at a future date.

Scoping and Public Meetings

Three public meetings have been scheduled. The purpose of these meetings is to provide an opportunity for interested persons and agencies to comment on the scope of the environmental assessment or environmental impact statement and issues related to the proposed withdrawal. Each meeting will have an open house format. A brief overview of the proposed withdrawal will be presented at the opening of the meeting. After this presentation, refuge management, planning, and environmental compliance staff will be available to discuss and receive comments on the proposed withdrawal.

Electronic Access and Filing Addresses

You may submit comments by electronic mail (e–mail) to: r1planning__guest@fws.gov (Please type ''Ash Meadows'' in the subject line).

Authority

This notice is published in accordance with the regulations set forth in 43 CFR part 2300, and pursuant to the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*), (NEPA Regulations 40 CFR parts 1500–1508) to obtain suggestions and information from other agencies and the public on the scope of issues and alternatives that would be analyzed or considered in preparation of an environmental assessment or environmental impact statement, and other appropriate Federal laws and regulations, including the National Wildlife Refuge System Improvement Act of 1997, Executive Order 12996, and Service policies and procedures for compliance with those regulations.

Dated: January 7, 1999.

Dan Walsworth,

Acting Manager, California/Nevada Operations, U.S. Fish and Wildlife Service, Sacramento, California.

[FR Doc. 99–727 Filed 1–12–99; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ES–930–08–1310–00–241A; MSES 47867]

Mississippi: Proposed Reinstatement of Terminated Oil and Gas Lease

Under the provisions of Public Law 97–451, a petition for reinstatement of oil and gas lease MSES 47867, Greene County, Mississippi, was timely filed and accompanied by all required rentals and royalties accruing from June 1, 1998, the date of termination.

No valid lease has been issued affecting the lands. The lessee has agreed to new lease terms for rentals and royalties at rates of $10 per acre and 16⅔ percent. Payment of $500 in administrative fees and a $125 publication fee has been made.

The Bureau of Land Management is proposing to reinstate the lease effective

June 1, 1997, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above. This is in accordance with section 31(d) and (e) of the Mineral Leasing Act of 1920, as amended (30 U.S.C. 188 (d) and (e)).

FOR FURTHER INFORMATION CONTACT: Thelma Wright at (703) 440–1546.

Dated: January 5, 1999.

Gwen W. Mason,

Associate State Director.

[FR Doc. 99–723 Filed 1–12–99; 8:45 am]

BILLING CODE 4310–GJ–M

DEPARTMENT OF THE INTERIOR

Minerals Management Service (MMS)

Minerals Management Advisory Board Outer Continental Shelf (OCS) Scientific Committee (SC); Notice of Vacancies and Request for Nominations

The Minerals Management Service is seeking interested and qualified individuals to serve on its Minerals Management Advisory Board OCS SC during the period of October 1, 1999, through September 30, 2001. The initial 2-year term may be renewable for up to an additional 4 years. The OCS SC is chartered under the Federal Advisory Committee Act to advise the Director of the MMS on the appropriateness, feasibility, and scientific value of the OCS Environmental Studies Program (ESP0 and environmental aspects of the offshore oil and gas program. This ESP, which was authorized by the OCS Lands Act as amended (Section 20), is administered by the MMS and covers a wide range of field and laboratory studies in biology, chemistry, and physical oceanography, as well as studies of the social and economic impacts of OCS oil and gas development. The work is conducted through award of competitive contracts and interagency and cooperative agreements. The OCS SC reviews the relevance of the information being produced by the ESP and may recommend changes in its scope, direction, and emphasis.

The OCS SC comprises distinguished scientists in appropriate disciplines of the biological, physical, chemical, and socioeconomic sciences. The selection is based on maintaining disciplinary expertise in all areas of research, as well as geographic balance. Demonstrated knowledge of the scientific issues related to OCS oil and gas development is essential. Selection is made by the Department of the Interior on the basis of these factors.

Interested individuals should send a letter of interest and resume within 60 days to: As. Phyllis Clark, Program Specialist, Environmental Division, Minerals Management Service, 381 Alden Street, Mail Stop 4040, Virginia 20170. She may be reached by telephone on (703) 787–1716 or e-mailed at Phyllis.Clark@1mms.gov.

Dated: January 8, 1999.

Carolita U. Kallaur,

Associate Director for Offshire Minerals Management.

[FR Doc. 99–768 Filed 1–12–99; 8:45 am]

BILLING CODE 4310–MR–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

Notice of Proposed Information Collection

AGENCY: Office of Surface Mining Reclamation and Enforcement.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the Office of Surface Mining Reclamation and Enforcement (OSM) is announcing its intention to request approval for the collections of information for 30 CFR parts 774 and 778.

DATES: Comments on the proposed information collection must be received by March 15, 1999, to be assured of consideration.

ADDRESSES: Comments may be mailed to John A. Trelease, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Ave, NW, Room 210–SIB, Washington, DC 20240. Comments may also be submitted electronically to jtreleas@osmre.gov.

FOR FURTHER INFORMATION CONTACT: To request a copy of the information collection request, explanatory information and related forms, contact John A. Trelease, at (202) 208–2783.

SUPPLEMENTARY INFORMATION: The Office of Management and Budget (OMB) regulations at 5 CFR 1320, which implement provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13), require that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities (see 5 CFR 1320.8(d)). This notice identifies information collections that OSM will be submitting to OMB for extension. These collections are contained in 30 CFR part 774, Revision; Renewal; and Transfer, Assignment, or Sale of Permit Rights; and part 778, Permit Applications—Minimum Requirements for Legal, Financial, Compliance, and Related Information.

OSM has revised burden estimates, where appropriate, to reflect current reporting levels or adjustments based on reestimates of burden or respondents. OSM will request a 3-year term of approval for each information collection activity.

Comments are invited on: (1) The need for the collection of information for the performance of the functions of the agency; (2) the accuracy of the agency's burden estimates; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the information collection burden on respondents, such as use of automated means of collection of the information. A summary of the public comments will be included in OSM's submissions of the information collection requests to OMB.

The following information is provided for each information collection: (1) Title of the information collection; (2) OMB control number; (3) summary of the information collection activity; and (4) frequency of collection, description of the respondents, estimated total annual responses, and the total annual reporting and recordkeeping burden for the collection of information.

Title: Revisions; Renewals; and Transfer, Assignment, or Sale of Permit Rights—30 CFR 774.

OMB Control Number: 1029–0088.

Summary: Sections 506 and 511 of P.L. 95–87 provide that persons seeking permit revisions, renewals, transfer, assignment, or sale of their permit rights for coal mining activities submit relevant information to the regulatory authority to allow the regulatory authority to determine whether the applicant meets the requirements for the action anticipated.

Bureau Form Number: None.

Frequency of Collection: On occasion.

Description of Respondents: Surface coal mining permit applicants and State regulatory authorities.

Total Annual Responses: 5,442.

Total Annual Burden Hours: 100,470 hours.

Title: Permit Applications—Minimum Requirements for Legal, Financial, Compliance, and Related Information—30 CFR 778.

OMB Control Number: 1029–0034.

Summary: Section 507(b) of P.L. 95–87 provides that persons conducting coal mining activities submit to the regulatory authority all relevant information regarding ownership and control of the property affected, their

compliance status and history. This information is used to insure all legal, financial and compliance requirements are satisfied prior to issuance or denial of a permit.

Bureau Form Number: None.

Frequency of Collection: Once.

Description of Respondents: Surface coal mining permit applicants and State regulatory authorities.

Total Annual Responses: 420.

Total Annual Burden Hours: 16,261.

Dated: January 7, 1999.

Richard G. Bryson,

Chief, Division of Regulatory Support.

[FR Doc. 99–755 Filed 1–12–99; 8:45 am]

BILLING CODE 4310–05–M

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–403]

In the Matter of Certain Acesulfame Potassium and Blends and Products Containing Same; Notice of Decision to Extend the Deadline for Determining Whether to Review an Initial Determination Finding No Violation of Section 337 and an Order Denying a Motion for Sanctions

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to extend by seven (7) days, or until January 14, 1999, the deadline for determining whether to review an initial determination (ID) issued by the presiding administrative law judge (ALJ) in the above-captioned investigation finding no violation of section 337 of the Tariff Act of 1930 and ALJ Order No. 23, which denied a motion for sanctions.

FOR FURTHER INFORMATION CONTACT: Cynthia P. Johnson, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone (202) 205–3098. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. General information concerning the Commission may also be obtained by accessing its Internet server (http://www.usitc.gov).

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on November 14, 1997, based on a complaint filed by Nutrinova Nutrition Specialties and Food Ingredients GmbH of Frankfurt am Main, Federal Republic of Germany, and Nutrinova Inc., of Somerset, New Jersey (collectively referred to as ''complainants''). 62 FR 62070 (1997). The complaint named four respondents—Hangzhou Sanhe Food Company Ltd., of Zheijiang, People's Republic of China; JRS International, Inc., of Garfield, New Jersey; Dingsheng, Inc., of Temple City, California; and WYZ Tech., of Chino, California. Hangzhou Sanhe Food Additives Factory, of Hangzhou, Zheijiang, Peoples Republic of China was subsequently added as a respondent.

Complainants alleged that respondents had violated section 337 by importing into the United States, selling for importation, and/or selling within the United States after importation certain acesulfame potassium or blends or products containing same by reason of infringement of claims 1, 2, 3, 4 or 5 of U.S. Letters Patent 4,695,629 (''the '629 patent'') or claims 1 or 2 of U.S. Letters Patent 4,158,068 (''the '068 patent''). Acesulfame potassium is an artificial sweetener.

The ALJ held a tutorial on the technology of artificial sweeteners and the processes for their manufacture on June 5, 1998. The evidentiary hearing was held from June 29, 1998, to July 10, 1998.

On May 12, 1998, complainants filed a motion seeking the imposition of monetary and non-monetary sanctions against respondents for respondents' failure to provide timely discovery. The motion was supported in part and opposed in part by the Commission investigative attorney (IA) and opposed by respondents. On August 14, 1998, the ALJ issued Order No. 23, denying complainants' motion for sanctions, but offering complainants an opportunity to seek reopening of the record for the purpose of presenting additional facts and arguments relevant to respondents' belatedly-produced discovery. Complainants declined to seek reopening of the record.

On November 20, 1998, the ALJ issued his final ID, in which he concluded that there was no violation of section 337, based on the following findings: (a) claims 1–5 of the '629 patent are not infringed by respondents' accused process; (b) claims 1–2 of the '068 patent are invalid as obvious over the prior art; (c) claims 1–2 of the '068 patent are not infringed by respondents' accused product.

On December 3, 1998, complainants filed a petition for review of the ID and Order No. 23, arguing that the ALJ erred in all of his adverse findings relating to failure to impose sanctions and in his infringement analysis of the '629 patent. Complainants did not petition for review of the findings in the ID with respect to the '068 patent. The IA also petitioned for review of Order No. 23 and the ID on policy grounds. On December 10, 1998, respondents filed a response to the petitions for review. The IA also filed a response to complainants' petition for review.

This action is taken under the authority of section 337 of the Tariff Act of 1930, 19 U.S.C. 1337, and section 210.42(h)(2) of the Commission of Practice and Procedure, 19 CFR 210.42(h)(2).

Copies of the nonconfidential version of Order No. 23 and the ID, and all other nonconfidential documents filed in connection with this investigation, are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street S.W., Washington, D.C. 20436, telephone 202–205–2000. Hearing impaired persons are advised that information on this matter can be obtained by contacting the Commission TDD terminal on 202–205–1810.

Issued: January 7, 1999.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 99–754 Filed 1–12–99; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. AA1921–127 (Review)]

Elemental Sulfur From Canada

Determination

On the basis of the record [1] developed in the subject five-year review, the United States International Trade Commission determines, pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. § 1675(c)) (the Act), that revocation of the antidumping duty finding on elemental sulfur from Canada would not be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.

Background

The Commission instituted this review on August 3, 1998 (63 FR 41280) and determined on November 5, 1998

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR § 207.2(f)).

that it would conduct an expedited review (63 FR 64275, November 19, 1998). The views of the Commission are contained in USITC Publication 3152 (January 1999), entitled Elemental Sulfur from Canada: Investigation No. AA1921–127 (Review).

Issued: January 7, 1999.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 99–753 Filed 1–12–99; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. AA1921–162 (Review)]

Antidumping: Melamine From Japan

AGENCY: United States International Trade Commission.

ACTION: Scheduling of a full five-year review concerning the antidumping duty finding on melamine from Japan.

SUMMARY: The Commission hereby gives notice of the scheduling of a full review pursuant to section 751(c)(5) of the Tariff Act of 1930 (19 U.S.C. § 1675(c)(5)) (the Act) to determine whether revocation of the antidumping duty finding on melamine from Japan would be likely to lead to continuation or recurrence of material injury. For further information concerning the conduct of this review and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207). Recent amendments to the Rules of Practice and Procedure pertinent to five-year reviews, including the text of subpart F of part 207, are published at 63 F.R. 30599, June 5, 1998, and may be downloaded from the Commission's World Wide Web site at http://www.usitc.gov/rules.htm.

EFFECTIVE DATE: December 23, 1998.

FOR FURTHER INFORMATION CONTACT: Cynthia Trainor (202–205–3354), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (http://www.usitc.gov).

SUPPLEMENTARY INFORMATION:

Background

On November 5, 1998, the Commission determined that responses to its notice of institution of the subject five-year review were such that a full review pursuant to section 751(c)(5) of the Act should proceed (63 FR 63747, November 16, 1998) . A record of the Commissioners' votes and statements of Chairman Lynn M. Bragg and Commissioner Carol T. Crawford are available from the Office of the Secretary and at the Commission's web site.

Participation in the review and public service list

Persons, including industrial users of the subject merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in this review as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11 of the Commission's rules, by 45 days after publication of this notice. A party that filed a notice of appearance following publication of the Commission's notice of institution of the review need not file an additional notice of appearance. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the review.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list

Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in this review available to authorized applicants under the APO issued in the review, provided that the application is made by 45 days after publication of this notice. Authorized applicants must represent interested parties, as defined by 19 U.S.C. § 1677(9), who are parties to the review. A party granted access to BPI following publication of the Commission's notice of institution of the review need not reapply for such access. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Staff report

The prehearing staff report in the review will be placed in the nonpublic record on May 4, 1999, and a public version will be issued thereafter, pursuant to section 207.64 of the Commission's rules.

Hearing

The Commission will hold a hearing in connection with the review beginning at 9:30 a.m. on May 20, 1999, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before May 12, 1999. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on May 17, 1999, at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the public hearing are governed by sections 201.6(b)(2), 201.13(f), 207.24, and 207.66 of the Commission's rules. Parties must submit any request to present a portion of their hearing testimony *in camera* no later than 7 days prior to the date of the hearing.

Written Submissions

Each party to the review may submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of section 207.65 of the Commission's rules; the deadline for filing is May 13, 1999. Parties may also file written testimony in connection with their presentation at the hearing, as provided in section 207.24 of the Commission's rules, and posthearing briefs, which must conform with the provisions of section 207.67 of the Commission's rules. The deadline for filing posthearing briefs is June 1, 1999; witness testimony must be filed no later than three days before the hearing. In addition, any person who has not entered an appearance as a party to the review may submit a written statement of information pertinent to the subject of the review on or before June 1, 1999. On June 23, 1999, the Commission will make available to parties all information on which they have not had an opportunity to comment. Parties may submit final comments on this information on or before June 28, 1999, but such final comments must not contain new factual information and must otherwise comply with section 207.68 of the Commission's rules. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's

rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means.

In accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the review must be served on all other parties to the review (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority

This review is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.62 of the Commission's rules.

Issued: January 4, 1999.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 99–752 Filed 1–12–99; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[USITC SE–99–02]

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: United States International Trade Commission.

TIME AND DATE: January 20, 1999 at 11:00 a.m.

PLACE: Room 101, 500 E Street SW, Washington, DC 20436.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda for future meeting: none.
2. Minutes.
3. Ratification List.
4. Inv. No. AA1921–188 (Review) (Prestressed Concrete Steel Wire Strand from Japan)—briefing and vote. (The Commission will transmit its determination to the Secretary of Commerce on February 2, 1999.)
5. Outstanding action jackets:

(1.) Document No. GC–98–061: Decision on petition of complainant Atmel for relief from final determination finding U.S. Patent No. 4,451,903 unenforceable in Inv. No. 337-TA–395 Certain EPROM, EEPROM, Flash Memory, and Flash Microcontroller Semiconductor Devices and Products Containing Same).

(2.) Document No. GC–98–068: Whether to review final initial determination finding no violation of section 337 in Inv. No. 337-TA–403 (Certain Acesulfame Potassium and Blends and Products Containing Same).

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

By order of the Commission.

Issued: January 11, 1999.

Donna R. Koehnke,

Secretary.

[FR Doc. 99–850 Filed 1–11–99; 2:56 pm]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 98–22]

Yi Heng Enterprises Development Co. and Luciano Martinez & cia S.C.S.; Suspension of Shipments

On March 4, 1998, the then-Acting Deputy Administrator of the Drug Enforcement Administration (DEA) issued two Orders to Suspend Shipment to Yi Heng Enterprises Development Company (Yi Heng) of Hong Kong, China, notifying it that DEA had ordered the suspension of two shipments of 10,000 kilograms each of potassium permanganate that were transshipped through the Port of Oakland, California on December 6 and 28, 1997, on their way to its customer Luciano Martinez y cia S.C.S. (Martinez) of Bogota, Colombia. The Orders to Suspend Shipment stated that DEA believed that the listed chemical may be diverted based on failure to notify DEA of the transshipments in violation of 21 CFR 1313.31 and on alleged diversionary practices by Martinez.

On April 7, 1998, a hearing was requested on the suspension of shipments on behalf of both Yi Heng and Martinez and the matter was docketed before Administrative Law Judge Mary Ellen Bittner. Both Yi Heng and Martinez waived the requirement set forth in 21 U.S.C. 971(c)(2) that the hearing be held within 45 days after the request for a hearing is filed, but did not waive their right to a hearing at a later date. During prehearing procedures, the issue was raised whether Martinez was entitled to participate in the hearing. In a Memorandum to Counsel, Ruling, and Order for Prehearing Statements dated May 4, 1998, Judge Bittner concluded, as will be discussed in more detail below, that Martinez is entitled to participate in a hearing on the record pursuant to 21 U.S.C. 971(c).

The hearing in this matter was scheduled to begin on August 11, 1998. However, on August 5, 1998, counsel for Martinez and Yi Heng filed a Notice of Waiver of Hearing, stating that they ''have concluded that the suspension orders can be sustained based on the absence of notice pursuant to 21 CFR 1313.12, 21 CFR 1313.21, and 21 CFR 1313.31,'' and that they therefore ''waive their right to a hearing on the suspension of shipments orders.'' On August 6, 1998, the Government filed a response to the Notice of Waiver of Hearing indicating that it did not object to the waiver of the hearing, but arguing that the issues cannot be limited to those set forth in the notice. Thereafter, on August 7, 1998, Judge Bittner issued an Order which terminated the proceedings before her and indicated that the file would be forwarded to the Deputy Administrator.

On August 11, 1998, counsel for Yi Heng and Martinez submitted a letter to Government counsel forwarding additional documents to be included in the file for consideration by the Deputy Administrator. In that letter, counsel for Yi Heng and Martinez states that ''(n)otwithstanding the fact that the proceedings before the administrative law judge have been terminated, we have not withdrawn our legal arguments set forth in our filings before the ALJ. Those legal arguments, as set forth in our prehearing conference statements are now to be submitted for review and determination by the Deputy Administrator.''

The Deputy Administrator concludes that Yi Heng and Martinez are deemed to have waived their opportunity for a hearing. After considering relevant material from the file in this matter, the Deputy Administrator now enters his final order without a hearing pursuant to 21 CFR 1313.54(c) and 1313.57.

First, the Deputy Administrator must address whether Martinez was entitled to participate in these proceedings. Pursuant to 21 U.S.C. 802(35) and 21 CFR 1310.04, potassium permanganate is a List II chemical because it is a chemical that is used in the illegal manufacturing of a controlled substance. Each regulated person who imports or exports a listed chemical is required to notify DEA of the importation or exportation not later than 15 days before the transaction is to take place. See 21 U.S.C. 971(a). A regulated person is defined in 21 U.S.C. 802(38) as ''a person who manufacturers, distributes, imports or exports a listed chemical. * * *'' DEA may order the suspension of any importation or exportation of a listed chemical pursuant to 21 U.S.C. 971(c) on the ground ''that the chemical may be diverted to the clandestine manufacture of a controlled substance,'' and a regulated person to whom an order to

suspend shipment applies is entitled to a hearing.

In addition, the regulations implementing these provisions of the law also require advance notification to DEA if a listed chemical meeting certain criteria is ''transferred or transshipped within the United States for immediate exportation. * * *'' See 21 CFR 1313.31. While transshipment is not defined, the regulations do define ''chemical export'' as ''transferring ownership or control, or the sending or taking of threshold quantities of listed chemical out of the United States * * *'' and ''chemical exporter'' as ''a regulated person who, as the principal party in interest in the export transaction, has the power and responsibility for determining and controlling the sending of the listed chemical out of the United States.'' See 21 CFR 1300.02(b)(5) and (6). Further, 21 CFR 1300.02(b)(7) and (8) define ''chemical import'' as ''any bringing in or introduction of such listed chemical into either the jurisdiction of the United States or into the Customs Territory of the United States * * *'' and ''chemical importer'' as ''a regulated person who, as the principal party in interest in the import transaction, has the power and responsibility for determining and controlling the bringing in or introduction of the listed chemical into the United States.''

In its prehearing filings, the Government essentially argued that Yi Heng imported the potassium permanganate into the United States for transshipment to Colombia and therefore is the ''regulated person'' to whom the order of suspension applies and as a result is the only one entitled to participate in these proceedings. Yi Heng and Martinez asserted that Martinez purchased the potassium permanganate from Yi Heng F.O.B. Huangpu, China which means that Martinez assumed title to, the obligation to pay transportation charges for, and the risk of loss of the goods when Yi Heng delivered the potassium permanganate to the carrier.

Judge Bittner noted that all parties seem to be in agreement that Yi Heng is entitled to participate in these proceedings, but that ''the statute does not specify that only one party in a transaction is entitled to a hearing. Furthermore, the statute provides the opportunity for a hearing to 'a regulated person to whom an order (suspending shipment) applies,' not necessarily the person to whom the order was issued.'' Thus Judge Bittner concluded and the Deputy Administrator agrees that if the title to the potassium permanganate passed to Martinez before the chemical entered the United States, then Martinez is the principal party in interest. There is no evidence in the file to refute the position of Yi Heng and Martinez that the title passed to Martinez when the goods were given to the carrier in China. Therefore, Martinez should be considered an importer of the potassium permanganate into the United States and an exporter of the chemical from the United States, and as such is a regulated person. As a regulated person to whom the suspension order applies, Martinez is entitled to participate in these proceedings pursuant to 21 U.S.C. 971(c).

The Deputy Administrator finds that based upon the assertions of Yi Heng and Martinez in their Notice of Waiver of Hearing, it is undisputed that no advance notification of the December 6 and 28, 1997 shipments of potassium permanganate was provided to DEA as required by the regulations, and that this provides a basis for the suspension of these shipments. In its August 11, 1998 letter to Government counsel, counsel for Yi Heng and Martinez indicate that they have not withdrawn their legal arguments set forth in their filings before Judge Bittner. However, all but one of Yi Heng and Martinez' arguments relate to whether advance notice was required and whether the suspensions and seizures of the shipments of the potassium permanganate were proper. In its Notice of Waiver of Hearing, Yi Heng and Martinez concede that ''the suspension orders can be sustained based on the absence of notice.'' In other words, Yi Heng and Martinez concede that advance notice of the shipments was required and that the failure to provide such notice is a basis for the suspension of the shipments. Therefore, the Deputy Administrator finds it unnecessary to address the earlier arguments of Yi Heng and Martinez.

However, counsel for Yi Heng and Martinez does raise the argument in its August 11, 1998 letter that all evidence regarding the activities of Martinez' customers is irrelevant and should not be considered in rendering a decision in this matter. Specifically, counsel argues that 21 CFR 1316.59 provides *inter alia* that only relevant evidence should be considered; that Martinez engaged in a legitimate business; that there are no allegations that Martinez knew of the improper conduct of its customers; that Martinez cannot be held responsible for the bad acts of its customers; and that Martinez has no control over potassium permanganate once it is sold to its customers. The Deputy Administrator disagrees with Yi Heng and Martinez and finds that evidence relating to the activities of Martinez' customers is relevant. In order to suspend a shipment, the Deputy Administrator must find that the chemical at issue may be diverted to the clandestine manufacture of a controlled substance. The prior conduct of Martinez' customers regarding potassium permanganate is clearly relevant in determining whether the shipments may be diverted.

After reviewing the file in this matter, the Deputy Administrator finds that there is ample evidence that these chemicals may be diverted to the clandestine manufacture of a controlled substance. Information in the file indicates that one customer purchases 50% of all of Martinez' sales of potassium permanganate. A review of that customer's sales invoices for October 1 through December 31, 1997, revealed that the company made numerous sales of potassium permanganate to individuals with non-existent addresses. In addition, the company sold large quantities of potassium permanganate to customers that did not have chemical permits authorizing them to purchase more than 5 kilograms or 5 liters of the chemical at a time. When told to stop this practice, the company told its customers to gather identification from their employees. The company then used this information for its records to indicate sales of potassium permanganate to individuals in quantities less than 5 kilograms where no permit would be required. There is also information in the file that another of Martinez' customers employed this same practice.

The Deputy Administrator also finds that a review of the file in this matter revealed that Martinez sold 1,000 kilograms of potassium permanganate to a company that had gone out of business approximately two years before the sale, and that it sold the chemical to another company at an address that had been abandoned for at least seven months before the sale.

The Deputy Administrator further finds that the suspension orders specifically noted that in 1993 the Colombian National Police seized Martinez' stock of potassium permanganate for exceeding its import quota in violation of Colombian law. However, the Deputy Administrator finds that there is evidence in the file that this seizure was based upon an importation of 17,500 kilograms of the chemical. Martinez had received authorization to import 16,000 kilograms. Information in the file indicates that the chemicals were in a sealed drum on its way to Martinez when it realized that the shipment

exceeded its import quota, and it sought authorization for the other 1,500 kilograms. Martinez was cleared by the Colombian government of any wrongdoing in this matter.

The Deputy Administrator finds it significant that at the time of the December 6 and 28, 1997 shipments to Martinez the United States had decertified the Government of Colombia after a determination was made by the President of the United States that the controls utilized by the Government of Colombia to prevent the processing and trafficking of illicit drugs were inadequate. This caused DEA to issue a policy statement indicating that a heightened review process would be used for shipments of listed chemicals to Colombia. See 61 FR 13,759 (1996).

Pursuant to 21 U.S.C. 971(c), and the delegation of authority found in 28 CFR 0.100(b) and 0.104, the Deputy Administrator may ''order the suspension of any importation or exportation of a listed chemical * * * on the ground that the chemical may be diverted to the clandestine manufacture of a controlled substance.'' The Deputy Administrator concludes that there is substantial evidence to support the conclusion that these shipments of potassium permanganate may be diverted to the clandestine manufacture of a controlled substance. No advance notification of the shipments was provided to DEA as required by 21 CFR 1313.31 Yi Heng and Martinez have conceded that advance notification was required and that the suspension of the shipments can be sustained based upon the failure to file such notification. In addition, there is evidence in the file that both Martinez and its customers have improperly sold potassium permanganate in the past. Finally, the decertification of the Government of Colombia at the time of the shipments leads to the conclusion that this shipment of a list chemical may be diverted to the clandestine manufacture of a controlled substance.

Accordingly, the Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 971 and 28 CFR 0.100(b) and 0.104, hereby order that the proposed transshipments described above, be, and they hereby are, suspended, and that these proceedings are hereby concluded. This final order is effective immediately.

Dated: January 6, 1999.

Donnie R. Marshall,

Deputy Administrator.

[FR Doc. 99–687 Filed 1–12–99; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

National Institute of Corrections

Advisory Board Meeting

TIME AND DATE: 8:30 a.m. to 5:00 p.m. on Monday, February 8, 1999 and 8:00 a.m. to 12 noon on Tuesday, February 9, 1999.

PLACE: Westin Fairfax Hotel, 2100 Massachusetts Avenue N.W., Washington, DC 20008.

STATUS: Open.

MATTERS TO BE CONSIDERED: Updates on Strategic Planning and Interstate Compact Activities and Program Division Reports.

CONTACT PERSON FOR MORE INFORMATION: Larry Solomon, Deputy Director, 202–307–3106, ext. 155.

Morris L. Thigpen,

Director.

[FR Doc. 99–721 Filed 1–12–99; 8:45 am]

BILLING CODE 4410–36–M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

National Advisory Committee on Occupational Safety and Health; Notice of Meeting

Notice is hereby given of the date and location of the next meeting of the National Advisory Committee on Occupational Safety and Health (NACOSH), established under section 7(a) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 656) to advise the Secretary of Labor and the Secretary of Health and Human Services on matters relating to the administration of the Act. NACOSH will hold a meeting on February 10 and 11, 1999, in Room N3437 A–D of the Department of Labor Building located at 200 Constitution Avenue NW, Washington, D.C. The meeting is open to the public and will begin at 2:00 p.m. lasting until approximately 5:30 p.m. the first day, February 10. On February 11, the meeting will begin at 8:30 a.m. and last until approximately 4:00 p.m.

During its last meeting November 9–10, NACOSH decided that one of its areas of activity over the next two years should be to study OSHA's standard-setting and regulatory process. The Committee plans to examine and discuss the different models available to the agency for promulgating standards and regulations, including the full 6(b) process, negotiated rulemaking, and the use of standards advisory committees. NACOSH will also examine the use of voluntary consensus standards and guidelines in the standard setting process; models used in other jurisdictions; and the role of professional organizations in the process. The Committee will focus on specific standards to inform its discussions. Methylene chloride will be used as an example of the 6(b) process, steel erection as an example of negotiated rulemaking, and metal working fluids as an example of the standards advisory committee model. NACOSH will invite key players who were or are involved in each of these regulatory areas to make presentations at upcoming meetings. These include representatives from industry and labor, employers, involved health and safety professionals; and others, as well as the involved government officials from OSHA and NIOSH. Members of the public are invited to submit comments.

Discussion Points for Presentations on Different Models for OSHA's Regulatory Process

Presenters are asked to address the following issues/questions in their remarks.

1. How did you become involved in the process? What was the role?
2. What were the key issues in the process? (e.g., technical, economic, political feasibility; scope of the standard; nature of the regulated community)
3. What went right and what went wrong with the process? That is, what were the major obstacles and what were the strengths of the process?
4. Based on your experience and expertise, how could the process be improved? That is, how could it be done better, faster, more efficiently, less contentiously, etc.? Consider what all the different parties might contribute in this context—not just what the agency should do.
5. What advice would you give OSHA if it were to embark on another rulemaking using the same process?

The entire morning of February 11 will be devoted to this subject. Other agenda items will include: a brief overview of current activities of the Occupational Safety and Health Administration (OSHA) and the National Institute for Occupational Safety and Health (NIOSH), a brief discussion of OSHA's regulatory agenda for the coming three years, a presentation by NIOSH on the changing workforce and nature of work, workgroup reports and a committee discussion of how to structure its interest in partnerships over the coming year.

Written data, views or comments for consideration by the committee may be submitted, preferably with 20 copies, to Joanne Goodell at the address provided below. Any such submissions received prior to the meeting will be provided to the members of the Committee and will be included in the record of the meeting. Because of the need to cover a wide variety of subjects in a period of time, there is usually insufficient time on the agenda for members of the public to address the committee orally. However, any such requests will be considered by the Chair who will determine whether or not time permits. Any request to make an oral presentation should state the amount of time desired, the capacity in which the person would appear, and a brief outline of the content of the presentation. Individuals with disabilities who need special accommodations should contact Theresa Berry (phone: 202–693–1999; FAX: 202–693–1641) one week before the meeting.

An official record of the meeting will be available for public inspection in the OSHA Technical Data Center (TDC) located in Room N2625 of the Department of the Labor Building (202–693–2350). For additional information contact: Joanne Goodell, Occupational Safety and Health Administration (OSHA); Room N–3641, 200 Constitution Avenue NW, Washington, D.C., 20210 (phone: 202–693–2400; FAX: 202–693–1641; e-mail joanne.goodell@osha-no.osha.gov; or at www.osha.gov).

Signed at Washington, D.C., this 7th day of January, 1999.

Charles N. Jeffress,

Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 99–744 Filed 1–12–99; 8:45 am]

BILLING CODE 4510–26–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 99–013]

NASA Advisory Council, Minority Business Resource Advisory Committee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Minority Business Resource Advisory Committee.

DATES: Wednesday, January 27, 1999, 9:00 a.m. to 4:00 p.m. and Thursday, January 28, 1999, 9:00 a.m. to noon.

ADDRESSES: National Aeronautics and Space Administration, Lyndon B. Johnson Space Center, Building 1, Room 820, Houston, TX 77058–3696.

FOR FURTHER INFORMATION CONTACT: Mr. Ralph C. Thomas III, Code K, National Aeronautics and Space Administration, Washington, DC 20546, (202) 358–2088.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the seating capacity of the room. The agenda for the meeting is as follows:

—MBRAC Subpanel Reports
—Status of MBRAC Recommendations
—Special Issues
—Action Items
—Call to Order
—Reading of Minutes
—Agency Small Disadvantaged Business (SDB) Program
—Report of Chair
—Public Comment
—Center Directorate Reports
—Report on NASA FY 98 SDB Accomplishments

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitors' register.

Dated: January 7, 1999.

Matthew M. Crouch,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 99–741 Filed 1–12–99; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 99–012]

Notice of Prospective Patent License

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of prospective patent license.

SUMMARY: NASA hereby gives notice that Benick Brands, Inc., of Glastonsbury, Connecticut, has applied for an exclusive license to practice the inventions described and claimed in U.S. Patent No. 5,772,912, entitled ''Environmentally Friendly Anti-Icing Fluid,'' and in NASA Case No. ARC–12069–9GE, entitled ''Anti-Icing Fluid or Deicing Fluid.'' Both inventions are assigned to the United States of America as represented by the Administrator of the National Aeronautics and Space Administration. Written objections to the prospective grant should be sent to NASA Ames Research Center.

DATES: Responses to this notice should be received by March 15, 1999.

FOR FURTHER INFORMATION CONTACT: Kathleen Dal Bon, Patent Counsel, NASA Ames Research Center, Mail Stop 202A–3, Moffett Field, CA 94035–1000; telephone (650) 604–5104.

Dated: January 7, 1999.

Edward A. Frankle,

General Counsel.

[FR Doc. 99–742 Filed 1–12–99; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL BIPARTISAN COMMISSION ON THE FUTURE OF MEDICARE

Public Meeting

The National Bipartisan Commission on the Future of Medicare will hold a public meeting on Tuesday, January 26, 1999 at the Cannon House Office Building, Cannon Caucus Room 340, Washington, DC. Please check the Commission's web site for additional information: *http://Medicare.Commission.Gov*

Tuesday, January 26, 1999, 9:00 a.m.

Tentative Agenda

Members of the Commission to discuss options to reform the Medicare program.

If you have any questions, please contact the Bipartisan Medicare Commission, ph: 202–252–3380.

I hereby authorize publication of the Medicare Commission meetings in the **Federal Register.**

Julie Hasler,

Office Manager, National Bipartisan Medicare Commission.

[FR Doc. 99–681 Filed 1–12–99; 8:45 am]

BILLING CODE 1132–00–M

UNITED STATES NUCLEAR REGULATORY COMMISSION

[Docket No. 50–400]

Carolina Power & Light; Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF–63 issued to Carolina Power & Light (CP&L or the licensee) for operation of the Shearon Harris Nuclear Power Plant

located in Wake and Chatham Counties, North Carolina.

The proposed amendment would support a modification to the plant to increase the spent fuel storage capacity by adding rack modules to spent fuel pools (SFPs) ''C'' and ''D'' and placing the pools in service. In order to activate the pools, CP&L requests that the NRC review and approve the following:

i. Revised Technical Specification 5.6 to identify PWR burnup restrictions, BWR enrichment limits, pool capacities, heat load limitations and nominal center-to-center distances between fuel assemblies in the racks to be installed in SFPs 'C' and 'D.'

ii. 10 CFR 50.55a Alternative Plan to demonstrate acceptable level of quality and safety in the completion of the component cooling water (CCW) and SFP 'C' and 'D' cooling and cleanup system piping.

The cooling system for SFPs 'C' and 'D' cannot be N stamped in accordance with ASME Section III since some installation records are not available, a partial turnover was not performed when construction was halted following the cancellation of Unit 2 and CP&L's N certificate program was discontinued following completion of Unit 1.

iii. Unreviewed safety question for additional heat load on the CCW system. The acceptability of the 1.0 MBtu/hr heat load from SFPs 'C' and 'D' was demonstrated by the use of thermal-hydraulic analyses of the CCW system under various operating scenarios. The dynamic modeling used in the thermal-hydraulic analyses identified a decrease in the minimum required CCW system flow rate to the residual heat removal heat exchangers. This change has not been previously reviewed by the NRC and is deemed to constitute an unreviewed safety question.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

In the analysis of the safety issues concerning the expanded pool storage capacity within Harris' Fuel Handling Building, the following previously postulated accident scenarios have been considered:

a. A spent fuel assembly drop in a Spent Fuel Pool.

b. Loss of Spent Fuel Pool cooling flow.

c. A seismic event.

d. Misloaded fuel assembly.

The probability that any of the accidents in the above list can occur is not significantly increased by the activity itself. The probabilities of a seismic event or loss of Spent Fuel Pool cooling flow are not influenced by the proposed changes. The probabilities of accidental fuel assembly drops or misloadings are primarily influenced by the methods used to lift and move these loads. The method of handling loads during normal plant operations is not significantly changed, since the same equipment (i.e., Spent Fuel Handling Machine and tools) and procedures as those in current use in pools 'A' and 'B' will be used in pools 'C' and 'D'. Since the methods used to move loads during normal operations remain nearly the same as those used previously, there is no significant increase in the probability of an accident. Current shipping activities at the Harris Nuclear Plant will continue as previously licensed. The consequences of an accident involving shipping activities [are] not changed and there is no significant increase in the probability of an accident.

During rack installation, all work in the pool area will be controlled and performed in strict accordance with specific written procedures. Any movement of fuel assemblies which is required to be performed to support this activity (e.g., installation of racks) will be performed in the same manner as during normal refueling operations.

Accordingly, the proposed activity does not involve a significant increase in the probability of an accident previously evaluated.

The consequences of the previously postulated scenarios for an accidental drop of a fuel assembly in the Spent Fuel Pool have been re-evaluated for the proposed change. The results show that such the postulated accident of a fuel assembly striking the top of the storage racks will not distort the racks sufficiently to impair their functionality. The minimum subcriticality margin, K_{eff} less than or equal to 0.95, will be maintained. The structural damage to the Fuel Handling Building, pool liner, and fuel assembly resulting from a fuel assembly drop striking the pool floor or another assembly located within the racks is primarily dependent on the mass of the falling object and the drop height. Since these two parameters are not changed by the proposed activity from those considered previously, the structural damage to these items remains unchanged. The radiological dose at the exclusion area boundary will not be increased from those previously considered, since the pertinent fuel parameters remain unchanged. These dose levels remain ''well within'' the levels required by 10 CFR 100, paragraph 11, as defined in Section 15.7.4.II.1 of the Standard Review Plan. Thus, the results of the postulated fuel drop accidents remain acceptable and do not represent a significant increase in consequences from any of the same previously evaluated accidents that have been reviewed and found acceptable by the NRC.

The consequences of a loss of Spent Fuel Pool cooling have been evaluated and found to have no increase. The concern with this accident is a reduction of Spent Fuel Pool water inventory from bulk pool boiling resulting in uncovering fuel assemblies. This situation would lead to fuel failure and subsequent significant increase in offsite dose. Loss of spent fuel pool cooling at Harris is mitigated in the usual manner by ensuring that a sufficient time lapse exists between the loss of forced cooling and uncovering fuel. This period of time is compared against a reasonable period to re-establish cooling or supply an alternative water source. Evaluation of this accident usually includes determination of a time to boil, which in the case of pools 'C' and 'D' is in excess of 13 hours based on a consideration of end of plant life heat loads. This evaluation neglects any possible cooling from the connection to pools 'A' and 'B' through the transfer canal. The 13 hour period is much shorter than the onset of any significant increase in offsite dose, since once boiling begins it would have to continue unchecked until the pool surface was lowered to the point of exposing active fuel. The time to boil represents the onset of loss of pool water inventory and is commonly used as a gauge for establishing the comparison of consequences before and after a refueling project. The heatup rate in the Spent Fuel Pool is a nearly linear function of the fuel decay heat load. Subsequent to the proposed changes, the fuel decay heat load will increase because of the increase in the number assemblies from those considered from Pools 'A' and 'B' alone. The methodology used in the thermal-hydraulic analysis determined the maximum fuel decay heat loads. In the unlikely event that pool cooling is lost to pools 'C' and 'D', sufficient time will still be available for the operators to provide alternate means of cooling before the onset of pool boiling. Therefore, the proposed change represents no increase in the consequences of loss of pool cooling.

The consequences of a design basis seismic event are not increased. The consequences of this accident are evaluated on the basis of subsequent fuel damage or compromise of the fuel storage or building configurations leading to radiological or criticality concerns. The new racks have been analyzed in their new configuration and found safe during seismic motion. The fuel stored in these racks has been determined to remain intact and the racks maintain the fuel and fixed poison configurations subsequent to a seismic event. The structural capability of the pool and liner will not be exceeded under the appropriate combinations of dead weight, thermal, and seismic loads. The Fuel

Handling Building structure will remain intact during a seismic event and will continue to adequately support and protect the fuel racks, storage array, and pool moderator/coolant. Thus, the consequences of a seismic event are not increased.

Fuel misloading and mislocation accidents were previously credible occurrences, since fuel could be placed at an unintended storage location or could have been lowered outside and adjacent to a storage rack in Pools 'A' or 'B'. However, neither of these two scenarios previously represented any concern because of the flux trap style of the rack designs in these two pools. Similar procedures, equipment and methods of fuel movement will be used for Pools 'C' and 'D' as those used previously for Pools 'A' and 'B'. Therefore, the proposed activity does not represent any increase in the probability of occurrence. The proposed non-flux trap design racks for Pools 'C' and 'D' require administrative controls to ensure that fuel assemblies meet effective enrichment criteria prior to storage. Under these conditions, misloading of a fuel assembly by placement in an unintended storage cell has no significant consequences. Therefore, the only remaining potential mislocation of a fuel assembly is for an assembly to be lowered outside of and directly adjacent to a storage rack. This accident occurring in Pools 'C' or 'D' has been analyzed for the worst possible storage configuration subsequent to the proposed activity and it has been shown that the consequences remain acceptable with respect to the same criteria used previously. Thus, there is no increase in consequences for fuel mislocation or misloading.

Therefore it is concluded that the proposed changes do not significantly increase the probability or consequences of any accident previously evaluated.

2. Create the possibility of a new or different kind of accident from any previously analyzed.

To assess the possibility of new or different kind of accidents, a list of the important parameters required to ensure safe fuel storage was established. Safe fuel storage is defined here as providing an environment, which would not present any significant threats to workers or the general public (i.e., meeting the requirements of 10 CFR 100 and 10 CFR 20). Any new events, which would modify these parameters sufficiently to place them outside of the boundaries analyzed for normal conditions and/or outside of the boundaries previously considered for accidents would be considered to create the possibility of a new or different accident. The criticality and radiological safety evaluations were reviewed to establish the list of important parameters. The fuel configuration and the existence of the moderator/coolant were identified as the only two parameters, which were important to safe fuel storage. Significant modification of these two parameters represents the only possibility of an unsafe storage condition. Once the two important parameters were established, an additional step was taken to determine what events (which were not previously considered) could result in changes to the storage configuration or moderator/coolant presence during or subsequent to the proposed changes.

This process was adopted to ensure that the possibility of any new or different accident scenario or event would be identified. Due to the proposed activity, an accidental drop of a rack module during construction activity in the pool was considered as the only event which might represent a new or different kind of accident.

A construction accident resulting in a rack drop is an unlikely event. The proposed activity will utilize the defense-in-depth approach for these heavy loads. The defense-in-depth approach is intended to meet the requirements of NUREG–0612 and preclude the possibility of a rack drop. All movements of heavy loads over the pool will comply with the applicable administrative controls and guidelines (i.e. plant procedures, NUREG–0612, etc.). A temporary hoist and rack lifting rig will be introduced to lift and suspend the racks from the bridge of the Auxiliary Crane. These items have been designed in accordance with the requirements of NUREG–0612 and ANSI N14.6 and will be similar to those used recently to install storage rack modules in Pool 'B'.

The postulated rack drop event is commonly referred to as a ''heavy load drop'' over the pools. Heavy loads will not be allowed to travel over any racks containing fuel assemblies. The danger represented by this event is that the racks will drop to the pool floor and the pool structure will be compromised leading to loss of moderator/coolant, which is one of the two important parameters identified above. Although the analysis of this event has been performed and shown to be acceptable, the question of a new or different type of event is answered by determining whether heavy load drops over the pool have been considered previously. As stated above, heavy loads (storage rack modules) were recently installed in Pool 'B' using similar methods. Therefore, the rack drop does not represent a new or different kind of accident.

The proposed change does not alter the operating requirements of the plant or of the equipment credited in the mitigation of the design basis accidents. The proposed change does not affect any of the important parameters required to ensure safe fuel storage. Therefore, the potential for a new or previously unanalyzed accident is not created.

3. Involve a significant reduction in the margin of safety.

The function of the Spent Fuel Pool is to store the fuel assemblies in a subcritical and coolable configuration through all environmental and abnormal loadings, such as an earthquake or fuel assembly drop. The new rack design must meet all applicable requirements for safe storage and be functionally compatible with Pools 'C' and 'D'.

CP&L has Addressed the Safety Issues Related to the Expanded Pool Storage Capacity in the Following Areas:

1. Material, mechanical and structural considerations. The mechanical, material, and structural designs of the new racks have been reviewed in accordance with the applicable provisions of the NRC Guidance entitled, ''Review and Acceptance of Spent Fuel Storage and Handling Applications''. The rack materials used are compatible with the spent fuel assemblies and the Spent Fuel Pool environment. The design of the new racks preserves the proper margin of safety during normal and abnormal loads. It has been shown that such loads will not invalidate the mechanical design and material selection to safely store fuel in a coolable and subcritical configuration.

2. Nuclear Criticality

The methodology used in the criticality analysis of the expanded Spent Fuel Pool meets the appropriate NRC guidelines and the ANSI standards (GDC 62, NUREG 0800, Section 9.1.2, the OT Position for Review and Acceptance of Spent Fuel Storage and Handling Applications, Reg. Guide 1.13, and ANSI/ANS 8.17). The margin of safety for subcriticality is maintained by having the neutron multiplication factor equal to, or less than, 0.95 under all accident conditions, including uncertainties. This criterion is the same as that used previously to establish criticality safety evaluation acceptance and remains satisfied for all analyzed accidents.

3. Thermal-hydraulic and Pool Cooling

The thermal-hydraulic and cooling evaluation of the pools demonstrated that the pools can be maintained below the specified thermal limits under the conditions of the maximum heat load and during all credible accident sequences and seismic events. The pool temperature will not exceed 137°F during the highest heat load conditions. The maximum local water temperature in the hot channel will remain below the boiling point. The fuel will not undergo any significant heat up after an accidental drop of a fuel assembly on top of the rack blocking the flow path. A loss of cooling to the pool will allow sufficient time (>13 hours) for the operators to intervene and line up alternate cooling paths and the means of inventory make-up before the onset of pool boiling. The thermal limits specified for the evaluations performed to support the proposed activity are the same as those that were used in the previous evaluations. It has also been demonstrated that adequate margin exists in the Unit 1 CCW system to support near term operation of the pools subject to the requirements of the proposed changes to the Technical Specifications.

Based on the preceding discussion it is concluded that this activity does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D59, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By February 12, 1999, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available 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 Cameron Village Regional Library, 1930 Clark Avenue, Raleigh, North Carolina 27605. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to William D. Johnson, Vice President and Senior Counsel, Carolina Power & Light Company, Post Office Box 1551, Raleigh, North Carolina 27602, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

The Commission hereby provides such notice that this is a proceeding on an application for a license amendment falling within the scope of section 134 of the Nuclear Waste Policy Act of 1982 (NWPA), 42 U.S.C. 10154. Under section 134 of the NWPA, the

Commission, at the request of any party to the proceeding, must use hybrid hearing procedures with respect to ''any matter which the Commission determines to be in controversy among the parties.''

The hybrid procedures in section 134 provide for oral argument on matters in controversy, preceded by discovery under the Commission's rules and the designation, following argument of only those factual issues that involve a genuine and substantial dispute, together with any remaining questions of law, to be resolved in an adjudicatory hearing. Actual adjudicatory hearings are to be held on only those issues found to meet the criteria of section 134 and set for hearing after oral argument.

The Commission's rules implementing section 134 of the NWPA are found in 10 CFR Part 2, Subpart K, ''Hybrid Hearing Procedures for Expansion of Spent Fuel Storage Capacity at Civilian Nuclear Power Reactors'' (published at 50 FR 41662 dated October 15, 1985). Under those rules, any party to the proceeding may invoke the hybrid hearing procedures by filing with the presiding officer a written request for oral argument under 10 CFR 2.1109. To be timely, the request must be filed within ten (10) days of an order granting a request for hearing or petition to intervene. The presiding officer must grant a timely request for oral argument. The presiding officer may grant an untimely request for oral argument only upon a showing of good cause by the requesting party for the failure to file on time and after providing the other parties an opportunity to respond to the untimely request. If the presiding officer grants a request for oral argument, any hearing held on the application must be conducted in accordance with the hybrid hearing procedures. In essence, those procedures limit the time available for discovery and require that an oral argument be held to determine whether any contentions must be resolved in an adjudicatory hearing. If no party to the proceeding timely requests oral argument, and if all untimely requests for oral argument are denied, then the usual procedures in 10 CFR Part 2, Subpart G apply.

For further details with respect to this action, see the application for amendment dated December 23, 1998, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Cameron Village Regional Library, 1930 Clark Avenue, Raleigh, North Carolina 27605.

Dated at Rockville, Maryland, this 7th day of January 1999.

For the Nuclear Regulatory Commission.

Scott Flanders,

Project Manager, Project Directorate II–3, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 99–758 Filed 1–12–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Number 40–8102]

Exxon Coal and Minerals Company

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of receipt of Exxon Coal and Minerals Company's application for establishing alternate concentration limits in source material license SUA–1139 for the Highland Uranium Mill in Converse County, Wyoming; notice of opportunity for a hearing.

SUMMARY: Notice is hereby given that the U.S. Nuclear Regulatory Commission (NRC) has received, by letter dated December 18, 1998, an application from Exxon Coal and Minerals Company (ECMC) to establish Alternate Concentration Limits (ACLs) for nickel, radium (Ra 226+228), and natural uranium (UNAT); and amend accordingly Source Material License No. SUA–1139 for the Highland uranium mill.

FOR FURTHER INFORMATION CONTACT: Mohammad W. Haque, Uranium Recovery Branch, Division of Waste Management, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Telephone (301) 415–6640.

SUPPLEMENTARY INFORMATION: ECMC's application to amend Source Material License SUA–1139, which describes the proposed change and the reasons for the request, is being made available for public inspection at NRC's Public Document Room at 2120 L Street, N.W. (Lower Level), Washington, DC 20555.

The NRC hereby provides notice of an opportunity for a hearing on the license amendment under the provisions of 10 CFR Part 2, Subpart L, ''Informal Hearing Procedures for Adjudications in Materials and Operator Licensing Proceedings.'' Pursuant to § 2.1205(a), any person whose interest may be affected by this proceeding may file a request for a hearing. In accordance with § 2.1205(c), a request for hearing must be filed within 30 days of the publication of this notice in the **Federal Register**. The request for a hearing must be filed with the Office of the Secretary, either:

(1) By delivery to the Docketing and Service Branch of the Office of the Secretary at One White Flint North, 11555 Rockville Pike, Rockville, MD 20852; or

(2) By mail or telegram addressed to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Docketing and Service Branch.

In accordance with 10 CFR 2.1205(e), each request for a hearing must also be served, by delivering it personally, or by mail, to:

(1) The applicant, Exxon Coal and Minerals Company, P.O. Box 1314, Houston, Texas 77251–1314, Attention: David Range; and

(2) The NRC staff, by delivery to the Executive Director for Operations, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852, or by mail addressed to the Executive Director for Operations, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

In addition to meeting other applicable requirements of 10 CFR Part 2 of NRC's regulations, a request for a hearing filed by a person other than an applicant must describe in detail:

(1) The interest of the requestor in the proceeding;

(2) How that interest may be affected by the results of the proceeding, including the reasons why the requestor should be permitted a hearing, with particular reference to the factors set out in § 2.1205(g);

(3) The requestor's areas of concern about the licensing activity that is the subject matter of the proceeding; and

(4) The circumstances establishing that the request for a hearing is timely in accordance with § 2.1205(c).

The request must also set forth the specific aspect or aspects of the subject matter of the proceeding as to which petitioner wishes a hearing.

Dated at Rockville, Maryland, this 5th day of January 1999.

N. King Stablein,

Acting Chief, Uranium Recovery Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 99–756 Filed 1–12–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 72–09]

Public Service Company of Colorado, Fort St. Vrain Independent Spent Fuel Storage Installation; Exemption

I

Public Service Company of Colorado (PSCo, the licensee) holds Materials

License SNM–2504 for receipt and storage of spent nuclear fuel at an independent spent fuel storage installation (ISFSI) located on the Fort St. Vrain (FSV) site. The facility is located in Weld County, Colorado.

II

Pursuant to 10 CFR 72.7, the Nuclear Regulatory Commission (NRC) may grant exemptions from the requirements of the regulations in 10 CFR Part 72 as it determines are authorized by law, will not endanger life or property or the common defense and security, and are otherwise in the public interest.

Section 72.32(b)(12) states in part that ''each application for an ISFSI that is licensed under this part and that may process and/or repackage spent fuel, must be accompanied by an Emergency Plan that includes * * * provisions for conducting quarterly communications checks with offsite response organizations and biennial onsite exercises to test response to simulated emergencies.'' Section 6.6.1(b)(2) of the PSCo ISFSI Emergency Response Plan (ERP) (Revision 2, (submitted September 6, 1996), includes a provision to conduct a biennial exercise of the ERP as required by 10 CFR 72.32(b)(12).

III

By letter dated July 31, 1998, the licensee requested an exemption, pursuant to 10 CFR 72.7, from the biennial emergency response exercise requirement of 10 CFR 72.32(b)(12)(I). In its submittal, the licensee stated that it its currently due to perform a biennial emergency exercise in December 1998. The licensee further requested that, in approving the requested exemption, the NRC approve postponing the biennial exercise for six months until June 1999. The circumstances associated with PSCo's request are described below.

The United States Department of Energy (DOE) has submitted a request to transfer Materials License SNM–2504 for the FSV ISFSI from PSCo to DOE. This request, submitted on December 17, 1998, is currently under NRC staff review. The completion of this review and transfer of the license is anticipated in early 1999. To prepare for assuming the responsibilities associated with the FSV ISFSI license, DOE has been developing programs and modifying PSCo programs for routine and non-routine operation of the ISFSI. As part of this preparation, DOE performed an emergency response exercise on September 23, 1998, at the FSV ISFSI. This exercise, which was developed and executed by DOE and its agents, demonstrated the response of existing local emergency responders, including local law enforcement and local ambulance services, as well as the response of DOE's emergency response organization.

As current holder of the FSV ISFSI license, PSCo is required, pursuant to 10 CFR 72.32(b)(12)(I), to hold an emergency response exercise biennially. The next scheduled emergency exercise for PSCo should be conducted in December 1998. PSCo, in its exemption request, describes the extensive coordination with local community responders who are required to perform an emergency exercise. The exemption is requested to relieve the burden imposed on the local community responders by having to prepare for and perform two emergency exercises between September 1998 (the DOE exercise) and December 1998 (the PSCo exercise which is currently due).

The NRC conducted an inspection of the September 23, 1998, DOE emergency exercise and documented the results of that inspection in a report, IR 72–09/98–201, dated December 28, 1998. In IR 72–09/98–201, the staff stated:

''On September 23, 1998, DOE–ID conducted a second exercise at the FSV site to demonstrate that adequate corrective actions had been taken to resolve the weaknesses identified during the May, 1997 exercise. The September, 1998 exercise scenario was a very challenging accident involving the dropping of a fuel storage container resulting in high radiation exposures, contamination, and serious injury of a worker. Correction of the program weaknesses identified in the May, 1997 exercise were adequately demonstrated except for radiological controls. In addition, a new problem was identified concerning medical treatment of a seriously injured person. The hospital, which had a Memorandum of Understanding with FSV, was not equipped or staffed to accept serious head trauma cases. These types of injuries would be routed to another hospital in Denver. FSV did not have any arrangement with the other hospital in Denver to accept a contaminated person. On November 29, 1998, DOE–ID established a Memorandum of Understanding with North Colorado Medical Center to accept and treat contaminated and injured persons. North Colorado Medical Center is qualified to accept all levels of injuries including serious head injuries.

The radiological control problem identified in the May 1997 exercise concerned the inability of the emergency responders to adequately address radiological problems. In the September, 1998 exercise, the scenario presented an even more significant radiological condition with very high radiation and contamination levels. Lack of adequate radiological controls during the emergency response, resulted in emergency response personnel receiving unnecessarily high exposures. Examples include: evacuating personnel leaving the affected area proceeding through the high radiation area, and the ambulances arriving and parking in the high radiation area. Consequently, both the command post and ambulances became contaminated. Radiological controls were simulated by the radiation protection technician, because he did not have time to implement the necessary actions.

For activities associated with the FSV facility, the type of problems presented during the scenario would not occur, except during the movement of fuel. Regarding the radiological problems that occurred in both exercises, the lack of sufficient personnel available to implement radiological controls was a key factor. Having a second radiation protection technician available onsite at FSV during the event could have prevented a number of the observed problems. DOE–ID concurred with this assessment and committed to revise their procedures to require a second qualified radiation protection individual to be onsite during any fuel movement activities. This has been entered into the DOE–ID process deficiency report system as PDR #5079.''

During the September 23, 1998 exercise, the staff observed that local community emergency organizations responded in a timely manner. In addition, the staff observed that some of the current PSCo staff of the FSV ISFSI will be retained as facility staff when DOE assumes the license. These staff, who participated in the DOE sponsored exercise, will ensure continuity in both routine and emergency operation. Based on the above, the staff concludes that the emergency response capability, including the response of local community responders and onsite staff has been adequately exercised and that an additional exercise, conducted by PSCo during December 1998 is not necessary.

IV

Accordingly, NRC has determined, in accordance with 10 CFR 72.7 that this exemption is authorized by law, will not endanger life or property or the common defense and security, and is otherwise in the public interest. Therefore, NRC hereby grants the licensee an exemption from the biennial emergency exercise requirement of 10 CFR 72.32(b)(12(I) as requested by letter dated July 31, 1998.

The documents related to this proposed action are available for public inspection and for copying at the NRC Public Document Room, 2120 L Street, NW, Washington, DC 20555. Pursuant to 10 CFR 51.32, NRC has determined that granting this exemption will have no significant impact on the quality of the human environment (63 FR 72337).

This exemption is effective upon issuance. The exemption expires June 30, 1999, or upon transfer of SNM–2504 to the Department of Energy, whichever occurs first.

Dated at Rockville, Maryland, this 31st day of December 1998.

For the Nuclear Regulatory Commission.

William F. Kane,

Director, Spent Fuel Project Office, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 99–757 Filed 1–12–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Biweekly Notice; Applications and Amendments to Facility Operating Licenses Involving No Significant Hazards Considerations

I. Background

Pursuant to Public Law 97–415, the U.S. Nuclear Regulatory Commission (the Commission or NRC staff) is publishing this regular biweekly notice. Public Law 97–415 revised section 189 of the Atomic Energy Act of 1954, as amended (the Act), to require the Commission to publish notice of any amendments issued, or proposed to be issued, under a new provision of section 189 of the Act. This provision grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from December 18, 1998, through December 31, 1998. The last biweekly notice was published on December 30, 1998 (63 FR 71962).

Notice of Consideration of Issuance of Amendments To Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received before action is taken. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administration Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC. The filing of requests for a hearing and petitions for leave to intervene is discussed below.

By February 12, 1999, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC and at the local public document room for the particular facility involved. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law

or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington DC, by the above date. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for a hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room for the particular facility involved.

Baltimore Gas and Electric Company, Docket Nos. 50–317 and 50–318, Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2, Calvert County, Maryland

Date of amendments request: November 30, 1998.

Description of amendments request: Currently, the Calvert Cliffs Technical Specifications allow defective tubes to be plugged and removed from service, or to be repaired by either the laser-welded sleeving technique developed by Westinghouse Electric Corporation or by using leak-tight, tungsten inert gas-welded sleeving developed by Combustion Engineering, Inc. (ABB–CE). The proposed amendment will revise the appropriate Technical Specifications to permit the use of leak-limiting Alloy 800 repair sleeves developed by ABB–CE to be used at Calvert Cliffs. Combustion Engineering provides two types of leak-limiting Alloy 800 repair sleeves. The first type of repair sleeve spans the expansion transition zone of the tube at the top of the tubesheet. The second type of repair sleeve spans the degraded areas at an eggcrate support elevation or in a free span section.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed amendment would not involve a significant increase in the probability or consequences of an accident previously evaluated.

The ABB CE Alloy 800 leak-limiting repair sleeves are designed using the applicable American Society of Mechanical Engineers (ASME) Boiler and Pressure Vessel Code and, therefore, meet the design objectives of the original steam generator tubing. The applied stresses and fatigue usage for the repair sleeves are bounded by the limits established in the ASME Code. Mechanical testing has shown that the structural strength of repair sleeves under normal, upset, and faulted conditions provides margin to the acceptance limits. These acceptance limits bound the most limiting (three times normal operating pressure differential) burst margin recommended by Regulatory Guide 1.121. Burst testing of sleeved tubes has demonstrated that no unacceptable levels of primary-to-secondary leakage are expected during any plant condition.

The Alloy 800 repair sleeve Technical Specification depth-based plugging limit is determined using the guidance of Regulatory Guide 1.121 and the pressure stress equation of ASME Code, Section III. A bounding tube wall degradation growth rate per cycle and a nondestructive examination uncertainty has been assumed for determining the repair sleeve plugging limit.

Evaluation of the repaired steam generator tubes indicates no detrimental effects on the sleeve or sleeve-tube assembly from reactor system flow, primary or secondary coolant chemistries, thermal conditions or transients, or pressure conditions as may be experienced at Calvert Cliffs. Corrosion testing of sleeve-tube assemblies indicates no evidence of sleeve or tube corrosion considered detrimental under anticipated service conditions.

The implementation of the proposed amendment has no significant effect on either the configuration of the plant, or the manner in which it is operated. The consequences of a hypothetical failure of the sleeved tube is bounded by the current steam generator tube rupture analysis described in Calvert Cliffs Updated Final Safety Analysis Report, Section 14.15. Due to the slight reduction in diameter caused by the sleeve wall thickness, primary coolant release rates would be slightly less than assumed for the steam generator tube rupture analysis and, therefore, would result in lower total primary fluid mass release to the secondary system. A main steam line break or feed line break will not cause a SGTR [steam generator tube rupture] since the sleeves are analyzed for a maximum accident differential pressure greater than that predicted in the Calvert Cliffs safety analysis. The minimal repair sleeve leakage that could occur during plant operation is well within the Technical Specification leakage limits.

Therefore, BGE has concluded that the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Would not create the possibility of a new or different kind of accident from any other accident previously evaluated.

As discussed above, the Alloy 800 repair sleeves are designed using the applicable ASME Code as guidance; therefore, it meets the objectives of the original steam generator tubing. As a result, the functions of the steam generators will not be significantly affected by the installation of the proposed sleeve. The proposed repair sleeves do not interact with any other plant systems. Any accident as a result

of potential tube or sleeve degradation in the repaired portion of the tube is bounded by the existing tube rupture accident analysis. The continued integrity of the installed sleeve is periodically verified by the Technical Specification requirements.

The implementation of the proposed amendment has no significant effect on either the configuration of the plant, or the manner in which it is operated. Therefore, BGE [Baltimore Gas and Electric Company] concludes that this proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Would not involve a significant reduction in a margin of safety.

The repair of degraded steam generator tubes with Alloy 80 leak-limiting repair sleeves restores the structural integrity of the degraded tube under normal operating and postulated-accident conditions. The design safety factors utilized for the repair sleeves are consistent with the safety factors in the ASME Boiler and Pressure Vessel Code used in the original steam generator design. The portions of the installed sleeve assembly that represent the reactor coolant pressure boundary can be monitored for the initiation and progression of sleeve/tube wall degradation. Use of the previously identified design criteria and design verification testing assures that the margin to safety is not significantly different from the original steam generator tubes.

Therefore, BGE concludes that the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendments request involves no significant hazards consideration.

Local Public Document Room location: Calvert County Library, Prince Frederick, Maryland 20678.

Attorney for licensee: Jay E. Silberg, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: S. Singh Bajwa, Director.

Commonwealth Edison Company, Docket Nos. 50–373 and 50–374, LaSalle County Station, Units 1 and 2, LaSalle County, Illinois

Date of amendment request: November 9, 1998.

Description of amendment request: The proposed amendments would revise Technical Specification Table 3.3.3–2, ''Emergency Core Cooling System Actuation Instrumentation Setpoints'' to modify the degraded voltage second level undervoltage relay setpoint and allowable value. This change was submitted in response to a concern identified during an Electrical Distribution System Functional Inspection.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

The setpoint change does not change the logic or function of the degraded voltage protection circuits as described in UFSAR [Updated Final Safety Analysis Report] Section 8.2.3. They also do not reduce the reliability of these circuits. The increase in the degraded voltage protection circuit setpoint is conservative compared to the existing setpoint. There is no change as a result of this amendment to the underlying accident and transient analyses that support operations of LaSalle County Station. Inadvertent or spurious operation of the degraded voltage protection function will initiate loading of the safe shutdown loads on the diesel generators and is not assumed to initiate an accident. The proposed degraded voltage setpoints are low enough to prevent spurious actuations given the expected offsite grid voltages. After implementation of this amendment, no operator actions are required for equipment operations in response to degraded voltage conditions.

This change does not affect the initiators or precursors of any accident previously evaluated. This change will not increase the likelihood that a transient initiating event will occur because transients are initiated by equipment malfunction and/or catastrophic system failure.

The consequences of accidents previously evaluated are not increased. The proposed change does not affect the required level of availability of systems required to mitigate the accidents considered in the analyses. The proposed changes will ensure that the Class 1E equipment will be capable of starting and operating during a design basis accident with degraded offsite grid voltage. The increase in the level of confidence is the result of more rigorous methodology used to determine limiting Class 1E bus voltages at the minimum expected offsite AC voltage. These calculations demonstrate that the degraded voltage relays will not actuate following a block start of the electrical loads that are automatically actuated by or as a consequence of the LOCA [loss-of-coolant accident] signal if the switchyard voltage remains above 352 kV.

If the grid voltage drops below 352 kV, then the analytical limit of 3814 volts for proper operation of class 1E loads connected to each 4.16 kV Class 1E bus is assured by transfer to the respective onsite power sources (Emergency Diesel Generators (EDGs)) by the degraded voltage logic.

Therefore this proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

(2) Create the possibility of a new or different kind of accident from any accident previously evaluated because:

Setpoint methodology established the bases to ensure that, with known errors, the relays will detect degraded voltage conditions and transfer safety loads to the EDGs at a voltage level adequate to ensure proper safety equipment performance and to prevent equipment damage.

The greater than or equal to 3870 volt setpoint and the greater than or equal to 3814 volt allowable value includes adequate tolerance to calibrate the relay trip units while ensuring that the Class 1E bus voltage will remain above the analytical limits.

These setpoint changes will ensure that adequate voltages will be available for the continuous operation of safety-related equipment required to function during a LOCA. These proposed changes will also ensure that adequate voltages will be available for starting any Class 1E equipment.

The proposed degraded voltage setpoint change does not change the design of the degraded voltage protection system or its function to protect against degraded offsite power. Actuation of the degraded voltage protection system will initiate a sequence of events that will start the EDG for the associated Class 1E bus, strip loads from the Class 1E bus, open all feed breakers to the Class 1E bus, close the Emergency feed breaker (thus energizing the Class 1E bus from the respective EDG), and initiate starting of the Safe Shutdown equipment supplied by the Class 1E bus.

Since the scope of this change does not affect the operation of the auxiliary power system or any actions necessary to mitigate the consequences of accidents or achieve safe shutdown, the

change does not involve a new or different accident scenario.

Therefore, these proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

(3) Involve a significant reduction in the margin of safety because:

The proposed amendment will allow the degraded voltage setpoint to be conservatively established based on new engineering calculations which consider the lowest expected offsite grid voltage and operation of required Class 1E equipment under design basis accident loading conditions.

The proposed degraded voltage setpoints will ensure that adequate Class 1E bus voltage will be available to support starting and operation of the required Class 1E loads. The proposed setpoint includes instrument error to ensure that the lowest possible voltage will not be lower than the degraded voltage analytical limits. Additionally, the proposed setpoints are low enough to prevent spurious actuations due to expected fluctuations in the grid voltage. The new setpoints are also set with margin to the minimum Class 1E bus voltage, which is based on a minimum grid voltage of 352 kV, which is less than the expected grid voltage of 354 kV. The proposed changes will provide an increase in the level of protection that currently exists and will ensure the margin of safety is adequately maintained.

Therefore, these changes do not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the requested amendments involve no significant hazards consideration.

Local Public Document Room location: Jacobs Memorial Library, 815 North Orlando Smith Avenue, Illinois Valley Community College, Oglesby, Illinois 61348–9692.

Attorney for licensee: Michael I. Miller, Esquire; Sidley and Austin, One First National Plaza, Chicago, Illinois 60603.

NRC Project Director: Stuart A. Richards.

Commonwealth Edison Company, Docket Nos. 50–254 and 50–265, Quad Cities Nuclear Power Station, Units 1 and 2, Rock Island County, Illinois

Date of amendment request: November 30, 1998.

Description of amendment request: The Safe Shutdown Makeup Pump (SSMP) allowed outage time (AOT) is being decreased from 67 days to 14 days.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

The change does not involve a significant increase in the probability or consequences of an accident previously evaluated. The proposed change to the Technical Specification Allowed Outage Time is conservative with respect to current requirements. This change is being proposed to establish an AOT for the SSMP that is equivalent to that for the reactor core isolation cooling (RCIC) pump (14 day AOT) in order to enhance system performance by assuring maximum SSMP pump availability to a level consistent with RCIC. This is necessary since, pursuant to Paragraph III.G.3 of 10 CFR 50, Appendix R, the SSMP is an alternate system to the RCIC system. By ensuring equipment availability, the probability or consequences of an accident previously evaluated are not increased. In addition, the proposed change has no impact on any accident initiators or initial condition assumptions for accident scenarios. Onsite or offsite dose consequences resulting from an event previously evaluated are not affected by this proposed amendment request.

Therefore, this proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated. The proposed license amendment provides a reduction to a Technical Specification Allowed Outage Time to enhance system performance by assuring maximum SSMP pump availability to a level consistent with RCIC. The proposed change is conservative with respect to the current requirements. The proposed amendment does not involve any plant physical changes that would create the possibility of a new or different kind of accident from any accident previously evaluated.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Does the change involve a significant reduction in a margin of safety?

The proposed change does not involve a significant reduction in a margin of safety. The proposed change enhances system performance by assuring maximum SSMP pump availability to a level consistent with RCIC. Since this is a conservative change that will enhance the performance of the SSMP system, it does not involve a significant reduction in the margin of safety.

Therefore, this change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the requested amendments involve no significant hazards consideration.

Local Public Document Room location: Dixon Public Library, 221 Hennepin Avenue, Dixon, Illinois 61021.

Attorney for licensee: Michael I. Miller, Esquire; Sidley and Austin, One First National Plaza, Chicago, Illinois 60603.

NRC Project Director: Stuart A. Richards.

Florida Power Corporation, et al., Docket No. 50–302, Crystal River Nuclear Generating Plant, Unit No. 3 (CR–3), Citrus County, Florida

Date of amendment request: October 30, 1998.

Description of amendment request: The proposed amendment would change the Crystal River Unit 3 (CR–3) Improved Technical Specifications (ITS) to delete a note regarding the number of required channels for the Degrees of Subcooling function, and to subdivide the Core Exit Temperature (Backup) function into two new functions in ITS Table 3.3.17–1, Post-Accident Monitoring Instrumentation.

These proposed ITS changes support modifications scheduled for Refueling Outage 11 at CR–3. These modifications are intended to significantly improve the reliability and availability of information to the control room operators for verifying adequate core cooling is maintained following a design basis accident. The proposed ITS change deletes the note describing the use of the SPDS as a backup since the SPDS will be the primary indication of subcooling margin after the planned modifications are implemented.

The planned modifications will separate the sixteen core exit thermocouples into two separate channels of eight core exit thermocouples each. Following the modifications, there will be two core exit thermocouples per channel located in each core quadrant. Each separate channel of eight core exit thermocouples will have an associated core exit temperature recorder on the main control board, instead of the current three recorders, and will provide input into the associated channel of SPDS for calculation of subcooling margin.

The proposed ITS change will subdivide the current Core Exit Temperature (Backup) function into two new functions, Core Exit Temperature (Thermocouple) function and Core Exit Temperature (Recorder) function. For the Core Exit Temperature (Thermocouple) function, the proposed ITS will require at least two OPERABLE core exit thermocouples per core quadrant (at least one per channel) to provide a representative distribution of temperatures across the core to the operator. For the Core Exit Temperature (Recorder) function, both core exit temperature recorders will be required OPERABLE.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below.

1. Involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed changes to the Degrees of Subcooling, Core Exit Temperature (Thermocouple), and Core Exit Temperature (Recorder) functions in the CR–3 Improved Technical Specifications (ITS) ensure appropriate post-accident monitoring instrumentation is available for use by the operators during implementation of emergency operating procedures. These emergency operating procedures provide direction to the operators for ensuring that actions required to mitigate the effects of the previously evaluated design basis accidents are performed. The instrumentation is used for monitoring by the operators after an accident occurs, perform no automatic functions, and there are no credible failures of this instrumentation which could initiate any accident previously evaluated. Therefore, the probability of occurrence of any accident previously evaluated is unaffected.

The availability and use of this instrumentation ensures that the prescribed manual operator actions for mitigating the consequences of an accident will be implemented when necessary, and that the operator has sufficient information to verify required automatic actions have occurred when necessary. The availability and use of the instrumentation provides assurance that the consequences of accidents will not be greater than that previously evaluated. The associated modifications that are planned for these post-accident monitoring instruments will enhance the reliability of the required indications to the operators.

2. Create the possibility of a new or different kind of accident from previously evaluated accidents?

The proposed changes to this post-accident monitoring instrumentation will ensure appropriate instrumentation is available for use by the operators following a design basis accident. This instrumentation is necessary for performing certain manual actions, or to verify automatic actions have occurred, which are required to mitigate the effects of a design basis accident. The instrumentation is used for monitoring by the operators after an accident occurs, perform no automatic functions, and there are no credible failures of this instrumentation which could initiate a new or different kind of accident. Therefore, the possibility of a new or different kind of accident occurring as a result of this passive instrumentation is not created.

3. Involve a significant reduction in a margin of safety?

The proposed changes to this post-accident monitoring instrumentation provide additional assurance that adequate instrumentation is available for use by the operators to perform manual actions, and to verify that automatic actions that are required to mitigate the effects of a design basis accident have occurred. The instrumentation is used for monitoring by the operators after an accident occurs, and perform no automatic functions. The availability and use of this instrumentation ensures that the prescribed manual operator actions for mitigating the consequences of an accident will be implemented when necessary, and that the operators have sufficient information to verify required automatic actions have occurred when necessary. These required manual and automatic actions are necessary to preserve the margin of safety as defined in the CR–3 ITS. The availability and use of this instrumentation provides assurance that the existing margin of safety will be maintained, and assumptions related to the margin of safety during mitigation of design basis accidents will be preserved. Therefore, the existing margin of safety will not be reduced.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied.

Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Coastal Region Library, 8619 W. Crystal Street, Crystal River, Florida 34428.

Attorney for licensee: R. Alexander Glenn, General Counsel, Florida Power Corporation, MAC—A5A, P.O. Box 14042, St. Petersburg, Florida 33733–4042.

NRC Project Director: Frederick J. Hebdon.

Florida Power Corporation, et al., Docket No. 50–302, Crystal River Nuclear Generating Plant, Unit No. 3 (CR–3), Citrus County, Florida

Date of amendment request: November 24, 1998.

Description of amendment request: The proposed amendment would change the CR–3 Improved Technical Specifications (ITS) in support of a modification to install a diesel-driven emergency feedwater (EFW) pump (EFP–3) which is intended to resolve capacity limitations of the CR–3 1A Emergency Diesel Generator (EGDG). The licensee has determined that installation of EFP–3 involves an unreviewed safety question and also requires changes and additions to the ITS and Bases.

EFP–3 will be installed as a functional replacement for EFP–1, the motor-driven EFW pump. EFP–3 will start and provide controlled and monitored EFW flow to both steam generators through the same EFW block and control valves as EFP–1 currently uses. The licensee stated that removing the auto-start logic from EFP–1 would eliminate the need to perform EGDG–1A load management to accommodate emergency safeguards (ES) loads required to mitigate design basis accidents. EFP–1 will remain available as a manually started pump. The installation of EFP–3 will also permit other changes in system operation which are intended to reduce reliance on operator actions to perform EGDG load management.

The proposed ITS and Bases changes fall into two categories: (1) new or revised ITS and Bases to account for equipment changes associated with the new EFP–3, and (2) those ITS and Bases requirements being deleted because they were approved until Cycle 12 only.

The new ITS requirements and revisions (category 1 changes) involve revised surveillance requirements (SR) and Bases for EFP–3 (SR 3.7.5), and new ITS and Bases for the diesel fuel oil supply, lube oil and starting air for EFP–3 (3.7.19). Also, the option to use EFP–3 for Once Through Steam Generator (OTSG) cooling is added to the Bases for 3.4.6, RCS Loops—MODE 5, Loops Filled. The Bases for 3.4.6, Background, lists all feedwater pumps that may be available in MODE 5. EFP–3 is added here for completeness.

The Bases for 3.7.5 are revised to describe the new EFP–3 and the new role for EFP–1 as a manual defense-in-depth pump. The Bases are also revised to indicate that EFP–3 cannot directly access the condenser hotwell. The phrase ''with the exception of the loss of all AC power (Ref. 3)'' is deleted from the Applicable Safety Analysis because with the addition of EFP–3, the EFW system is able to maintain its function on a loss of off-site power (LOOP) with a single failure.

In Section 3.7.5, EFW System, one SR is being revised and one new SR is being added. These changes are intended to provide SRs that demonstrate OPERABILITY of EFP–3 and essential subsystems. SR 3.7.5.1 and Bases are revised to add verification of proper valve position for starting air and fuel oil flow paths for EFP–3 on a 45-day frequency.

SR 3.7.5.6 is added to provide assurance that the DC electrical support system will be available to support OPERABILITY of EFP–3. This SR is based on a similar SR currently approved for the station DC system required by ITS 3.8.4, DC Sources—Operating. SR 3.7.5.6 was determined necessary because DC power is essential for starting EFP–3.

ITS 3.7.19 was added to ensure essential subsystems are within limits needed to maintain EFP–3 OPERABLE. The specification includes requirements for fuel oil, lube oil, and starting air. This specification has an allowed outage time (AOT) for these parameters if they are less than the limit but above a minimum value. Below the minimum allowed value, EFP–3 must be declared inoperable.

A number of ITS and Bases are being revised to remove the requirements that permitted operation of CR–3 until Cycle 12 only (category 2 changes). All text marked with the footnote ''Note—Valid until Cycle 12 only,'' and the note itself, is being deleted except for a few instances which are discussed in the licensee's submittal.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below.

4. Does not involve a significant increase in the probability or consequences of an accident previously evaluated.

This change involves the addition of a new safety-related Diesel-Driven Emergency Feedwater Pump (EFP–3). The Emergency Feedwater (EFW) System is not an initiator for any design basis accident except for those accidents associated with an increase in primary to secondary cooling and a loss of heat sink. The new EFP–3 functionally replaces the Motor-Driven Emergency Feedwater Pump (EFP–1) and is no more likely to cause an inadvertent cooldown than the existing EFP–1. The starting logic of the Emergency Feedwater Initiation and Control system is the same for EFP–3 as it was for EFP–1 before. No other control or logic changes are being made that would make EFP–3 more likely to cause a cooldown transient.

EFP–3 has a slightly greater probability of failing to start compared to EFP–1 with offsite power available. Therefore, there is a slight increase in the probability of an event that involves a loss of heat sink when considering only the Improved Technical Specifications (ITS) required EFW Pumps. The new EFP–3 will be highly reliable and therefore this increase in risk is not significant. Loss of EFP–3 alone does not cause a total loss of heat sink without the loss of the Turbine-Driven Emergency Feedwater Pump (EFP–2) and the remaining feedwater pumps. The most important of these feedwater pumps is EFP–1, which will be maintained as a safety-grade backup. EFP–3 is less reliable than EFP–1 with offsite power available. However, if offsite power is not lost, EFP–1 should be available for use. Therefore, the overall EFW system reliability is enhanced.

The consequences of the failure of EFP–3 to start or inadvertently actuate were considered. Failure of EFP–3 to start will have the same impact as failure of EFP–1. Therefore, the consequences of evaluated accidents are the same. EFP–3 will be designed to have minimum and maximum flows equivalent to EFP–1. No changes to the system will cause a decrease in the ability of the EFW system to remove heat from the Once Through Steam Generators (OTSGs). Similarly, the heat removal capability of EFP–3 will not be different than EFP–1. Therefore, there will not be the potential of a significantly greater overcooling event due to inadvertent start of EFP–3.

The license changes associated with the addition of EFP–3 remove a number of ITS Actions that established compensatory measures due to the possibility of overloading the Emergency Diesel Generators (EGDGs) and cross-train dependencies with EFP–2. These compensatory actions are no longer required. The changes to the EFW system eliminate EGDG limitations and reliance of the ''A'' train EFW pump on EFP–2. The revised ITS Actions ensure the equipment required to mitigate an accident is restored to OPERABLE status in accordance with previously approved limits. In addition, replacing required operator actions with automatic functions provides greater assurance that mitigating actions will occur. Therefore, these changes will not adversely affect the probability or consequences of evaluated accidents.

Based on the above, the addition of EFP–3 and the associated license changes do not involve a significant increase in the probability or consequences of a previously evaluated accident.

5. Does not create the possibility of a new or different kind of accident from any accident previously evaluated.

EFP–3 performs the same functions as the existing EFP–1. No plant conditions are changed to cause new or different accidents. Although a diesel engine has different failure modes than a motor-driven pump, the consequences of a pump failure are the same. An interlock and administrative controls are provided to ensure that both EFP–3 and EFP–1 do not run at the same time. The interlock and administrative controls prevent any new interactive failure modes that could be caused by having both ''A'' train pumps (or all three EFW pumps) operating at the same time.

The revised ITS Actions ensure equipment is restored to OPERABLE status in accordance with previously approved timeframes. No new plant configurations or conditions are created by these Actions.

Therefore, these changes cannot create the possibility of an accident of a different type than previously evaluated in the SAR [Safety Analysis Report].

6. Does not involve a significant reduction in the margin of safety.

EFP–3 is designed to meet the same performance criteria as EFP–1. EFP–3 will replace EFP–1 in the ITS. The pump will perform the same functions, will be reliable and meet the same design criteria. There are no functions performed by EFP–1 that will be significantly different with EFP–3. The

margin of safety provided by the specification relates to the ability to provide a heat sink. EFP–3 will provide the same margin of safety. In addition, EFP–1 will be available as a safety-grade backup and can deliver EFW to the OTSGs if offsite power is available or if the ''A'' train EGDG has adequate load margin.

The cooling capability of EFP–3 will be equivalent to EFP–1. Therefore, EFP–3 provides the same protection to the fuel cladding from temperature excursions as EFP–1. The EFP–3 modifications will be done without making penetrations through reactor coolant system (RCS) or containment boundaries. Therefore, the integrity of these fission product barriers remains unchanged.

The proposed changes to the ITS delete temporary restrictions placed on systems due to the potential to overload the EGDGs and cross-train dependencies with EFP–2. These compensatory actions are no longer required. The changes to the EFW system eliminate EGDG limitations and reliance of the ''A'' train EFW pump on EFP–2. The revised ITS Actions ensure the equipment required to mitigate an accident is restored to OPERABLE status in accordance with previously approved limits. In addition, replacing required operator actions with automatic functions provides greater assurance that mitigating actions will occur.

Based on the above evaluation, there is no reduction in the margin of safety associated with the proposed equipment, system and license changes.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Coastal Region Library, 8619 W. Crystal Street, Crystal River, Florida 34428.

Attorney for licensee: R. Alexander Glenn, General Counsel, Florida Power Corporation, MAC—A5A, P. O. Box 14042, St. Petersburg, Florida 33733–4042.

NRC Project Director: Frederick J. Hebdon.

Maine Yankee Atomic Power Company, Docket No. 50–309, Maine Yankee Atomic Power Station, Lincoln County, Maine

Date of amendment request: July 14, 1998.

Description of amendment request: The proposed amendment would amend the Technical Specifications to revise the liquid and gaseous release rates to reflect the replacement of the former 10 CFR 20.106 requirements with the existing 10 CFR 20.1302 requirements.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The proposed change does not:

1. Involve a significant increase in the probability or consequence of an accident previously evaluated.

The likelihood that an accident will occur is neither increased nor decreased by these Technical Specification changes. These Technical Specifications changes will not impact the function or method of operation of plant equipment. No systems, equipment, or components are affected by the proposed changes. The proposed revisions to the liquid and gaseous release rate limits will not result in any change or increase in the types or amounts of effluents other than that which has historically been deemed acceptable for release, nor will there be an increase in individual or cumulative occupational radiation exposures other than that which has historically been deemed acceptable. Therefore, the proposed changes to the Technical Specifications do not involve any increase in the probability or consequences of any accident previously evaluated.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes do not involve changes to the physical plant or operations. The proposed changes are administrative in nature and will not change the types and amounts of effluents from that which has historically been deemed acceptable. Since these administrative changes do not contribute to accident initiation, they do not produce a new accident scenario nor do they alter any existing accident scenarios. Therefore, the proposed changes to the Technical Specifications would not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Involve a significant reduction in a margin of safety.

The proposed changes will not reduce the margin of safety because compliance with the limits of the existing 10 CFR 20.1301 will be demonstrated by operating within the limits of 10 CFR Part 50, Appendix I and 40 CFR Part 190. For the liquid effluent releases the annual dose of 500 mrem, upon which the concentrations in the previous 10 CFR Part 20, Appendix B, Table II, Column 2, are based, is a factor of 10 higher than the annual dose of 50 mrem, upon which the concentrations in the existing 10 CFR 20, Appendix B, Table 2, Column 2, are based. Also, for gaseous effluent releases, the limits associated with the gaseous release Technical Specifications will be revised to the previously acceptable instantaneous dose rate limits.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Wiscasset Public Library, High Street, P.O. Box 367, Wiscasset, ME 04578.

Attorney for licensee: Mary Ann Lynch, Esquire, Maine Yankee Atomic Power Company, 321 Ferry Road, Wiscasset, ME 04578.

NRC Project Director: Seymour H. Weiss.

Northeast Nuclear Energy Company, (NNECO) et al., Docket No. 50–336, Millstone Nuclear Power Station, Unit No. 2, New London County, Connecticut

Date of amendment request: December 10, 1998.

Description of amendment request: The proposed amendment would allow NNECO to implement plant modifications that would ensure that proper flow paths can be established for boron precipitation control after a loss-of-coolant accident.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

In accordance with 10 CFR 50.92, NNECO [Northeast Nuclear Energy Company] has reviewed the proposed changes and has concluded that they do not involve a significant hazards consideration (SHC). The basis for this conclusion is that the three criteria of 10 CFR 50.92(c) are not compromised. The proposed changes do not involve an SHC because the changes would not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed plant modifications will ensure proper flow paths can be established for boron precipitation control after a Loss of Coolant Accident

(LOCA). This will be accomplished by the following plant modifications:

a. Provide an alternate AC source of power for 2–SI–651, ''Shutdown Cooling Header Containment Isolation Valve,'' a Facility Z1 component, from Facility Z2.

b. Provide an alternate DC source of power for 2–CH–517, ''Auxiliary Spray Charging Header Supply Valve,'' a Facility Z2 component, from Facility Z1.

c. Provide an alternate DC source of power for 2–CH–519, ''Loop 1A Charging Header Supply Valve,'' a Facility Z2 component, from Facility Z1.

d. Provide test jacks to determine valve position for LPSI [low-pressure safety injection] injection valves 2–SI–615, 2–SI–625, 2–SI–635, and 2–SI–645 at the respective motor control center (MCC [motor control center] B51 for 2–SI–615 and 2–SI–625 (MCC B61 for 2–SI–635 and 2–SI–645).

e. Provide bypass capability of the low pressure open permissive for 2–SI–651.

The alternate power supply to valves 2–SI–651, 2–CH–517 and 2–CH–519, and the position indication for valves 2–SI–615, 2–SI–625, 2–SI–635, and 2–SI–645 cannot initiate an accident. The proposed modifications will not change the design parameters, failure positions or design requirements of the valves. The proposed plant modifications will ensure valves 2–SI–651, 2–CH–517 and 2–CH–519 can operate after a LOCA to perform their accident mitigating functions. Therefore, providing an additional power source to 2–SI–651, 2–CH–517 and 2–CH–519, and a local means of determining the position of valves 2–SI–615, 2–SI–625, 2–SI–635, and 2–SI–645 cannot initiate an accident and will not adversely affect the function of these components to mitigate the consequences of an accident.

The proposed plant modifications will also bypass the open permissive for 2–SI–651. This pressure permissive, which protects the low pressure Shutdown Cooling (SDC) System from the high pressure Reactor Coolant System (RCS), allows 2–SI–651 to be opened only when pressurizer pressure is below 280 psia [pounds per square inch absolute]. This pressure permissive would be disabled upon a loss of Facility Z1 power. This would prevent the opening of 2–SI–651. The new local control switch for 2–SI–651, which bypasses this pressurizer pressure permissive, is isolated by normally open relay contacts. When aligned to its alternate power, local control is enabled, and remote control in the Main Control Room is isolated. Multiple operator errors would be required to align 2–SI–651 to the alternate power source during normal operation. To misalign these valves, an equipment operator would have to perform steps located only in an Emergency Operating Procedure. Additionally, control room operators would have to disregard annunciators that indicate the valves are being transferred to their alternate power source. Therefore, the only time the valve is expected to be opened by the local control switch is after a LOCA with a Facility Z1 failure. Currently, the potential exists for an operator to open the valve when pressure is above 280 psia. An undetectable single failure of the contact which provides the permissive would allow an operator to open the valve even when pressure is above 280 psia. During normal operation, this condition would be annunciated in the Main Control Room. During accident conditions, this annunciator may be disabled. Therefore, 2–SI–651 could be opened with pressurizer pressure above 280 psia without annunciation. Although 2–SI–651 could be opened, the pressure permissive for 2–SI–652, the upstream isolation valve (Attachment 1 Figure 1), would prevent 2–SI–652 from opening. This would protect the shutdown cooling suction line from overpressurization. During accident conditions, if both valves were opened and pressure increased above 280 psia, annunciation of 2–SI–652 being open would be available to provide indication of the potential overpressure condition. Therefore, the installation of the capability to bypass the open permissive for 2–SI–651 will not result in a significant increase in the probability or consequences of an accident previously evaluated.

The proposed plant modifications have no adverse effect on how any of the associated systems or components function to prevent or mitigate the consequences of design basis accidents. Also, the proposed changes have no adverse effect on any design basis accident previously evaluated since the modifications will ensure that accident mitigation equipment will be available to function as assumed in the LOCA analysis. Therefore, the proposed plant modifications do not result in a significant increase in the probability or consequences of an accident previously evaluated.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed plant modifications will provide the capability of powering 2–SI–651, 2–CH–517 and 2–CH–519 from either Facility Z1 or Facility Z2, and will add test jacks to MCC B51 and B61 to determine the position of valves 2–SI–615, 2–SI–625, 2–SI–635, and 2–SI–645. Additionally, this activity adds a local control switch which will bypass the open permissive for 2–SI–651 when aligned to the alternate power source. A single failure in any of the breakers or disconnect switches which allow 2–SI–651, 2–CH–517 and 2–CH–519 to be powered from either facility is bounded by the failure of the valve. A failure of any of the test jacks may result in a loss of control power to the associated valves. This failure is also bounded by the failure of the valve. During normal operation the local control switch which bypasses the pressure permissive is isolated by normally open contacts. A single failure of the local control switch or isolating relay during normal operation cannot disable the pressure permissive.

Since a single failure of any component added by this activity is bounded by existing component failures, a failure of these components cannot create a new accident. Therefore, the proposed plant modifications will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Involve a significant reduction in a margin of safety.

The proposed plant modifications will ensure boron precipitation control can be established. This will be accomplished by providing an alternate power source for 2–SI–651, 2–CH–517 and 2–CH–519, and adding test jacks to determine the position of valves 2–SI–615, 2–SI–625, 2–SI–635, and 2–SI–645. Additionally, this activity adds a local control switch which will bypass the open permissive for 2–SI–651 when aligned to the alternate power source. Although the potential exists to route redundant power trains in the same cable trays, conduits and cable, the design of the modifications ensures that a single failure will not compromise the redundant power distribution system. The installation of the connection jacks and local control switch will not alter the failure analysis for the valves, and will not change the design parameters of the valves (i.e. pressure rating). Therefore, the proposed plant modifications will not compromise RCS pressure boundaries, containment integrity, or fuel cladding. In addition, the new disconnect switches, breakers, cabling, and auxiliary components are all designed for the rated voltages and currents, and are QA [quality assurance] Category I seismically and environmentally qualified, as required.

Based on the above, the proposed plant modifications will not reduce the integrity of the plant protective boundaries, or adversely affect the LOCA analysis. These modifications will have no adverse effect on equipment important to safety. The equipment will continue to function as assumed in the design basis accident analysis. This will ensure that the acceptance criteria of 10 CFR 50.46(b)(5) for long term core cooling will be met. Therefore, there will be no significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Learning Resources Center, Three Rivers Community-Technical College, 574 New London Turnpike, Norwich, Connecticut, and the Waterford Library, ATTN: Vince Juliano, 49 Rope Ferry Road, Waterford, Connecticut.

Attorney for licensee: Lillian M. Cuoco, Esq., Senior Nuclear Counsel, Northeast Utilities Service Company, P.O. Box 270, Hartford, Connecticut.

NRC Project Director: William M. Dean.

Public Service Electric & Gas Company, Docket No. 50–354, Hope Creek Generating Station, Salem County, New Jersey

Date of amendment request: December 16, 1998.

Description of amendment request: The proposed amendment would revise Technical Specification (TS) Surveillance Requirements 4.8.1.1.2 and 4.8.1.1.3, Table 4.8.1.1.2–1, and the associated Bases. The proposed changes would remove the Emergency Diesel Generator accelerated testing and special reporting requirements from the TSs in accordance with the guidance provided in Generic Letter 94–01.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed TS changes do not involve any physical changes to plant structures, systems, or components. [Public Service Electric & Gas Company] PSE&G has implemented the provisions of the Maintenance Rule for diesel generators, including the associated regulatory guidance, thereby establishing a program that assures diesel generator performance. The elements of the program include the performance of detailed root cause analysis of individual failures, effective corrective actions taken in response to individual failures, and implementation of preventive maintenance consistent with the Maintenance Rule. Monitoring the effectiveness of diesel generator maintenance and continuing surveillance testing in accordance with the proposed TS changes will ensure that the diesel generators will perform their intended functions and will minimize failures. The accelerated testing requirements are therefore no longer considered to be necessary and are deleted. The requirements of 10 CFR 50.72 and 10 CFR 50.73 ensure that diesel generator failures are properly reported. The special reporting requirements are therefore unnecessary and are deleted. Based on the above information, the changes will not adversely affect the assurance of diesel generator reliability or operability, and there is no significant increase in the probability or consequences of any accident previously evaluated.

(2) The proposed change does not create the possibility of a new or different kind of accident from any accident previously analyzed.

The proposed TS changes do not involve any physical changes to the design of plant systems, structures or components, nor do the changes involve a change in plant operation. The diesel generators will continue to function as designed to mitigate the consequences of an accident. Eliminating the accelerated testing requirements and special reporting requirements does not permit plant operation in a configuration that would create a different type of malfunction to the diesel generators than any previously evaluated. In addition, the proposed TS changes do not alter the conclusions described in the [Updated Final Safety Analysis Report] UFSAR regarding the safety related functions of the diesel generators or their support systems. No new failure modes will be introduced. Therefore, the proposed changes will not create the possibility of a new or different kind of accident from any accident previously evaluated.

(3) The proposed change does not involve a significant reduction in a margin of safety.

This request does not involve an adverse impact on diesel generator design, operation, or reliability. Since monitoring and maintenance is being performed in conformance with 10 CFR 50.65, modifying the surveillance testing frequency requirements does not adversely affect the reliability of the diesel generators. Deletion of the special reporting requirements does not impact operability or reliability of the diesel generator. Since the diesel generator function is not affected by the proposed change, this request does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Pennsville Public Library, 190 S. Broadway, Pennsville, NJ 08070.

Attorney for licensee: Jeffrie J. Keenan, Esquire, Nuclear Business Unit—N21, P.O. Box 236, Hancocks Bridge, NJ 08038.

NRC Project Director: Robert A. Capra.

Previously Published Notices of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The following notices were previously published as separate individual notices. The notice content was the same as above. They were published as individual notices either because time did not allow the Commission to wait for this biweekly notice or because the action involved exigent circumstances. They are repeated here because the biweekly notice lists all amendments issued or proposed to be issued involving no significant hazards consideration.

For details, see the individual notice in the **Federal Register** on the day and page cited. This notice does not extend the notice period of the original notice.

Indiana Michigan Power Company, Docket, Nos. 50–315 and 50–316, Donald C. Cook Nuclear Plant, Units 1 and 2, Berrien County, Michigan

Date of application for amendments: December 3, 1998.

Brief description of amendments: The amendments would revise Technical Specification Section 4.6.5.1, ''Ice Condenser, Ice Bed,'' and the associated bases to reflect the maximum ice condenser flow channel blockage assumed in the accident analyses.

Date of publication of individual notice in **Federal Register**: December 28, 1998.

Expiration date of individual notice: January 27, 1999.

Local Public Document Room location: Maud Preston Palenske Memorial Library, 500 Market Street, St. Joseph, MI 49085.

Notice of Issuance of Amendments To Facility Operating Licenses

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for A Hearing in connection with these actions was published in the **Federal Register** as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendment, (2) the amendment, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment as indicated. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document rooms for the particular facilities involved.

Arizona Public Service Company, et al., Docket Nos. STN 50–528 and STN 50–529, Palo Verde Nuclear Generating Station, Units Nos. 1, 2, and 3, Maricopa County, Arizona

Date of application for amendment: October 6, 1998.

Brief description of amendment: The amendments revise Technical Specifications (TS) 3.3.1, ''Reactor Protective System (RPS) Instrumentation—Operating,'' and TS 3.3.2, ''Reactor Protective System (RPS) Instrumentation—Shutdown.'' The amendments clarify the power level threshold at which certain RPS instrumentation trips must be enabled and may be bypassed, and clarify that this level is a percentage of the neutron flux at rated thermal power (RTP). The bypass power level, 1E–4% RTP, is specified as logarithmic power instead of thermal power. The NRC approved these changes for Palo Verde Unit 3 on an exigent basis in its letter dated October 19, 1998. The exigent TS amendment resulted in TS pages with notes specifying different requirements between Unit 3 and Units 1 and 2. These amendments remove these notes regarding Unit 3 from the affected TS pages so that all Units now have the same TS.

Date of issuance: December 23, 1998.

Effective date: December 23, 1998.

Amendment No.: Unit 1–119; Unit 2–119.

Facility Operating License Nos. NPF–41 and NPF–51: The amendment revised the Technical Specifications.

Date of initial notice in **Federal Register**: November 4, 1998 (63 FR 59586).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 23, 1998.

No significant hazards consideration comments received: No.

Local Public Document Room location: Phoenix Public Library, 1221 N. Central Avenue, Phoenix, Arizona 85004.

Boston Edison Company, Docket No. 50–293, Pilgrim Nuclear Power Station, Plymouth County, Massachusetts

Date of application for amendment: February 11, 1998.

Brief description of amendment: The Updated Final Analysis Report (UFSAR) describes the response of the salt service water (SSW) system to a complete loss of AC power by assuming that the system would be divided by the closure of one of the two division isolation valves. Boston Edison Company (BECo) has discovered single failures involving a partial loss of AC power could place the SSW system in a configuration of one pump supplying both trains of heat exchangers for the first 10 minutes of the worst case design basis accident. BECo has determined that these single failures are an unreviewed safety question. The amendment authorizes BECo to change UFSAR Section 10.7, ''Salt Service Water System,'' to address this single fauilure vulnerability.

Date of issuance: December 21, 1998.

Effective date: December 21, 1998.

Amendment No.: 180.

Facility Operating License No. DPR–35: Amendment revised the UFSAR.

Date of initial notice in **Federal Register**: April 8, 1998, (63 FR 17220)

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 21, 1998.

No significant hazards consideration comments received: No.

Local Public Document Room location: Plymouth Public Library, 11 North Street, Plymouth, Massachusetts 02360.

Carolina Power & Light Company, et al., Docket No. 50–400, Shearon Harris Nuclear Power Plant, Unit 1, Wake and Chatham Counties, North Carolina

Date of application for amendment: March 10, 1997, as supplemented May 23, 1997, and October 15, 1998.

Brief description of amendment: This amendment revises Technical Specification (TS) 3.5.1, ''Emergency Core Cooling System (ECCS) Accumulators,'' by (1) increasing the allowed outage time (from 1 hour to 72 hours) that one ECCS accumulator can be inoperable as a result of the boron concentration being outside of TS limits, and (2) modifying surveillance requirement 4.5.1 consistent with the guidance provided in NUREG–1366, ''Improvements to Technical Specifications Surveillance Requirements,'' December 1992, and the Standard Technical Specifications (STS) for Westinghouse Plants, NUREG-1431, Revision 1.

Date of issuance: December 31, 1998.

Effective date: December 31, 1998.

Amendment No.: 86.

Facility Operating License No. NPF–63: Amendment revises the Technical Specifications

Date of initial notice in **Federal Register**: April 9, 1997 (62 FR 17226).

The May 23, 1997, and October 15, 1998, submittals contained clarifying information only, and did not change the initial no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 31, 1998.

No significant hazards consideration comments received: No.

Local Public Document Room location: Cameron Village Regional Library, 1930 Clark Avenue, Raleigh, North Carolina 27605

Consumers Energy Company, Docket No. 50—155, Big Rock Point (BRP) Plant, Charlevoix County, Michigan

Date of application for amendment: September 19, 1997.

Brief Description of amendment: This amendment changes the DPR—6 License and revises its Technical Specifications to reflect the permanently shutdown and defueled condition of the BRP plant.

Date of issuance: December 24, 1998.

Effective date: No later than 45 days from date of issuance.

Amendment No.: 120.

Facility Operating License No. DPR–6: The amendment revises the DPR—6 License and Appendix A Technical Specifications to the licensee.

Date of initial notice in **Federal Register**: December 3, 1997 (62 FR 63974).

No significant hazards consideration comments received: No.

Local Public Document Room location: North Central Michigan College Library, 1515 Howard Street, Petoskey, MI 49770.

Duquesne Light Company, et al., Docket Nos. 50–334 and 50–412, Beaver Valley Power Station, Unit Nos. 1 and 2, Shippingport, Pennsylvania

Date of application for amendments: July 13, 1998.

Brief description of amendments: These amendments change the Beaver Valley Power Station, Unit Nos. 1 and 2 (BVPS–1 and BVPS–2) Updated Final Safety Analysis Reports (UFSAR) descriptions of the Intake Structure main entrance and interconnecting cubicle doors. The changes approved by these amendments address a new failure mode of safety-related equipment that had not been previously considered for BVPS–1. The changes state that the cubicle interconnecting flood protection doors are normally closed with their inflatable seals depressurized and that the associated security/fire doors are normally closed. This door closure arrangement provides protection for the safety-related equipment in the interconnecting cubicles from the consequences of potential internal flooding.

Date of issuance: December 16, 1998.

Effective date: December 16, 1998.

Amendment Nos.: 218 and 96.

Facility Operating License Nos. DPR–66 and NPF–73: Amendments approve changes to the Updated Final Safety Analysis Reports.

Date of initial notice in **Federal Register**: August 12, 1998 (63 FR 43202)

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated December 16, 1998.

No significant hazards consideration comments received: No.

Local Public Document Room location: B.F. Jones Memorial Library, 663 Franklin Avenue, Aliquippa, PA 15001.

Duquesne Light Company, et al., Docket No. 50–334, Beaver Valley Power Station, Unit No. 1, Shippingport, Pennsylvania

Date of application for amendment: June 18, 1996, as supplemented September 8 and 30, 1998.

Brief description of amendment: The amendment (1) makes editorial changes to Technical Specification (TS) 4.4.5 and associated Bases; (2) revises the Bases for TS 3.4.6.2 to provide consistency with the Beaver Valley Power Station, Unit No. 1, Updated Final Safety Analysis Report (UFSAR); and (3) revises Index Page XVII to reflect the revision of page numbers due to shifting of text by License Amendment No. 198.

Date of issuance: December 21, 1998.

Effective date: As of date of issuance, to be implemented within 60 days.

Amendment No: 219.

Facility Operating License No. DPR–66. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register**: November 18, 1998 (63 FR 64109).

The September 8 and 30, 1998, letters did not change the initial proposed no significant hazards consideration determination or expand the amendment request beyond the scope of the November 18, 1998, **Federal Register** notice; these letters only provided updated TS pages to be consistent with the UFSAR.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 21, 1998.

No significant hazards consideration comments received: No.

Local Public Document Room location: B. F. Jones Memorial Library, 663 Franklin Avenue, Aliquippa, PA 15001.

Entergy Operations, Inc., Docket No. 50–313, Arkansas Nuclear One, Unit No. 1, Pope County, Arkansas

Date of amendment request: May 31, 1996.

Brief description of amendment: The amendment revises the surveillance test interval for the reactor protection system reactor trip breakers, reactor trip modules, and electronic trip relays from a monthly interval to a quarterly interval.

Date of issuance: December 31, 1998.

Effective date: December 31, 1998.

Amendment No.: 194.

Facility Operating License No. DPR–51: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register**: August 28, 1996 (61 FR 44356).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 31, 1998.

No significant hazards consideration comments received: No.

Local Public Document Room location: Tomlinson Library, Arkansas Tech University, Russellville, AR 72801.

Entergy Operations, Inc., Docket No. 50–368, Arkansas Nuclear One, Unit 2, Pope County, Arkansas

Date of amendment request: May 18, 1998, as supplemented on December 8, 1998.

Brief description of amendment: The amendment allows the use of trisodium phosphate stored in three baskets on the containment floor as a replacement to the sodium hydroxide addition system for the control of sump pH during long term core cooling in recirculation phase.

Date of issuance: December 23, 1998.

Effective date: The license amendment is effective as of its date of issuance to be implemented prior to the facility's restart from refueling outage 2R13.

Amendment No.: 194.

Facility Operating License No. NPF–6: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register**: October 21, 1998 (63 FR 56241)

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 23, 1998.

No significant hazards consideration comments received: No.

Local Public Document Room location: Tomlinson Library, Arkansas Tech University, Russellville, AR 72801.

Entergy Operations, Inc., Docket No. 50–368, Arkansas Nuclear One, Unit No. 2, Pope County, Arkansas

Date of application for amendment: July 28, 1997.

Brief description of amendment: The amendment modifies the actions associated with Technical Specification (TS) Table 3.3–1 for the Reactor Protective Instrumentation and TS Table 3.3–3 for the Engineered Safety Feature Actuation System Instrumentation.

Date of issuance: December 29, 1998.

Effective date: December 29, 1998, to be implemented within 30 days.

Amendment No.: 195.

Facility Operating License No. NPF–6: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register**: August 27, 1997 (62 FR 45456).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 29, 1998.

No significant hazards consideration comments received: No.

Local Public Document Room location: Tomlinson Library, Arkansas Tech University, Russellville, AR 72801.

Entergy Operations, Inc., Docket No. 50–368, Arkansas Nuclear One, Unit No. 2, Pope County, Arkansas

Date of application for amendment: June 29, 1998, as supplemented by letters dated December 17, 1998 and December 22, 1998.

Brief description of amendment: This amendment revises the as-found lift setting tolerance for the ANO–2 main steam safety valves and the pressurizer safety valves, revises the maximum allowable linear power level-high trip setpoint with inoperable steam line safety valves, and relocates part of the specifications for steam line safety valves to the ANO–2 Safety Analysis Report. Administrative and bases changes have also been made.

Date of issuance: December 31, 1998.

Effective date: The license amendment is effective as of its date of issuance to be implemented within 30 days.

Amendment No.: 197.

Facility Operating License No. NPF–6: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register**: October 21, 1998 (63 FR 56242).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 31, 1998.

No significant hazards consideration comments received: No.

Local Public Document Room location: Tomlinson Library, Arkansas Tech University, Russellville, AR 72801.

Entergy Operations, Inc., Docket No. 50–382, Waterford Steam Electric Station, Unit 3, St. Charles Parish, Louisiana

Date of amendment request: August 12, 1998.

Brief description of amendment: The amendment changes the Technical Specifications by increasing the maximum boron concentration in the Safety Injection Tanks (SITs) and the Refueling Water Storage Pool (RWSP) from 2300 ppm to 2900 ppm.

Date of issuance: December 21, 1998.

Effective date: December 21, 1998, to be implemented within 60 days.

Amendment No.: 147.

Facility Operating License No. NPF–38: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register**: October 21, 1998 (63 FR 56249).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 21, 1998.

No significant hazards consideration comments received: No.

Local Public Document Room location: University of New Orleans Library, Louisiana Collection, Lakefront, New Orleans, LA 70122.

Indiana Michigan Power Company, Docket Nos. 50–315 and 50–316, Donald C. Cook Nuclear Plant, Units 1 and 2, Berrien County, Michigan

Date of application for amendments: June 11, 1996, and supplemented March 26, 1997.

Brief description of amendments: The amendments relocate certain quality assurance related requirements from the TS to the licensee's Quality Assurance Program Description.

Date of issuance: December 28, 1998.

Effective date: December 28, 1998, with full implementation within 120 days.

Amendment Nos.: 226 and 210.

Facility Operating License Nos. DPR–58 and DPR–74: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register**: July 31, 1996 (61 FR 40022).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated December 28, 1998.

No significant hazards consideration comments received: No.

Local Public Document Room location: Maud Preston Palenske Memorial Library, 500 Market Street, St. Joseph, MI 49085.

Indiana Michigan Power Company, Docket No. 50–315 , Donald C. Cook Nuclear Plant, Unit 1, Berrien County, Michigan

Date of application for amendment: August 28, 1998, as supplemented November 4, 1998.

Brief description of amendment: The amendment grants relief from the steam generator surveillance requirement in Section 4.4.5.3 of the Technical Specifications (TS). The surveillance requirement is associated with non-destructive examination of the steam generator tubes which is required every 24 months. The relief allows the examination to be deferred from April 8, 1999, until the next refueling outage for D.C. Cook, Unit 1.

Date of issuance: December 30, 1998.

Effective date: December 30, 1998, with full implementation within 45 days.

Amendment No.: 227.

Facility Operating License No. DPR–58: Amendment adds paragraph 2.C.(9) to the License.

Date of initial notice in **Federal Register**: October 7, 1998 (63 FR 53950).

The November 4, 1998, submittal provided additional information that did not change the initial no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 30, 1998.

No significant hazards consideration comments received: No.

Local Public Document Room location: Maud Preston Palenske Memorial Library, 500 Market Street, St. Joseph, MI 49085.

Niagara Mohawk Power Corporation, Docket No. 50–410, Nine Mile Point Nuclear Station, Unit 2, Oswego County, New York

Date of application for amendment: April 30, 1997, as supplemented November 12, 1998.

Brief description of amendment: The amendment deletes TSs requirements associated with meterological monitoring instrumentation which have been relocated to the Updated Safety Analysis Report in accordance with 10 CFR 50.36 and the guidance in NRC Generic Letter 95–10, ''Relocation of Selected Technical Specification Requirements Related to Instrumentation.''

Date of issuance: December 22, 1998.

Effective date: As of the date of issuance to be implemented within 30 days.

Amendment No.: 85.

Facility Operating License No. NPF–69: Amendment revises the Technical Specifications.

Date of initial notice in **Federal Register**: June 18, 1997 (62 FR 33126).

The November 12, 1998, letter provided clarifying information that did not change the initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 22, 1998.

No significant hazards consideration comments received: No.

Local Public Document Room location: Reference and Documents

Department, Penfield Library, State University of New York, Oswego, New York 13126.

Northeast Nuclear Energy Company (NNECO), et al., Docket No. 50–336, Millstone Nuclear Power Station, Unit No. 2, New London County, Connecticut

Date of application for amendment: September 19, 1995.

Brief description of amendment: The amendment reduces the frequency of the Technical Specification (TS) 4.5.1.d surveillance interval for boron concentration of the safety injection tasks from once per 31 days to once every 6 months. Initially, the change was requested for TS Section 4.5.1.b. However, TS Section 4.5.1.b was subsequently changed to TS Section 4.5.1.d by Amendment No. 220 to Facility Operating License No. DPR–65 dated September 3, 1998, in response to NNECO's application dated August 23, 1995.

Date of issuance: December 17, 1998.

Effective date: As of the date of issuance to be implemented within 60 days from the date of issuance.

Amendment No.: 221.

Facility Operating License No. DPR–65: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register**: October 25, 1995 (60 FR 54722).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 17, 1998

No significant hazards consideration comments received: No.

Local Public Document Room location: Learning Resources Center, Three Rivers Community-Technical College, 574 New London Turnpike, Norwich, Connecticut, and the Waterford Library, ATTN: Vince Juliano, 49 Rope Ferry Road, Waterford, Connecticut.

Northeast Nuclear Energy Company, et al., Docket No. 50–336, Millstone Nuclear Power Station, Unit No. 2, New London County, Connecticut

Date of application for amendment: July 2, 1998.

Brief description of amendment: The amendment revises the Updated Final Safety Analysis Report (UFSAR) by changing UFSAR Sections 9.7.2, ''Service Water,'' and 9.4, Reactor Building Closed Cooling Water,'' to include in the discussions the use of various types of internal protective coatings and liners used in the piping and components of the systems. The change also indicates that periodic maintenance, surveillance, and inspections will be conducted to ensure that coating or liner degradation will be promptly detected and corrected to provide reasonable assurance that the systems can perform their safety-related functions.

Date of issuance: December 18, 1998.

Effective date: As of the date of issuance to be implemented within 60 days from the date of issuance.

Amendment No.: 222.

Facility Operating License No. DPR–65: Amendment revised the Updated Final Safety Analysis Report and Appendix B to Operating License.

Date of initial notice in **Federal Register**: August 12, 1998 (63 FR 43206).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 18, 1998.

No significant hazards consideration comments received: No.

Local Public Document Room location: Learning Resources Center, Three Rivers Community-Technical College, 574 New London Turnpike, Norwich, Connecticut, and the Waterford Library, ATTN: Vince Juliano, 49 Rope Ferry Road, Waterford, Connecticut.

Northern States Power Company, Docket No. 50–263, Monticello Nuclear Generating Plant, Wright County, Minnesota

Date of application for amendment: July 5, 1995, as supplemented October 9, 1998.

Brief description of amendment: The amendment extends surveillance test intervals and allowable out-of-service times for instrumentation in the Emergency Core Cooling (ECCS), Rod Block, Isolation Group 4 (High Pressure Coolant Injection, or HPCI) and Isolation Group 5 (Reactor Core Isolation Cooling, or RCIC), Reactor Building Ventilation & Standby Gas Treatment, Recirculation Pump Trip and Alternate Rod Injection, and Shutdown Cooling Supply Isolation Systems.

Date of issuance: December 23, 1998.

Effective date: December 23, 1998, with full implementation within 30 days.

Amendment No.: 103.

Facility Operating License No. DPR–22. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register**: August 30, 1995 (60 FR 45182). The October 9, 1998, submittal withdrew a portion of the original request, made additional editorial changes, and provided updated Technical Specification pages. This information was within the scope of the original **Federal Register** notice and did not change the staff's initial proposed no significant hazards considerations determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 23, 1998.

No significant hazards consideration comments received: No.

Local Public Document Room location: Minneapolis Public Library, Technology and Science Department, 300 Nicollet Mall, Minneapolis, Minnesota 55401.

Northern States Power Company, Docket No. 50–263, Monticello Nuclear Generating Plant, Wright County, Minnesota

Date of application for amendment: August 15, 1996, as supplemented March 19 and October 12, 1998.

Brief description of amendment: The amendment revises the Technical Specifications so that either 8 or 12 hour shifts will be considered ''normal'' and 40 hours will be considered a ''nominal'' week, changes the wording for surveillances required ''once per shift'' to ''once per 12 hours,'' clarifies the ''once per hour'' wording related to fire watch patrols, and makes a number of other clarifications and typographical corrections.

Date of issuance: December 24, 1998.

Effective date: December 24, 1998, with full implementation within 30 days.

Amendment No.: 104.

Facility Operating License No. DPR–22: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register**: October 7, 1998 (63 FR 53951). The October 12, 1998, submittal provided additional clarifications and new TS pages. This information was within the scope of the original **Federal Register** notice and did not change the staff's initial proposed no significant hazards considerations determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 24, 1998.

No significant hazards consideration comments received: No.

Local Public Document Room location: Minneapolis Public Library, Technology and Science Department, 300 Nicollet Mall, Minneapolis, Minnesota 55401.

Northern States Power Company, Docket Nos. 50–282 and 50–306, Prairie Island Nuclear Generating Plant, Unit Nos. 1 and 2, Goodhue County, Minnesota

Date of application for amendments: December 14, 1995, as supplemented on November 25, 1996, April 10, September 4, and December 29, 1997, January 8, March 2, June 11, August 12, and October 30, 1998.

Brief description of amendments: The amendments revise Technical Specifications (TS) Table of Contents; TS 3.1, ''Reactor Coolant System;'' TS 4.0, ''Surveillance Requirements;'' TS 5.0, ''Design Features;'' and associated Bases by removing or relocating requirements that are adequately controlled by existing regulations other than 10 CFR 50.36 and the TS and by modifying TS 6.0 to more closely meet the format and content of the standard technical specifications.

Date of issuance: December 7, 1998.

Effective date: December 7, 1998, with full implementation of the TS and License Condition 7 by September 1, 1999. License Condition 6 shall be implemented by the next USAR update, but no later than June 1, 1999. Implementation shall also include the relocation of TS requirements to the appropriate licensee-controlled documents as identified in the licensee's application dated December 14, 1995, as supplemented on November 25, 1996, April 10, September 4, and December 29, 1997, January 8, March 2, June 11, August 12, and October 30, 1998, and evaluated in the staff's safety evaluation attached to these amendments.

Amendment Nos.: 141 and 132.

Facility Operating License Nos. DPR–42 and DPR–60: Amendments revised the Licenses and TS.

Date of initial notice in **Federal Register**: June 5, 1996 (61 FR 28618). The November 25, 1996, April 10, September 4, and December 29, 1997, January 8, March 2, June 11, August 12, and October 30, 1998, submittals provided additional clarifying information, revised implementation dates, and updated TS pages. This information was within the scope of the original **Federal Register** notice and did not change the staff's initial proposed no significant hazards considerations determination.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated December 7, 1998. '

No significant hazards consideration comments received: No.

Local Public Document Room location: Minneapolis Public Library, Technology and Science Department, 300 Nicollet Mall, Minneapolis, Minnesota 55401.

Northern States Power Company, Docket Nos. 50–282 and 50–306, Prairie Island Nuclear Generating Plant, Unit Nos. 1 and 2, Goodhue County, Minnesota

Date of application for amendments: September 4, 1998.

Brief description of amendments: The amendments revise Technical Specifications (TS) 3.1.A.3.b, 4.18, and Bases for TS 4.18 to clarify the surveillance requirements and limiting conditions for operation of the reactor coolant vent system.

Date of issuance: December 17, 1998.

Effective date: December 17, 1998, with full implementation within 30 days.

Amendment Nos.: 142 and 133.

Facility Operating License Nos. DPR–42 and DPR–60: Amendments revised the TS.

Date of initial notice in **Federal Register**: September 23, 1998 (63 FR 50938).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated December 17, 1998.

No significant hazards consideration comments received: No.

Local Public Document Room location: Minneapolis Public Library, Technology and Science Department, 300 Nicollet Mall, Minneapolis, Minnesota 55401.

Omaha Public Power District, Docket No. 50–285, Fort Calhoun Station, Unit No. 1, Washington County, Nebraska

Date of amendment request: April 17, 1997.

Brief description of amendment: The amendment revises Technical Specifications (TS) 2.12, ''Control Room Systems,'' to delete the limiting condition for operation (LCO) and surveillance for control room temperature and replace it with an associated LCO and surveillance for the control room air conditioning system. In addition, the amendment revises TS 2.1, ''Reactor Coolant System,'' TS 2.6, ''Containment System,'' and TS 2.8, ''Refueling Operations,'' and the associated surveillance requirements to incorporate the design basis requirements for refueling operations and to correspond to NUREG–1432, ''Standard Technical Specifications Combustion Engineering Plants.''

Date of issuance: December 31, 1998.

Effective date: December 31, 1998, to be implemented within 60 days from the date of issuance.

Amendment No.: 188.

Facility Operating License No. DPR–40. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register**: June 4, 1997 (62 FR 30639).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 31, 1998.

No significant hazards consideration comments received: No.

Local Public Document Room location: W. Dale Clark Library, 215 South 15th Street, Omaha, Nebraska 68102.

Power Authority of the State of New York, Docket No. 50–286, Indian Point Nuclear Generating Unit No. 3, Westchester County, New York

Date of application for amendment: April 16, 1998, as supplemented August 20, 1998.

Brief description of amendment: The amendment will extend the surveillance interval for five instrument channels from the current 18 months to 24 months. The proposed amendment also revises Section 6 of the Technical Specifications to reflect updated analyses.

Date of issuance: December 16, 1998.

Effective date: As of the date of issuance to be implemented within 30 days.

Amendment No.: 185.

Facility Operating License No. DPR–64: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register**: October 21, 1998 (63 FR 56256).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 16, 1998.

No significant hazards consideration comments received: No.

Local Public Document Room location: White Plains Public Library, 100 Martine Avenue, White Plains, New York 10610.

Power Authority of the State of New York, Docket No. 50–333, James A. FitzPatrick Nuclear Power Plant, Oswego County, New York

Date of application for amendment: July 6, 1998.

Brief description of amendment: The amendment revises Appendix B Technical Specification 3.5, Main Condenser Steam Jet Air Ejector and Table 3.10–1, Radiation Monitoring Systems that Initiate and /or Isolate Systems including the associated Bases to provide Allowable Outage Times for selected instrumentation.

Date of issuance: December 28, 1998.

Effective date: As of the date of issuance to be implemented within 60 days.

Amendment No.: 249.

Facility Operating License No. DPR–59: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register**: August 12, 1998 (63 FR 43211).

Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 28, 1998.

No significant hazards consideration comments received: No.

Local Public Document Room location: Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126.

Public Service Electric & Gas Company, Docket Nos. 50–272 and 50–311, Salem Nuclear Generating Station, Unit Nos. 1 and 2, Salem County, New Jersey

Date of application for amendments: August 1, 1997, as supplemented on October 6, 1997, February 18 and July 7, 1998.

Brief description of amendments: The amendments revise Technical Specification Section 4.2.1 of Appendix B to require that Public Service Electric & Gas Company (PSE&G) adhere to the Incidental Take Statement, approved by the National Marine Fisheries Service (NMFS), but remove the specific requirements. Removing the specific requirements of Section 4.2.1 enables PSE&G to utilize relief granted by the NMFS on a case-by-case basis.

Date of issuance: December 18, 1998.

Effective date: Effective as of its date of issuance, to be implemented within 60 days.

Amendment Nos: 216 and 196.

Facility Operating License Nos. DPR–70 and DPR–75: The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register**: September 10, 1997 (62 FR 47698).

The October 6, 1997, February 18 and July 7, 1998 submittals provided clarifying information that did not change the initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated December 18, 1998.

No significant hazards consideration comments received: No.

Local Public Document Room location: Salem Free Public Library, 112 West Broadway, Salem, NJ 08079.

South Carolina Electric & Gas Company, South Carolina Public Service Authority, Docket No. 50–395, Virgil C. Summer Nuclear Station, Unit No. 1, Fairfield County, South Carolina

Date of application for amendment: May 21, 1997, as supplemented on December 4, 1998. The December 4, 1998, submittal contained clarifying information only, and did not change the initial no significant hazards consideration determination.

Brief description of amendment: The amendment revises the Virgil C. Summer Nuclear Station Technical Specifications to change the methods for testing the control room and spent fuel pool ventilation system charcoal adsorbers from American National Standards Institute Standard N509–1980 to American Society for Testing and Materials Standard D3803–1989.

Date of issuance: December 23, 1998.

Effective date: December 23, 1998.

Amendment No.: 140.

Facility Operating License No. NPF–12: Amendment revises the Technical Specifications.

Date of initial notice in **Federal Register**: June 18, 1997 (62 FR 33133).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 23, 1998.

No significant hazards consideration comments received: No.

Local Public Document Room location: Fairfield County Library, 300 Washington Street, Winnsboro, SC 29180.

Southern California Edison Company, et al., Docket Nos. 50–361 and 50–362, San Onofre Nuclear Generating Station, Unit Nos. 2 and 3, San Diego County, California

Date of application for amendments: May 7, 1998.

Brief description of amendments: The amendments revise the reference for obtaining the thyroid dose conversion factors used in the definition of Dose Equivalent Iodine 131 (I–131) in Technical Specification Section 1.1, ''Definitions.''

Date of issuance: December 16, 1998.

Effective date: December 16, 1998, to be implemented within 30 days from the date of issuance.

Amendment Nos.: Unit 2—145; Unit 3—137.

Facility Operating License Nos. NPF–10 and NPF–15: The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register**: November 4, 1998 (63 FR 59595).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated December 16, 1998.

No significant hazards consideration comments received: No.

Local Public Document Room location: Main Library, University of California, P. O. Box 19557, Irvine, California 92713.

Southern California Edison Company, et al., Docket Nos. 50–361 and 50–362, San Onofre Nuclear Generating Station, Unit Nos. 2 and 3, San Diego County, California

Date of application for amendments: June 12, 1998, as supplemented by letters dated September 18, 1998, October 29, 1998, and November 23, 1998.

Brief description of amendments: The amendments authorize revision of the San Onofre Nuclear Generating Station Updated Final Safety Analysis Report to incorporate a new turbine missile protection calculation methodology.

Date of issuance: December 21, 1998.

Effective date: December 21, 1998, to be implemented in the next periodic update of the UFSAR in accordance with 10 CFR 50.71(e) that occurs after 60 days of the date of issuance.

Amendment Nos.: Unit 2–146; Unit 3–138.

Facility Operating License Nos. NPF–10 and NPF–15: The amendments authorize revisions to the Updated Final Safety Analysis Report.

Date of initial notice in **Federal Register**: November 9, 1998 (63 FR 60412).

The November 23, 1998, supplemental letter provided additional information and did not change the original no significant hazards consideration determination.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated December 21, 1998.

No significant hazards consideration comments received: No.

Local Public Document Room location: Main Library, University of California, P. O. Box 19557, Irvine, California 92713.

Tennessee Valley Authority, Docket No. 50–259, Browns Ferry Nuclear Plant, Unit No. 1, Docket No. 50–260, Browns Ferry Nuclear Plant, Unit No. 2, and Docket No. 50–296, Browns Ferry Nuclear Plant, Unit No. 3, Limestone County, Alabama

Date of amendment request: June 2, 1997 as supplemented November 19, 1998.

Description of amendment request: Presently Technical Specification (TSs) require both the recirculation loops to

be operable and provide a 12-hour allowable outage time (AOT) for single loop operation (SLO) mode. The amendments modify TS to allow indefinite SLO instead of the 12-hour AOT.

Date of issuance: December 23, 1998.

Effective date: December 23, 1998.

Amendment No.: 236, 256 and 216.

Facility Operating License Nos. DPR–33, DPR–52, and DPR–68. Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register**: August 13, 1997 (62 FR 43377). The licensee's letter of November 19, 1998, did not expand the scope of the application or affect the staff's initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated December 23, 1998.

No significant hazards consideration comments received: No.

Local Public Document Room location: Athens Public Library, South Street, Athens, Alabama 35611.

Tennessee Valley Authority, Docket No. 50–390 Watts Bar Nuclear Plant, Unit 1, Rhea County, Tennessee

Date of application for amendment: February 18, 1998.

Brief description of amendment: Changes Technical Specification (TS) 3.7.4, Steam Generator Atmospheric Dump Valves (ADVs), and its associated bases by adding a new TS CONDITION, REQUIRED ACTION, and COMPLETION TIME to address a potential condition where two ADVs are made technically inoperable when one train of the safety-related auxiliary control air system is taken out of service.

Date of issuance: December 17, 1998.

Effective date: December 17, 1998.

Amendment No.: 16.

Facility Operating License No. NPF–90: Amendment revises the TSs.

Date of initial notice in **Federal Register**: August 12, 1998 (63 FR 43213) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 17, 1998.

No significant hazards consideration comments received: None.

Local Public Document Room location: Chattanooga-Hamilton County Library, 1001 Broad Street, Chattanooga, TN 37402.

Tennessee Valley Authority, Docket No. 50–390 Watts Bar Nuclear Plant, Unit 1, Rhea County, Tennessee

Date of application for amendment: February 28, 1996, as supplemented October 2 and December 12, 1997, March 30 and December 11, 1998.

Brief description of amendment: The February 28, 1996 letter proposed to extend the surveillance interval for Westinghouse type AR relays with alternating current and direct current coils from quarterly to an 18 month interval. The letter of December 11, 1998 revised the scope of the application such that it now applies only to Westinghouse type AR relays which use alternating current coils. Accordingly, this amendment approves the extension of the surveillance interval only for Westinghouse type AR relays which use alternating current coils.

Date of issuance: December 30, 1998.

Effective date: December 30, 1998.

Amendment No.: 17.

Facility Operating License No. NPF–90: Amendment revises the Technical Specifications.

Date of initial notice in **Federal Register**: April 10, 1996 (61 FR 15998). The October 2 and December 12, 1997, March 30 and December 11, 1998 letters provided clarifying information that did not change the initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 30, 1998.

No significant hazards consideration comments received: No.

Local Public Document Room location: Chattanooga-Hamilton County Library, 1001 Broad Street, Chattanooga, TN 37402.

The Cleveland Electric Illuminating Company, Centerior Service Company, Duquesne Light Company, Ohio Edison Company, OES Nuclear, Inc., Pennsylvania Power Company, Toledo Edison Company, Docket No. 50–440 Perry Nuclear Power Plant, Unit 1, Lake County, Ohio

Date of application for amendment: June 30, 1998, as supplemented by submittals dated October 27, November 30, and December 3, 1998. The supplemental submittals did not expand the scope of the original application or change the staff's proposed no significant hazards considerations determination.

Brief description of amendment: This amendment reflects the approval of the transfer of the authority to operate the Perry Nuclear Power Plant, Unit 1, under the license to a new company, FirstEnergy Nuclear Operating Company. In addition, several administrative changes unrelated to the transfer are being made to delete certain sections of the license relating solely to one-time historical events that have occurred.

Date of issuance: December 21, 1998.

Effective date: December 21, 1998.

Amendment No.: 96.

Facility Operating License No. NPF–58: This amendment revised the operating license.

Date of initial notice in **Federal Register**: August 4, 1998 (63 FR 41600).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 21, 1998.

No significant hazards consideration comments received: No.

Local Public Document Room location: Perry Public Library, 3753 Main Street, Perry, OH 44081.

Toledo Edison Company, Centerior Service Company, and The Cleveland Electric Illuminating Company, Docket No. 50–346, Davis-Besse Nuclear Power Station, Unit 1, Ottawa County, Ohio

Date of application for amendment: June 29, 1998, as supplemented by submittals dated July 14, October 26, and November 30, 1998.

Brief description of amendment: This amendment reflects the approval of the transfer of the authority to operate Davis-Besse Nuclear Power Station, Unit 1, under the license to a new company, FirstEnergy Nuclear Operating Company.

Date of issuance: December 21, 1998.

Effective date: December 21, 1998.

Amendment No.: 228.

Facility Operating License No. NPF–3: Amendment revised the operating license.

Date of initial notice in **Federal Register**: August 4, 1998 (63 FR 41602) The additional information provided in the supplemental submissions provided clarifying information only which did not affect the staff's proposed no significant hazards consideration or expand the scope of the application as noticed initially.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 21, 1998.

No significant hazards consideration comments received: No.

Local Public Document Room location: University of Toledo, William Carlson Library, Government Documents Collection, 2801 West Bancroft Avenue, Toledo, OH 43606.

TU Electric Company, Docket Nos. 50–445 and 50–446, Comanche Peak Steam Electric Station, Unit Nos. 1 and 2, Somervell County, Texas

Date of amendment request: August 2, 1996 (TXX–96434), as supplemented by

letters dated October 2, 1998 (TXX–98215), and November 13, 1998 (TXX–98241 and TXX–98244).

Brief description of amendments: The amendment increases the allowed outage time (AOT) for a centrifugal charging pump from 72 hours to 7 days and adds a Configuration Risk Management Program.

Date of issuance: December 29, 1998.

Effective date: December 29, 1998, to be implemented within 30 days.

Amendment Nos.: Unit 1—Amendment No. 62; Unit 2—Amendment No. 48.

Facility Operating License Nos. NPF–87 and NPF–89: The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register**: November 27, 1998, (63 FR 65617) supersedes FR notice dated September 24, 1997.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated December 29, 1998.

No significant hazards consideration comments received: No.

Local Public Document Room location: University of Texas at Arlington Library, Government Publications/Maps, 702 College, P.O. Box 19497, Arlington, TX 76019.

Vermont Yankee Nuclear Power Corporation, Docket No. 50–271, Vermont Yankee Nuclear Power Station, Vernon, Vermont

Date of application for amendment: May 8, 1998, as supplemented on July 10 and October 2, 1998.

Brief description of amendment: The amendment reduces the normal operating suppression pool water temperature limit and adds a time restriction for the temperature limit allowed during surveillances that add heat to the suppression pool.

Date of Issuance: December 28, 1998.

Effective date: December 28, 1998, to be implemented within 30 days.

Amendment No.: 163.

Facility Operating License No. DPR–28: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register**: September 23, 1998 (63 FR 50941).

The Commission's related evaluation of this amendment is contained in a Safety Evaluation dated December 28, 1998.

No significant hazards consideration comments received: No.

Local Public Document Room location: Brooks Memorial Library, 224 Main Street, Brattleboro, VT 05301

Virginia Electric and Power Company, et al., Docket Nos. 50–280 and 50–281, Surry Power Station, Units 1 and 2, Surry County, Virginia

Date of application for amendments: September 12, 1996, as supplemented April 24, 1997, and September 24, 1998

Brief Description of amendments: The amendments revise License Condition 3.I, Fire Protection, and relocate fire protection requirements from the Technical Specifications to the Updated Final Safety Analysis Report.

Date of issuance: December 16, 1998.

Effective date: December 16, 1998.

Amendment Nos.: 217 and 217.

Facility Operating License Nos. DPR–32 and DPR–37: Amendments change the Licenses and Technical Specifications.

Date of initial notice in **Federal Register**: November 4, 1998 (63 FR 59598).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated December 16, 1998.

No significant hazards consideration comments received: No.

Local Public Document Room location: Swem Library, College of William and Mary, Williamsburg, Virginia 23185.

Washington Public Power Supply System, Docket No. 50–397, Nuclear Project No. 2, Benton County, Washington

Date of application for amendment: October 10, 1996, as supplemented by letter dated November 9, 1998.

Brief description of amendment: The amendment changes Facility Operating License No. NPF–21 to authorize the storage of byproduct, source, and special nuclear materials at the WNP–2 site. These materials had been originally stored at the WNP–1 site and are not intended for use at WNP–2.

Date of issuance: December 29, 1998.

Effective date: December 29, 1998, to be implemented within 45 days from the date of issuance.

Amendment No.: 155.

Facility Operating License No. NPF–21: The amendment revised the operating license.

Date of initial notice in **Federal Register**: September 23, 1998 (63 FR 50942).

The November 9, 1998, supplemental letter provided additional clarifying information that did not change the staff's original no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 29, 1998.

No significant hazards consideration comments received: No.

Local Public Document Room location: Richland Public Library, 955 Northgate Street, Richland, Washington 99352.

Dated at Rockville, Maryland, this 6th day of January 1999.

For the Nuclear Regulatory Commission.

Elinor G. Adensam,

Acting Director, Division of Reactor Projects—III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 99–660 Filed 1–12–99; 8:45 am]

BILLING CODE 7590–01–P

THE PRESIDENT'S COUNCIL ON SUSTAINABLE DEVELOPMENT

Twenty-First Meeting of the President's Council on Sustainable Development (PCSD) To Take Public Comment on the Council's Recommendations and Draft Report to the President

ACTION: Notice.

SUMMARY: The President's Council on Sustainable Development (PCSD), a Presidential advisory council with representation from industry, government, environmental, and Native American organizations, will convene its twenty-first meeting in Washington, D.C. on Wednesday, February 10, 1999 to take public comment and finalize recommendations for its report to the President. A draft of the executive summary for this report is included below for public review. If you would like to read the entire report please visit our website at ''http://www.whitehouse.gov/PCSD'' or contact the PCSD office at the address or phone number below. The Council will consider all comments received.

The Council's current charter from the President is to forge consensus on policy, demonstrate implementation, get the word out about sustainable development, and evaluate progress. The Council is advising the President in four specific areas: (1) Domestic implementation of policy options to reduce greenhouse gas emissions; (2) next steps in building the new environmental management system of the 21st century; (3) promoting multi-jurisdictional and community cooperation in metropolitan and rural areas; and (4) policies that foster the United States' leadership role in sustainable development internationally. The final report to the President will fulfill this charter and culminate work in all four areas.

At the Council's last few meetings, the members have deliberated among themselves, listened to experts, and

taken comments from the public on the four main topic areas described above of this draft report. At the February 10 meeting, the Council is interested in hearing from the public in the following areas:

- How can the Council improve its proposed findings and recommendations in the areas of climate change, metropolitan and rural strategies for sustainable communities, environmental management, and international leadership?
- Are there any major omissions among the Council's set of policy recommendations?
- How can the Council generally improve the report?
- How can the Council maximize exposure of the report and have it contribute to and influence active policy debates?
- How can the Council and the President use the report to engage the public and leaders from all sectors to promote sustainable development.

The Council's previous recommendations to the President may be found in two reports: Sustainable America: A New Consensus for Prosperity, Opportunity and a Healthy Environment for the Future (March 1996) and Building on Consensus: A Progress Report on Sustainable America (January 1997). Copies of the latter report may be ordered by calling 1–800–363–3732. Both may be downloaded off the Internet at ''http://www.whitehouse.gov/PCSD''. For more information about PCSD, please e-mail ''infopcsd@aol.com'', log onto PCSD's web site, or call the contact listed below. You may also check the web site for the National Town Meeting for a Sustainable America at ''www.sustainableamerica.org.''

Dates: Wednesday, February 10, 1999 from 1:00 p.m. to 4:00 p.m.

Place: The Ronald Reagan Building, International Trade Center, 1300 Pennsylvania Ave. N.W., Polaris Rooms A and B, Washington D.C.

Status: Open to the public. Public comments are welcome and may be submitted orally at the public meeting or in writing any time prior to the meeting until February 8. Please submit written comments prior to the meeting to: PCSD, Public Comments, 730 Jackson Place, NW, Washington, D.C. 20503, fax to: 202/408–6839, or e-mail directly to PCSD.comments@erols.com using ''PCSD Report Comments'' as your subject line.

Contact: Evangeline Deshields, Chief Administrative Officer, at 202/408–5296. Sign Language Interpreter: Please notify the contact if you will need a sign language interpreter.

Martin A. Spitzer,

Executive Director, President's Council on Sustainable Development.

EXECUTIVE SUMMARY

Vision Statement

Our Vision is of a life-sustaining Earth. We are committed to the achievement of a dignified, peaceful, and equitable existence. A sustainable United States will have a growing economy that provides equitable opportunities for satisfying livelihoods and a safe, healthy, high quality of life for current and future generations. Our nation will protect its environment, its natural resource base, and the functions and viability of natural systems on which all life depends. Sustainable America, p. iv

Introduction

The Journey

As the world stands at the threshold of the 21st century, the President's Council on Sustainable Development is completing its sixth year working together to visualize and realize a new American dream. In our dream of a better future, prosperity, fairness, and a healthy environment are inseparable threads woven into the fabric of our everyday life at work, at play, with our families and communities, and among nations.

We began this journey in June 1993 when President Clinton asked the Council—a groundbreaking partnership of leaders from industry, government and non-profit organizations—to recommend a national action strategy for sustainable development. We began by exploring some of the most challenging issues of our day, including the rapid social, economic, environmental, and technological changes all about us—locally, nationally and internationally. We struggled with many difficult and seemingly inconsistent ideas. We listened to, occasionally argued with, and learned from one another. We traveled the country and spoke to Americans from all walks of life. Thousands of people participated in workshops, conferences, Council task forces and our public meetings.

By early 1996 we reached agreement on a set of common beliefs and recommendations and delivered them to the President in our first report, ''Sustainable America: A New Consensus'' for Prosperity, Opportunity, and a Healthy Environment for the Future. The beliefs and recommendations, which remain as timely as ever, are a compass for a more sustainable future. They are also the basis of all our work since then. The recommendations were comprehensive, addressing everything from economic and regulatory policy to natural resource management, from strengthening communities and education to international leadership. Crafted to move the nation toward sustainability, the recommendations were directed toward public and private sectors, as well as citizens.

Upon receiving the report, the President asked us to continue our work. Since 1996 we have worked to implement some of our policy recommendations, continued to forge consensus on sustainable development policy, begun getting the word out about sustainable development to larger audiences, and encouraged efforts to evaluate and report on progress. Substantively, we were asked to focus on (1) policies to reduce greenhouse gas emissions (2) the next steps in building the new environmental management system of the 21st century, (3) policies and approaches to build partnerships to strengthen communities; and (4) policies to foster U.S. leadership in international sustainable development policy.

This report presents our recommendations in each of these policy areas. As we did before, we worked collaboratively, overcoming differences of opinion and perspective to find common ground. In some cases, we found common ground where conventional wisdom seems to suggest none should exist. Our work on climate change was some of the most challenging. As we navigated through the often-heated public debates surrounding the international climate negotiations, we reached agreement on critical steps needed to reduce greenhouse gas emissions. By listening to each other and working together we were able to overcome many of our differences in other policy areas as well.

Each chapter of the report corresponds to one of the substantive areas in the Council's charter. In each policy area we have produced a concrete set of findings and recommendations for future action.

- Climate Change (Chapter 2)

Early on, we agreed on a set of principles to guide overall United States climate policy.

With accord on key issues, we then (1) developed principles for an incentive-based program to catalyze voluntary early action to reduce greenhouse gas emissions; (2) agreed on policies to spur the rapid development

and deployment of climate-friendly technologies in the next 10–15 years; and (3) stimulated opportunities to realize the broader benefits and global opportunities of climate change mitigation strategies.

• Environmental Management (Chapter 3)

Our report on environmental management builds on the earlier work of the Council and of others to improve the existing system and build a new, more effective, flexible and accountable one. It goes beyond our earlier efforts by recognizing that we are reaping some benefits and learning a great deal from existing reforms, but that most reforms were not designed to promote sustainable development. This report begins to answer the question, what would environmental management look like if we did? We do so by identifying the attributes of an environmental management framework designed for sustainable development and recommending the critical steps that can be taken to move the existing environmental management framework toward one that is more sustainable.

• Metropolitan and Rural Strategies for Sustainable Communities (Chapter 4)

This report on building sustainable communities directly follows from our earlier work. It goes a step further by suggesting that the many successful efforts promoting more sustainable communities have seven common characteristics. It also goes further by acknowledging that although we are witnessing more activities and successes, most sustainable community development initiatives face daunting technical, financial, and institutional obstacles. In order to fulfill the promise of sustainable communities, we addressed a fundamental question: How can we, as a nation, help sustainable community initiatives ''get over the hump'' from inspiration to implementation? In response, we developed a framework for implementation highlighting five strategic opportunities for sustainable community development—''green infrastructure,'' land use and development, community revitalization and reinvestment, rural enterprise and community development, and materials reuse and resource efficiency—and three types of tools and resources that can overcome major implementation obstacles: information and technical assistance, economic incentives and financial assistance, and local capacity and partnerships.

• International (Chapter 5)

In our earlier work, we identified key international sustainable development issues and the importance of leadership for the United States. Our recent work has been more focused. Specifically, we have examined how international private capital flows affect sustainable development, particularly in investments in developing countries. We convened stakeholders to discuss key issues in the prospective Multilateral Agreement on Investment and on a structure for facilitating capital flows to developing countries to help them embark on a clean development path in the context of climate change. We have also begun outreach to other National councils on sustainable development.

In all of our work, we saw connections between the specific policy issues we were asked to study; and whenever possible, we made those connections. We know, for example, that community development decisions has implications for greenhouse gas emissions, just as reducing greenhouse gas emissions have implications for community development. We know that an environmental management system that creates incentives for sustainable development will provide incentives for greenhouse gas emissions and community reinvestment. A more prosperous, healthy, and equitable future for our children requires all of us, as individuals and institutions, to understand and make these types of connections whenever we can.

We have several hopes for this report and for the future. Our recent experiences reaffirm the Council's view that collaboration, individual responsibility and stewardship are cornerstones for a path to a more Sustainable America. The Council is very much a mirror of America. Because this report is more of a handbook for people and organizations struggling to improve our quality of life than are either of our earlier reports, we hope readers will use it that way. The content of the report as much reflects the ideas and innovations we have seen and heard about, as it provides direction and recommendations on specific policy areas that we believe can immediately move us in a more sustainable direction. Many specific ideas and suggestions can be found in the body of the report.

We present this report to the President knowing the challenges to improve our quality of life are as great as ever. But as we said 3 years ago, ''We view this challenge with considerable optimism * * * But optimism is not complacency.'' Vigilance and perseverance will be needed if we are to meet these local, national and global challenges.

On May 2–5, 1999, the PCSD and its partners [1] will hold a National Town Meeting for a Sustainable America. The event will use the ideas in this report and those from tens of thousands of Americans who are joining together with us to demonstrate how we can make America a more sustainable, livable place.

Sustainable America, A Reprise

Challenges

As we said in Sustainable America in 1996, ''these are remarkable times.'' Market economies have continued to spread around the globe, even as they experience unprecedented growing pains. The overall flow of trade, investment, and people moving across international borders is increasing. Communication, manufacturing, agricultural, and transportation technologies continue to change how we work and play, and what we produce and consume. Information and knowledge are now hallmarks of our economy and increasingly the world economy. Energy and raw material efficiency per unit of economic output continue to increase, even as overall consumption and resource use increases.

We recognized the significant benefits and challenges from growing economies, population and demand for goods, services, food and space. The world's growing economic output continues to raise more people from poverty and create opportunity, but also creates growing disparities between rich and poor. Growing population and affluence increase demand for materials and land, in turn creating pollution, depleting finite resources, and stressing natural systems and the communities dependent on those resources.

In our travels across America, we spoke with thousands of Americans from all walks of life to hear about their concerns and aspirations. We were humbled and inspired by what we learned. From them, we learned how crime, congestion, education, good jobs, clean air and water are fundamental concerns. We learned how sustainable development remains abstract unless it is connected to people's daily lives and the communities in which they work, live and play. We saw innovation in communities across America and noted ''striking contrasts between communities struggling with dissatisfaction and despair, and communities where energized and

optimistic citizens have become engaged in shaping their own future.'' [2]

As we said three years ago,

> We believe that significant change is both necessary and inevitable. American society has been characterized by its capacity to embrace and profit from change. But how can communities be mobilized to leave future generations a cleaner, more resilient environment; a more prosperous nation; a more equitable society; and a more productive and efficient economy—one that is competitive internationally? This is especially difficult because the pace and extent of today's changes are unprecedented, reflecting the local consequences of the interaction of economic, social, and environmental forces at the global level.[3]

Pursuit of Common Goals

Prosperity, fairness, and a healthy environment are interrelated elements of the human dream of a better future. Sustainable development is a way to pursue that dream through choice and policy. Work, wealth, community, and the environment are interwoven into the fabric of everyday life and the life of the nation. Sustainable development is the framework that integrates economic, environmental, and social goals in discourse and policies that enhance the prospects of human aspirations.

The Council had hard and frequent debates about the term economic growth, and heard it discussed by members of the public as well, at almost all of our meetings. In the end, we agreed that to achieve our vision of sustainability some things must grow—jobs, productivity, wages, profits, capital and savings, information, knowledge, education—and others—pollution, waste, poverty, energy and material use per unit of output—must not. We agree on growth, and agree that it must be defined and measured with care. The issue is not whether the economy needs to grow but how and in what way.

An economy that creates good jobs and safeguards public health and the environment will be stronger and more resilient than one that does not. A country that protects its ecosystems and manages its natural resources wisely lays a far stronger base for future prosperity than one that carelessly uses its assets and destroys its natural capital. A society that invests in its children and communities, equitably providing education and opportunity, is far more likely to prosper than one that allows the gap between rich and poor to widen.

By recognizing that the economy, the environment, social equity, and well-being are integrally linked and by having policies that reflect that interrelationship, Americans can regain their sense that they are in control of their future and that the lives of each generation will be better than the last. Thinking narrowly about jobs, energy, transportation, housing, or ecosystems—as if they were not connected—creates new problems even as it attempts to solve old ones. Asking the wrong questions is a sure way to get misleading answers that result in short-term remedies for symptoms, instead of cures for long-term basic problems.

Seeing choices in terms of tradeoffs and balance reflects a history of confrontational politics. It pits vital necessities against each other in a false contest that inhibits exploration of the best solutions, those that link economic gain, ecological improvement, social equity, and well-being—solutions that build common purpose from shared goals.

The United States is a democracy with powerful traditions of individual liberty. What happens in American society ultimately depends on the values that guide the choices that individuals make—which is a function of their commitment and understanding. People act according to their perception of the intersection of their needs and wants, their values and conditions, and the events that affect them. But the narrow and immediate interests of individuals, organizations, or government officials do not necessarily coincide with the long-term interests of a larger community at home or abroad. Although people can act in the interests of the larger community, they rarely do so alone. Because each fears losing separately, all lose together.

We Believe Statement [5]

There are certain beliefs that we as Council members share that underlie all of our agreements.

We believe:

1. To achieve our vision of sustainable development, some things must grow—jobs, productivity, wages, capital and savings, profits, information, knowledge, and education—and others—pollution, waste, and poverty must not.

2. Change is inevitable and necessary for the sake of future generations and for ourselves. We can choose a course for change that will lead to the mutually reinforcing goals of economic growth, environmental protection, and social equity.

3. Steady progress in reducing disparities in education, opportunity, and environmental risk within society is essential to economic growth, environmental health and social justice.

4. The United States made great progress in protecting the environment in the last 25 years, and must continue to make progress in the next 25 years. We can achieve that goal because market incentives and the power of consumers can lead to significant improvements in environmental performance at less cost.

5. Economic growth based on technological innovation, improved efficiency, and expanding global markets is essential for progress toward greater prosperity, equity, and environmental quality.

6. Environmental regulations have improved and must continue to improve the lives of all Americans. Basic standards of performance that are clear, fair, and consistently enforced remain necessary to protect that progress. The current regulatory system should be improved to deliver required results at lower costs. In addition, the system should provide enhanced flexibility in return for superior environmental performance.

7. Environmental progress will depend on individual, institutional and corporate responsibility, commitment, and stewardship.

8. We need a new collaborative decision process that leads to better decisions; more rapid change; and more sensible use of human, natural, and financial resources in achieving our goals.

9. The nation must strengthen its communities and enhance their role in decisions about environment, equity, natural resources, and economic progress so that the individuals and institutions most immediately affected can join with others in the decision process.

10. Economic growth, environmental protection, and social equity are linked. We need to develop integrated policies to achieve these national goals.

11. The United States should have policies and programs that contribute to stabilizing global human population; this objective is critical if we hope to have the resources to ensure a high quality of life for future generations.

12. Even in the face of scientific uncertainty, society should take reasonable actions to avert risks where the potential harm to human health or the environment is thought to be serious or irreparable.

13. Steady advances in science and technology are essential to help improve economic efficiency, protect and restore natural systems, and modify consumption patterns.

14. A growing economy and healthy environment are essential to national and global security.

15. A knowledgeable public, the free flow of information, and opportunities for review and redress are critically

important to open, equitable, and effective decisionmaking.

16. Citizens must have access to high quality and lifelong formal and nonformal education that enables them to understand the interdependence of economic prosperity, environmental quality, and social equity—and prepares them to take actions that support all three.

Climate Change

The risk of accelerated climate change in the next century cannot be ignored as the United States seeks to achieve its aspirations for economic growth, environmental protection, and social justice. Although the challenges of taking action are not inconsequential, failure to respond could mean that we miss opportunities to improve our quality of life. We can reap the benefits of acting to protect the climate as we strive to achieve economic, environmental, and social improvement for ourselves without compromising the ability of future generations to meet their own needs.

Advise the President on domestic implementation of policy options to reduce greenhouse gas emissions. The Council should not debate the science of global warming, but should instead focus on the implementation of national and local greenhouse gas reduction policies and activities, and adaptations in the U.S. economy and society that maximize societal benefits, minimize economic impacts, and are consistent with U.S. international agreements.

—PCSD Charter, April 1997

In the course of its work on climate change, the Council benefitted from the wealth of scientific research, technical and economic studies, and policy analysis that is available on the subject. In November 1997, the Climate Task Force approved a set of climate principles that were transmitted to the President. Rather than focus on the entire range of issues that emerge when considering climate change, the 29 PCSD members, including leaders from businesses, environmental and civic organizations, and local and federal government, focused on developing consensus climate policy recommendations in three key areas:

- Principles for an incentive-based program to catalyze voluntary early action to reduce greenhouse gas emissions;
- Policies to spur the rapid development and deployment of climate-friendly technologies in the next 10–15 years;
- Stimulating opportunities to realize the broader benefits and global opportunities to climate change mitigation strategies.

Climate Change Key Findings

- Climate protection policy is fundamentally linked to any national agenda for economic growth, environmental protection, and social justice. If we are to achieve all of these goals together, climate change must be drawn onto the roadmap for the achievement of our other national aspirations.
- We urge timely action to reduce the risks of climate change. Incentives for early action, international agreements, accountability, flexibility, broad-based measures to encourage technology, and fairness are essential in any climate mitigation strategy.
- Many actions that protect the climate have multiple benefits. Action to protect the climate can help solve other social, economic, and environmental problems, benefit society, create global opportunities, and meet the needs of current and future generations.
- An incentive-based program is essential to catalyze voluntary early action to reduce overall greenhouse gas emissions. The program should include broadly-based participation; encourage learning, innovation, flexibility, and experimentation; grant formal credit for legitimate and verifiable measures to protect the climate; ensure accountability; be compatible with other climate protection strategies and environmental goals; and be inspired by government leadership.
- Climate-friendly technology will play a critical role as we strive to achieve reduced greenhouse gas emissions as well as our other sustainable development goals. Rapid deployment of existing technologies and continued investment in research and development are essential elements of any strategy that aims to help the United States and the rest of the world secure a future of reduced greenhouse gas emissions to protect the climate. Because greenhouse gases are released from small, large, stationary, and mobile sources throughout our economy, a broad and diverse policy portfolio to rapidly develop and disseminate climate-friendly technologies is essential. the Council reached agreement on a solid course of action that could accelerate the development and deployment of climate-friendly technology in the agriculture, buildings, electric power, industry, and transportation sectors and reduce U.S. greenhouse gas emissions in the next 10–15 years.
- Consensus building, outreach, and inclusive approaches are essential components of sustainable climate action.

Environmental Management

It is possible to provide more prosperity and more opportunity for more people with less burden on the environment if we agree that is what we want and we are prepared to make it profitable to attain. This is the underlying premise of sustainable development; it is the assumption guiding this report.

A 21st century environmental management framework that fosters sustainable development will be one that drives continuous environmental improvement, while respecting and creating continuous economic and social value. To do this, the new framework must consider, accept and strategically optimize the benefits of the dynamic interplay between people, markets, information, technology, and the natural world.

One of the most important revelations of the PCSD in Sustainable America was that meaningful and long term solutions for environmental, economic and social equity problems will require new strategies that address the source of problems, create mutual benefit throughout society and the chain of commerce, and achieves multiple objectives—environmental, economic and social—simultaneously. Building on this view, the PCSD sought to further identify the interrelated tools and strategies that need to be put into place for aligning economic and social equity concerns with a clean and safe environment. Sustainable America emphasizes some specific approaches that are necessary in building a new environmental management framework, but alone may be insufficient for simultaneously achieving the interrelated goals of sustainable development outlined elsewhere in the report.

Sustainable America stands for the concept that no matter what environmental issue we choose to address, we must also recognize and understand the economic and social dimensions of the issue, and that they are often interrelated or connected. We must likewise, identify the multi-purpose solutions to these issues or problems that address the environmental, economic and social aspects in relation to one another.

Throughout the report an attempt was made to highlight the objectives of a new environmental management framework with references to ''related activity'' or examples corresponding to

the specific recommendations. These and other recent initiatives were not explicitly designed to achieve sustainable development goals, yet some are achieving success, but not always in the integrative way, or to the degree, that sustainable development requires. Read together, the suggested framework attributes, recommendations, and related activities form a compass for charting the next steps in building the environmental management framework of the 21st Century.

Environmental Management Key Findings

A new environmental management framework that fosters sustainable development requires rethinking the nature, source, and linkage of problems. Currently, the definitions of environmental management and environmental protection are too narrow in some cases for identifying the true nature of problems and re-casting their potential solutions.

- A dynamic environmental management framework needs to understand interdependencies between communities, nature, and the economic world, to craft strategies that respect and use those interdependencies to improve environmental quality. Increasingly, consumer, market and regulatory behavior need to complement natural systems or cycles as well as each other.
- The framework can and should serve multiple purposes by improving business management, resource productivity, worker protection, community life, ecosystem health, and global awareness. Information garnered by the framework should be used to identify new social and economic opportunities (as well as responsibilities) for making continuous environmental improvements.
- The framework needs to reliably monitor ambient conditions and measure the environmental performance of activities or organizations that affect environmental quality, including products, households, services, firms, governments, and the economy. Future environmental effects, and potential ones, must be anticipated as well.
- The framework must make extensive use of incentives that provide both rewards for improving environmental outcomes and penalties for degrading environmental quality. Rewards can and should vary in value and depend upon the magnitude of the benefits.
- The capacity to protect the environment needs to grow with the economy, adapting and harnessing innovative environmental management systems, accounting practices, and market forces that enhance environmental performance.
- An environmental management framework must be sensitive to differences among people, communities, and organizations. Communities, like organizations, differ in size, ability, sophistication, and understanding of environmental issues.

FROM INSPIRATION TO IMPLEMENTATION: METROPOLITAN AND RURAL STRATEGIES FOR BUILDING SUSTAINABLE COMMUNITIES

Introduction

In Sustainable America, The President's Council on Sustainable Development (PCSD) presented a vision of community development that embraced economic, environmental, and equity concerns—a vision informed by the collective aspirations and experiences of communities around the nation.

Goal Statement for Sustainable Communities

Encourage people to work together to create healthy communities where natural and historic resources are preserved, jobs are available, sprawl is contained, neighborhoods are secure, education is lifelong, transportation and health care are accessible, and all citizens have opportunities to improve the quality of their lives.

—Sustainable America, 1996

Over the past give years of the Council's work, we have observed considerable innovation in how people with different interests can act collectively to strengthen their communities. In hundreds of communities and regions across America, community leaders representing citizens groups, elected officials, businesses, and other stakeholders are ''rolling up their sleeves'' to engage each other and work together. Whether they are restoring watersheds, creating accessible transportation alternatives, championing more efficient use of land, fostering racial and cultural tolerance, making housing more affordable, linking people with quality jobs, or creating new environmental businesses, these community leaders are improving the lives of today's citizens while safeguarding their communities for future generations. Our review of projects and programs from around the country suggests that successful initiatives have seven characteristics in common:

- They serve, invest in, and respect people
- They invest in and respect places
- They align with or create new market forces to improve community well-being
- They look for and build on the local assets of their communities
- They constructively address issues of race and class
- They build regional alliances and multi-stakeholder coalitions
- They are locally-driven

There is no denying the power of example these efforts provide. Although we are witnessing more activities and successes, most sustainable community development initiatives face daunting technical, financial, and institutional obstacles. In order to fulfill the promise of sustainable communities affirmed in Sustainable America, the Metropolitan and Rural Strategies Task Force addressed a fundamental question: How can we, as a nation, help sustainable community initiatives ''get over the hump'' from inspiration to implementation?

The task force developed a framework for implementation that highlights five ''strategic opportunity'' areas for sustainable community development—''green infrastructure,'' land use and development, community revitalization and reinvestment, rural enterprise and community development, and materials reuse and resource efficiency. We believe that investing resources in each of these five areas leads to a comprehensive approach to sustainable community development. However, communities that invest in any one of these five areas can benefit in their efforts to develop sustainably. The framework also identifies three types of tools and resources that can overcome major implementation obstacles: information and technical assistance, economic incentives and financial assistance, and local capacity and partnerships.

FRAMEWORK FOR IMPLEMENTATION

Tools	Strategic opportunities				
	Green infrastructure	Land use and, development	Community revitalization and reinvestment	Rural community and enterprise development	Materials use and resource efficiency
Information and Technical Assistance					
Economic Mechanisms and Financial Assistance					
Local Capacity and Regional Partnerships					

The framework's philosophy asserts that many actors working at multiple levels need to take several actions, both small and large, if we are to more rapidly build a nation of sustainable communities. Numerous stakeholders—including the Federal government, State, local and tribal governments, the private sector, and community-based organizations—have already taken creative and bold steps to advance the use of tools and resources. Our recommendations of specific policies and actions, presented later in this report, acknowledge these efforts, but also contends that more can be done.

In order to accelerate the pace of sustainable community development, we must make the most out of existing authority and resources. By immediately undertaking new initiatives and building upon initiatives already underway, communities can achieve the following within the next three years:

- By Year 1: Learning Through Information and Networks. In one year, we can enhance existing capacity by deploying new information toolkits and creating learning networks to rapidly enable cross-regional innovation and partnerships. We can also begin to make a persuasive and credible case for action to the public and key decision-makers through education and communications.
- By Year 2: Leveraging Markets and Financial Intermediaries. By year two, we can be ready to leverage economic mechanisms and financial intermediaries to create the crucial financial support needed by communities seeking to create sustainable projects. We can also leverage the economic mechanisms needed to create incentives for everybody to act in ways that enhance sustainability.
- By Year 3: Linking Institutions to Build Local Capacity and Partnerships. By year three, we can institutionalize strong regional and multi-jurisdictional partnerships and local capacity that will institutionalize and implement sustainable community development.

By ''learning, leveraging, and linking,'' various stakeholders can work together to create communities where everyone in every generation can have a high quality of life.

Metropolitan and Rural Strategies Key Findings

- Urgent action is needed by communities to combat air and water pollution, loss of ecosystems, poverty, energy inefficiency, and other threats to their current and future well-being. Individuals and institutions that pursue sustainable community development are resolving these pressing challenges and are also finding new or rediscovering local economic, ecological, and social assets that can strengthen their communities.
- Place matters. More and more individuals and leaders are recognizing the intrinsic value of the places in which they live, work, and visit. Community leaders are also recognizing that place is defined by more than artificial jurisdictional lines. Successful initiatives are attempting to understand their regions—composed of ecosystems, economic networks, and human habitats—as a total larger than the sum of its parts in order to create more realistic and useful policies and plans. They are also recognizing that problems and challenges can be best tackled by networks of people with diverse backgrounds, views, and experiences.
- Five strategic opportunity areas for sustainable community development—''green infrastructure,'' land use and development, community revitalization and reinvestment, rural enterprise and community development, and materials reuse and resource efficiency—hold particular promise and potential. We believe that each of these five opportunity areas can deliver significant benefits. When invested in collectively, the five areas comprise a comprehensive approach to sustainable community development.

International

The United States of America is blessed with significant endowments of capital—human, social and financial. These riches enable the United States to be a world leader. In turn, this leadership gives the nation a substantial amount of economic, political, and cultural influence around the world. The United States must recognize this leadership role, and use it to help put itself, and the world on a path toward sustainable development.

As a society, Americans need to appreciate that U.S. leadership is wide-ranging, and can be informal in nature. For instance, American movies and television programs are popular throughout the world. Through them many people are shown a higher standard of living than their national circumstances currently allow them to attain. These media images can lead to many results: dreams for a better future, immigration as people seek the ''American Dream,'' as well as dissatisfaction with their current situation leading to changes in local customs and cultures.

Advise the President on the promotion of sustainable development in international fora, and gather and disseminate information about US and international sustainable development policies. Promote the creation and continuation of national sustainable development councils around the world. Additionally, given the increasing flow of financial capital from developed to developing countries, the Council shall recommend policies that encourage foreign investment by the U.S. Government, businesses, investors, and, as appropriate, multilateral institutions that are consistent with the principles of sustainable development.

Given the enormous challenge of charting a path toward sustainability for our country, our government and our communities, the Council focused primarily on domestic issues during its first four years. The International Task Force was formed in 1997 to ensure that an international perspective is

maintained in the Council's efforts to develop a plan for America's path to sustainable development.

The Task Force recognized the value of sharing knowledge across national borders. Lessons learned by Americans pursuing a sustainable future, and new technologies and processes developed in the United States could be of interest and use to other nations. Correspondingly the United States can learn from the many interesting examples of sustainable development found all over the world.

The Task Force focused on how internationally private capital flows affect sustainable development, particularly in investments made in developing countries. To help develop an understanding of this complex set of issues, the Task Force undertook several activities. It convened stakeholders to discuss key issues in the prospective Multilateral Agreement on Investment and on a structure for facilitating capital flows to developing countries to help them embark on a clean development path. It also provided input to the United Nations effort to take a fresh look at how to finance development, emphasizing that financing should be for sustainable development and take into account social and environmental concerns in parallel with economic growth.

International Key Findings and Recommendations

■ The United States must use its leadership role to help chart a path toward sustainable development both at home and abroad. In doing so the United States should be open to learning from other nations' experiences.

■ The Council can benefit from information exchange with the international community. Efforts should be made to disseminate the Council's work internationally as well as to learn from other countries' experiments and experiences toward achieving sustainable development.

■ New coalitions of interests are needed, both domestically and internationally, to build support for the changes necessary for sustainable development to be achieved. Without ''champions'' from all sectors, change will not occur.

■ Multilateral agreements should integrate economic, environmental and equity considerations. Sustainable development is inherently an integrative effort. Economic agreements must consider environmental and social effects and environmental agreements must take economic and equity effects into account.

■ The Council or a similar body should continue as a forum for thoughtful consideration of issues of sustainable development by high-level leaders in all sectors. In having such a body, the United States sends a strong signal to the world that multistakeholder dialogue and consensus-building are important means of policy advice and development, and that all sectors are committed to a more sustainable future.

■ Foreign investment, assistance, and all government activities should be progressively and consistently conducted in ways that promote recipient countries' efforts to achieve sustainable development. The global need for ''green'' development strategies creates new investment opportunities. Domestic policies should enhance America's ability to take advantage of these trends and support the creation and expansion of businesses which help improve the environment and well-being of citizens around the world.

Endnotes

1. PCSD's co-sponsor of the event is the not-for-profit organization, the Global Environment Technology Foundation.
2. Sustainable America, p. 3
3. Sustainable America, p. 4
4. Sustainable America, pp. 6–7.
5. Sustainable America, p. v-vi.

[FR Doc. 99–762 Filed 1–12–99; 8:45 am]

BILLING CODE 3125–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Deadline for Submission of Application Under the Airport Improvement Program (AIP) for Fiscal Year 1999 for Sponsor Entitlement and Cargo Funds

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces March 1, 1999, as the deadline for each airport sponsor to have on file with the FAA an acceptable fiscal year 1999 grant application for funds apportioned to it under the AIP.

FOR FURTHER INFORMATION CONTACT: Mr. Stanley Lou, Manager, Programming Branch, Airports Financial Assistance Division, Office of Airport Planning and Programming, APP–520, on (202) 267–8809.

SUPPLEMENTARY INFORMATION: Section 47105(f) of Title 49, United States Code, provides that the sponsor of each airport to which funds are apportioned shall notify the Secretary by such time and in a form as prescribed by the Secretary, of the sponsor's intent to apply for the funds apportioned to it (entitlements). Notification of the sponsor's intent to apply during fiscal year 1999 for any of its entitlement funds including those unused from prior years, shall be in the form of a project application (SF 424) submitted to the cognizant FAA Airports office no later than March 1, 1999.

This notice is promulgated to expedite and prioritize grants prior to the March 30, 1999, AIP expiration date as established by Public Law 105–227 (the Omnibus Act). Absent an acceptable application by March 1, FAA will defer an airport's entitlement funds until the next fiscal year. Pursuant to the authority and limitations in section 47117(g), FAA will issue discretionary grants in an aggregate amount not to exceed the aggregate amount of deferred entitlement funds.

In prior fiscal years, FAA has had sufficient program flexibility to permit sponsors to provide notice later than the deadline date, or to use entitlement funds later in a fiscal year in spite of filing no notice to that effect. In FY 1999, however, FAA must make all discretionary grant awards prior to April 1, 1999, including discretionary grants of entitlement funds that are available to, but will not be used by, the airport sponsors to which they have been apportioned. Airport sponsors that fail to notify FAA by the deadline date that they intend to use all or a portion of their entitlement funds in FY 1999 may have access to those funds in FY 1999 after March 31, only if legislation is enacted prior to October 1, 1999, to authorize the AIP beyond March 31. This includes prior year entitlement funds that remain available to an airport sponsor only through fiscal year 1999. In all other cases, airport sponsors may request unused entitlements after September 30, 1999.

The FAA views the receipt of this notice from the sponsors of primary commercial service airports as particularly important this fiscal year. The ability to use the contract authority associated with unused entitlement funds on a discretionary basis during the current truncated program will allow FAA to obligate additional critically needed AIP funds by March 31. This abbreviated ''year-end conversion'' will result in more discretionary dollars for airport development. For these reasons, the FAA will rely heavily upon the extent to which responses to the required notice indicate the availability of unused entitlement funds for

discretionary use. Inasmuch as the FAA will be able to obligate these funds after March 31 as entitlements only with the enactment of follow-on authorizing legislation, sponsors are advised to give careful consideration to decisions related to the use of entitlement funds during fiscal year 1999.

Issued in Washington, DC, January 4, 1999.

Stan Lou,

Manager, Programming Branch.

[FR Doc. 99–733 Filed 1–12–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Aviation Rulemaking Advisory Committee Meeting on Emergency Evacuation Issues

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of public meeting.

SUMMARY: This notice announces a public meeting of the FAA's Aviation Rulemaking Advisory Committee (ARAC) to discuss emergency evacuation issues.

DATES: The meeting will be held on January 28, 1999, at 10 a.m. Arrange for oral presentations by January 21, 1999.

ADDRESSES: The meeting will be held at Douglas Product Division of Boeing, Conference Room E, Building 800, Douglas Center Complex, corner of Lakewood Boulevard and Carson Street, Long Beach, CA.

FOR FURTHER INFORMATION CONTACT: Effie M. Upshaw, Office of Rulemaking, ARM–209, FAA, 800 Independence Avenue, SW, Washington, DC 20591, Telephone (202) 267–7626, FAX (202) 267–5075.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. app. III), notice is given of an ARAC meeting to be held on January 28, 1999, at Douglas Product Division of Boeing, Long Beach, CA.

The agenda will include:

- Opening remarks.
- Report on Performance Standards Working Group activities, including detailed discussion of notices of proposed rulemaking on slide lighting illumination and slide portability.

Attendance is open to the public, but will be limited to space available. The public must make arrangements by January 21, 1999, to present oral statements at the meeting. Written statements may be presented to the committee any time by providing 25 copies to the Assistant Executive Director for Emergency Evacuation Issues or by providing copies at the meeting. In addition, sign and oral interpretation, as well as a listening device, can be made available if requested 10 calendar days before the meeting. Arrangements may be made by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**.

Issued in Washington, DC, on January 6, 1999.

Ida Klepper,

Acting Executive Director, Aviation Rulemaking Advisory Committee.

[FR Doc. 99–728 Filed 1–12–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Public Meeting and Availability of Draft Interim Safety Guidance for Reusable Launch Vehicle Operators

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of public meeting and availability of draft interim safety guidance for reusable launch vehicle (RLV) operators.

SUMMARY: The Associate Administrator for Commercial Space Transportation (AST) has developed a draft interim safety guidance for use by an applicant seeking a license to operate a reusable launch vehicle (RLV). The draft guidance is intended to assist an applicant in responding to public safety concerns of the agency associated with an application to conduct RLV operations.

The safety objectives presented in the draft interim safety guidance are not regulations. The draft guidance reflects the agency's general approach to ensuring public safety is not jeopardized as a result of new launch vehicle technology. Until the FAA issues regulations that address the unique safety aspects associated with reentry of reentry vehicles and RLV operations, the FAA will consider license applications for RLV launch and reentry on a case-by-case basis, taking into account the operational capability of a proposed vehicle. Development of a license application by an RLV operator is facilitated through consultation between the agency and the applicant to assure public safety issues are identified and adequately addressed by the applicant. To the extent appropriate, existing licensing regulations will apply to applications to launch or reenter an RLV. However, for those unique safety aspects associated with RLV or reentry operations, the FAA is providing interim safety guidance that reflects public safety concerns of the FAA in evaluating a license applicant's capability to conduct safe launch and reentry operations.

The FAA is also preparing proposed rules of general applicability that would address licensing requirements for RLV operators. Public comment will be invited on the content of the notice of proposed rulemaking. You may comment now on the draft interim safety guidance and you may also comment on the notice of proposed rulemaking after it is published in the **Federal Register**.

The FAA will hold a public meeting for the purpose of gathering information from industry and the public generally concerning the safety objectives presented in the draft interim safety guidance. Please submit in writing any information that you would like to present to the FAA not later than 30 days after the public meeting, referencing Docket Number 29140 and addressed to the Rules Docket: Room 915G, 800 Independence Avenue, SW., Washington, DC 20591. The meeting is scheduled for February 11, 1999, from 9:00 a.m. to 1:00 p.m. at DOT Headquarters located in the Nassif Building, 400 7th Street, SW., Washington D.C. The meeting will be conducted in Room 3200. Visitors must enter through the southwest corner of the building. Copies of the interim safety guidance material are available by contacting the Office of the Associate Administrator for Commercial Space Transportation (AST), 800 Independence Avenue SW., Room 331, Washington, DC 20591 or visiting AST's web site at http://ast.faa.gov/.

FOR FURTHER INFORMATION CONTACT: Brian Campbell (AST–200), Office of the Associate Administrator for Commercial Space Transportation (AST), 800 Independence Avenue SW, Room 331, Washington, DC 20591, telephone (202) 267–8464.

Issued in Washington, DC on January 7, 1999.

Manuel F. Vega,

Acting Deputy Associate Administrator for Commercial Space Transportation.

[FR Doc. 99–732 Filed 1–12–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Passenger Facility Charge (PFC) Approvals and Disapprovals

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Monthly Notice of PFC Approvals and Disapprovals. In December 1998, there were 13 applications approved. Additionally, eight approved amendments to previously approved applications are listed.

SUMMARY: The FAA publishes a monthly notice, as appropriate, of PFC approvals and disapprovals 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). This notice is published pursuant to paragraph d of § 158.29.

PFC Applications Approved

Public Agency: Ketchikan Gateway Borough, Ketchikan, Alaska.

Application Number: 98–01–C–00–KTN.

Application Type: Impose and use a PFC.

PFC Level: $3.00.

Total PFC Revenue Approved in This Decision: $6,419,400.

Earliest Charge Effective Date: February 1, 1999.

Estimated Charge Expiration Date: February 1, 2018.

Class of Air Carriers not Required to Collect PFC's: None.

Brief Description of Projects Approved for Collection and Use: Terminal building improvements. Acquire airport ferry.

Decision Date: December 1, 1998.

FOR FURTHER INFORMATION CONTACT: Debbie Roth, Alaska Region Airports Division, (907) 271–5443.

Public Agency: City of Roswell, New Mexico.

Application Number: 98–01–C–00–ROW.

Application Type: Impose and use a PFC.

PFC Level: $3.00.

Total PFC Revenue Approved in This Decision: $200,395.

Earliest Charge Effective Date: April 1, 1999.

Estimated Charge Expiration Date: March 1, 2002.

Class of Air Carriers not Required to Collect PFC's: None.

Brief Description of Projects Approved for Collection and Use:

Aircraft rescue and firefighting equipment.

Taxiway B transition pavement rehabilitation.

Taxiway A transition pavement rehabilitation.

Install taxiway guidance signs.

Runway 3/21 safety improvements.

Acquire snow removal equipment.

Distance-to-go signs.

Runway 3/21 pavement improvements.

Rehabilitate electrical vault.

Install airfield lighting control system.

Widen apron taxilane.

Acquire passenger lift device.

Engineering report for runway 17/35.

Acquire snow removal grader and tractor.

Install taxiway and apron reflectors.

Install area lighting for general aviation apron.

Acquire air/ground radios.

PFC administrative costs.

Decision Date: December 4, 1998.

FOR FURTHER INFORMATION CONTACT: Ben Guttery, Southwest Region Airports Division, (817) 222–5614.

Public Agency: St. Joseph County Airport Authority, South Bend, Indiana.

Application Number: 98–02–C–00–SBN.

Application Type: Impose and use a PFC.

PFC Level: $3.00.

Total PFC Revenue Approved in This Decision: $1,367,991.

Earliest Charge Effective Date: December 1, 2002.

Estimated Charge Expiration Date: June 1, 2003.

Class of Air Carriers not Required to Collect PFC's: On-demand Part 135 air taxi operators with less than 15 seats.

Determination: Approved. Based on information in the public agency's application, the FAA has determined that the proposed class accounts for less than 1 percent of the total annual enplanements at Michiana Regional Transportation Center.

Brief Description of Projects Approved for Collection and Use:

Hold room C improvements.

Relocate terminal entrance road.

Terminal apron rehabilitation.

Lighting system rehabilitation.

Widen runway 18/36.

Hold room A improvements.

Install flight information display system.

Widen and strengthen taxiways A and A–1.

Airfield clearing for line-of-sight and animal damage control.

Decision Date: December 7, 1998.

FOR FURTHER INFORMATION CONTACT: Gregory N. Sweeny, Chicago Airports District Office, (847) 294–7526.

Public Agency: Northwest Alabama Regional Airport Authority, Inc., Muscle Shoals, Alabama.

Application Number: 98–03–C–00–MSL.

Application Type: Impose and use a PFC.

PFC Level: $3.00.

Total PFC Revenue Approved in This Decision: $107,600.

Earliest Charge Effective Date: November 1, 2000.

Estimated Charge Expiration Date: October 1, 2004.

Class of Air Carriers not Required to Collect PFC's: None.

Brief Description of Projects Approved for Collection and Use: Rehabilitate runway, taxiway, and ramp circuits. Taxiway B extension. Sealcoat/crackfill/mark taxiways B, C, and D, and east and west ramps. Perimeter fencing.

Decision Date: December 11, 1998.

FOR FURTHER INFORMATION CONTACT: Roderick Nicholson, Jackson Airports District Office, (601) 965–4628.

Public Agency: Minneapolis-St. Paul Metropolitan Airports Commission, Minneapolis, Minnesota.

Application Number: 98–04–C–00–MSP.

Application Type: Impose and use a PFC.

PFC Level: $3.00.

Total PFC Revenue Approved in this Decision: $55,460,000.

Earliest Charge Effective Date: January 1, 2000.

Estimated Charge Expiration Date: June 1, 2001.

Class of Air Carriers Not Required to Collect PFC's: Air taxi/commercial operators filing FAA Form 1800–31.

Determination: Approved. Based on information in the public agency's application, the FAA has determined that the proposed class accounts for less than 1 percent of the total annual enplanements at Minneapolis-St. Paul International Airport.

Brief Description of Projects Approved for Collection and Use:

Snow removal equipment storage building addition.

Maintenance campus site work.

Hangars 1 and 2 demolition.

Taxiway W construction.

Part 150 residential noise mitigation.

Metropolitan Airports Commission building demolition.

Runway 12R/30L tunnel rehabilitation.

Security fence upgrade.

Stormwater collection/detention ponds.

Electrical systems computerization.

Run-up pad blast fence.

Decision Date: December 11, 1998.

FOR FURTHER INFORMATION CONTACT: Gordon Nelson, Minneapolis Airports District Office, (612) 713–4358.

Public Agency: Mobile Airport Authority, Mobile, Alabama.

Application Number: 98–02–C–00–MOB.

Application Type: Impose and use a PFC.

PFC Level: $3.00.

Total PFC Revenue Approved in This Decision: $445,000.

Earliest Charge Effective Date: June 1, 1999.

Estimated Charge Expiration Date: October 1, 1999.

Class of Air Carriers not Required to Collect PFC's: Air taxi/Commercial operators that file FAA Form 1800–31.

Determination: Approved. Based on information in the public agency's application, the FAA has determined that the proposed class accounts for less than 1 percent of the total annual enplanements at Mobile Regional Airport.

Brief Description of Projects Approved for Collection and Use: Elevator. Visual information display system with baggage claim marquee system. Seating.

Decision Date: December 18, 1998.

FOR FURTHER INFORMATION CONTACT: Keafur Grimes, Jackson Airports District Office, (601) 965–4628.

Public Agency: Port of Moses Lake, Moses Lake, Washington.

Application Number: 98–01–C–00–MWH.

Application Type: Impose and use a PFC.

PFC Level: $3.00.

Total PFC Revenue Approved in This Decision: $470,000.

Earliest Charge Effective Date: March 1, 1999.

Estimated Charge Expiration Date: March 1, 2009.

Class of Air Carriers not Required to Collect PFC's: (1) Part 135 air taxi/commercial operators who conduct operations in air commerce carrying persons for compensation or hire in aircraft with a seating capacity of 10 passengers or less; and (2) Part 135 air carrier commercial operators who conduct operations in air commerce for the purpose of emergency and medical airlift, air ambulance, and ''lifeguard'' flights.

Determination: Approved. Based on information submitted in the public agency's application, the FAA has determined that the proposed classes each account for less than 1 percent of the total annual enplanements at Grant County International Airport.

Brief Description of Project Approved for Collection and Use: Financing and interest for new airport terminal building.

Decision Date: December 18, 1998.

FOR FURTHER INFORMATION CONTACT: Mary Vargas, Seattle Airports District Office, (425) 227–2660.

Public Agency: City of Minot, North Dakota.

Application Number: 98–03–C–00–MOT.

Application Type: Impose and use a PFC.

PFC Level: $3.00.

Total PFC Revenue Approved in This Decision: $228,720.

Earliest Charge Effective Date: March 1, 1999.

Estimated Charge Expiration Date: June 1, 2000.

Class of Air Carriers not Required to Collect PFC's: Air taxi/commercial operators.

Determination: Approved. Based on information in the public agency's application, the FAA has determined that the proposed class accounts for less than 1 percent of the total annual enplanements at Minot International Airport.

Brief Description of Projects Approved for Collection and Use: Preparation of PFC application. Preparation of airport master plan.

Brief Description of Project Approved for Collection Only: Runway 8/26 restoration and extension.

Decision Date: December 22, 1998.

FOR FURTHER INFORMATION CONTACT: Irene R. Porter, Bismarck Airports District Office, (701) 250–4385.

Public Agency: Central West Virginia Regional Airport Authority, Charleston, West Virgina.

Application Number: 98–04–C–00–CRW.

Application Type: Impose and use a PFC.

PFC Level: $3.00.

Total PFC Revenue Approved in This Decision: $1,257,285.

Earliest Charge Effective Date: April 1, 1999.

Estimated Charge Expiration Date: February 1, 2001.

Classes of Air Carriers not Required to Collect PFC's: Nonscheduled/on-demand air carriers filing FAA Form 1800–31.

Determination: Approved. Based on information in the public agency's application, the FAA has determined that the proposed class accounts for less than 1 percent of the total annual enplanements at Yeager Airport.

Brief Description of Projects Approved for Collection and Use:

Update airport master plan.

Remodel rest rooms.

Jetway modifications.

Purchase security computer and cameras.

Purchase firefighting equipment.

Terminal apron expansion (phase one).

Seal coat main apron asphalt areas.

Purchase terminal chiller unit.

Rehabilitation of taxiways B and C.

Decision Date: December 22, 1998.

FOR FURTHER INFORMATION CONTACT: Elonza Turner, Beckley Airports Field Office, (304) 252–6216.

Public Agency: Palm Beach County, Department of Airports, West Palm Beach, Florida.

Application Number: 99–04–C–00–PBI.

Application Type: Impose and use a PFC.

PFC Level: $3.00.

Total PFC Revenue Approved in This Decision: $18,933,000.

Earliest Charge Effective Date: December 1, 1999.

Estimated Charge Expiration Date: March 1, 2002.

Class of Air Carriers not Required to Collect PFC's: Air taxi and commercial operators filing FAA Form 1800–31.

Determination: Approved. Based on information submitted in the public agency's application, the FAA has determined that the proposed class accounts for less than 1 percent of the total annual enplanements at Palm Beach International Airport.

Brief Description of Projects Approved for Collection and Use: Runway 9L/27R extension. Acquire land runway 31 protection zone. Main terminal system rehabilitation.

Decision Date: December 28, 1998.

FOR FURTHER INFORMATION CONTACT: Jennifer A. Ganley, Orlando Airports District Office, (407) 812–6331, ext. 25.

Public Agency: England Economic and Industrial Development District, Alexandria, Louisiana.

Application Number: 99–01–C–00–AEX.

Application Type: Impose and use a PFC.

PFC Level: $3.00.

Total PFC Revenue Approved in This Decision: $5,378,532.

Earliest Charge Effective Date: May 1, 1999.

Estimated Charge Expiration Date: November 1, 2020.

Class of Air Carriers not Required to Collect PFC's: None.

Brief Description of Projects Approved for Collection and Use: Aircraft rescue and firefighting vehicle. New terminal building. PFC application fees.

Decision Date: December 29, 1998.

FOR FURTHER INFORMATION CONTACT: Ben Guttery, Southwest Region Airports Division, (817) 222–5614.

Public Agency: Burbank-Glendale-Pasadena Airport Authority, Burbank, California.

Application Number: 98–03–C–00–BUR.

Application Type: Impose and use a PFC.

PFC Level: $3.00.

Total PFC Revenue Approved in This Decision: $84,481,000.

Earliest Charge Effective Date: October 1, 2001.

Estimated Charge Expiration Date: June 1, 2010.

Class of Air Carriers not Required to Collect PFC's: On-demand air taxi/commercial operators filing FAA Form 1800–31 that (1) do not enplane or deplane passengers at the main passenger terminal building and (2) [collectively] enplane less than 29,000 passengers per year at Burbank-Glendale-Pasadena Airport (BUR).

Determination: Approved. Based on information submitted in the public agency's application, the FAA has determined that the proposed class accounts for less than 1 percent of the total annual enplanements at BUR.

Brief Description of Project Approved for Collection and Use: Replacement terminal.

Decision Date: December 30, 1998.

FOR FURTHER INFORMATION CONTACT: John Milligan, Western Pacific Region Airports Division, (310) 725–3621.

Public Agency: City of Eugene, Oregon.

Application Number: 98–03–C–00–EUG.

Application Type: Impose and use a PFC.

PFC Level: $3.00.

Total PFC Revenue Approved in This Decision: $805,335.

Earliest Charge Effective Date: March 1, 1999.

Estimated Charge Expiration Date: February 1, 2000.

Classes of Air Carriers not Required to Collect PFC's: (1) Operations by air taxi/commercial operators utilizing aircraft having a maximum seating capacity of less than 20 passengers when enplaning revenue passengers in a limited, irregular/non-scheduled, or special service manner; and (2) operations by air taxi/commercial operators, without regard to seating capacity, for revenue passengers transported for student instruction, non-stop sightseeing flights that begin and end at Eugene Airport, Mahlon Sweet Field (EUG) and are conducted within a 25-mile radius of EUG, firefighting charters, ferry or training flights, air ambulance/medivac flights, and aerial photography or survey flights.

Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that the proposed classes each account for less than 1 percent of the total annual enplanements at EUG.

Brief Description of Projects Approved for Collection and use:

General aviation ramp reconstruction.

Taxiway Alpha and taxiway Alpha 8 reconstruction.

B gate ramp rehabilitation.

Water loop extension.

A gate, north and south canopies.

B gates covered walkways.

Taxiway Alpha 7 reconstruction.

Taxiway Alpha 3 rehabilitation.

Taxiway Alpha rehabilitation.

Taxiway Delta rehabilitation.

Decision Date: December 30, 1998.

FOR FURTHER INFORMATION CONTACT: Mary Vargas, Seattle Airports District Office, (425) 227–2660.

AMENDMENTS TO PFC APPROVALS

Amendment No. city, state	Amendment approved date	Original approved net PFC revenue	Amended approved net PFC revenue	Original estimated charge exp. date	Amended estimated charge exp. date
93–01–C–01–LBB Lubbock, TX	03/18/97	$10,699,749	$11,187,305	02/01/00	04/01/00
92–01–I–03–TLH Tallahassee, FL	06/11/98	6,715,081	7,567,709	06/01/98	07/01/98
93–02–U–01–TLH Tallahassee, FL	06/11/98	6,715,081	7,567,709	06/01/98	07/01/98
96–02–C–01–TYS Knoxville, TN	08/25/98	530,000	552,931	05/01/97	05/01/97
94–01–C–02–DUJ DuBois, PA	11/17/98	298,533	264,625	03/01/98	03/01/98
95–01–C–01–MCI Kansas City, MO	11/27/98	64,043,000	92,632,458	05/01/01	01/01/02
98–06–C–01–PHL Philadelphia, PA	12/22/98	26,150,000	26,150,000	01/01/99	01/01/99
98–02–C–01–PWM Portland, ME	12/30/98	6,887,241	8,485,479	10/01/02	02/01/04

Issued in Washington, DC on January 7, 1999.

Eric Gabler,

Manager, Passenger Facility Charge Branch.

[FR Doc. 99–731 Filed 1–12–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Federal Transit Administration

Major Investment Study/Environmental Impact Statement: Northeast Corridor in Indianapolis, Indiana; Hamilton and Marion Counties

AGENCY: Federal Highway Administration (FHWA) and Federal Transit Administration (FTA), DOT.

ACTION: Notice of intent.

SUMMARY: The Federal Highway Administration (FHWA) and the Federal Transit Administration (FTA) are jointly issuing this notice to advise the public that a Major Investment Study (MIS)/Environmental Impact Statement (EIS) is being prepared for proposed transportation improvements in the Northeast Corridor of the Indianapolis region. The MIS, which is currently underway, will be used as input to the EIS.

DATES: A public scoping and information meeting will be held on Tuesday, January 26, 1999 from 4:00 p.m. to 7:00 p.m. with a presentation at 5:30 p.m. in Indianapolis. Written comments on the scope of the alternatives and impacts to be considered should be sent by March 15, 1999.

ADDRESSES: The meeting will be held at the Indiana Government Center South Conference Center, Room A, located at 100 North Senate Avenue, in downtown Indianapolis. Written comments on the scope of the alternatives and impacts to be considered should be sent to:

Steve Cecil, Chief, Pre-Engineering and Environment Division at the Indiana Department of Transportation (INDOT), 100 North Senate Avenue, Indiana Government Center North, Room N848, Indianapolis, IN 46204, scecil@indot.state.in.us;

or,

Lori Miser, Transportation Planning Manager, 200 East Washington Street, Suite 1841, Indianapolis, IN 46204, lmiser@indygov.org.

FOR FURTHER INFORMATION CONTACT: Mr. Joel P. Ettinger, FTA Region 5, 200 West Adams St, Suite 2410, Chicago, IL 60606: Telephone: (312) 353–2789. Ms. Joyce Newland, FHWA—Indiana Division, 575 N. Pennsylvania Street, Room 254, Indianapolis, IN 46204, Telephone: (317) 226–5353.

SUPPLEMENTARY INFORMATION: The FHWA and FTA, in cooperation with the Indiana Department of Transportation (INDOT) and the Indianapolis Metropolitan Planning Organization (MPO), will prepare a MS and a Draft EIS (DEIS) for transportation improvements in the Northeast Corridor of the Indianapolis region. The MIS/DEIS is being prepared in accordance with the National Environmental Policy Act (NEPA) of 1969, as amended, and implemented by the Council on Environmental Quality (CEQ) regulations (40 CFR parts 1500–1508) and in accordance to FHWA/FTA's planning and environmental impact procedures and regulations (23 CFR 450 and 23 CFR 771).

A major investment study in the Northeast Corridor is underway to consider a range of alternative investment strategies for transportation improvements that will include: Transportation System Management (TSM) and Intelligent Transportation Systems (ITS), High-Occupancy Vehicle (HOV) facilities, public transit improvements including bus system enhancements, commuter rail, light rail, and other transit technologies, roadway and freeway improvements, as well as a No-Action Alternative. (No-Action Alternative includes existing and committed elements of the region's transportation plan, except for the proposed new start or investment.) Alternatives generated through the scoping process will also be considered. Scoping will be accomplished through written correspondence with interested persons, organizations, and federal, state, and local agencies as well as through the public meeting listed in **DATES** and **ADDRESSES**.

Scoping

FHWA, FTA, INDOT, and the MPO invite all interested individuals, organizations, and federal, state, and local agencies to participate in the scoping process defining the alternatives to be evaluated in the MIS/DEIS and identifying any significant social, economic, or environmental issues related to the alternatives. An information packet describing the purpose and need of the project, the proposed alternatives, the impact areas to be evaluated, the citizen involvement program, and the preliminary project schedule will be mailed to affected federal, state, and local agencies and will be provided upon request to interested parties on record. Requests for the scoping materials should be directed to Ms. Lori Miser at the address above or by calling her at (317) 327–5136. Scoping comments may be made verbally at the public scoping meeting, or in writing. See the **DATES** and **ADDRESSES** sections above for the location and time. During the scoping phase, comments should focus on identifying specific social, economic, or environmental impacts to be evaluated and suggesting less costly or less environmentally damaging alternatives that achieve similar objectives. However, scoping is not the appropriate time to indicate a preference for a particular alternative. Comments on preferences should be communicated after the MIS/DEIS has been completed. If you wish to be placed on the mailing list to receive further information as the project develops, contact Lori Miser as previously described.

Description of Study Area and Project Needs

The Northeast Corridor is a major travel corridor that stretches from Noblesville in the northeast to just south of the Indianapolis Central Business District (CBD). Major highway facilities in the corridor include I–69 south and west of 126th Street, I–465 from just west of the US 31 interchange to the I–70 interchange, and I–70 from the east leg of I–465 to the CBD. In addition, the study area includes SR 37/Fall Creek Parkway from just north of Noblesville to the CBD, US 31 from north of Carmel to the CBD, and Allisonville Road, Keystone Avenue, and the Meridian Street corridor.

Alternatives

Transportation alternatives to be considered within the corridor include new and/or improved bus services, busways (facilities exclusively for buses), light rail, commuter rail, TSM/TDM/ITS strategies and roadway and highway expansion.

Probable Effects/Potential Impacts for Analysis

FHWA, FTA, INDOT, and the MPO plan to evaluate in the MIS/DEIS all significant social, economic, and environmental impacts of the alternatives. Among the primary issues are transportation service changes, including transit cost, service, patronage change, and its financial implications as well as the effect on traffic movement and railroad operations. Other key issues include community impacts, including land use planning and zoning compatibility, neighborhood compatibility, local and regional economic change, aesthetics, and utility relocation; cultural resource impacts, including effects on historic, archaeological, and park resources; and natural resource impacts, including air quality, noise and vibration, removal of pre-existing hazardous wastes, water resources, natural features, and ecosystems. The proposed impact assessment and its evaluation criteria will take into account both positive and negative impacts, direct and indirect impacts, short-term (construction) and long-term (operation) impacts, and site-specific and corridor-wide impacts. Evaluation criteria will be consistent with the applicable Federal, State of Indiana, and local standards, criteria, regulations, and policies. Mitigation measures will be explored for any adverse impacts that are identified as part of the analyses.

Procedures

In accordance with the regulations and guidance established by CEQ, as well as with 23 CFR part 450 and 23 CFR part 771 of the FHWA/FTA planning and environmental regulations and policies, the MIS/DEIS will include an evaluation of the social, economic, and environmental impacts of the alternatives. The MIS/DEIS will also comply with the requirements of the Clean Air Act Amendments of 1990 (CAAA) and with the Executive Order 12898 on Environmental Justice. After its publication, the MIS/DEIS will be available for public and agency review and comment, and a public hearing will be held. On the basis of the MIS/DEIS and the comments received, INDOT and the MPO will select a locally preferred alternative for a major investment strategy. The locally preferred alternative will then be reaffirmed by the MPO for inclusion into the Indianapolis Regional Transportation Plan (RTP) and the Transportation Improvement Program (TIP). The MIS shall lead to specification of the project's mode, the design concept and scope in sufficient detail to meet the requirements of the US Environmental Protection Agency's transportation conformity regulations [40 CFR part 93 and 23 CFR 450.322(b)(8)]. INDOT and the MPO will then seek approval from FHWA and FTA to continue with Preliminary Engineering and the preparation of the Final EIS.

Issued on: January 6, 1999.

Lawrence D. Tucker,

Planning and Program Development Manager, Federal Highway Administration, Indianapolis, Indiana.

Joel P. Ettinger,

Region 5 Administrator, Federal Transit Administration, Chicago, Illinois.

[FR Doc. 99–725 Filed 1–12–99; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Amtrak Reform Council; Notice of Meeting

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

ACTION: Notice of Amtrak Reform Council meeting.

SUMMARY: As provided in Section 203 of the Amtrak Reform and Accountability Act of 1997, the Federal Railroad Administration (FRA) gives notice of a meeting of the Amtrak Reform Council (''ARC''). The purpose of the meeting is to receive Amtrak's response to the Department of Transportation's Inspector General's independent assessment report of Amtrak's financial needs, discuss possible selection of an executive director, receive a briefing from representatives of rail labor and to take up such other matters as the Council or its members deem appropriate.

DATES: The meeting is scheduled from 9:00 a.m. to 1:00 p.m. on Tuesday, January 19, 1999.

ADDRESSES: The meeting will be held in the Krieble Center, Free Congress Foundation, 717 Second Street, N.E., Washington, D.C. The meeting is open to the public on a first-come, first-served basis. Portions of the meeting may be closed to the public at the discretion of the Council if proprietary information is to be discussed. Persons in need of special arrangements should contact the person whose name is listed below.

FOR FURTHER INFORMATION CONTACT: Alexander Chavrid, Passengers Programs Division, Office of Railroad Development, FRA, RDV–13, Mail Stop 20, 1120 Vermont Avenue, NW., Washington, DC 20590 (mailing address only) or by telephone at (202) 493–6380.

SUPPLEMENTARY INFORMATION: The ARC was created by the Amtrak Reform and Accountability Act of 1997 (ARAA) as an independent commission to evaluate Amtrak's performance and make recommendations to Amtrak for achieving further cost containment and productivity improvements, and financial reforms. In addition, the ARAA requires: that the ARC monitor cost savings resulting from work rules established under new agreements between Amtrak and its labor unions; that the ARC provide an annual report to Congress that includes an assessment of Amtrak's progress on the resolution of productivity issues; and that after two years the ARC begin to make findings on whether Amtrak can meet certain financial goals and, if not, to notify the President and the Congress.

The ARAA provides that the ARC consist of eleven members, including the Secretary of Transportation and ten others nominated by the President or Congressional leaders. Each member is to serve a 5 year term.

Issued in Washington, D.C. on January 7, 1999.

Mark E. Yachmetz,

Chief, Passenger Programs Division.

[FR Doc. 99–699 Filed 1–12–99; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–98–4453; Notice 2]

Dorsey Trailers, Inc., Grant of Application for Decision of Inconsequential Noncompliance

Dorsey Trailers, Inc. (Dorsey), a manufacturer of trailers, is a corporation organized under the laws of the State of Delaware with headquarters in Atlanta, Georgia and manufacturing facilities in Elba, Alabama; Cartersville, Georgia; and Dillon, South Carolina. Dorsey has determined that its tire and rim label information, on some units, was not in full compliance with 49 CFR 571.120, Federal Motor Vehicle Safety Standard (FMVSS) No. 120, ''Tire Selection and Rims for Vehicles Other Than Passenger Cars,'' and has filed an appropriate report pursuant to 49 CFR Part 573, ''Defect and Noncompliance Reports.'' Dorsey has also applied to be exempted from the notification and remedy requirements of 49 U.S.C. Chapter 301—''Motor Vehicle Safety'' on the basis that the noncompliance is inconsequential to motor vehicle safety.

Notice of receipt of the application was published, with a 30-day comment period, on October 2, 1998, in the **Federal Register** (63 FR 53123). NHTSA received two comments on this application during the 30-day comment period. Both commenters recommended that NHTSA grant the application.

Paragraph S5.3 of FMVSS No. 120 states that each vehicle shall show the information specified on the tire information label in both English and metric units. The standard also shows an example of the prescribed format.

After the requirement went into effect on March 14, 1996, Dorsey manufactured and/or distributed 18,816 trailers that do not meet the requirements stated in the standard. Of these 18,816 units, 16,788 were produced in Elba between March 14, 1996 and August 27, 1998; 1,713 units were produced in Cartersville between March 14, 1996 and October 31, 1997; and 315 were produced in Dillon between July 1, 1996 and December 9, 1997. The certification label affixed to Dorsey's trailers pursuant to Part 567 failed to comply with S5.3 of FMVSS No. 120 because of the omission of metric measurements, and Dorsey did not separately provide the metric measurements on another label, an alternative allowed by FMVSS No. 120. The use of metric measurements is required by FMVSS No. 120, pursuant to Federal Motor Vehicle Safety Standards: Metric Conversion, 60 FR 13639, published on March 14, 1995, and effective on March 14, 1996.

Dorsey supports its application for inconsequential noncompliance with the following statements:

1. The certification label contains the correct English unit information and has headings for the required metric data with voids in the area of the required data;

2. The omission of the metric data from Dorsey's 49 CFR 571.120 and 49 CFR 567 certification label is highly unlikely to have any effect whatsoever on motor vehicle safety since the correct English units are included on the label and since the nonconforming vehicles will probably be out of service before the American general public ceases to be familiar with the English system of measurement;

3. The metric requirements of 49 CFR 571.120 S5.3 were not mandated for safety reasons and, the second regulation governing certification label data, 49 CFR 567, has not yet been changed to require that metric data be shown and still states that GVWR and GAWR data be stated in pounds;

4. Each Dorsey manufacturing facility has now begun to provide all the required data on certification labels since appropriate people at each location have been made aware of the requirement; and

5. Dorsey has not received any complaints from customers on the omission of the metric data from the certification labels and has not received

any reports of accidents which were related to the omission to the metric data.

The purpose of labeling requirements in S5.3, Label information, of FMVSS No. 120 is to provide safe operation of vehicles by ensuring that those vehicles are equipped with tires of appropriate size and load rating; and rims of appropriate size and type designation. Section 5164 of the Omnibus Trade and Competitiveness Act (Pub. L. 100–418) makes it the United States policy that the metric system of measurement is the preferred system of weights and measures for U.S. trade and commerce. On March 14, 1995, NHTSA published in the **Federal Register** (60 FR 13693) the final rule that metric measurements be used in S5.3 of FMVSS No. 120. The effective date for this final rule was March 14, 1996.

Paragraph S5.3 states that each vehicle shall show the appropriate tire information (such as: recommended cold inflation pressure) and rim information (such as: size and type designations) in metric and English units. This information must appear either on the certification label or a tire information label, lettered in block capitals and numerals not less than 2.4 millimeters high, and in the prescribed format.

The agency agrees with Dorsey that the label on these trailers is likely to achieve the safety purpose of the required label. The vehicle user will have the correct safety information sans the metric conversion in the prescribed location. First, all the correct English unit information required by FMVSS No. 120 is provided on the certification label. Second, the information contained on the label is of the correct size. Third, the information contained on the label is in the prescribed format.

In consideration of the foregoing, NHTSA has decided that the applicant has met its burden of persuasion that the noncompliance it describes is inconsequential to safety. Accordingly, its application is granted, and the applicant is exempted from providing the notification of the noncompliance that is required by 49 U.S.C. 30118, and from remedying the noncompliance, as required by 49 U.S.C. 30120.

(49 U.S.C. 30118, delegations of authority at 49 CFR 1.50 and 501.8).

Issued on: January 8, 1999.

L. Robert Shelton,

Associate Administrator for Safety Performance Standards.

[FR Doc. 99–766 Filed 1–12–99; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–99–4966]

TarasPort Trailers, Inc.; Application for Temporary Exemption From Federal Motor Vehicle Safety Standard No. 224

TarasPort Trailers, Inc., of Sweetwater, Tennessee, has applied for a two-year temporary exemption from Motor Vehicle Safety Standard No. 224 *Rear Impact Protection,* as provided by 49 CFR part 555. The basis of the application is that ''compliance would cause substantial economic hardship to a manufacturer that has tried in good faith to comply with the standard.'' Sec. 555.6(a).

We are publishing this notice of receipt of the application in accordance with our regulations on temporary exemptions. This action does not represent any judgment by the agency about the merits of the application. We base the discussion that follows on information contained in TarasPort's application, submitted by its Vice President, Ms. Jeanne Isbill.

Why TarasPort Needs a Temporary Exemption

Located in the Sweetwater Industrial Park in Monroe County, Tennessee, TarasPort has been manufacturing trailers since April 1988. Standard No. 224 requires, effective January 26, 1998, that all trailers with a GVWR of 4536 Kg or more be fitted with a rear impact guard that conforms to Standard No. 223 *Rear impact guards.* TarasPort manufactured a total of 237 trailers in 1997, including ''two models of drop decks equipped with rear deck extenders.'' The extenders deploy in 1-foot increments, up to 3 feet, from the rear of the trailer. S5.1.3 of Standard No. 224 requires that the horizontal member of the rear impact guard must be as close as practicable to the rear extremity of the vehicle, but in no case farther than 305 mm. from it. TarasPort had asked NHTSA to exclude its two trailer models as ''special purpose vehicles,'' but we denied its request. We also determined that the trailers' rear extremity, with the extenders deployed ''would be the rearmost surface on the extenders themselves.'' In order to meet S5.1.3, TarasPort must redesign these models so that the rear face of the horizontal member of the guard will never exceed 305 mm from the rearmost surface on the extenders, when the extenders are in any position in which they can be placed when in transit. It has asked for a 2-year exemption in order to do so.

Why Compliance Would Cause TarasPort Substantial Economic Hardship

TarasPort employs 16 people, including its two working owners. An increasing amount of its sales is comprised of the two extended-deck trailers, from 55% in 1997 to 63% in the first two quarters of 1998. Using its existing staff, the company estimates that it needs 18 to 24 months of design and testing to bring the trailers into compliance with S5.1.3, and that the modifications required will cost $1800 to $2000 per trailer.

If the application is denied, TarasPort would have to discontinue production for 18 to 24 months, or hire an engineering consulting firm to possibly reduce that time, at a fee of $80 to $120 an hour. It would be forced to layoff a majority of its employees, and it would lose the market and established customer base that it has achieved as a niche producer over the 10 years of its existence.

According to its financial statements, TarasPort has had a small net income in each of its past three fiscal years, though the income each year has been substantially less than the year before. The net income for 1997 was $87,030.

How TarasPort Has Tried To Comply With the Standard in Good Faith

Most of TarasPort's trailers have low deck heights and rear ramp compartments ''which only compound rear impact compliance problems.'' Nevertheless, the company was able to bring its designs into compliance by Standard No. 224's effective date, with the exception of the two extender designs. These trailers comply when the extenders are not in use. The company tested mounting the guard directly on the extenders ''so it would move out and thus comply,'' but found that this method of mounting ''would not absorb the level of energy'' required by Standard No. 223. TarasPort hoped that NHTSA would consider the extenders to be load overhang or exempt as a special purpose vehicle, but NHTSA denied this request on May 22, 1998.

Why Exempting TarasPort Would Be Consistent With the Public Interest and Objectives of Motor Vehicle Safety

A denial would adversely affect the company's employees, customers, and the local economy in Monroe County. The motor vehicle safety standards ''were created with the general public's well being in mind. Assisting our company to comply to those standards

only insures public safety. Compliance rather than enforcement is consistent with the objectives of the National Traffic and Motor Vehicle Safety Act.''

How To Comment on TarasPort's Application

We invite you to comment on TarasPort's application. Send your comments, in writing, to: Docket Management, National Highway Traffic Safety Administration, room PL–401, 400 Seventh Street, SW, Washington, DC 20590, in care of the docket and notice number shown at the top of this document. It would be helpful if you provide us with 10 copies of your comments.

We shall consider all comments received before the close of business on the comment closing date stated below. To the extent possible, we shall also consider comments filed after the closing date. You may examine the comments in the docket in room PL–401 both before and after that date, between the hours of 10 a.m. and 5 p.m. When we have reached a decision, we shall publish it in the **Federal Register**.

Comment closing date: February 12, 1999.

Authority: 49 U.S.C. 30113; delegations of authority at 49 CFR 1.50 and 501.4.

Issued: January 7, 1999.

L. Robert Shelton,

Associate Administrator for Safety Performance Standards.

[FR Doc. 99–686 Filed 1–12–99; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF THE TREASURY

Customs Service

[T.D. 99–8]

19 U.S.C. 1625(c) Inapplicable to Certain Specific Manufacturing Drawback Rulings and General Manufacturing Drawback Notices of Acknowledgment

AGENCY: Customs Service, Treasury.

ACTION: General notice.

SUMMARY: Under 19 U.S.C. 1625(c) Customs is required to give notice of any proposed interpretive ruling that would modify or revoke a prior interpretive ruling. Customs is announcing in this document that it has determined that rulings involving no interpretive decision by Customs which modify or terminate specific manufacturing drawback rulings or terminate general manufacturing drawback notices of acknowledgment fall outside the scope of 19 U.S.C. 1625(c). Accordingly, it is Customs position that any such modifications or terminations do not require prior notice published in the Customs Bulletin.

DATES: January 13, 1999.

FOR FURTHER INFORMATION CONTACT: Bill Rosoff, Duty and Refund Determinations Branch, Office of Regulations and Rulings, 1300 Pennsylvania Avenue, NW, Washington, DC, 20029, Tel. (202) 927–2277.

SUPPLEMENTARY INFORMATION:

Background

This document concerns a position that Customs is taking that 19 U.S.C. 1625(c) is not applicable to:

(1) Factual non-interpretive modifications or terminations of specific drawback manufacturing rulings, or;

(2) Factual non-interpretive terminations of general manufacturing drawback notices of acknowledgment.

It is Customs position that the modification or termination of a specific manufacturing drawback ruling which involves no interpretive decision by Customs, or the termination for non-interpretive factual reasons of a general manufacturing drawback notice of acknowledgment, does not require prior notice published in the Customs Bulletin before publication of the final ruling.

Customs considers modifications or terminations which require no interpretation of the drawback laws and regulations by Customs as non-interpretive.

General Manufacturing Drawback Notices of Acknowledgment

Section 191.7 of the Customs Regulations (19 CFR 191.7) provides that applicants for drawback involving certain common manufacturing operations may apply for drawback by submitting a letter of notification of intent to operate under a general manufacturing drawback ruling that is published in Appendix A to Part 191, Customs Regulations. The letter of notification of intent contains much factual information, such as the name and address of the manufacturer or producer, locations of the factories which will operate under the letter of notification, description of the merchandise and the manufacturing process and the IRS number. The drawback office to which the letter of notification of intent to operate under a general manufacturing drawback ruling was submitted will review the letter and, if the letter complies with certain criteria set forth in 19 CFR 191.7(c), will issue an acknowledged letter of notification.

Specific Manufacturing Drawback Rulings

Section 191.8 of the Customs Regulations (19 CFR 191.8) provides that each manufacturer or producer of an article intended to be claimed for drawback is required to apply for a specific manufacturing drawback ruling unless operating under a general manufacturing drawback ruling.

The contents of an application for a specific manufacturing drawback ruling, as with a letter of notification of intent for general manufacturing drawback, include much factual, non-interpretive information. Examples of some issues which are factual and non-interpretive include an applicant's name and address, IRS number, description of the type of business in which engaged, factory location, manufacturer's election of the manner by which it intends to show the basis for its entitlement to drawback (i.e, ''used in,'' ''appearing in,'' ''used in less valuable waste''), election of whether the claim will involve trade-off, and location of the Customs office where claims will be filed, etc.

An application may also raise issues which require Customs to interpret the drawback statute and regulations. Such interpretive issues may arise in rulings where Customs erroneously concluded that a process accurately described in the application was a manufacture or production, where Customs erroneously concluded that a process accurately described in the application was a major conversion or that the materials used were required for the safe operation of the vessel or aircraft within the meaning of 19 U.S.C. 1313, or where Customs erroneously concluded that accurately described substitute merchandise was of the same kind and quality as the designated merchandise, etc.

If Customs determines that a specific manufacturing drawback application is consistent with the drawback law and regulations, a letter of approval will be issued to the applicant.

Approved Drawback Applications Are ''Rulings''

Before the final rule revising the drawback regulations published in the **Federal Register** (63 FR 10970) on March 5, 1998 became effective, an approved drawback application was called a drawback contract. In that final rule document, Customs affirmed that an approved drawback application is now considered a drawback ruling, rather than a drawback contract, and subject to the requirements of 19 CFR Part 177 and 19 U.S.C. 1625. Accordingly, a specific manufacturer's

statement of its proposed operations under 19 U.S.C. 1313(a), (b), (d) and (g) which is approved by Customs now constitutes a ruling.

Modification and Revocation of Rulings Under 19 U.S.C. 1625(c)

Pursuant to 19 U.S.C. 1625(c), before publishing a final ruling which would (1) modify (other than to correct a clerical error) or revoke a prior interpretive ruling which has been in effect for at least 60 days or; (2) have the effect of modifying the treatment previously accorded by Customs to substantially identical transactions, Customs shall publish in the Customs Bulletin a proposed interpretive ruling on the subject, giving interested parties the opportunity to comment.

Termination of Specific Manufacturing Drawback Rulings or General Manufacturing Drawback Notices of Acknowlegement

Under 19 CFR 191.8(h), a specific manufacturing drawback ruling remains in effect indefinitely unless it is terminated for one of two reasons: (1) it has not been used for five years and notice of termination is published in the Customs Bulletin, or: (2) the ruling recipient requests termination.

Under 19 CFR 191.7(d), an acknowledged letter of notification for general manufacturing drawback remains in effect indefinitely unless it is terminated under the same circumstances set forth in 19 CFR 191.8(h).

Termination of the effectiveness of a specific manufacturing drawback ruling or general manufacturing drawback notice of acknowledgment is equivalent to revocation under 19 U.S.C. 1625(c).

Modification of Specific Manufacturing Drawback Rulings

A specific manufacturing drawback ruling can be modified under 19 CFR 191.8(g) upon request of the manufacturer or producer. The Customs Regulations do not provide for modification of a general manufacturing drawback notice of acknowledgment.

Customs Processing of Approved Specific Manufacturing Drawback Rulings and General Manufacturing Drawback Notices of Acknowledgment

A unique computer-generated number is assigned when Customs approves a specific manufacturing drawback ruling or acknowledges the intent of a person to use a general manufacturing drawback ruling. This number must be used when filing drawback claims with Customs. This unique computer-generated number helps Customs track manufacturing drawback transactions, particularly under the new Drawback Selectivity System. The Drawback Selectivity System is intended to evaluate a drawback claimant's compliance with the drawback laws and regulations by providing a history of the claimant's activity. If a general manufacturing drawback notice of acknowledgment or a specific manufacturing drawback ruling is terminated, the computer-generated number is removed from the active file part of the Drawback Selectivity System as Customs intends to concentrate its compliance efforts on active claimants. If a specific manufacturing drawback ruling is modified, a suffix is added to the computer-generated number of the original approved ruling which will continue the ruling as an active file. This is important for purposes of the Drawback Selectivity Program in that it continues the original specific manufacturing drawback ruling as an active drawback selectivity file.

Independent of the Drawback Selectivity System, individual claims of both active or inactive claimants remain subject to verification under 19 CFR 191.61. If a verification of a general or specific manufacturing claim reveals that the letter of intent for general manufacturing drawback or application for specific manufacturing drawback inaccurately described the actual operation employed by the manufacturer, Customs may deny the claim without effecting a modification or termination. In that situation, the failure of the applicant to accurately describe the processing steps or the specifications of the designated and substituted merchandise in the application is the basis of denial of drawback.

Inapplicability of 19 U.S.C. 1625(c) to Factual, Non-Interpretive Modifications or Terminations of Specific Manufacturing Drawback Rulings or Non-Interpretive Terminations of General Manufacturing Drawback Notices of Acknowlegement

As stated above, there are many factual elements of specific manufacturing drawback rulings and letters of notice of intent which are acknowledged for general manufacturing drawback. These factual elements sometimes change and Customs is generally notified of such changes by the recipient of the specific manufacturing drawback ruling or the recipient of the notice of acknowledgment for general manufacturing drawback. Such factual changes reflect the recipient's altered circumstances and involve no interpretation of the drawback statute and regulations by Customs. It is Customs position that modifications or terminations of specific manufacturing drawback rulings or terminations of general manufacturing drawback notices of acknowledgment, which are limited to factual changes and involve no interpretive decision by Customs, fall outside the scope of 19 U.S.C. 1625(c) as this section is not triggered absent a proposed ''interpretive'' ruling or decision. Accordingly, any such proposed non-interpretive modification or termination does not require prior notice published in the Customs Bulletin before publication of the final ruling.

Furthermore, Customs perceives no benefit, either to the Service or to the applicant, in postponing publication of a final ruling pending prior publication of a notice which merely details changes to a recipient's factual circumstance.

Of course, any modification or termination based on information which requires Customs to interpret the drawback statute and regulations will continue to be subject to the procedures of 19 U.S.C. 1625(c).

Dated: January 7, 1999.

Stuart P. Seidel,

Assistant Commissioner, Office of Regulations and Rulings.

[FR Doc. 99–719 Filed 1–12–99; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[LR–1214]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, LR–1214 (TD 7430), Discharge of Liens (§ 301.7425–3(b)(2)).

DATES: Written comments should be received on or before March 15, 1999 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulation should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, room 5569, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Discharge of Liens.

OMB Number: 1545–0854.

Regulation Project Number: LR–1214.

Abstract: The Internal Revenue Service needs this information in processing a request to sell property subject to a tax lien to determine if the taxpayer has equity in the property. This information will be used to determine the amount, if any, to which the tax lien attaches.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals, business or other for-profit organizations, and farms.

Estimated Number of Respondents: 500.

Estimated Time Per Respondent: 24 minutes.

Estimated Total Annual Burden Hours: 200.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: January 7, 1999.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 99–702 Filed 1–12–99; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[Regulation Section 601.201]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing regulation, 26 CFR 601.201, Instructions for Requesting Rulings and Determination Letters.

DATES: Written comments should be received on or before March 15, 1999 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, room 5569, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Instructions for Requesting Rulings and Determination Letters.

OMB Number: 1545–0819.

Regulation Project Number: 26 CFR 601.201.

Abstract: The IRS issues ruling letters and determination letters to taxpayers interpreting and applying the tax laws to a specific set of facts. The procedural regulations set forth the instructions for requesting ruling and determination letters.

Current Actions: There is no change to the collection of information in this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: All taxpayers.

Estimated Number of Respondents: 271,914.

Estimated Time Per Respondent: The estimated annual burden per respondent various from 15 minutes to 1 hour, depending on individual circumstances, with an estimated average of 55 minutes.

Estimated Total Annual Burden Hours: 248,496.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: January 6, 1999.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 99–703 Filed 1–12–99; 8:45 am]

BILLING CODE 4830–01–U

UNITED STATES INFORMATION AGENCY

Culturally Significant Objects Imported for Exhibition Determinations: ''Egyptian Art in The Age of the Pyramids''

ACTION: Notice.

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978 (43 FR 13359, March 29, 1978), and Delegation Order No. 85–5 of June 27, 1985 (50 FR 27393, July 2, 1985). I hereby determine that the objects to be included in the exhibit, ''Egyptian Art in The Age of the Pyramids'' (see list), imported from abroad for the temporary exhibition without profit within the United States, are of cultural significance. These objects are imported pursuant to loan agreements with foreign lenders. I also determine that the exhibition or display of the listed objects at The Metropolitan Museum of Art from September 13, 1999 to January 9, 2000 is in the national interest.

Public Notice of these Determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Carol Epstein, Assistant General Counsel, Office of the General Counsel, 202/619–6981, and the address is Room 700, U.S. Information Agency, 301 4th Street, SW, Washington, DC 20547–0001.

Dated: January 7, 1999.

R. Wallace Stuart,

Deputy General Counsel.

[FR Doc. 99–735 Filed 1–12–99; 8:45 am]

BILLING CODE 8230–01–M

federal register

Wednesday
January 13, 1999

Part II

Environmental Protection Agency

40 CFR Part 437

Effluent Limitations Guidelines, Pretreatment Standards, and New Source Performance Standards for the Centralized Waste Treatment Point Source Category; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 437

[FRL–6215–5]

RIN 2040–AB78

Effluent Limitations Guidelines, Pretreatment Standards, and New Source Performance Standards for the Centralized Waste Treatment Point Source Category

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule and notice of availability of new information.

SUMMARY: This proposal represents the Agency's second look at Clean Water Act national effluent limitations guidelines and pretreatment standards—first proposed in January 1995—for wastewater discharges from centralized waste treatment facilities. The proposed regulation would establish technology-based effluent limitations and pretreatment standards for wastewater discharges associated with the operation of new and existing centralized waste treatment facilities which accept hazardous or non-hazardous industrial wastes, wastewater, and/or used material from off-site for treatment and/or materials recovery.

Compliance with this regulation is expected to reduce the discharge of pollutants by at least 14.3 million pounds per year of conventional pollutants and 4.1 million pounds per year of toxic and non-conventional pollutants and cost an estimated $27.8 million ($1997) on an annual basis. EPA has estimated that the annual benefits of the proposal would range from $5.3 million to $15.9 million ($1997).

DATES: EPA must receive comments on the proposal by midnight of March 15, 1999. EPA will present an assessment of its 1998 characterization sampling of non-hazardous oil treatment and recovery facilities, and conduct a public hearing on pretreatment standards on February 18, 1999 from 9:30 AM to 12:30 PM.

ADDRESSES: Submit written comments to, Ms. Jan Matuszko, Office of Water, Engineering and Analysis Division (4303), U.S. EPA, 401 M St. SW, Washington, DC 20460. Please submit any references cited in your comments. EPA requests an original and three copies of your comments and enclosures (including references). Commenters who want EPA to acknowledge receipt of their comments should enclose a self-addressed, stamped envelope. No facsimiles (faxes) will be accepted. For additional information on how to submit electronic comments see "**SUPPLEMENTARY INFORMATION**, How to Submit Comments."

EPA will present an assessment of its 1998 characterization sampling of non-hazardous oil treatment and recovery facilities, and conduct a public hearing on pretreatment standards in EPA's Auditorium, Waterside Mall, 401 M St. SW, Washington, DC. Persons wishing to present formal comments at the public hearing should contact Mr. Timothy Connor before the hearing and should have a written copy for submittal.

The public record for this proposed rulemaking has been established under docket number W–98–21 and is located in the Water Docket East Tower Basement, 401 M St. SW, Washington, DC 20460. The record is available for inspection from 9:00 a.m. to 4:00 p.m., Monday through Friday, excluding legal holidays. For access to the docket materials, call (202) 260–3027 to schedule an appointment. You may have to pay a reasonable fee for copying.

FOR FURTHER INFORMATION CONTACT: For technical information concerning today's proposed rule, contact Ms. Jan Matuszko at (202) 260–9126 or Mr. Timothy Connor at (202) 260–3164. For economic information contact Dr. William Wheeler at (202) 260–7905.

SUPPLEMENTARY INFORMATION:

Regulated Entities

Entities potentially regulated by this action include:

Category	Examples of regulated entities
Industry	• Discharges from stand-alone waste treatment and recovery facilities receiving materials from off-site. These facilities may treat and/or recover or recycle hazardous or non-hazardous waste, hazardous or non-hazardous wastewater, and/or used material from off-site. • Certain discharges from waste treatment systems at facilities primarily engaged in other industrial operations. Thus, industrial facilities which process their own, on-site generated, process wastewater with hazardous or non-hazardous wastes, wastewaters, and/or used material received from off-site, in certain circumstances, may be subject to this proposal with respect to a portion of their discharge.

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 proposed in Section 437.01 and detailed further in Section IV of the proposed rule. If you still have questions regarding the applicability of this action to a particular entity (after consulting Section IV), consult one of the persons listed for technical information in the preceding **FOR FURTHER INFORMATION CONTACT** section.

How To Submit Comments

Comments may also be sent via e-mail to matuszko.jan@epamail.epa.gov. Electronic comments must be identified by the docket number W–98–21 and must be submitted as an ASCII or WordPerfect 6.1 file avoiding the use of special characters and any form of encryption. Electronic comments on this notice may be filed online at many Federal Depository Libraries. No confidential business information (CBI) should be sent via e-mail.

Protection of Confidential Business Information

EPA notes that many documents in the record supporting the proposed rule have been claimed as 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, alternatively, is masking facility identities in order to preserve confidentiality claims. Further, the Agency has withheld from disclosure some data not claimed as CBI because release of this information could indirectly reveal information claimed to be confidential.

Some facility-specific data, claimed as CBI, are available to the company that submitted the information. To ensure

that all CBI is protected in accordance with EPA regulations, any requests for company-specific data should be submitted to EPA on company letterhead and signed by a responsible official authorized to receive such data. The request must list the specific data requested and include the following statement, ''I certify that EPA is authorized to transfer confidential business information submitted by my company, and that I am authorized to receive it.''

Overview

The preamble describes the definitions, acronyms, and abbreviations used in this notice; the background documents that support these proposed regulations; the legal authority of these rules; a summary of the proposal; background information; and the technical and economic methodologies used by the Agency to develop these regulations. This preamble also solicits comment and data on specific areas of interest.

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I. Legal Authority

These regulations are proposed under the authority of Sections 301, 304, 306, 307, 308, 402, and 501 of the Clean Water Act, 33 U.S.C.1311, 1314, 1316, 1317, 1318, 1342, and 1361.

II. Legislative Background

A. Clean Water Act

Congress adopted the Clean Water Act (CWA) to ''restore and maintain the chemical, physical, and biological integrity of the Nation's waters'' (Section 101(a), 33 U.S.C. 1251(a)). To achieve this goal, the CWA prohibits the discharge of pollutants into navigable waters except in compliance with the statute. The Clean Water Act confronts the problem of water pollution on a number of different fronts. Its primary reliance, however, is on establishing restrictions on the types and amounts of pollutants discharged from various industrial, commercial, and public sources of wastewater.

Congress recognized that regulating only those sources that discharge effluent directly into the nation's waters would not be sufficient to achieve the CWA's goals. Consequently, the CWA requires EPA to promulgate nationally applicable pretreatment standards which restrict pollutant discharges for those who discharge wastewater indirectly through sewers flowing to publicly-owned treatment works (POTWs) (Section 307(b) and (c), 33

U.S.C. 1317(b) & (c)). National pretreatment standards are established for those pollutants in wastewater from indirect dischargers which may pass through or interfere with POTW operations. Generally, pretreatment standards are designed to ensure that wastewaters from direct and indirect industrial dischargers are subject to similar levels of treatment. In addition, POTWs are required to implement local treatment limits applicable to their industrial indirect dischargers to satisfy any local requirements (40 CFR 403.5).

Direct dischargers must comply with effluent limitations in National Pollutant Discharge Elimination System (''NPDES'') permits; indirect dischargers must comply with pretreatment standards. These limitations and standards are established by regulation for categories of industrial dischargers and are based on the degree of control that can be achieved using various levels of pollution control technology.

1. Best Practicable Control Technology Currently Available (BPT)—Section 304(b)(1) of the CWA

In the guidelines, EPA defines BPT effluent limits for conventional, priority,[1] and non-conventional pollutants. In specifying BPT, EPA looks at a number of factors. EPA first considers the cost of achieving effluent reductions in relation to the effluent reduction benefits. The Agency also considers the age of the equipment and facilities, the processes employed and any required process changes, engineering aspects of the control technologies, non-water quality environmental impacts (including energy requirements), and such other factors as the Agency deems appropriate (CWA 304(b)(1)(B)). Traditionally, EPA establishes BPT effluent limitations based on the average of the best performances of facilities within the industry of various ages, sizes, processes, or other common characteristics. Where, however, existing performance is uniformly inadequate, EPA may require higher levels of control than currently in place in an industrial category if the Agency determines that the technology can be practically applied.

2. Best Conventional Pollutant Control Technology (BCT)—Section 304(b)(4) of the CWA

The 1977 amendments to the CWA required EPA to identify effluent reduction levels for conventional pollutants associated with BCT technology for discharges from existing industrial point sources. In addition to other factors specified in Section 304(b)(4)(B), the CWA requires that EPA establish BCT limitations after consideration of a two part ''cost-reasonableness'' test. EPA explained its methodology for the development of BCT limitations in July 1986 (51 FR 24974).

Section 304(a)(4) designates the following as conventional pollutants: biochemical oxygen demand (BOD_5), 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)—Section 304(b)(2) of the CWA

In general, BAT effluent limitations guidelines represent the best economically achievable performance of plants 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 cost of achieving BAT effluent reductions, the age of equipment and facilities involved, the process employed, potential process changes, and non-water quality environmental impacts, including energy requirements and such other 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. Generally, EPA determines economic achievability on the basis of total costs to the industry and the effect of compliance with BAT limitations on overall industry and subcategory financial conditions. As with BPT, where existing performance is uniformly inadequate, BAT may require a higher level of performance than is currently being achieved based on technology 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. New Source Performance Standards (NSPS)—Section 306 of the CWA

NSPS reflect effluent reductions that are achievable based on the best available demonstrated control technology. New facilities have the opportunity to install the best and most efficient production processes and wastewater treatment technologies. As a result, NSPS should represent the most stringent controls attainable through the application of the best available control technology for all pollutants (that is, conventional, nonconventional, and priority pollutants). 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)—Section 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. These regulations contain a definition of pass-through that addresses localized rather than national instances of pass-through and establishes pretreatment standards that apply to all non-domestic dischargers. See 52 FR 1586, January 14, 1987.

6. Pretreatment Standards for New Sources (PSNS)—Section 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 plants the best available demonstrated technologies. The Agency considers the same factors in promulgating PSNS as it considers in promulgating NSPS.

[1] In the initial stages of EPA CWA regulation, EPA efforts emphasized the achievement of BPT limitations for control of the ''classical'' pollutants (for example, TSS, pH, BOD_5). However, nothing on the face of the statute explicitly restricted BPT limitations to such pollutants. Following passage of the Clean Water Act of 1977 with its requirement for point sources to achieve best available technology limitations to control discharges of toxic pollutants, EPA shifted its focus to address the listed priority pollutants under the guidelines program. BPT guidelines continue to include limitations to address all pollutants.

B. Section 304(m) Consent Decree

Section 304(m) of the CWA, added by the Water Quality Act of 1987, requires EPA to establish schedules for (1) reviewing and revising existing effluent limitations guidelines and standards (''effluent guidelines'') and (2) promulgating new effluent guidelines. On January 2, 1990, EPA published an Effluent Guidelines Plan (55 FR 80) that established schedules for developing new and revised effluent guidelines for several industry categories. One of the industries for which the Agency established a schedule was the centralized waste treatment industry.

The Natural Resources Defense Council (NRDC) and Public Citizen, Inc. filed suit against the Agency, alleging violation of Section 304(m) and other statutory authorities requiring promulgation of effluent guidelines (*NRDC et al.* v. *Browner,* Civ. No. 89–2980 (D.D.C.)). Under the terms of a consent decree dated January 31, 1992, which settled the litigation, EPA agreed, among other things, to propose effluent guidelines for the ''Centralized Waste Treatment Industry Category by April 31, 1994 and take final action on these effluent guidelines by January 31, 1996. On February 4, 1997, the court approved modifications to the Decree which revised the deadline to August 1999 for final action. EPA provided notice of these modifications on February 26, 1997 at 62 FR 8726.

C. The Land Disposal Restrictions Program

1. Introduction to RCRA Land Disposal Restrictions (LDR)

The Hazardous and Solid Waste Amendments (HSWA) to the Resource Conservation and Recovery Act (RCRA), enacted on November 8, 1984, largely prohibit the land disposal of untreated hazardous wastes. Once a hazardous waste is prohibited from land disposal, the statute provides only two options for legal land disposal: meet the treatment standard for the waste prior to land disposal, or dispose of the waste in a land disposal unit that has been found to satisfy the statutory no-migration-test. A no-migration-unit is one from which there will be no migration of hazardous constituents for as long as the waste remains hazardous (RCRA Sections 3004 (d), (e), (g)(5)).

Under section 3004, the treatment standards that EPA develops may be expressed as either constituent concentration levels or as specific methods of treatment. The criteria for these standards is that they must substantially diminish the toxicity of the waste or substantially reduce the likelihood of migration of hazardous constituents from the waste so that short-term and long-term threats to human health and the environment are minimized (RCRA Section 3004(m)(1)). For purposes of the restrictions, the RCRA program defines land disposal to include any placement of hazardous waste in a landfill, surface impoundment, waste pile, injection well, land treatment facility, salt dome formation, salt bed formation, or underground mine or cave. Land disposal restrictions are published in 40 CFR Part 268.

EPA has used hazardous waste treatability data as the basis for land disposal restrictions standards. First, EPA has identified Best Demonstrated Available Treatment Technology (BDAT) for each listed hazardous waste. BDAT is that treatment technology that EPA finds to be the most effective for a waste which is also readily available to generators and treaters. In some cases, EPA has designated, for a particular waste stream, a treatment technology which has been shown to successfully treat a similar, but more difficult to treat, waste stream. This ensured that the land disposal restrictions standards for a listed waste stream were achievable since they always reflected the actual treatability of the waste itself or of a more refractory waste.

As part of the Land Disposal Restrictions (LDR), Universal Treatment Standards (UTS) were promulgated as part of the RCRA phase two final rule (July 27,1994). The UTS are a series of concentrations for wastewaters and non-wastewaters that provide a single treatment standard for each constituent. Previously, the LDR regulated constituents according to the identity of the original waste; thus, several numerical treatment standards might exist for each constituent. The UTS simplified the standards by having only one treatment standard for each constituent in any waste residue.

The LDR treatment standards established under RCRA may differ from the Clean Water Act effluent guidelines proposed here today both in their format and in the numerical values set for each constituent. The differences result from the use of different legal criteria for developing the limits and resulting differences in the technical and economic criteria and data sets used for establishing the respective limits.

The difference in format between the LDR and effluent guidelines is that LDR establishes a single daily limit for each pollutant parameter whereas the effluent guidelines generally establish monthly and daily limits. Additionally, the effluent guidelines provide for several types of discharge, including new vs. existing sources, and indirect vs. direct discharge.

The differences in numerical limits established under the Clean Water Act may differ, not only from LDR and UTS, but also from point-source category to point-source category (for example, Electroplating, 40 CFR Part 413; and Metal Finishing, 40 CFR Part 433). The effluent guidelines limitations and standards are industry-specific, subcategory-specific, and technology-based. The numerical limits are typically based on different data sets that reflect the performance of specific wastewater management and treatment practices. Differences in the limits reflect consideration of the CWA statutory factors that the Administrator is required to evaluate in developing technically and economically achievable limitations and standards. A consequence of these differing approaches is that similar waste streams can be regulated at different levels.

2. Overlap Between LDR Standards and the Centralized Waste Treatment Industry Effluent Guidelines

EPA's survey for this guideline identified no facilities discharging wastewater effluent to land disposal units. There is, consequently, no overlap between the proposed regulations for the CWT Industry and the Universal Treatment Standards.

III. Centralized Waste Treatment Industry Effluent Guideline Rulemaking History

A. January 27, 1995 Proposal

On January 27, 1995 (60 FR 5464), EPA proposed regulations to reduce discharges to navigable waters of toxic, conventional, and non-conventional pollutants in treated wastewater from facilities defined in the proposal as ''centralized waste treatment facilities.'' As proposed, these effluent limitations guidelines and pretreatment standards would have applied to ''any facility that treats any hazardous or non-hazardous industrial waste received from off-site by tanker truck, trailer/roll-off bins, drums, barge or other forms of shipment.'' Facilities which received waste from off-site solely via pipeline were excluded from the proposed rule. Facilities proposed for regulation included both stand-alone waste treatment and recovery facilities that treat waste received from off-site as well as those facilities that treat on-site generated process wastewater with wastes received from off-site.

The Agency proposed limitations and standards for an estimated 85 facilities

in three subcategories. The subcategories for the centralized waste treatment (CWT) industry were metal-bearing waste treatment and recovery, oily waste treatment and recovery, and organic waste treatment and recovery. EPA based the BPT effluent limitations proposed in 1995 on the technologies listed in Table III.A–1 below. EPA based BCT, BAT, NSPS, PSES, and PSNS on the same technologies as BPT.

TABLE III.A–1. TECHNOLOGY BASIS FOR 1995 BPT EFFLUENT LIMITATIONS

Proposed subpart	Name of subcategory	Technology basis
A	Metal-Bearing Waste Treatment and Recovery	Selective Metals Precipitation, Pressure Filtration, Secondary Precipitation, Solid-Liquid Separation, and Tertiary Precipitation. For Metal-Bearing Waste Which Includes Concentrated Cyanide Streams: Pretreatment by Alkaline Chlorination at Elevated Operating Conditions.
B	Oily Waste Treatment and Recovery	Emulsion Breaking/Gravity Separation and Ultrafiltration; or Ultrafiltration, Carbon Adsorption, and Reverse Osmosis.
C	Organic Waste Treatment and Recovery	Equalization, Air Stripping, Biological Treatment, and Multimedia Filtration.

B. September 16, 1996 Notice of Data Availability

Based on comments received on the 1995 proposal and new information, EPA reexamined its conclusions about the Oily Waste Treatment and Recovery subcategory, or ''oils subcategory''. (The 1995 proposal had defined facilities in this subcategory as ''facilities that treat, and/or recover oil from oily waste received from off-site.'') Subsequently, in September, 1996 EPA noticed the availability of the new data on this subcategory (61 FR 48800). EPA explained that it had underestimated the size of the oils subcategory, and that the data used to develop the original proposal may have mischaracterized this portion of the CWT industry. EPA had based its original estimates on the size of this segment of the industry on information obtained from the 1991 Waste Treatment Industry Questionnaire. The basis year for the questionnaire was 1989. However, many of the new oils facilities discussed in this notice began operation after 1989. EPA concluded that many of these facilities may have started up or modified their existing operations in response to requirements in EPA regulations, specifically, the provisions of 40 CFR part 279, promulgated on September 10, 1992 (Standards for the Management of Used Oil). These regulations govern the handling of used oils under the Solid Waste Disposal Act and CERCLA. EPA's 1996 notice discussed the additional facilities, provided a revised description of the subcategory, and described how the 1995 proposal limitations and standards, if promulgated, would have affected such facilities. The notice, among other items, also solicited comments on the use of dissolved air flotation in this subcategory.

IV. Scope/Applicability of the Proposed Regulation

Over half of the comments received on the original proposal related to the applicability of the rule. For more background on the CWT industry, see Section V. EPA has reviewed these comments and is proposing a revised scope for this rule. Many of these issues are discussed in more detail below. EPA solicits comments on each of these issues as well as any other applicability issues which are not specifically addressed in today's notice.

A. General Overview

EPA is still proposing limitations and standards for three subcategories of CWT facilities. However, it would change the scope of the facilities and wastewater discharges that would be subject to regulation from that proposed earlier. The universe of facilities which would be potentially subject to this guideline generally include the following. First, except where noted otherwise, EPA is proposing to establish limitations and pretreatment standards for stand-alone waste treatment and recovery facilities receiving materials from off-site—classic ''centralized waste treaters.'' These facilities may treat and/or recover or recycle hazardous or non-hazardous waste, hazardous or non-hazardous wastewater, and/or used material from off-site. Second, discharges from waste treatment systems at facilities primarily engaged in other industrial operations may also fall within the scope of today's proposal in certain circumstances. Thus, industrial facilities which process their own, on-site generated, process wastewater with hazardous or non-hazardous wastes, wastewaters, and/or used material received from off-site may be subject to this proposal with respect to a portion of their discharge.

The wastewater flows which EPA is proposing to subject to the requirements of this rule would include some or all off-site waste receipts and on-site wastewater generated as a result of CWT operations. The kinds of on-site wastewater generated at these facilities would include, for example, solubilization wastewater, emulsion breaking/gravity separation wastewater, used oil processing wastewater, treatment equipment washes, transport washes (tanker truck, drum, and roll-off boxes), laboratory-derived wastewater, air pollution control wastewater, industrial waste combustor wastewater from on-site industrial waste combustors, landfill wastewater from on-site landfills, and contaminated stormwater. A detailed discussion of CWT wastewaters is provided in Section VIII. In summary, all wastewater discharges to a receiving stream or the introduction of wastewater to a publicly owned treatment works from a facility which falls under the definition of centralized waste treatment facility would be subject to the provisions of this rule unless specifically excluded as discussed in the following sections.

B. Facilities Subject to 40 CFR (Parts 400 Through 471)

At the time of the original proposal, EPA defined a centralized waste treatment facility as any facility which received waste from off-site for treatment or recovery on a commercial or non-commercial basis. Non-commercial facilities were defined as facilities that accept off-site wastes from facilities under the same ownership. EPA received many comments concerning the applicability of the CWT rule to facilities that perform waste treatment and/or recovery of off-site generated wastes, but whose primary business is something other than waste treatment or recovery. These facilities

are generally manufacturers who primarily treat wastes generated as a result of their on-site manufacturing operations, and whose wastewater discharges are already subject to existing effluent guidelines and standards. Many of these facilities also accept off-site generated wastes for treatment. In some instances, these off-site wastes received at these industrial facilities are generated by a facility under the same corporate ownership—intracompany transfer—and treated on a non-commercial basis. In other instances, the off-site waste streams originate from a company under a different ownership, an intercompany transfer.

In general, commenters urged that the scope of the guideline should be limited to facilities whose sole purpose is the treatment of off-site wastes and wastewater. Reasons provided by commenters for not including facilities that treat off-site wastes along with their own on-site wastes within the scope of the guideline include:

- The wastes transferred from different locations within a company (and different companies) for treatment with on-site wastes are usually generated from the same categorical process as the on-site generated wastes. Since most of these facilities are already covered by an existing effluent guideline, coverage of these waste streams is redundant. Monitoring, record keeping, etc. would be duplicative.
- This proposed rule could prevent effective waste management practices at many manufacturing facilities. Currently, many companies operate a single, central treatment plant and transport waste from ''satellite'' facilities to the central treatment facility. This allows for effective treatment while controlling costs. Additionally, many facilities transfer a specific waste stream to other company-owned treatment systems (intracompany) that are designed for the most efficient treatment of that type of waste stream.
- Many of these types of facilities only accept waste streams which are comparable and compatible with the on-site generated process waste streams.
- These facilities are not primarily in the business of waste treatment. Only a small percentage of wastes treated are from off-site.
- EPA has not performed the technical analyses that are necessary to support application of the CWT rule to manufacturing facilities regulated by existing effluent guidelines and pretreatment standards.

EPA reexamined the database of facilities which forms the basis of the CWT rule. EPA's database contains information on 17 manufacturing facilities which commingle waste generated by on-site manufacturing activities for treatment with waste generated off-site and one manufacturing facility which does not commingle waste generated by on-site manufacturing activities for treatment with waste generated off-site. Nine of these facilities treat waste on a non-commercial basis only while nine treat waste on a commercial basis. Of the eighteen facilities, eight facilities only accept and treat off-site wastes which are from the same categorical process as the on-site generated waste streams. Ten of the facilities, however, are clearly accepting off-site wastes which are not subject to the same categorical standards as the on-site generated wastewater. The percentage of off-site wastewaters being commingled for treatment with on-site wastewater varies from 0.06% to 80%, with the total volumes varying between 87,000 gallons per year to 381 million gallons per year.

The guidelines, as proposed in 1995, would have included all of these facilities within the scope of this rule. EPA included these facilities in the 1995 proposed CWT rule to ensure that all wastes receive adequate treatment—even those shipped between facilities already subject to existing effluent guidelines and standards. After reconsidering this issue for the current proposal, however, EPA agrees that, for off-site wastes which are generated by the same categorical process as on-site generated wastes, intracompany and intercompany transfers are a viable and often preferable method to treat waste streams efficiently at a reduced cost. EPA does not want to discourage these management practices. EPA is still concerned, however, that, in circumstances where the off-site generated wastes are not from the same categorical group as the on-site generated wastes, the effluent limitations and categorical standards currently in place for one industry may not ensure adequate treatment for wastes generated in another industry. It is not duplicative, in such circumstances, to include within the scope of the CWT guideline, wastewater that results from the treatment of off-site wastes not subject to the guidelines and standards applicable to the treatment of wastewater generated on-site. EPA has included these facilities in all of its economic analyses.

Therefore, based on the Agency's evaluation of the comments submitted on its earlier proposal and consideration of additional information, EPA is today proposing to include within the scope of the CWT rule wastewater received from off-site from facilities in other industries that also generate on-site wastewater unless one of the following conditions is met:

- For facilities subject to national effluent limitations guidelines for existing sources, standards of performance for new sources, or pretreatment standards for new and existing sources (''categorical standards''), the wastes received from off-site for treatment would be subject to the same categorical standards as the on-site generated wastes; or
- For facilities not subject to existing categorical standards, the waste received from off-site is from the same industry (other than the waste treatment industry) and is of a similar nature to the waste generated on-site (based on the best professional judgment of the permit writer).

For purposes of developing its effluent limitations and pretreatment standards, EPA has included manufacturing facilities which accept off-site waste for treatment in all of its analyses unless the above mentioned conditions were met.

EPA contemplates that this approach would be implemented in the following manner. A facility that is currently subject to either national effluent limitations or pretreatment standards receives wastewater from off-site for treatment. The wastewater is commingled for treatment with wastewater generated on-site. If the off-site wastewater is subject to the same limitations or standards as the onsite wastewater (or would be if treated where generated), the CWT limitations would not apply to the discharge associated with the off-site wastewater flows. In that case, another guideline or standard applies. If, however, the off-site wastewater is not subject to the same national limitations or standards (or if none exist), that portion of the discharge associated with the off-site flow would be subject to CWT requirements. (Of course, the portion of the wastewater generated on-site remains subject to applicable limitations and standards for the facility. If the off-site and on-site wastewaters were commingled prior to discharge, the permit writer would use the ''combined wastestream formula'' or ''building block approach'' to determine limitations for the commingled wastestream). Alternatively, EPA is considering an option under which the permit writers could allow manufacturing facilities that treat off-site wastes to meet all otherwise-

applicable categorical limitations and standards for the industries from which the waste was generated. This approach would also determine limitations or standards for any commingled on-site and off-site wastewater using the ''combined waste stream formula'' or ''building block approach''. Under the approach, however, the permit writer would apply the categorical limitations from the industries generating the wastewater, rather than the CWT limitations proposed today to the off-site portion of the commingled wastestream. The use of the combined wastestream formula and building block approaches for CWT wastes is discussed further in Section XIV.F. EPA envisions the second alternative would be preferable for facilities which only receive continuous flows of process wastewaters with relatively consistent pollutant profiles from no more than five customers. The decision to base limitations in this manner would be at the permit writer's discretion only. EPA solicits comment on this alternative as well as the application of the CWT rule to manufacturing facilities in general.

In addition, there are manufacturing facilities that may not currently be subject to any effluent limitations guidelines or pretreatment standards. Some of these may accept off-site wastewater that is commingled for treatment with on-site process wastewater. With respect to such facilities, EPA contemplates that an approach similar to that proposed above for categorical industries receiving off-site wastewater for treatment. Thus, the proposal would be implemented as follows. Under EPA regulations, the permit writer would develop best professional judgement BPJ limits (or standards) for the on-site generated wastewater flows. The portion of the discharge resulting from the treatment of off-site flows would be subject either to CWT limitations and standards or to the same BPJ requirements as on-site flows. CWT limitations would apply if the off-site wastes treated at the facility were different from those generated on-site. Alternatively, applying either a building block or combined waste stream formula approach, on-site wastewater would be subject to appropriate BPJ limits or standards for the on-site processes generating the wastewater and the off-site wastewater would be subject to appropriate limits for the off-site industry generating the wastewater. The Agency solicits comment on how it should treat such facilities.

C. Pipeline Transfers (Fixed Delivery Systems)

As previously noted, the scope of EPA's 1995 proposal did not extend to facilities which received off-site wastes for treatment solely via an open or enclosed conduit (for example, pipeline, channels, ditches, trenches, etc.). At that time, EPA had concluded that facilities which receive all their wastes through a pipeline or trench (fixed delivery systems) from the original source of waste generation are receiving continuous flows of process wastewater with relatively consistent pollutant profiles. As such, EPA concluded that these wastes differ fundamentally from those received at CWT facilities it had studied as part of this rulemaking.

The Agency received many comments on the proposal to limit the applicability of the proposed limits to wastewaters received other than by pipelines or fixed delivery systems. Many commented that this approach is arbitrary and that the mode of transportation should not be the determining factor as to whether or not a facility is included in the scope of the rule. Commenters asserted that the character of the waste remains unchanged regardless of whether it is trucked or piped to another facility for treatment. Many also questioned EPA's conclusion that piped waste is more consistent in strength and treatability than typical CWT wastewaters studied for this proposal.

EPA has reevaluated the database for this rule. EPA received questionnaire responses from four CWT facilities which receive their waste streams solely via pipeline. EPA also examined the database that was developed for the organic chemicals, plastics, and synthetic fibers (OCPSF) effluent guidelines and pretreatment standards to gather additional data on OCPSF facilities which also have CWT operations. Based on the OCPSF database, 16 additional facilities are treating wastewater received solely via pipeline from off-site for treatment. A review of the CWT and OCPSF databases supplemented by telephone calls to selected facilities reveals that one facility no longer accepts wastes from off-site, one facility is now operating as a POTW, and 11 facilities only accept off-site wastes that were generated by a facility within the same category as on-site generated waste. (The latter facilities, under the criteria explained above, would no longer be within the scope of the proposed rule because they are already subject to existing effluent guidelines and standards.) Therefore, EPA identified 7 facilities which receive off-site wastes solely via pipeline which may be subject to this rulemaking.

Of these seven facilities, one is a dedicated treatment facility which is not located at a manufacturing site. The other six pipeline facilities are located at manufacturing facilities which are already covered by an existing effluent guideline or standard. All of the facilities are direct dischargers and all receive waste receipts from no more than five customers (many receive waste receipts from three or fewer customers).

Since the 1995 proposal, EPA conducted site visits at two of these pipeline facilities. Information collected during these site visits confirmed EPA's original conclusion that wastes received by pipeline are more consistent in strength and treatability than ''typical'' CWT wastewaters. These wastewaters are traditional wastewaters from the applicable industrial category that generally remain constant from day to day in terms of the concentration and type of pollutant parameters. Unlike traditional CWT facilities, their customers and wastewater sources do not change and are limited by the physical and monetary constraints associated with pipelines.

EPA has also reviewed the discharge permits for each of these pipeline facilities. EPA found that, in all cases, permit writers had carefully applied the ''building block approach'' in establishing the facility's discharge limitations. Therefore, in all cases, the treating facility was required to treat each of the piped wastewaters to comply with otherwise applicable effluent guidelines and standards.

Consequently, based on the information it has obtained to date, EPA continues to believe that (except as discussed below) wastes that are piped to waste treatment facilities should be excluded from the scope of the CWT rule and covered by otherwise applicable effluent guidelines and standards. The Agency has concluded that effluent limitations and pretreatment standards for CWT facilities should not apply to pipeline treatment facilities. EPA believes that it is more appropriate for permit writers to develop limitations for treatment facilities that receive wastewater by pipeline on an individual basis by applying the ''combined waste stream formula'' or ''building block'' approach. The one exception to this approach is for facilities which receive waste via conduit (that is, pipeline, trenches, ditches, etc.) from facilities that are acting merely as waste collection or consolidation centers that are not the original source of the waste. These wastewaters would be subject to the

CWT rule. EPA has not identified any pipeline facility that is receiving waste from waste consolidators, but has received public comment that these facilities exist.

EPA notes that 40 CFR 122.44(m) of the Agency's NPDES permitting regulations require that an NPDES permit for a private treatment works must include conditions expressly applicable to any user, as a limited co-permittee, necessary to ensure compliance with applicable NPDES requirements. In the case of a pipeline treatment system, this may require that the permit writer include conditions in a permit issued to the pipeline treatment system and its users, as co-permittee, if necessary for the pipeline facility to comply with the applicable limitations. Alternatively, EPA may need to issue permits both to the private treatment works and to the users or require the user to file a permit application.

D. Product Stewardship

Many members of the manufacturing community have adopted ''product stewardship'' programs as an additional service for their customers to promote recycling and reuse of products and to reduce the potential for adverse environmental impacts from chemical products. Many commenters on the proposal have defined ''product stewardship'' in this way: ''taking back spent, used, or unused products, shipping and storage containers with product residues, off-specification products and waste materials from use of products.'' Generally, whenever possible, these manufacturing plants recover and reuse materials in chemical processes at their facility. Manufacturing companies that cannot reuse the spent, used, or unused materials returned to them treat these materials in their wastewater treatment plant. In industry's view, such materials are inherently compatible with the treatment system.

EPA received no specific information on these product stewardship activities in the responses to the 308 Waste Treatment Industry Questionnaire. EPA obtained information on this program from comment responses to the 1995 CWT proposal and in discussions with industry since the 1995 proposal. As part of their comment to the 1995 proposal, the Chemical Manufacturer's Association provided results of a survey of their members on product stewardship activities. Based on these survey results, the vast majority of materials received under the product stewardship programs are materials received for product rework. A small amount is classified as residual recycling and an even smaller amount is classified as drum take backs. Of the materials received, the vast majority is reused in the manufacturing process. With few exceptions, all of the materials (which are not reused in the manufacturing process) that are treated in the on-site wastewater treatment systems appear to be from the same categorical group as the on-site manufactured materials.

EPA has decided to apply the same approach to wastewater generated from materials that are taken back for recycle or reuse as to wastewater received from off-site by a manufacturing facility. EPA applauds the efforts of manufacturing facilities to reduce pollution and the environmental impacts of their products and does not want to discourage these practices. In most of the instances stated in the product stewardship definition, manufacturing facilities are essentially taking back product which has not been utilized or has not been chemically altered. In these cases, where the treatment of these wastes would be subject to same guidelines or pretreatment standards as the other wastewater generated at the facility, under the approach discussed above, they would not be subject to CWT requirements (Section IV.B).

EPA remains concerned, however, that there are circumstances in which used materials or waste products may not be compatible with the otherwise existing treatment system. Therefore, EPA is not proposing to remove all product stewardship activities from the scope of this rulemaking. Those activities that involve used products or waste materials that are not subject to effluent guidelines or standards from the same category as the other on-site generated wastes are subject to today's proposal. Based on the information provided by manufacturing facilities, EPA believes that very few product stewardship activities would be subject to this rule. EPA's approach will not curtail product stewardship activities, in general, but will ensure that all wastes are treated effectively. EPA requests comment on this approach.

E. Solids, Soils, and Sludges

EPA did not distinguish in its information gathering efforts between those waste treatment and recovery facilities treating aqueous waste and those treating non-aqueous wastes or a combination of both. Thus, EPA's 308 Waste Treatment Industry Questionnaire and related CWT Detailed Monitoring Questionnaire (DMQ) asked for information on CWT operations without regard to the type of waste treated. EPA's sampling program also included facilities which accepted both aqueous and solid wastes for treatment. In fact, the facility which formed the technology basis for the metals subcategory limitations selected at the time of the original proposal treats both liquid and solid wastes. As such, a facility that accepts wastes from off-site for treatment and/or recovery that generates a wastewater is subject to the CWT rule regardless of whether the wastes are aqueous or non-aqueous. Therefore, wastewater generated in the treatment of solids received from off-site, of course, would be subject to the CWT rule.

As a further point of clarification, the main concern in the treatment or recycling of off-site ''solid wastes'' is that pollutants contained in the solid waste may be transferred to a process or contact water resulting in a wastewater that may require treatment. Examples of such wastewaters include the following:

- entrained water directly removed through dewatering operations (for example, sludge dewatering);
- contact water added to wash or leach contaminants from the waste material;
- stormwater that comes in direct contact with waste material; and
- solvent contaminated wastewater removed from scrap metal recycling.

The treatment or recovery of solids that remain in solid form when contacted with water and which do not leach any chemicals into the water are not subject to this rule. Examples of excluded solids recovery operations are the recycling of aluminum cans, glass and plastic bottles.

F. Sanitary Wastes

The CWT proposal would regulate facilities which treat, or recover materials from, off-site industrial wastes and wastewaters. Sanitary wastes such as chemical toilet wastes and septage are not covered by the provisions of the proposed CWT rule. EPA would expect that permit writers would develop BPJ limitations or local limits to establish site-specific permit requirements for any commercial sanitary waste treatment facility.

Similarly, sanitary wastes received from off-site and treated at an industrial facility or a CWT facility are not covered by provisions of the CWT rule. If these wastes are mixed with industrial wastes, EPA would expect that, as is the case now with ancillary sanitary waste flows mixed for treatment at categorical facilities, the permit writer would establish BPJ, site-specific permit requirements.

G. Transporters and/or Transportation Equipment Cleaners

Facilities that treat wastewater that results from cleaning tanker trucks, rail tank cars, or barges may or may not be subject to the provisions of this rule. Thus, for example, the rule does not apply to discharges from wastewater treatment at facilities engaged exclusively in cleaning the interiors of transportation equipment. These facilities may be subject to the requirements to be established for the Transportation Equipment Cleaning (TEC) Point Source Category (these requirements were proposed at 63 FR 34685 June 25,1998). As proposed, the TEC regulation only applies to facilities that solely accept tanks which have been previously emptied or that contain a small amount of product, called a ''heel'', typically accounting for less than one percent of the volume of the tank. A facility which accepts a tank truck, rail tank car, or barge not considered to be empty for cleaning or treatment is not subject to the Transportation Equipment Cleaning (TEC) Point Source Category, and may be subject to the provisions established for this rule.

There are some facilities which are engaged in traditional CWT activities and also engaged in traditional TEC activities. If the wastewaters from the two operations are commingled, under the approach adopted for the TEC proposal, the commingled TEC wastewater flow would be subject to CWT limits when promulgated. Therefore, a facility performing transportation equipment cleaning as well as other CWT services that commingles these wastes is a CWT facility. All of the wastewater discharges are subject to provisions of this rule. If, however, a facility is performing both operations and the waste streams are not commingled (that is, transportation equipment cleaning wastewater is treated in one system and CWT wastes are treated in a second, separate system), both the TEC rule and CWT rule apply to the respective wastewaters.

As a further point of clarification, the CWT proposal would subject transportation equipment cleaning wastes received from off-site to its provisions. Transportation equipment cleaning wastes received from off-site that are treated at CWT facilities along with other off-site wastes are subject to provisions of this rule.

H. Publicly Owned Treatment Works (POTWs)

At the time of the original proposal, EPA solicited comment on how to treat POTWs which receive wastes for treatment by any means of transportation other than sewers or pipelines. EPA was aware that many POTWs were receiving waste via tanker trucks, but did not have a good understanding of how widespread the practice was or what types of wastes were being transferred in this manner. Based on comments, EPA now believes that hauling of non-hazardous industrial and commercial wastes is a widespread practice, particularly among the larger POTWs. A special discharge survey conducted by the Association of Metropolitan Sewerage Agencies (AMSA) indicates that 42.5 percent of POTW respondents accept hauled industrial wastes. Commenters to the original CWT proposal also noted that many small POTWs located in rural areas regularly accept trucked wastes. While the acceptance of waste at POTWs via truck appears to be common practice, commenters also cautioned that EPA should be concerned that the hauled waste is being accepted with little or no documentation regarding the source, little or no monitoring of the shipments when they arrive, and no pretreatment before mixing with the normal POTW influent.

The large volume of wastes generally trucked to POTWs includes septage and chemical toilet wastes. These were not evaluated for this regulation and are not subject to the proposed limits. In addition, POTWs also receive trucked industrial and commercial wastes. Examples of these include tank cleaning water, bilge water, restaurant grease trap wastes, groundwater remediation water, contaminated stormwater run-off, interceptor wastewaters, and non-hazardous leachate.

The proposed CWT pretreatment regulations would not establish any requirements that apply directly to local POTWs that receive off-site wastes. In the case of categorical wastes (subject to pretreatment standards in 40 CFR parts 400 through 471), the generator of the wastes must comply with any applicable standards before introducing the waste to the POTW regardless of whether the wastewater is discharged directly to the sewer or otherwise hauled to the POTW. Similarly, for non-categorical wastes, the generator would need to meet any applicable local limits regardless of the mode of transportation to the POTW. As such, therefore, the CWT rule as proposed today does not apply to POTWs. EPA, does, however, want to remind POTWs that they should document and monitor hauled waste streams to ensure that necessary pretreatment steps have been performed. EPA pretreatment regulations at 40 CFR 403.8(f)(1)(ii) require that POTW pretreatment programs must require compliance with applicable pretreatment standards.

If, however, a POTW chooses to establish a pretreatment business as an addition to their operation, they may, in given circumstances, be subject to provisions of this rule. EPA is aware of a POTW which plans to open a wastewater treatment system to operate in conjunction with their POTW operations. This CWT facility at a POTW will accept categorical wastewaters, treat them, and then discharge them to the POTW. As such, the CWT operation may be subject to provisions of this rule. It is not a POTW itself (even if the facility is located at the same site). In this case, the facility is operating as a CWT facility and all discharges are subject to provisions of this rule. EPA would caution POTWs and industrial users that it will carefully examine such operations to ensure they are legitimate CWT facilities and not simply waste consolidation centers seeking to avoid meeting categorical pretreatment standards. EPA further notes that if wastes are piped to such facilities, under the approach proposed today, such flows would still be subject to applicable categorical standards and not CWT limits.

I. Silver Recovery Operations From Used Photographic and X-Ray Materials

Many commenters to the 1995 CWT proposal expressed concern over the inclusion in the metals subcategory of CWT operations that recover metals from used photographic materials and solutions and x-ray materials and solutions. Commenters were particularly concerned that they would be unable to meet the limitations established for silver in the metals subcategory. In general, commenters stated that the scope of the proposed rule should not include these operations. Reasons provided include:

- The metals subcategory limitations proposed for the CWT rule are not based on technologies typically used in silver recovery operations. Silver recovery facilities typically use electrolytic plating followed by metallic replacement with iron.
- The facility used to calculate the BAT silver limitation is engaged in a variety of recovery operations. This BAT treatment system does not reflect performance of facilities which solely treat silver-bearing wastes.

• Existing effluent guidelines should be sufficient. Many facility discharge permits are based on Part 421, effluent guidelines for non-ferrous metals manufacturing, Subpart L secondary silver subcategory. In addition, an effluent guideline also exists for the industry which is the primary source of the recovered materials—Part 459 photographic point source subcategory.

• The Silver Coalition and the Association of Metropolitan Sewerage Agencies (AMSA) have prepared and issued recommendations on technology, equipment, and management practices for controlling discharges from facilities that process photographic materials.

• It is not economical or efficient for these waste streams to be recovered on-site due to their small volume. If this rule were enacted, many of the CWT facilities processing used photographic materials would discontinue this operation, and silver recovery operations would decrease greatly.

Based on information provided by the industry, EPA estimates that there are 360,000 photographic and image processing facilities which generate silver bearing wastes. Many of these facilities generate very small volumes of silver bearing waste which would not be economical or efficient to recover on site. Thus, there exists a large potential for facilities to consolidate and treat silver bearing photographic waste from various sources.

EPA believes that the off-site shipment of silver bearing photographic waste streams for the purpose of consolidation and recovery is beneficial, and does not wish to discourage this practice. EPA encourages the segregation of waste streams as this leads to more efficient recovery. EPA is aware that some of these consolidated waste streams are treated at typical CWT facilities and some are treated at facilities which treat photographic waste streams only. While EPA has promulgated effluent guidelines for non-ferrous metals manufacturing and the photographic point source categories (40 CFR part 421, Subpart L and 40 CFR part 459, respectively), the majority of these centralized silver recovery facilities are not currently subject to any effluent guideline.

EPA agrees with proposal commenters that the BAT system selected at the time of the original proposal does not reflect performance of facilities which solely treat silver-bearing wastes. The precipitation processes to recover silver used as the basis for its metal limits (including silver) is different from that most widely used to recover silver at facilities that treat only silver bearing wastes—electrolytic plating followed by metallic replacement. Although the facility which formed the technology basis for the 1995 proposed BAT limitations was engaged in recovering silver from photographic waste streams, EPA does not have information in its database on facilities which only perform CWT of photographic waste streams.

Consequently, EPA is today proposing not to include electrolytic plating/metallic replacement silver recovery operations of used photographic and x-ray materials within the scope of this rule. Based on the fundamental difference in technology used to recover silver at facilities devoted exclusively to treatment of photographic and x-ray wastes, the Agency has decided to defer proposing regulations for these facilities. Facilities which only perform CWT silver recovery operations (electrolytic plating followed by metallic replacement) would not fall within the scope of today's proposal. Permit writers would use Best Professional Judgement or local limits to establish site-specific permit requirements. However, off-site wastes which are treated/recovered at these facilities through any other process and/or waste generated at these facilities as a result of any other centralized treatment/recovery process are subject to provisions of this rule.

J. High Temperature Metals Recovery

During the development of the 1995 proposal, EPA did not include facilities which perform high temperature metals recovery (HTMR) within the scope of this rule. EPA is aware of three facilities in the U.S. which utilize the HTMR process. High temperature metals recovery facilities generally take solid forms of various metal containing materials and produce a remelt alloy which is then sold as feed materials in the production of metals. These facilities utilize heat-based pyrometallurgical technologies, not the water-based precipitation/filtration technologies used throughout the CWT industry. Based on questionnaire responses and industry comments, the HTMR process does not generate wastewater.

For these reasons, the high temperature metals recovery operations have been excluded from provisions of the CWT rule. Facilities which only perform high temperature metals recovery are not subject to this rule. However, off-site wastes which are treated/recovered at these facilities through any other process and/or wastes generated at these facilities as a result of any other CWT treatment/ recovery process are subject to the provisions of this rule.

As noted, EPA's data show that HTMR operations generate no process wastewater. Accordingly, EPA is also considering whether this rule, when promulgated, should include a subcategory for HTMR operations with a zero discharge requirement. EPA is requesting comment on such an approach, and specifically seeks any data on facilities that may produce a process wastewater in their HTMR operations.

K. Landfill Wastewaters

EPA proposed effluent guidelines and pretreatment standards for Landfills, 40 CFR Part 445, on February 6, 1998 (63 FR 6426–6463). There, EPA explained how it proposed to treat categorical facilities that mix and treat categorical wastewater with wastewater from on-site landfills. EPA proposed to subject the mixed wastewater to the applicable categorical limits and not the proposed landfill limits. In the CWT industry, there are some facilities which are engaged both in CWT activities and in operating an on-site landfill(s). EPA is proposing to treat the mixture of CWT wastewater and landfill wastewater in the same way considered for the proposed landfill guideline. Therefore, a facility performing landfill activities as well as other CWT services that commingles the wastewaters would be a CWT facility, and all of the wastewater discharges would be subject to the provisions of this rule when promulgated. If a facility is performing both operations and the waste streams are not commingled (that is, landfill wastewaters are treated in one treatment system and CWT wastewaters are treated in a second, separate, treatment system), the provisions of the Landfill rule and CWT rule would apply to their respective wastewaters.

Additionally, under the approach proposed for the Landfills rulemaking, CWT facilities which are dedicated to landfill wastewaters only, whether they are located at a landfill site or not, would be subject to the effluent guidelines limitations and pretreatment standards for Landfills when promulgated. These dedicated landfill CWT facilities would not be subject to provisions of the CWT rulemaking. EPA is not aware of any other facilities that are dedicated to the treatment of off-site wastes from a single category for which EPA has proposed or promulgated effluent limitations that do not also perform on-site operations that generate these same categorical wastewaters. EPA requests comments on any such facilities.

As a further point of clarification, landfill wastewaters are not specifically excluded from provisions of this rule. Landfill wastewaters that are treated at CWT facilities along with other off-site waste streams are subject to provisions of this rule. Furthermore, a landfill that treats its own landfill wastewater and off-site landfill wastewater would be subject to the proposed Landfill limits when promulgated in the circumstances described in IV.B above.

L. Industrial Waste Combustors

EPA proposed effluent guidelines and pretreatment standards for Industrial Waste Combustors, 40 CFR Part 444 on February 6, 1998 (63 FR 6392–6423). There, EPA explained how it proposed to treat categorical facilities that mix and treat categorical wastewater with wastewater from on-site industrial waste combustors. EPA proposed to subject the mixed wastewater to the applicable categorical limits and not the proposed industrial waste combustor limits. In the CWT industry, there are some facilities which are engaged both in CWT activities and in operating an on-site industrial waste combustor(s). EPA is proposing to treat the mixture of CWT wastewater and industrial waste combustor wastewater in the same way considered for the proposed Industrial Waste Combustor guideline. Therefore, a facility performing industrial waste combustion activities as well as other CWT services that commingles the wastewaters would be a CWT facility, and all of the wastewater discharges would be subject to the provisions of this rule when promulgated. If a facility is performing both operations and the waste streams are not commingled (that is, industrial waste combustion wastewaters are treated in one treatment system and CWT wastewaters are treated in a second, separate, treatment system), the provisions of the Industrial Waste Combustor rule and CWT rule would apply to their respective wastewaters

As a further point of clarification, industrial waste combustor wastewaters are not specifically excluded from provisions of this rule. Industrial waste combustor wastewaters that are treated at CWT facilities along with other off-site waste streams are subject to provisions of this rule. Furthermore, an industrial waste combustor that treats off-site industrial waste combustor wastewater would be subject to the proposed Industrial Waste Combustor limits when promulgated in the circumstances described in IV.B above.

M. Solvent Recycling/Fuel Blending

The solvent recycling industry was studied by the EPA in the 1980s. EPA published the ''Preliminary Data Summary for the Solvent Recycling Industry'' (EPA 440/1–89/102) in September 1989 which describes this industry and the processes utilized. This document defines solvent recovery as ''the recycling of spent solvents that are not the byproduct or waste product of a manufacturing process or cleaning operation located on the same site.'' Spent solvents are generally recycled in two main operations. Traditional solvent recovery involves pretreatment of the waste stream (in some cases) and separation of the solvent mixtures by specially constructed distillation columns. Wastewater discharges resulting from this process are subject to effluent limitations guidelines and standards for the organic chemicals industry (40 CFR part 414). As such, wastewaters resulting from traditional solvent recovery operations as defined above are not subject to this effluent guideline.

Fuel blending is the second main operation which falls under the definition of solvent recovery. Fuel blending is the process of mixing wastes for the purpose of regenerating a fuel for reuse. At the time of the 1995 proposal, fuel blending operations were excluded from the CWT rule since EPA believed the fuel blending process was ''dry'' (that is, no wastewaters were produced). Based on comments to the original proposal and the Notice of Data Availability, EPA has concluded that this is valid and that true fuel blenders do not generate any process wastewaters and are, therefore, zero dischargers. EPA is concerned, however, that the term ''fuel blending'' may be loosely applied to any process where recovered hydrocarbons are combined as a fuel product. Such operations occur at nearly all used oil and fuel recovery facilities. Therefore, fuel blending operations as defined above would be excluded from the CWT rule providing that the operations do not generate a wastewater. In the event that wastewater is generated at a fuel blending facility, the facility is most likely performing some pretreatment operations (usually to remove water). These pretreatment wastewaters would be subject to this rule.

N. Re-refining

When EPA initially proposed guidelines and standards for CWT facilities, the regulations would have limited discharges from used oil reprocessors/reclaimers, but did not specifically include or exclude discharges from used oil re-refiners. During review of information received on the proposal and assessment of the information collected, the Agency, at one point, considered limiting the scope of this regulation to reprocessors/reclaimers only because it was not clear whether re-refiners actually generated wastewater. However, further data gathering efforts have revealed that re-refiners may generate wastewater and that the principal sources of re-refining wastewaters are essentially the same as for reprocessors/reclaimers. Consequently, the re-refining wastewater is included within the scope of this proposal.

The used oil reclamation and re-refining industry was studied by EPA in the 1980s. EPA published the ''Preliminary Data Summary for the Used Oil Reclamation and Re-Refining Industry'' (EPA 440/1–89/014) in September 1989 which describes this industry and the processes utilized. This document generally characterizes the industry in terms of the types of equipment used to process the used oil. Minor processors (reclaimers) generally separate water and solids from the used oil using simple settling technology, primarily in-line filtering, and gravity settling with or without heat addition. Major processors (reclaimers) generally use various combinations of more sophisticated technology including screen filtration, heated settling, centrifugation, and light fraction distillation primarily to remove water. Re-refiners generally use the most sophisticated systems which include, in addition to the previous technologies, a vacuum distillation step to separate the oil into different components.

Today's proposal applies to the process wastewater discharges from used oil re-refining operations. The principal sources of wastewater include oil-water gravity separation (often accompanied by chemical/thermal emulsion breaking) and dehydration unit operations (including light distillation and the first stage of vacuum distillation). EPA has, to date, identified two re-refining facilities. Data for these facilities have not yet been included in the economic analysis for the proposed rule, but will be included in the analysis for the final rule.

O. Used Oil Filter Recycling

EPA did not obtain information on used oil filter recycling through the Waste Treatment Industry Questionnaire. However, in response to the September 1996 Notice of Data Availability, EPA received comments from facilities which recycle used oil

filters. In addition, EPA also visited several used oil reprocessors that recycle used oil filters as part of their operations.

Used oil filter recycling processes range from simple crushing and draining of entrained oil to more involved processes where filters are shredded and the metal and filter material are separated. In all cases, the oil is recycled, the crushed filters and separated metal are sent to smelters, and the separated filter material is recovered as solid fuel. Also, in all cases observed, the operations generate no process wastewater. Therefore, based on this characterization, used oil filter recycling operations would not be subject to the provisions of the CWT rule as proposed today. EPA is also considering whether this rule, when promulgated, should include a subcategory for used oil filter recycling with a zero discharge requirement for such operation. EPA is requesting comment on such an approach, and the number of facilities engaged in this activity. EPA specifically seeks data on any such facilities that may produce a process wastewater in their operations.

P. Marine Generated Wastes

EPA received many comments on the original proposal relating to marine generated wastes. Since these wastes are often generated while a ship is at sea and subsequently off-loaded at port for treatment, the treatment site could arguably be classified as a CWT facility due to its acceptance of ''off'' site wastes. Commenters, however, claimed that marine wastes should not be subject to the CWT rule for the following reasons:

- Unlike most CWT waste streams, bilge and/or ballast water contains dilute concentrations of pollutants and is generally not toxic; and
- Much of the bilge water is generated while the ship is docked. If only the portion of bilge water contained in the ship upon docking is subject to regulation, it would be expensive and inefficient to monitor only that small portion for compliance with the CWT rule.

EPA reexamined its database concerning these wastes as well as additional data on the characteristics of these types of wastes provided through comments to the 1995 proposal and collected by EPA during development of the recently proposed Uniform National Discharge Standards (UNDS) (63 FR 45298). Based on data provided by industry as well as data collected during the development of UNDS, EPA has determined these waste streams may be similar in some cases to the toxic wastewaters proposed here for regulation. The data on bilge and ballast water characteristics show that bilge and ballast water can vary greatly in terms of the number of pollutants present and their concentration from one ship to another. In most instances, the pollutants and concentrations are similar to those found in wastes typical of those proposed for regulation in the oils subcategory. EPA found that while some shipyards and docking facilities have specialized treatment centers for bilge and/or ballast wastes, some of these wastes are being treated at off-site CWT facilities. EPA has concluded that marine-generated, ''off-site'' wastes should not be included in the scope of today's proposal except where this waste is not treated and discharged at the ship service facility receiving the waste.

For purposes of this rule, EPA is defining marine waste as waste generated as part of the normal maintenance and operation of a ship, boat, or barge operating on inland, coastal or open waters. Such wastes may include ballast water, bilge water, and other wastes generated as part of routine ship operations. EPA has determined that a wastewater off-loaded from a ship shall be considered as being generated on-site at the point where it is off-loaded provided that the waste is generated as part of the routine maintenance and operation of the ship on which it originated while at sea. The waste will not be considered an off-site generated waste (and thus subject to CWT requirements) as long as it is treated and discharged at the ship servicing facility where it is off-loaded. Therefore, these facilities would not be considered CWT facilities. If, however, marine generated wastes are off-loaded and subsequently sent to a CWT facility at a separate location, these facilities and their waste streams would be subject to provisions of this rule.

Q. Stabilization

In the original CWT proposal, waste solidification/stabilization operations were specifically not subject to the CWT rule. The reason stated for EPA's conclusion was that these operations are ''dry'' and do not generally produce a wastewater. EPA reexamined its database and concluded that this assessment remains valid. As such, stabilization/solidification processes are not subject to the CWT rule as proposed today. If, however, the stabilization/solidification facility produces a wastewater from treatment and/or recovery of off-site wastes through any other operation, those wastewaters would be subject to the CWT rule. EPA is also considering whether this rule, when promulgated, should include a subcategory for stabilization operations with a zero discharge requirement. EPA is requesting comment on such an approach, and specifically seeks any data on facilities that may produce a process wastewater in their stabilization operations.

R. Grease Trap/Interceptor Wastes

EPA received comments on coverage of grease, sand, and oil interceptor wastes by the CWT rule during the comment period for the original proposal and 1996 Notice of Data Availability. Some of these wastes are from non-industrial sources and some are from industrial sources. Some are treated at central locations designed to exclusively treat grease trap/interceptor wastes and some of these wastes are treated at traditional CWT facilities with traditional CWT wastes.

Throughout the development of this rule, EPA has maintained that this rule is designed to cover the treatment and/or recovery of off-site industrial wastes. As such, as proposed today, grease/trap interceptor wastes do not fall within the scope of the proposal. Grease trap/interceptor wastes are defined as animal or vegetable fats/oils from grease traps or interceptors generated by facilities engaged in food service activities. Such facilities include restaurants, cafeterias, and caterers. Excluded grease trap/interceptor wastes should not contain any hazardous chemicals or materials that would prevent the fats/oils from being recovered and recycled. Wastewater discharges from the centralized treatment of wastes produced from oil interceptors, which are designed to collect petroleum-based oils, sand, etc. from industrial type processes, would be subject to this rule.

S. Small Businesses

During consideration of this proposal, among other alternatives, EPA looked at whether it should limit the scope of this rule to facilities above a certain size or flow level because of potential impacts to small businesses. Given an assessment of potentially significant effects on small businesses, EPA convened in November 1997 a Small Business Advocacy Review (SBAR) Panel (also referred to as SBAR Panel, SBREFA panel, or panel) for this rule. After collecting advice and recommendations from Small Entity Representatives (SERs), the Panel discussed at length the possible impacts of the rule on small businesses and various regulatory alternatives that might mitigate these impacts. For a detailed summary of the panel's

findings and discussion, see ''Final Report of the SBREFA Small Business Advocacy Review Panel on EPA's Planned Proposed Rule for Effluent Limitations Guidelines and Standards for the Centralized Waste Treatment Industry,'' January 23, 1998 (available in the public docket). Among the regulatory alternatives discussed by the panel were limiting the scope of the rule to various small business or small facilities, including limiting the scope to not include all indirect dischargers with flows under 3.5 million gallons per year (MGY), to not include all indirect dischargers treating non-hazardous water only with flows under either 3.5 or 7.5 MGY, and to not include all indirect dischargers owned by companies with less than $6 million in annual revenue, which is the Small Business Administration cut off for a small business in this industry. A detailed analysis of the effects of these possible scope limitations is included in the EA and summarized in Section XI.L. The panel focused on indirect discharging facilities because most small companies are indirect dischargers. Based on EPA's current analyses, limiting the scope of the rule to not include all indirect dischargers with flows under 3.5 MGY would address over half of the small businesses potentially covered by the rule, reduce compliance costs among indirect dischargers by about 22% while reducing estimated pollutant removals by about 11%, and minimize projected facility closures and job losses among all of the options considered. Alternatively, limiting the scope of the rule to not include all indirect discharging facilities owned by small businesses would eliminate virtually all small business impacts (only 2 direct discharging facilities owned by small businesses) and reduce pollutant removals by about 30%. This option would result in somewhat more facility closures and job losses than limiting the scope to not include all indirect dischargers with flows under 3.5 MGY, but the relief provided would be more directly targeted to small businesses.

Despite considerable effort, the SBREFA panel was not able to reach consensus on a specific recommendation for providing regulatory relief to small businesses that would not jeopardize the pollutant removals and corresponding environmental benefits anticipated to result from the rule. EPA's primary concern with limiting the scope of the rule is that the ''lost'' pollutant reductions associated with these scope limitations are not insignificant, that the analysis represents a snapshot of a rapidly changing industry, and that any segment might quickly expand as a result of scope limitations, leading to much greater discharges within a few years. The panel noted that one way of addressing this concern would be to put a mass-based limit on receipts as part of the eligibility requirements for the scope limitation. This could ensure that significant volumes of highly contaminated wastes would not be handled by the facilities not included in the scope of the rule. However, it would also constrain the flexibility of small businesses benefiting from these scope limitations, and might require them to give up a significant share of their existing business. Mass-based limits on receipts, if set at a low level, might require some small businesses to ''give up'' a significant share of their existing business. On the other hand, many small businesses might save money if they can limit their mass discharges and avoid the cost of wastewater treatment. EPA is also reluctant to provide any type of scope limitation based on low-flow or the size of the business because of its concern that many existing plants may not be providing effective treatment because they are commingling dissimilar waste streams prior to treatment. This concern is discussed further in Section V.B.

Because of these concerns and others discussed more fully in Section XI.L, EPA is not proposing to limit the scope of today's proposal based on either the size of a facility or the volume of wastewater flows. However, EPA requests comment on this issue. EPA also requests comment on ways in which it could structure limiting the scope of the rule to not include small businesses or low-flow facilities that would address the concerns discussed above.

T. Hazardous vs. Non-hazardous Wastes

Another option discussed by the SBREFA panel was to develop alternative regulatory requirements for oils subcategory facilities based on the types of waste receipts treated. This could mean limitations and standards for oils subcategory facilities that treat RCRA subtitle C hazardous wastes (either exclusively or in combinations with non-hazardous wastes) that are different from those that would apply to oils subcategory facilities that treat only non-hazardous wastes. Another alternative would be to develop different limitations and standards for oils facilities with and without RCRA subtitle C permits. This could also mean not regulating discharges from the treatment of non-hazardous waste receipts or ''non-RCRA permitted'' facilities. The Panel discussion of this option responded to an SER comment that non-hazardous flows contain relatively low pollutant loadings as compared to hazardous flows. The Panel was concerned that the same guidelines and standards may not be appropriate to flows with very different characteristics. Other SERs disagreed and argued that hazardous flows are already heavily regulated while non-hazardous flows are not (although neither are currently subject to categorical effluent guidelines or pretreatment standards). In their view, it is, thus, important that the proposed rule apply equally to both types of flows. These SERs further argued that establishing different requirements for, or not including facilities that treat only non-hazardous waste could create a competitive disadvantage for those facilities that treat both hazardous and non-hazardous waste.

EPA's database on oils subcategory facilities contains information that was collected at facilities which treat a mixture of hazardous and non-hazardous wastes and facilities which treat non-hazardous wastes only. The majority of the data collected prior to the SBREFA Panel was collected at facilities which have permits to accept hazardous waste and treat a portion of RCRA subtitle C hazardous waste with non-hazardous waste. Some data reflect facilities that do not have a RCRA permit to treat hazardous waste. Although these data suggest that flows from non-RCRA permitted facilities may have significantly lower pollutant loadings, they are inadequate to support the conclusion that EPA should differentiate between oily facilities on the basis of whether hazardous or non-hazardous wastes are treated at the facility. Consequently, EPA has not proposed different regulatory requirements for facilities based on distinctions between hazardous and non-hazardous waste or, alternatively, provided different limitations depending on whether the facility has a RCRA permit.

However, following the SBREFA panel, EPA collected raw wastewater samples at ten additional facilities that treat only non-hazardous materials in order to obtain additional information on the pollutant profiles of the wastes that are treated at these facilities. These samples have now been analyzed and the results are included in Appendix B to the technical development document. EPA has not yet had the opportunity to review the data in detail or to compare these results to the earlier data it collected. As a result, the Agency at this

time does not know whether the data would support a determination that oily waste facilities treating exclusively non-hazardous waste treat a significantly different waste stream from RCRA subtitle C facilities. Consequently, EPA at this time has not proposed different regulatory requirements for oily waste facilities based on whether they treat hazardous or non-hazardous waste or whether or not they have a RCRA subtitle C permit.

EPA plans to review this data in detail and will present its assessment before commencing the public hearing on pretreatment standards scheduled for February 18, 1999. The assessment will also be available in the public docket for this rule on that date. Any member of the public wishing to submit comment on EPA's assessment should submit comments on that information within 30 days of February 18, 1999. Note that EPA will accept comment on this material only through March 22, 1999 following the close of the 60 day comment period for the proposed rule.

V. Industry Profile

EPA is today proposing limitations and standards for three subcategories of CWT facilities: facilities treating either metal, oil, or organic wastes and wastewater. This subcategorization scheme is discussed in Section VII. The following provides a general description of the CWT industry that would be subject to this proposal if promulgated.

A. Description of the Industry

The adoption of the increased pollution control measures required by CWA and RCRA requirements had a number of ancillary effects, one of which has been the formation and development of a waste treatment industry. Several factors have contributed to the growth of this industry: (a) The manner in which manufacturing facilities have selected to comply with CWA and RCRA requirements; (b) the manner in which the applicability sections of promulgated CWA effluent guidelines were developed; and (c) the RCRA 1992 used oil management requirements.

A manufacturing facility's options for managing wastes include on-site treatment or sending them off-site. Because a large number of operations (both large and small) have chosen to send their wastes off-site, specialized facilities have developed whose sole commercial operation is the handling of wastewater treatment residuals and industrial process by-products.

The manner in which the applicability sections of many promulgated effluent guidelines were developed also encouraged the creation of these central treatment centers. Facilities which send their waste off-site to CWT facilities are generally considered ''zero or alternative dischargers'' in the effluent guidelines development program, and are not directly subject to the categorical standards. Additionally, RCRA regulations, such as the 1992 used oil management requirements (40 CFR part 279), significantly influenced the size and service provided by this industry.

Based upon responses to EPA's data gathering efforts (see discussion below), the Agency now estimates that there are approximately 205 CWT facilities in 38 States. The major concentration of CWT facilities is in EPA Regions 4, 5, and 6 due to the proximity of the industries generating the wastes undergoing treatment. At the time of the original proposal, EPA estimated there were 85 CWT facilities in the United States. EPA, however, greatly underestimated the size of the proposed oily waste and recovery subcategory. Through additional data gathering activities (see discussion below), EPA obtained information on additional oils facilities. Except for facilities that were included or excluded because of scope changes/clarifications, all of the facilities which have been added since the original proposal treat and/or recover oily waste and/or used oil. EPA is aware that facilities in the metals and organics subcategories have joined and or left the CWT market also. This is expected in a service industry. Even so, EPA believes its initial estimate of facilities in the other subcategories is reasonable and no adjustments, other than those resulting from the redefined scope of the industry, have been made. EPA notes that its current estimate may not include the entire universe of CWT facilities, and again solicits information on the number, name, and location of facilities within this industry.

CWT facilities do not fall into a single description and are as varied as the wastes they accept. Some treat wastes from a few generating facilities while others treat wastes from hundreds of generators. Some treat only certain types of waste while others accept many wastes. Some treat non-hazardous wastes exclusively while others treat hazardous and non-hazardous wastes. Some primarily treat concentrated wastes while others primarily treat more dilute wastes. For some, their primary business is the treatment of other company's wastes while, for others, CWT is ancillary to their main business.

CWT facilities treat hazardous and/or non-hazardous wastes. At the time of the original proposal, a few of the facilities in the industry database solely accepted wastes classified as non-hazardous under RCRA. The remaining facilities accepted either hazardous wastes only or a combination of hazardous and non-hazardous wastes. The vast majority of the newly identified oils facilities only accept non-hazardous materials. As such, EPA believes the market for CWT of non-hazardous materials has increased during the 1990s.

CWT facilities service a variety of customers. A CWT facility generally receives a variety of wastes daily from dozens of customers. Some customers routinely generate a particular waste stream, and are either unable to provide effective on-site treatment of that waste stream or find it cheaper to send the waste stream off-site for treatment. Some customers utilize CWT facilities because they generate particular waste streams only sporadically (for example tank removal, tank cleaning and remediation wastes) and are unable to economically provide effective on-site treatment of these wastes. Some, including many which are small businesses, utilize CWT facilities as their primary source of wastewater treatment.

Before a CWT facility accepts a waste for treatment, the waste generally undergoes rigorous screening for compatibility with other wastes being treated at the facility. Waste generators initially furnish the treatment facility with a sample of the waste stream to be treated. The sample is analyzed to characterize the level of pollutants in the sample, and, at some facilities, bench-scale treatability tests are performed to determine what treatment is necessary to treat the waste stream effectively. After all analyses and tests are performed, the treatment facility determines the cost for treating the waste stream. If the waste generator accepts the cost of treatment, shipments of the waste stream to the treatment facility will begin. Generally, for each truck load of waste received for treatment, the treatment facility collects a sample from the shipment and analyzes the sample to determine if it is similar to the initial sample tested. If the sample is similar, the shipment of waste will be treated. If the sample is not similar, but falls within an allowable range as determined by the treatment facility, the treatment facility will reevaluate the estimated cost of treatment for the shipment. Then, the waste generator decides if the waste will remain at the treatment facility for treatment. If the sample is not similar, and does not fall within an allowable

range, the treatment facility will decline the shipment for treatment.

Many treatment facilities and waste generators complete extensive amounts of paperwork during the waste acceptance process. Most of the paperwork is required by Federal, State, and local regulations. The amount of paperwork necessary for accepting a waste stream may be a significant component of the cost of operating CWT facilities.

B. Off-Site Treatment Incentives and Comparable Treatment

As noted before, the adoption of the increased pollution control measures required by the CWA and RCRA regulations were a significant factor in the formation and development of the CWT industry. Major contributors to the growth of this industry include the EPA CWA effluent limitations guidelines program as well as the manner in which manufacturing facilities have elected to comply with CWA and RCRA requirements.

The CWA requires the establishment of limitations and standards for categories of point sources that discharge into surface waters or introduce pollutants into publicly owned treatment works. At present, facilities that do not discharge wastewater (or introduce pollutants to POTWs) may not be subject to the requirements of 40 CFR Subchapter N Parts 400 to 471. Such facilities include manufacturing or service facilities that generate no process wastewater, facilities that recycle all contaminated waters, and facilities that use some kind of alternative disposal technology or practice (for example, deep well injection, incineration, evaporation, surface impoundment, land application, and transfer to a CWT facility).

Thus, for example, in implementing CWA and RCRA requirements in the electroplating industry, many facilities made process modifications to conserve and recycle process wastewater, to extend the lives of plating baths, and to minimize the generation of wastewater treatment sludges. As the volumes of wastewater were reduced, it became economically attractive to transfer electroplating metal-bearing wastewater to off-site CWT facilities for treatment or metals recovery rather than to invest in on-site treatment systems. In the case of the OCPSF industry, many facilities transferred selected process residuals and small volumes of process wastewater to off-site CWT facilities. When estimating the engineering costs for the OCPSF industry to comply with the OCPSF regulation, the Agency assumed, based on economies of scale, in the case of facilities with wastewater flows less than 500 gallons per day, that such plants would use off-site rather than on-site wastewater treatment.

In the development of existing effluent guidelines EPA considered incremental costs for facilities that would likely choose hauling wastes to CWT facilities as a less expensive alternative to compliance with the effluent guideline by installing and operating control and treatment technologies on-site. These estimates generally used an average cost of treatment provided by CWT facilities at that time. EPA excluded from these estimates facilities that were hauling wastes to CWT facilities in advance of effluent guidelines for their industry. The potential economic impact of the incremental controls being required through today's proposal on customers was evaluated and found to increase the price from less than half a percent to approximately 25 percent.

The Agency believes that any wastes transferred to an off-site CWT facility should be treated effectively, in a manner consistent with the technology-based provisions of the CWA, and that categorical standards are necessary to ensure that this occurs. In the absence of appropriate regulations to ensure at least comparable or adequate treatment, the CWT facility may inadvertently offer an economic incentive for increasing the pollutant load to the environment. One of the Agency's primary concerns is the potential for a discharger to reduce its wastewater pollutant concentrations through dilution rather than through appropriate treatment. While the Agency has already promulgated regulations at § 403.6(d) prohibiting dilution in lieu of treatment, it is concerned that some CWT facilities may be inadvertently engaging in dilution by combining in a single treatment system dissimilar waste streams for which different types of treatment would be more appropriate. Today's proposal is designed to ensure that wastes transferred to CWT facilities will be treated effectively.

This is illustrated by the information the Agency obtained during the data gathering activities for the 1995 proposal. EPA visited 27 CWT facilities in an effort to identify well-designed, well-operated candidate treatment systems for sampling. Two of the principal criteria for selecting plants for sampling were whether the plant applied waste management practices that increased the effectiveness of the treatment system and whether the treatment system was effective in removing pollutants. One of the primary reasons why some plants did not satisfy these criteria was co-dilution of one type of waste with another. For example, many facilities treated metal-bearing and oily wastes in the same treatment system and many facilities mixed non-CWT wastewater with CWT wastewater. Mixing metal-bearing with non-metal-bearing oily wastewater and mixing CWT with non-CWT wastewater provides a dilution effect which generally reduces the efficiency of the wastewater treatment system. Of the 27 plants visited, many were not sampled because of the problems of assessing CWT treatment efficiencies due to combining one type of wastewater with another.

Today's proposal would ensure, to the extent possible, that metal-bearing wastes are treated with metals control technology, that oily wastes are treated with oils control technology, and that organic wastes are treated with organics control technology.

In developing today's proposal, EPA identified a wide variation in the size of CWT facilities and the level of treatment provided by these facilities. Often, pollutant removals were significantly lower than would have been required had the wastewaters been treated at the site where generated. In particular, EPA's survey indicated that some facilities were employing only the most basic pollution control equipment and, as a result, achieved low pollutant removals relative to those which could be achieved through the use of other available pollutant control technologies. Further, as explained below, EPA found that most facilities had not installed appropriate technology and/or were not operating the installed technology effectively.

As discussed previously, during consideration of this proposal, EPA looked at whether it should limit the scope of national regulation to facilities above a certain size or flow level because of information before the Agency suggesting that, in the case of many smaller facilities, the costs of additional controls would represent a significant increase in their costs of operation. The Small Business Advocacy Review (SBAR) Panel, convened by EPA for this rulemaking, discussed this approach extensively. For the reasons explained above, however, EPA is not proposing to limit the scope of today's proposal based on either the size of a facility or the volume of wastewater flows. The effect of such an approach, given the structure of the industry and treatment levels currently observed at some facilities, could be to encourage the movement of wastewater to facilities that are not providing effective treatment. EPA is, however,

requesting comment on this approach, which is discussed in Section IV.S. In order to ensure adequate controls for wastewater discharges from CWT facilities that accept waste and wastewater that would otherwise be controlled by other guidelines, EPA is proposing that all members of the CWT industry comply with economically achievable, national CWT standards.

VI. Summary of EPA Activities and Data Gathering Efforts

A. Preliminary Data Summary for the Hazardous Waste Treatment Industry

EPA's initial effort to develop effluent limitations guidelines and pretreatment standards for the waste treatment industry began in 1986. The Agency initiated a study which looked at a range of facilities, including CWT facilities, landfills and industrial waste combustors, that received hazardous waste from off-site for treatment, recovery, or disposal. The purpose of the study was to develop information to characterize the hazardous waste treatment industry, its operations, and pollutant discharges to the nation's waters. EPA published the results of its examination of the industry in a report entitled the ''Preliminary Data Summary for the Hazardous Waste Treatment Industry'' in 1989 (EPA 440/1–89/100). In addition, EPA conducted two similar, but separate studies, of the solvent recycling industry and the used oil reclamation and re-refining industry during the same time period. In 1989, EPA also published the results of these studies in two reports entitled the ''Preliminary Data Summary for the Solvent Recycling Industry'' (EPA 440/1–89/102) and the ''Preliminary Data Summary for Used Oil Reclamation and Re-refining Industry'' (EPA 440/1–89/014).

After a thorough analysis of the data presented in the Preliminary Data Summary, EPA decided it should develop effluent guidelines regulations for the CWT industry. EPA also decided to develop effluent guidelines regulations for landfills and industrial waste combustors, proposing these on February 6, 1998 (63 FR 6426 and 63 FR 6392, respectively). In addition to CWT facilities, EPA also studied fuel blending operations and waste solidification/stabilization facilities. As detailed and defined in the applicability section, EPA has decided not to propose nationally applicable effluent limitations guidelines and standards for fuel blending and stabilization operations.

B. Survey Questionnaires (1991 Waste Treatment Industry Questionnaire and Detailed Monitoring Questionnaire)

There are three major sources of information and data used in developing today's effluent limitations guidelines and standards proposal. Two of these are industry responses to detailed technical and economic questionnaires and responses to subsequent follow up monitoring questionnaires distributed by EPA (the third is discussed in the subsequent section). In 1991, EPA sent the 1991 Waste Treatment Industry Questionnaire to 455 facilities that the Agency had identified as possible CWT facilities. Because there is no specific CWT Industry Standard Industrial Code (SIC) code, identification of facilities was difficult. EPA looked to directories of treatment facilities, other Agency information sources, and even telephone directories to identify the 455 facilities which received the questionnaires. EPA received responses from 413 facilities indicating that 89 treated or recovered material from off-site industrial waste in 1989. The remaining 324 facilities did not treat, or recover, materials from industrial waste from off-site. Four of the 89 facilities received waste via a pipeline (fixed delivery system) from the original source of wastewater generation.

The technical section of the questionnaire specifically requested information on: (1) the type and quantities of wastes accepted for treatment; (2) the industrial waste management practices used; (3) the quantity, treatment, and disposal of wastewater generated during industrial waste management; (4) available analytical monitoring data on wastewater treatment; (5) the degree of co-treatment (treatment of CWT wastewater with wastewater from other industrial operations at the facility); and (6) the extent of wastewater recycling and/or reuse at the facility. EPA obtained further information through follow-up telephone calls and written requests for clarification of questionnaire responses.

As a follow-up to the initial questionnaire, EPA requested detailed wastewater monitoring information from twenty in-scope facilities selected from the questionnaire mailing list. These facilities were selected based upon their responses. EPA reviewed each facility's monitoring summary provided in the questionnaire, discharge permit requirements, off-site waste receipts, and treatment technologies and practices. Based on responses, EPA determined that these twenty facilities could provide useful information on technology performance and pollutant removal.

EPA asked that the twenty selected facilities send effluent wastewater monitoring data in the form of individual data points rather than monthly aggregates, generally for the 1990 calendar year. When appropriate, EPA used this detailed monitoring data to calculate the variability factors and long-term averages used in determining the industry effluent limits (See section IX of today's notice). EPA also requested analytical data for intermediate waste treatment points from some facilities. In this manner, EPA hoped to obtain information about pollutant removal across individual treatment units in addition to the entire treatment train. Finally, EPA asked facilities to submit information on pollutant concentrations and waste receipt data for a six week period. EPA collected the waste receipt data to provide information about the types of wastes treated and the influent waste characteristics due to the absence of influent wastewater monitoring data.

C. Wastewater Sampling and Site Visits

Between 1989 and 1994, EPA visited 27 CWT facilities. The purpose of these visits was to collect various information about the operation of CWT facilities and, in most cases, to evaluate each facility as a potential week-long sampling candidate. The selection of these facilities was largely based on the types of off-site waste received at the facility and the types of wastewater treatment operations on-site. During the site visits, EPA collected information on the facility and its operations. This included information on the wastes accepted for treatment and the facility's waste acceptance criteria, the raw wastewater generated and its sources, the wastewater treatment on-site, and the location of potential sampling points. Following the original CWT proposal, EPA conducted site visits at eleven additional facilities. EPA selected these facilities based on information obtained through comment responses and contacts with the industry, AMSA, and EPA Regional staff.

Based on an analysis of information collected during the site visits, EPA selected 14 facilities to sample in order to characterize the performance of their treatment systems. EPA sampled ten of the facilities prior to the original proposal and four facilities after the 1995 proposal. EPA sampled twice at two of the facilities. During each sampling episode, EPA sampled facility influent and effluent streams. EPA also collected samples at intermediate points

throughout the entire waste/wastewater treatment system to assess the performance of individual treatment units. Generally, EPA conducted the sampling episodes over a five day period. EPA obtained 24-hour composite samples for continuous systems and grab samples for batch systems. Depending on the wastes/wastewaters treated at the site and the technology employed, EPA analyzed for up to 460 analytes.

Data collected from the influent samples contributed to characterization of the industry, development of the list of pollutants of concern, and development of raw wastewater characteristics. EPA used the data collected from the influent, intermediate, and effluent points to analyze the efficacy of treatment at the facilities, and to develop current discharge concentrations, loadings, and the treatment technology options for the CWT industry. EPA used data collected from the effluent points to calculate the long-term averages (LTAs) and limitations for each of the proposed regulatory options.

Additionally, in March and April 1998, EPA conducted site visits at eleven facilities which treat and/or recover non-hazardous oils wastes, oily wastewater, or used oil material from off-site. While the information collected at these facilities was similar to information collected during previous site visits, these facilities were selected based solely on waste receipts. That is, they were selected specifically to investigate the question of whether oily hazardous waste receipts are different from oily non-hazardous waste receipts and whether oily wastes at facilities without RCRA hazardous waste permits are significantly different from oily waste treated by facilities with RCRA permits. The facilities represent a diverse mix of facility size, treatment processes, and geographical locations. Also, unlike previous site visits, EPA collected samples of their waste receipts and effluent discharged at 10 of these facilities. These samples were one-time grabs and were analyzed for metals, classicals, and semi-volatile organic compounds. The analytical results are included in an appendix to the technical development document, but EPA has not incorporated the results into the analyses presented today. As discussed in Section IV.S, EPA plans to use this analytical data for further analyses and will present its assessment before commencement of the pretreatment public hearing on February 18, 1999.

1. Metal-bearing Waste Treatment and Recovery Sampling

Of the sampling episodes completed from 1989 to 1994, EPA conducted six at facilities classified in the metals subcategory. EPA re-sampled at two of these facilities in 1996 following the original proposal. Both of these facilities had altered their treatment systems somewhat from the treatment schemes in place at the time of the original sampling episodes. All of the facilities employed some form of chemical precipitation as part of their treatment of the metal-bearing waste streams. Only one of the facilities sampled discharged to a surface water. The rest are indirect dischargers. The Agency evaluated the following treatment technologies: primary precipitation, secondary precipitation, and tertiary precipitation, selective metals precipitation, gravity separation, multimedia filtration, clarification, liquid and sludge filtration, and treatment technologies for cyanide destruction.

2. Oily Waste Treatment and Recovery Sampling

Of the sampling episodes completed between 1989 and 1994, EPA conducted four at facilities which treat oily wastes. During 1995–1996, the Agency sampled an additional two oily waste facilities. All performed an initial gravity separation step with or without emulsion breaking to remove oil from wastewater. At this point, some facilities commingled the oily wastewaters with other non-oily wastewaters for additional treatment. At facilities which commingled their waste streams, data was collected after the emulsion breaking step and prior to commingling to characterize waste receipts and not for establishing limitations and standards. None of the sampled oils facilities were direct discharging facilities. EPA evaluated the following treatment technologies for this subcategory: gravity separation, emulsion breaking, ultrafiltration, dissolved air flotation, biological treatment, reverse osmosis, carbon adsorption, and air stripping. For the sampling episodes prior to 1995, EPA analyzed samples for oil and grease using Method 413.1 (total recoverable oil and grease) which uses freon. Since this method is being phased out, for the sampling episodes conducted during 1995 and 1996, EPA analyzed the samples for oil and grease as measured by the newly proposed Method 1664 for Hexane Extractable Materials (HEM) and Silica Gel Treated Hexane Extractable Materials (SGT–HEM). EPA believes that oil and grease measurements from Method 413.1 and HEM measurements from Method 1664 are comparable and has used the data interchangeably.

3. Organic Waste Treatment and Recovery Sampling

EPA had difficulty identifying facilities that could be used to characterize waste streams and assess treatment technology performance for the organics subcategory. A large portion of the facilities whose organic waste treatment operations EPA evaluated had other industrial operations on-site. For these facilities, CWT waste streams represented a minor component of the overall flow treated at the facility.

EPA did identify and sample three facilities treating a significant volume of off-site generated organic waste relative to non-CWT flows. EPA evaluated the following treatment technologies employed at these facilities: air stripping, biological treatment in a sequencing batch reactor, multi-media filtration, carbon adsorption and carbon dioxide extraction. None of the organic facilities sampled were direct discharging facilities. EPA has not used data from one of the facilities in calculating effluent levels achievable with its in-place technologies because the facility was experiencing operational difficulties with the treatment system at the time of sampling. In addition, after reviewing this facility's waste receipts during the sampling episode, EPA determined that the facility accepted both oil subcategory and organic subcategory waste streams and commingled them for treatment. EPA has also not used data from a second facility in calculating effluent levels achievable with its in-place technologies for the same reason.

D. Analytical Methods

Section 304(h) of the Clean Water Act directs EPA to promulgate guidelines establishing test procedures for the analysis of pollutants. These methods allow the analyst to determine the presence and concentration of pollutants in wastewater, and are used for compliance monitoring and for filing applications for the NPDES program under 40 CFR 122.21, 122.41, 122.44 and 123.25, and for the implementation of the pretreatment standards under 40 CFR 403.10 and 403.12. To date, EPA has promulgated methods for all conventional and toxic pollutants and for some nonconventional pollutants. EPA has identified five pollutants pursuant to section 304(a)(4) of the CWA defined as ''conventional pollutants'' (See 40 CFR 401.16). Table I–B at 40 CFR part 136 lists the

analytical methods approved for these pollutants. EPA has listed, pursuant to section 307(a) of the Act, 65 metals and organic pollutants and classes of pollutants as ''toxic pollutants'' at 40 CFR 401.15. From the list of 65 classes of toxic pollutants, EPA identified a list of 126 ''Priority Pollutants.'' This list of Priority Pollutants is shown, for example, at 40 CFR Part 423, Appendix A. The list includes non-pesticide organic pollutants, metal pollutants, cyanide, asbestos, and pesticide pollutants.

Currently approved methods for metals and cyanide are included in the table of approved inorganic test procedures at 40 CFR 136.3, Table I–B. Table I–C at 40 CFR 136.3 lists approved methods for measurement of non-pesticide organic pollutants, and Table I–D lists approved methods for the toxic pesticide pollutants and for other pesticide pollutants. Dischargers must use the test methods promulgated at 40 CFR 136.3 or incorporated by reference in the tables, when available, to monitor pollutant discharges from the CWT industry, unless specified otherwise in Part 437 or by the permitting authority.

Table I–C does not list 11 CWT semi-volatile organic pollutants and two CWT volatile organic pollutants (2-butanone and 2-propanone). However, the analyte list for EPA Method 1624 contains both volatile organic pollutants and the analyte list for EPA Method 1625 contains four of the semivolatile organic pollutants. EPA promulgated both of these methods for use in Clean Water Act measurement programs at 40 CFR part 136, Appendix A. As a part of this rulemaking, EPA is proposing to allow the use of EPA Method 1624 for the determination of the CWT volatile organic pollutants and modified versions of EPA Methods 625 and 1625 for the determination of all CWT semivolatile organic pollutants. The proposed modifications to EPA Methods 625 and 1625 have been included in the Docket for this rulemaking. The modified versions of Methods 625 and 1625 will allow the analysis of all CWT semivolatile organic pollutants by each method. If EPA adopts these proposed modifications, the following pollutants will be added to their respective analyte lists.

Additions to EPA Method 1625 and EPA Method 625

Pollutant	*CASRN*
acetophenone	98–86–2
aniline	62–53–3
benzoic acid	65–85–0
2,3-dichloroaniline	608–27–5
o-cresol	95–48–7
p-cresol	160–44–5
pyridine	110–86–1

Additions to EPA Method 625:

Pollutant	*CASRN*
alpha-terpineol	98–55–5
carbazole	86–74–8
n-decane	124–18–5
n-octadecane	593–45–3

These pollutants were found in CWT industry wastewaters in EPA's data gathering. The modifications to Methods 625 and 1625 consist of text, performance data, and preliminary quality control (QC) acceptance criteria for the additional analytes, if available. This information will allow a laboratory to practice the methods with the additional analytes as an integral part. The QC acceptance criteria for the additional analytes to be added to Method 1625 have been validated in single-laboratory studies. EPA plans further validation of these method modifications by use in subsequent data gathering for the final rule, and plans to promulgate these method modifications for monitoring at 40 CFR part 437 (see 40 CFR 401.13) or at 40 CFR part 136 in the final rule for this rulemaking.

On March 28, 1997, EPA proposed a means to streamline the method development and approval process (62 FR 14975) and on October 6, 1997, EPA published a notice of intent to implement a performance-based measurement system (PBMS) in all of its programs to the extent feasible (62 FR 52098). The Agency is currently determining the specific steps necessary to implement PBMS in all of its regulatory programs, and has approved a plan for implementation of PBMS in the water programs. Under PBMS, regulated entities will be able to modify methods without prior approval and will be able to use new methods without prior EPA approval, provided they notify the regulatory authority to which the data will be reported. EPA expects a final rule implementing PBMS in the water programs by the beginning of calendar year 1999. When the final rule takes effect, regulated entities in the CWT industry will be able to select methods for monitoring other than those approved at 40 CFR parts 136 and 437, provided that certain validation requirements are met. Many of the details were provided at proposal (62 FR 14975) and will be finalized in the final PBMS rule.

E. Public Comments to the 1995 Proposal and the 1996 Notice of Data Availability

In addition to data obtained through the Waste Treatment Industry Questionnaire, DMQ, site visits and sampling episodes, commenters on the 1995 proposal and the 1996 Notice of Data Availability also provided data to EPA. In fact, much of EPA's current description and estimates of the size of the oils subcategory is based on comments to the 1996 Notice of Data Availability.

As described earlier, following the 1995 proposal, EPA revised its estimate of the number of facilities in the oils subcategory and its description of the oils subcategory. Using new information provided by the industry during the 1995 proposal comment period in conjunction with questionnaire responses and sampling data used to develop the proposal, EPA has recharacterized this subcategory of the industry. This recharacterization reflected new data on the wastes treated by the subcategory, the technology in-place, and the pollutants discharged. As part of this recharacterization, EPA developed individual profiles for each of the newly identified oils facilities by modeling current wastewater treatment performance and treated-effluent discharge flow rates. In addition, assuming the same treatment technology options identified at proposal, EPA recalculated the projected costs of the proposed options under consideration, expected pollutant reductions associated with the options, and the projected economic impacts.

EPA presented its recharacterization of the oils subcategory in the September 1996 Notice of Data Availability (61 FR 48806). At that time, EPA estimated there were an additional 240 facilities in the oils subcategory and, as noted above, EPA developed a facility profile for each of these facilities. EPA presented that information in the 1996 Notice and requested that facilities comment on the validity of the modeled profiles. In order to facilitate that effort, copies of the Notice and the individual facility profile were mailed to each of the newly identified facilities. The facility information sheets summarized the estimates that EPA developed for operations at a facility. The facility information sheets provided EPA's estimates on the facility's following characteristics: treated effluent flow, RCRA permit status, quantity of oily waste being treated, quantity of oil recovered, characteristics of the final treated effluent, oily waste technologies in place, total cost of providing oily

waste treatment and recovery, total revenues from oily waste treatment and recovery, total revenues from sale of recovered oil, and total facility employment.

Of the 240 oils facilities for which NOA profiles were developed, EPA assessment showed that 20 facilities were closed. Of the remaining 220 facilities, EPA received comments and revised profiles from 100. Therefore, 120 facilities did not provide comments to the Notice or revised facility profiles. Of those facilities supplying information, 69 indicated their operations fall within the scope of the oils subcategory. EPA polled nine of the non-commenting facilities and determined that almost half of these are within the scope of the industry. Based on this information, EPA estimates that approximately half of the non-commenting facilities, or sixty, are within the scope of the oils subcategory. As to these sixty facilities that did not comment, EPA does not necessarily have facility-specific information for them.

EPA has again revised its characterization of the subcategory based on information provided prior to the 1995 proposal, during the proposal comment period, and during the Notice comment period. This includes company-specific information provided by commenters to correct oily waste facility profiles initially developed by EPA. EPA has used the revised facility profiles and the earlier information to perform the technical and economic analyses for the oils subcategory. The final results of the analyses are adjusted upward to provide estimates of the total population of oils facilities.

F. Database Sources

In developing the CWT effluent guidelines, EPA also evaluated the following data sources:

- Fate of Priority Pollutants in Publicly Owned Treatment Works (50 POTW Study) database.
- EPA's National Risk Management Research Laboratory (NRMRL) treatability database.

These data sources and their application to the development of the CWT effluent guidelines are discussed below.

EPA used the data included in the report entitled ''Fate of Priority Pollutants in Publicly Owned Treatment Works'' (EPA 440/1–82/303, September 1982), commonly referred to as the ''50-POTW Study'', in determining those pollutants that would pass through a POTW. This study presents data on the performance of 50 well-operated POTWs that employ secondary treatment to remove toxic pollutants. EPA has edited this database in order to minimize the possibility that low POTW removals might simply reflect low influent concentrations instead of being a true measure of treatment effectiveness. The criteria used in revising the data in the 50-POTW study were the following: (1) detected pollutants must have at least 3 pairs (influent/effluent) of data points to be included, (2) average pollutant influent levels less than 10 times the pollutant minimum analytical detection limit were eliminated, and (3) if none of the average pollutant influent concentrations exceeded 10 times the minimum analytical detection limit, then the average influent values less than 20 μg/l were eliminated. EPA then calculated each POTW percent removal for each pollutant based on its average influent and its average effluent values. The POTW percent removal used for each pollutant in the pass-through test is the median value of all the POTW percent removals for that pollutant. This is discussed in further detail in the technical development document.

EPA's National Risk Management Research Laboratory (NRMRL) developed a treatability database (formerly called the Risk Reduction Engineering Laboratory (RREL) database). This computerized database provides information, by pollutant, on removals obtained by various treatment technologies. The database provides the user with the specific data source, and the industry from which the wastewater was generated. EPA relied on the NRMRL database in its pass-through analysis to supplement the treatment information provided in the 50-POTW study when there was insufficient information on specific pollutants. For each of the pollutants of concern (POCs) not found in the 50-POTW database, EPA took data from portions of the NRMRL database. EPA edited this data so that only treatment technologies representative of typical POTW secondary treatment operations (activated sludge, activated sludge with filtration, aerated lagoons) were used. The files were further edited to include information pertaining to domestic or industrial wastewater,[2] unless other wastewater data were available. Pilot-scale and full-scale data were used, while bench-scale data were eliminated. Data from a peer-reviewed journal or government report were used and lesser quality references were edited out. From the remaining pollutant removal data, the average percent removal for each pollutant was calculated.

G. Summary of Public Participation

EPA has strived to encourage the participation of all interested parties throughout the development of the CWT guidelines and standards. EPA has met with various industry representatives. These include the Environmental Technology Council (formerly the Hazardous Waste Treatment Council), the National Solid Waste Management Association (NSWMA), the National Oil Recyclers Association (NORA), and the Chemical Manufacturers Association (CMA). EPA has also participated in industry meetings as well as meetings with individual companies that may be affected by these regulations. Additionally, EPA has met with environmental groups including members of the Natural Resources Defense Council. Finally, EPA has made a concerted effort to consult with EPA Regional staff, pretreatment coordinators, and state and local entities that will be responsible for implementing this regulation.

EPA sponsored two public meetings, one prior to the original proposal on March 8, 1994 and one prior to this recent proposal on July 27, 1997. The purpose of the public meetings was to share information about the content and status of the proposed regulations. The public meetings also gave interested parties an opportunity to provide information, data, and ideas on key issues. Following the 1995 proposal, EPA also held a workshop and public hearing to discuss topics of interest to stakeholders and to receive oral comments.

H. Small Business Advocacy Review Panel

The Regulatory Flexibility Act, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA), imposes certain duties on agencies that propose rules that may have a significant economic impact on a substantial number of small entities. These include requirements to assess the impact on small entities and seek their views. For example, unless EPA certifies that the proposed rule will not have such an impact, the statute requires an initial regulatory flexibility analysis (RFA). Section XI.L summarizes that analysis. The statute also provides that, where EPA has prepared an initial RFA, EPA must convene a Small Business Advocacy

[2] The NRMRL database breaks wastewaters down into the following categories: clean water, domestic water, groundwater, hazardous leachate, industrial wastewater, municipal leachate, commercial storage and disposal facility liquids, RCRA listed wastewater, synthetic wastewater, superfund wastewater, spill water, tap water, and surface water.

Review Panel for the proposed rule to seek the advice and recommendations of small entities concerning the proposal. The review panel for today's proposal was composed of employees from EPA, the Office of Information and Regulatory Affairs within the Office of Management and Budget, and the Chief Counsel for Advocacy of the Small Business Administration (SBA) (5 U.S.C. § 609(b)).

During development of today's proposal, EPA undertook a preliminary assessment to determine the economic effect of the options being considered for proposal on small CWT companies. (The statute defines small entities, for purposes of RFA analyses, as small businesses, small not-for-profit organizations, and small governmental jurisdictions. EPA is not aware of any CWT facilities owned by not-for-profit organizations or small governmental jurisdictions). Based on this initial evaluation, EPA concluded that, if EPA adopted limitations and standards based on some of the options being considered for proposal, the impact on small CWT companies might be significant. This would be particularly true with respect to CWT facilities that treated oily waste. Virtually all the small businesses potentially affected by the proposal would be found in this subcategory. While the absolute number of small businesses engaged in CWT operations was not large—EPA currently estimates that 63 small businesses own discharging CWT facilities—the potential costs for 71 percent of these companies would exceed one percent of their revenue.

Given that several of the proposed options would have a significant economic effect on a high percentage of these small businesses, EPA decided to prepare the analysis that the statute requires for proposals imposing significant impacts on a substantial number of small entities. The assessment is discussed below in Section XI.L and in ''Economic Analysis of Proposed Effluent Limitations Guidelines and Standards for the CWT Industry.'' The assessment addresses all of the elements that are required for an initial RFA under section 603(b) of the Regulatory Flexibility Act. In addition, pursuant to section 609(b), in May 1997, EPA decided to convene a panel for this proposed rule to collect the advice and recommendations of representatives of small CWT businesses that would be affected by the proposal.

EPA convened the panel on November 6, 1997. The panel members met among themselves and also with representatives of small CWT businesses. The panel then prepared a report that summarized its activities. The report is available in the docket for this proposal (''Final Report of the SBREFA Small Business Advocacy Review Panel on EPA's Planned Proposed Rule for Effluent Limitations Guidelines and Standards for the Centralized Waste Treatment Industry—January 23, 1998''). The report includes recommended alternatives and findings concerning the following issues:

- the type and number of small entities that would be subject to the proposal;
- record keeping, reporting and other compliance requirements that the proposal would impose on small entities subject to the proposal, if promulgated;
- identification of relevant Federal rules that may overlap or conflict with the proposed rule; and
- description of significant regulatory alternatives to the proposed rule which accomplish the stated objectives of the CWA and minimize any significant economic impact on small entities.

The panel reviewed a number of alternatives for minimizing impact on small businesses that are CWT facilities. Among the options discussed were the following:

(a.) Relief from monitoring requirements. EPA's NPDES and pretreatment program regulations require monitoring by both direct and indirect dischargers to demonstrate compliance with discharge limitations and pretreatment standards. Local permitting authorities, under these regulations, retain considerable authority in determining the frequency of monitoring. Because a significant portion of the costs of complying with CWT limitations and standards is related to monitoring costs, the panel examined approaches to reduce these costs. The panel considered two options. The first is the use of an indicator parameter as a surrogate for regulated organic pollutants. Instead of being required to monitor for a series of organic pollutants, the discharger would only need to measure the one indicator parameter. The second option is for EPA to develop guidance for distribution to permitting authorities that would recommend a reduced monitoring regime for small businesses. This second option could also be combined with the first. The Agency has examined these options further as discussed below at IX.D.

(b.) Other regulatory relief for oily waste treaters. As previously noted, the bulk of small CWT businesses are indirectly discharging oily waste treatment companies. The panel focused its attention on relief measures for these companies, but could develop no consensus on recommended relief. Among the measures considered are the following:

- The panel considered whether small businesses (those with less than $6 million in annual revenue) should not be included in the scope of the proposal or, alternatively, whether a flow cut off should be used so as to limit the facilities within the scope of the rule. In Section IV.S, EPA provides its current analyses of the effects of not including small businesses and of flow cut-offs of 3.5 million gallons per year (MGY) and 7 MGY on costs, facility closures, and pollutant loading removals. Neither the panel members nor the small business representatives could agree on whether such scope limitations would be appropriate. A more detailed discussion and request for comment on this issue is included in Section XI.L.
- The panel also heard a recommendation that EPA should propose pretreatment standards for oily waste treaters based on a less costly treatment option (emulsion breaking and secondary gravity separation) than dissolved air flotation. This treatment option is discussed with the other technology options considered for the oils subcategory as the basis for today's proposal, in Section IX.B.1.b.ii.
- Another relief option discussed is development of a streamlined procedure for obtaining a variance from categorical pretreatment standards. The CWA authorizes EPA to grant a variance from categorical pretreatment standards for facilities that, under specific circumstances, establish that their facility is ''fundamentally different'' with respect to the factors considered in establishing the categorical standard. The panel urged EPA to consider developing a procedure for small businesses to submit group applications for obtaining such variances to the extent the CWA would authorize adoption of such an approach. EPA discusses this relief option in Section XIV.C, Variances and Modifications.

(c.) New source performance standards for metal-bearing waste treaters. Concern was also expressed during the panel review about the treatment technology being considered as the basis for EPA's new source performance standards and pretreatment standards for new sources for the metals subcategory. EPA's assessment of the cost of the technology then being considered showed that it was three times as expensive as the technology forming the basis for limitations and standards for existing sources and that the incremental pollutant removals of the more stringent technology were

small. In the view of some panel members, this might pose a potential entry barrier for small business. This concern is discussed further, along with a request for comment, in Section IX.B.4 and XI.H which deal with option selection for these standards.

Finally, the panel discussed several methodological issues related to EPA's characterization of baseline pollutant loadings and estimation of loadings removals associated with various treatment options. These issues are discussed in more detail in Sections VIII and XI.M and in Chapter 12 of the technical development document.

Section XV.B discusses the SBREFA panel in more detail and provides information on what EPA has done to address the panel's recommendations. EPA notes that the panel was another effective public outreach tool, and that the small entity representatives provided valuable insight to the possible effects of the proposal to the CWT industry—specifically, the small entities.

EPA's consideration of these relief options are discussed in the appropriate sections of this document.

I. Examination of the Effect of Total Dissolved Solids on Metals Precipitation

During the comment period for the 1995 proposal, EPA received comments which asserted that high levels of total dissolved solids (TDS) in CWT wastewaters may compromise a CWT facility's ability to meet the proposed metal subcategory limitations. The data indicated that for some metal-contaminated wastewaters, as TDS levels increased, the solubility of the metal in wastewater also increased. As such, the commenters claimed that metal-contaminated wastewaters with high TDS could not be treated to achieve the proposed limitations.

At the time of the original proposal, EPA had no data on TDS levels in CWT wastewaters. No facility provided TDS data in their response to the Waste Treatment Industry Questionnaire or the Detailed Monitoring Questionnaire. Additionally, during the sampling episodes prior to the 1995 proposal, EPA did not collect TDS data. As such, EPA lacked the data to estimate TDS levels in wastewaters at the CWT facility which formed the technology basis for the 1995 proposed metals subcategory limitations.

In order to address the comment, EPA (1) collected additional information on TDS levels in metals subcategory wastewaters; (2) conducted additional sampling; (3) consulted literature sources; and (4) conducted bench scale studies.

First, EPA needed to determine the range of TDS levels in CWT metals subcategory wastewaters. As such, EPA contacted the metals subcategory Waste Treatment Industry Questionnaire respondents to determine the level of TDS in their wastewaters. Most CWT facilities do not collect information on the level of TDS in their wastewaters. Those facilities that provided information indicated that TDS levels in CWT metals subcategory wastewaters range from 10,000 ppm to 100,000 ppm (1–10%).

Second, EPA resampled the facility which formed the technology basis for the 1995 proposed metals subcategory limitations and the facility that provides the basis for metals subcategory limitations in this proposal, in part, to determine TDS levels in their wastewaters. EPA found TDS levels of 17,000 to 81,000 mg/L.

Third, EPA consulted various literature sources to obtain information about the effect of TDS levels on chemical precipitation. EPA found no data or information which related directly to TDS effects on chemical precipitation.

Fourth, EPA conducted a laboratory study designed to determine the effect of TDS levels on chemical precipitation treatment performance. In this study, EPA conducted a series of bench-scale experiments on five metals: arsenic, chromium, copper, nickel and titanium. These metals were selected because (1) they are commonly found in CWT metals subcategory wastewaters; (2) their optimal precipitation is carried out in a range of pH levels; and/or (3) the data provided in the comments indicated that TDS may have a negative effect on the precipitation of these metals. The preliminary statistical analyses of the data from these studies show no consistent relationship among the five metals, pH levels, TDS concentrations, and chemical precipitation effectiveness using hydroxide or a combination of hydroxide and sulfide. The study and the statistical analyses are included in the record. Thus, the study could not either confirm or refute the concern with high TDS levels interfering with metals treatment. EPA solicits comments on this study and EPA's statistical analyses of the results.

EPA has not incorporated an adjustment for TDS levels into the development of limitations on metals discharges for the following reason. EPA's data show that effluent levels associated with an option proposed today for BPT, BAT, and PSES for the metals subcategory are achievable even at high TDS levels. The facility which forms the technology basis for Metals Option 4 (see Section IX.B.1.b.i) had high influent levels of TDS in their wastewaters during EPA's sampling episode. On an average basis, their TDS levels were the highest EPA observed in the industry. Consequently, EPA believes the proposed BPT, BAT, and PSES limitations and standards can be achieved by all metals subcategory facilities—even those with high levels of TDS. EPA solicits comment and any data commenters may have bearing on this issue.

VII. Subcategorization

A. Methodology and Factors Considered for Basis of Subcategorization

For its earlier proposal, EPA considered whether a single set of effluent limitations and standards should be established for this industry or whether different limitations and standards were appropriate for subcategories within the industry (see 60 FR 5464, 5474). In reaching its preliminary decision that it should subcategorize for purposes of developing limitations and standards, EPA discussed its consideration of various factors.

The CWA requires EPA, in developing effluent limitations guidelines and pretreatment standards that represent the best available technology economically achievable for a particular industry category, to consider a number of different factors. Among others, these include the age of the equipment and facilities in the category, manufacturing processes employed, types of treatment technology to reduce effluent discharges, and the cost of effluent reductions (Section 304(b)(2)(B) of the CWA, 33 U.S.C. § 1314(b)(2)(B)). The statute also authorizes EPA to take into account other factors that the Agency deems appropriate and requires that the limitations it promulgates are economically achievable, which generally involves consideration of both compliance costs and the overall financial condition of the industry.

One way in which the Agency has taken some of these factors into account is by breaking down categories of industries into separate classes of similar characteristics. This recognizes the major differences among companies within an industry that may reflect, for example, different manufacturing processes, economies of scale, or other factors. One result of subdividing an industry by subcategories is to safeguard against overzealous regulatory standards, increase the confidence that the regulations are practicable, and diminish the need to address variations

between facilities through a variance process (*Weyerhaeuser Co. v. Costle*, 590 F.2d 1011, 1053 (D.C. Cir. 1978)).

The CWT industry, as previously explained, is not typical of many of the other industries regulated under the CWA because it does not produce a product. Therefore, EPA considered certain factors that specifically apply to CWT operations in its evaluation of how to establish appropriate limitations and standards and whether further subcategorization was warranted. Additionally, EPA did not consider certain other factors typically appropriate when subcategorizing manufacturing facilities as relevant when evaluating this industry. The factors EPA considered here in subcategorizing the CWT industry include:

- Facility age
- Facility size
- Facility location
- Non-water quality impacts
- Freatment technologies and costs
- RCRA classification
- Types of wastes received
- Nature of wastewater generated

EPA concluded that certain of these factors did not support further subcategorization of this industry. The Agency concluded that the age of a facility is not a basis for subcategorization as many older facilities have unilaterally improved or modified their treatment process over time. EPA is also not proposing to use facility size as a basis for subcategorization, although it is requesting comment in Section IV.S on whether facility size, as measured by flow, would be an appropriate basis for not including some facilities in the scope of the rule. EPA identified three parameters as relative measures of facility size: number of employees, amount of waste receipts accepted, and wastewater flow. EPA found that CWT facilities of varying sizes generate similar wastewaters and use similar treatment technologies, although the economic impacts of compliance costs may be greater for small facilities (as defined by parent company revenues). Furthermore, wastes can be treated to the same level regardless of the facility size. EPA is also not proposing to use facility location as a basis for subcategorization. Based on the data collected, no consistent differences in wastewater treatment technologies or performance exist between different geographical locations. EPA recognizes, however, that geographic location may have an effect on the market for CWT services, the cost charged for these services, and the value of recovered product which may affect the economic impacts of the rule. These issues are addressed in the Economic Assessment Document.

While non-water quality characteristics (solid waste and air emission effects) are of concern to EPA, these characteristics did not constitute a basis for subcategorization. Environmental impacts from solid waste disposal and from the transport of potentially hazardous wastewater are a result of individual facility practices, and EPA could not identify any common characteristics particular to a given segment of the industry. Treatment costs were not used as a basis for subcategorization because costs will vary, and are dependent on the following waste stream variables: flow rates, wastewater quality, and pollutant loadings. Finally, EPA is not proposing to use RCRA classification as a basis for subcategorization although EPA is requesting comment on whether this would be an appropriate basis for not including some facilities in the scope of the rule. (See further discussion in Sections IV.T and VIII.B.)

EPA identified only one factor with primary significance for subcategorizing the CWT industry—the type of waste received for treatment or recovery. This factor encompasses many of the other subcategorization factors. The type of treatment processes used, nature of wastewater generated, solids generated, and potential air emissions directly correlate to the type of wastes received for treatment or recovery. For today's proposal, EPA proposes to retain its earlier subcategorization approach.

B. Proposed Subcategories

Based on the type of wastes accepted for treatment or recovery, EPA has determined that there are three subcategories appropriate for the CWT industry.

- Subcategory A: Facilities which treat, recover, or treat and recover metal from metal-bearing waste, wastewater, or used material received from off-site,
- Subcategory B: Facilities which treat, recover, or treat and recover oil from oily waste, wastewater, or used material received from off-site, and
- Subcategory C: Facilities which treat, recover, or treat and recover organics from other organic waste, wastewater, or used material received from off-site.

C. General Description of Facilities in Each Subcategory

1. Metal-Bearing Waste Treatment and Recovery Operations

The facilities that would be subject to limits for this subcategory treat metal-bearing wastes received from off-site and/or recover metals from off-site metal-bearing wastes. Currently, EPA has identified 59 facilities in this subcategory. Fifty-two of these facilities are treatment facilities exclusively, while another six are recovery operations that recover metals from the wastes for sale in commerce or for return to industrial processes. One facility provides waste treatment services in addition to conducting a metals recovery operation. The vast majority of these facilities have RCRA permits to accept hazardous wastes. Among the types of wastes accepted for treatment are spent electroplating baths and sludges, spent anodizing solutions, metal finishing rinse water and sludges, chromate wastes, cyanide containing wastes, and waste acids and bases with or without metals.

The typical treatment process used for metal-bearing waste is chemical precipitation with lime or caustic followed by filtration. The sludge generated is then landfilled in a RCRA Subtitle C or D landfill depending upon its content. Most facilities that recover metals do not generate a sludge that requires disposal. Instead, the sludges are sold for their metal content. In addition to treating metal bearing waste streams, many facilities in this subcategory also treat cyanide waste streams, many of which are highly-concentrated and complex. Since the presence of cyanide may interfere with the chemical precipitation process, these facilities generally pretreat to remove cyanide and then commingle the pretreated cyanide wastewaters with the other metal containing wastewaters. EPA estimates that nineteen of the metals facilities also treat cyanide waste streams. (See discussion in 1995 proposal at 60 FR 5474.)

2. Used/Waste Oil Treatment and Recovery Operations

The facilities proposed for regulation in this subcategory are those that treat oily waste, wastewater, or used material received from off-site and/or recover oil from off-site oily materials. EPA estimates that, at present, there are 164 facilities in this subcategory. Among the types of waste accepted for treatment are lubricants, coolants, oil-water emulsions, used petroleum products, used oils, oil spill clean-up, bilge water, tank clean-out, off-spec fuels, interceptor wastes, and underground storage tank remediation waste. Many facilities in this subcategory only provide treatment for oily wastewaters while others pretreat the oily wastes for contaminants such as water and then blend the resulting oil residual to form a product—usually fuel. Most facilities perform both types of operations. EPA

estimates that 53 of these facilities only treat oily wastewaters and 36 facilities only recover oil for reuse. The remaining 75 facilities both treat oily waste and recover oil to reuse.

At the time of the original proposal, EPA believed that 85 percent of oils facilities were primarily accepting concentrated, difficult-to-treat, stable, oil-water emulsions containing more than 10 percent oil. However, during post-proposal data collection, EPA learned that many of the wastes treated for oil content at these facilities were fairly dilute and consisted of less than 10 percent oils. EPA now believes that, while some facilities are accepting the more concentrated wastes, that the majority of facilities in this subcategory are treating less concentrated wastes.

Further, at the time of the original proposal, only three of the facilities included in the database for this subcategory were identified as solely accepting wastes classified as non-hazardous under RCRA. The remaining facilities accepted either hazardous wastes alone or a combination of hazardous and non-hazardous wastes. In contrast, based on more recent information, EPA believes that the vast majority of facilities in this subcategory only accept wastes that would be classified by RCRA as non-hazardous.

The most widely used treatment technology in this subcategory is gravity separation and/or emulsion breaking. One-third of this industry only uses gravity separation and/or emulsion breaking to treat oily waste streams. Another third of the industry utilizes chemical precipitation, and most of the rest use Dissolved Air Flotation (DAF).

3. Organic Waste Treatment

The facilities proposed for regulation in this subcategory are those that treat organic waste received from off-site and/or recover organics from off-site wastes. EPA estimates that there are 25 facilities in this subcategory. The majority of these facilities have RCRA permits to accept hazardous wastes. Among the types of wastes accepted at these facilities are landfill leachate, groundwater clean-up from non-petroleum sources, solvent-bearing waste, off-specification organic products, still bottoms, used glycols, and wastewater from chemical product operations, paint washes, or adhesives and epoxies. As explained previously, wastewater discharges from solvent recovery operations are not included within the scope of this subcategory.

All of the organics facilities which discharge to a surface water use equalization and some form of biological treatment to handle the wastewater. The vast majority of organics facilities which discharge to a POTW primarily use equalization. One third of all the organics facilities also use activated carbon adsorption. Most of the facilities in the organics subcategory have other industrial operations as well, and the CWT wastes are mixed with these wastewaters prior to treatment. The relatively constant make-up of on-site wastewater can support the operation of conventional, continuous biological treatment processes which otherwise could be upset by the variability of the off-site waste receipts.

D. Mixed Waste Subcategory Consideration

EPA has received numerous comments from industry suggesting that the subcategorization scheme developed for this rule is impractical for CWT facilities which accept wastes in more than one subcategory. These commenters are primarily concerned about incoming waste receipts which may represent mixtures of wastes that would be classified in more than one subcategory. These commenters argue that, while CWT facilities can encourage their customers to segregate their wastes, they cannot require segregation of incoming waste receipts according to waste type. These commenters have suggested that, for ease of implementation, mixed waste subcategory limitations should be developed for all facilities treating wastes in more than one subcategory. These commenters are primarily concerned that permit writers may impose additional and substantial record keeping requirements in order to classify wastes in one of the three subcategories. Commenters have suggested that limitations for the mixed waste subcategory could combine pollutant limitations from all three subcategories, selecting the most stringent value where they overlap.

While facilities have suggested developing a mixed waste subcategory with limitations derived by combining pollutant limitations from all three subcategories (selecting the most stringent value where they overlap), EPA does not believe facilities have adequately considered the costs associated with such an option. In order to assure effective treatment of co-diluted waste streams, EPA would need to require more stringent limitations than currently being proposed for any current subcategory because of the co-dilution that occurs when wastes of different types are mixed together. Based on this assumption, EPA assumed that facilities design and operate their treatment systems to remove the mass of pollutants. EPA assumed that systems would not be operated to meet pollutant concentration limits because concentrations may be achieved merely through co-dilution (e.g., by mixing different waste types) rather than treatment. Consequently, in order to cost for mass pollutant removals, EPA compared the compliance cost for facilities in multiple subcategories with the mixed waste subcategory limitations as described above to compliance costs for facilities meeting the limitations for the three subcategories separately. Costs were greater for the mixed waste subcategory because EPA had to cost for larger flows, the need for more chemical addition in treatment, and other requirements. EPA chose nine representative facilities that treat wastes in more than one subcategory to conduct the comparison. EPA found that, in all cases, the costs of complying with the mixed waste subcategory limitations were two to three times higher than the costs associated with complying with each of the subcategory limitations separately. Since the market for these services is generally very competitive, and since many of these facilities are small businesses, EPA believes that few facilities would chose to meet those stringent limitations that would be necessary for the mixed waste subcategory.

The primary reason industry suggested the development of a mixed waste subcategory was their concern that their waste receipts may be classified in more than one subcategory. As detailed in Section XIV.E, EPA believes that the information currently available to CWT facilities is sufficient to classify wastes into one of the three subcategories. Using the procedure recommended in Section XIV.E for determining the subcategory, EPA has been able to assign each waste receipt identified by the industry during rule development to one of the three proposed subcategories. Therefore, EPA believes that the classification of any particular waste into a single subcategory will not be a problem. EPA requests comment on this issue, including examples of waste streams that commenters believe would be difficult to classify.

The second reason industry suggested the development of a mixed waste subcategory was to simplify implementation for mixed subcategory facilities. EPA agrees with commenters that developing appropriate limitations for mixed waste facilities presents many challenges, but the Agency is also concerned that mixed wastes receive adequate treatment. In many cases, facilities which accept wastes in

multiple subcategories do not have treatment in place to provide effective treatment of all waste receipts. While these facilities meet their permit limitations, compliance may be due to co-dilution of dissimilar wastes rather than treatment. As an example, a facility may have a treatment system comprised of equalization and biological treatment and accepts wastes from the organics subcategory and the metals subcategory (high concentrations of metal pollutants). Only the organic subcategory waste receipts would be treated effectively. The ''mixed waste subcategory'' limitations described above would not prevent ineffective treatment and could actually encourage it. Therefore, based on economic considerations as well as concerns that EPA has about ensuring compliance with effective treatment, rather than dilution, EPA is not today proposing a mixed waste subcategory. EPA solicits comments on ways to develop a ''mixed waste subcategory'' which ensures treatment rather than dilution.

VIII. Wastewater Characterization

This section describes the sources of wastewater at CWT facilities, characterization of these wastewaters, and discharge flows. All waste treatment processes covered by this regulation typically involve the use of water; however, specifics for any facility depend on the facility's waste receipts and treatment processes. For facilities that completed the Waste Treatment Industry Questionnaire, all information is based on 1989 operations. For all facilities included in scope after the original proposal, all data represent 1995 operations.

A. Wastewater Sources

Approximately 1.9 billion gallons of wastewater are generated annually at CWT facilities. It is difficult to determine the quantity of wastes attributable to different sources because facilities generally mix the wastewater prior to treatment. EPA has, as a general matter, however, identified the sources described below as contributing to wastewater discharges at CWT operations that would be subject to the proposed effluent limitations and standards.

1. Waste Receipts

Most off-site waste received by CWT facilities is aqueous. These aqueous off-site waste receipts comprise the largest portion of the wastewater treated at CWT facilities. Typical waste receipts for each subcategory are detailed in section VII.C.

2. Solubilization Water

A portion of the off-site waste receipts is in a solid form. Water may be added to the waste to render it treatable.

3. Used Oil Emulsion-Breaking Wastewater

The wastewater generated as a result of the emulsion breaking or gravity separation process(es) from the processing of used oil constitutes a major portion of the wastewater treated at oils facilities. EPA estimates that, at a typical oils facility, half of the wastewater treated is a result of oil/water separation processes.

4. Tanker Truck/Drum/Roll-Off Box Washes

Water is used to clean the equipment used for transporting wastes. The amount of wastewater generated was difficult to assess because the wash water is normally added to the wastes or used as solubilization water.

5. Equipment Washes

Water is used to clean waste treatment equipment during unit shut downs or in between batches of waste.

6. Air Pollution Control Scrubber Blow-Down

Water or acidic or basic solution is used in air emission control scrubbers to control fumes from treatment tanks, storage tanks, and other treatment equipment.

7. Laboratory-Derived Wastewater

Water is used in on-site laboratories which characterize incoming waste streams and monitor on-site treatment performance.

8. Wastewater from On-site Industrial Waste Combustors or On-site Landfills

Wastewater is generated at some CWT facilities as a result of on-site landfilling or incineration activities.

9. Contaminated Stormwater

This is stormwater which comes in direct contact with the waste or waste handling and treatment areas. If this contaminated CWT stormwater is introduced to the treatment system, its discharge is subject to the limitations proposed here today. The Agency is proposing not to regulate under the CWT guideline non-contact stormwater or contaminated stormwater not introduced to the treatment system. Such flows may, in certain circumstances, require permitting under EPA's existing permitting program at 40 CFR 122.26(b)(14) and 40 CFR 403.6. CWT facilities that introduce non-contaminated stormwater into their treatment system will need to identify this as a source of non-CWT wastewater in their treatment system in their permit applications. This is necessary in order that the permit writer may take account of these flows in developing permit limitations that reflect actual treatment.

B. Wastewater Characterization

As discussed in Section V.A, wastewater receipts treated at CWT facilities can have significantly different pollutants and pollutant loads depending on the customer and the process generating the waste receipt. In fact, at many CWT facilities, the pollutants and pollutant loads can vary daily and from batch to batch. As such, it is difficult to characterize typical CWT wastewaters. In fact, one of the distinguishing characteristics of CWT wastewaters (as compared to traditional categorical wastewaters) is that there is always the exception to the rule. As an example, EPA analyzed samples of wastewater receipts from a single facility that were obtained during three different, non-consecutive weeks. EPA found that the weekly waste receipts varied from the most concentrated (in terms of metal pollutants) to one of the least concentrated (in terms of metal pollutants).

EPA determined pollutants of concern for the CWT industry by assessing EPA sampling data only. Industry has provided very little quantitative data on the concentrations of pollutants entering their wastewater treatment systems. For the metals and organics subcategory, the data used to determine the pollutants of concern were collected at influent points to the wastewater treatment systems. For the oils subcategory, the data were collected following emulsion breaking and/or gravity separation. The pollutant concentrations at these points are lower than the original waste receipt concentrations as a result of the commingling of a variety of waste streams, and for the oils subcategory, as a result of pretreatment. In most cases, EPA could not collect samples from individual waste shipments because of physical constraints and excessive analytical costs.

EPA's influent sampling data were collected over a limited time span (generally two to five days). The samples represent a snapshot of the receipts accepted for treatment during the time the samples were collected. Since waste receipts can vary significantly from day to day, EPA cannot know if the data are representative of waste receipts during any other time period. If EPA had sampled at more facilities or over longer periods of time, EPA would expect to observe a wider range of flow, pollutants, and pollutant concentrations in CWT industry raw wastewater. This has complicated the selection of pollutants of concern and regulated pollutants, and the estimation of current performance and removals associated with this rulemaking. Historically, in developing effluent limitations guidelines and standards, unlike CWT waste receipts, influent waste streams are generally consistent in strength and nature.

To establish the pollutants of concern, EPA reviewed the analytical data from influent wastewater samples to determine the number of times a pollutant was detected at treatable levels. Treatable levels were set at ten times the minimum analytical detection limit to ensure that pollutants detected at only trace amounts would not be selected. For most organic pollutants, the minimum analytical detection limit is 10 ug/L. Therefore, for most organic parameters, EPA had defined treatable levels as 100 ug/L. For metal pollutants, the minimum analytical detection limits range from 0.2 ug/L to 1000 ug/L. The initial pollutant of concern listing for each subcategory was then derived by establishing which parameters were detected at treatable levels in at least 10 percent of the daily influent wastewater samples. Ten percent is a different criteria than was used to identify pollutants of concern in the 1995 proposal. EPA used different criteria for this proposal since it has a larger data set for this proposal than the 1995 proposal. EPA notes that, while it generally establishes criteria to establish pollutants of concern on an industry-by-industry basis, the criteria used in this proposal are similar to those used for proposal of other service industries. EPA additionally notes that the criteria to establish pollutants of concern used to date for the service industries have varied from the criteria used to establish pollutants of concern for some of the traditional categorical industries because service industries (particularly CWT) have much greater variability in the pollutants and pollutant concentrations seen in their wastewaters than some of the traditional categorical industries previously studied by EPA. Finally, if EPA had elected to establish pollutants of concern using a criteria higher than 10 percent, the estimated baseline loadings and pollutant removals would have been reduced, but EPA might have overlooked potential pollutants of concern because of the variability in the industry.

During the SBREFA panel, some industry representatives suggested that both the pollutants and the concentration of pollutants in non-hazardous CWT wastes were distinctly different from those in hazardous CWT wastes. EPA's database contains information that was collected at facilities which treat hazardous waste only, non-hazardous waste only, and a mixture of hazardous and non-hazardous wastes. The majority of the data was collected at facilities which are permitted to accept hazardous wastes. As stated earlier, although these data suggest that flows from non-RCRA permitted facilities may have significantly lower pollutant loadings, they are inadequate to support the conclusion that EPA should differentiate between oily facilities on the basis of whether hazardous or non-hazardous wastes are treated at the facility. However, as described in Section VI.C., EPA recently collected wastewater samples at an additional ten non-hazardous oily waste facilities. EPA has not included this data in these analyses, but has included this data in the Appendix of the technical development document. EPA will revisit its conclusions based on the analytical results of the recent sampling as well as any additional data provided during the comment period prior to promulgation. As such, EPA solicits comments and data on the pollutants and concentration of pollutants in non-hazardous CWT waste receipts and in hazardous CWT waste receipts. (See also Section IV.T).

1. Raw Wastewater at CWT Metals Subcategory Facilities

Wastewater treated at CWT facilities in the metals subcategory contains a range of conventional, toxic, and non-conventional pollutants. EPA identified 78 pollutants of concern for the metals subcategory, including three conventional pollutants, 43 metals, and 17 organic pollutants. As expected, wastewaters contained significant concentrations of common non-conventional metals such as aluminum, iron, and tin. Also, as expected, given the processes generating these wastewaters, waste receipts generally contained toxic heavy metals. Toxic metals found in the highest concentrations were cadmium, chromium, cobalt, copper, nickel, and zinc. While organic pollutants were present in the wastewater at a few sampled facilities in this subcategory, they were not typically found in the treated wastewater effluent in this subcategory. Many metals facilities have placed acceptance restrictions on the concentration of organic pollutants allowed in the off-site waste streams accepted for treatment.

2. Raw Wastewater at CWT Oils Subcategory Facilities

To characterize raw wastewater for the oils subcategory, EPA evaluated samples obtained following the initial gravity separation/emulsion breaking step. Wastewater treated at CWT facilities in the oils subcategory also contains a range of conventional, toxic, and non-conventional pollutants. EPA identified 120 pollutants of concern in the oils subcategory including three conventional pollutants, 32 metals, and 72 organics. Oil and grease levels in this subcategory varied greatly from one facility to the next and ranged from 26 mg/L to 61,000 mg/L after the first stage of treatment (emulsion breaking and/or gravity separation). Wastewaters contained significant concentrations of both non-conventional and toxic metals such as aluminum, boron, cobalt, iron, manganese, and zinc. A wide range of organic pollutants were also found in the untreated wastewaters from this subcategory. Organic pollutants found in the highest concentrations were straight chain hydrocarbons such as n-decane and n-tetradecane and aromatics such as naphthalene and bis(2-ethylhexyl)phthalate. EPA also detected

polyaromatic hydrocarbons, such as benzo(a)pyrene in the wastewaters of oils facilities. EPA reviewed the readily available literature pertaining to benzo(a)pyrene and its presence in waste receipts that may be accepted at facilities which treat non-hazardous oily wastes such as used motor oils, diesel fuels, fuel oils, lubricating oils, and gasolines. Based on this review, EPA has concluded that the presence of benzo(a)pyrene as a pollutant in its sampling data is not an anomaly. The result is consistent with what is observed in the available literature.

3. Raw Wastewater at CWT Organics Subcategory Facilities

Wastewater treated at CWT facilities in the organics subcategory contains a range of conventional, toxic and non-conventional pollutants. EPA identified 97 pollutants of concern for this subcategory including three conventional pollutants, 25 metals, and 60 organics. As expected, wastewaters contained significant concentrations of organic parameters, many of which are highly volatile. The metals present in the highest concentrations were common ones such as aluminum and iron.

As described in VI.C.3, the data available to the EPA for characterizing raw wastewaters for the organics subcategory are limited. In fact, the preceding discussion on the characterization of organic subcategory wastewaters is based on sampling data from a single organic subcategory facility. All other wastewater characterization data collected for the organics subcategory represented wastewater from multiple subcategories (e.g., mixed oils and organic subcategory wastewaters). EPA is especially eager for commenters on the proposal to provide data for organic subcategory wastewaters which are not mixed with other subcategory wastewaters to use in refining the Agency's characterization of this subcategory.

C. Wastewater Flow and Discharge

Based on the information collected during the development of this rule, approximately 1.9 billion gallons of in-scope wastewater are discharged annually from CWT operations. CWT facilities do not generate a ''process wastewater'' in the traditional sense of this term because there is no manufacturing or commercial ''process'' which is generating water.[3] Consequently, the regulated wastewater for this industry will include any wastes received for treatment (''waste receipt'') as well as water which comes into contact with the wastes or waste processing area. As mentioned previously, the primary sources of ''CWT wastewater'' discharges from these facilities include: waste receipts, used oil processing wastewater, solubilization wastewater, tanker truck/drums/roll-off box washes, equipment washes, air pollution control scrubber blow-down, laboratory-derived wastewater, on-site landfill and industrial waste combustor wastewaters, and contaminated stormwater.

CWT facilities have several options for the discharge of their wastewater. EPA estimates that there are 14 facilities discharging wastewater directly into a receiving stream or body of water, accounting for 0.5 billion gallons per year. In addition, there are 147 facilities discharging wastewater indirectly through a POTW, accounting for 1.4 billion gallons per year.

Also, there are a number of CWT facilities which do not dispose of wastewater directly to surface waters or indirectly to POTWs. The Agency estimates that there are 44 of these alternative discharge facilities. At these facilities, (1) wastewater is disposed of by alternate means such as on-site or off-site deep well injection or incineration (9 facilities); (2) wastewater is sent off-site for treatment, generally to another CWT (23 facilities); (3) wastewater is evaporated (5 facilities); and (4) zero discharge option is unknown (7 facilities).

Table VIII.C–1 provides estimates of wastewater flow and discharge at a subcategory level basis.

TABLE VIII.C–1.—WASTEWATER FLOW AND DISCHARGE BY SUBCATEGORY

Subcategory	Number of indirect discharging facilities	Total indirect flow (M gallons /year)	Number of direct discharging facilities	Total direct flow (M gallons /year)	Total flow (M gallons /year)
Metals Treatment and Recovery	41	449	9	496	944
Oils Treatment and Recovery	123	861	5	24	885
Organics Treatment	14	60	4	16	76

IX. Development of Effluent Limitations Guidelines and Standards

A. Description of Available Technologies

The treatment technologies presently employed by the industry represent the range of wastewater treatment systems observed at categorical industrial operations. All CWT facilities operate some wastewater treatment systems. The technologies used include physical-chemical treatment, biological treatment, and advanced wastewater treatment. Based on information obtained from the 1991 Waste Treatment Industry Questionnaire and site visits, EPA has concluded that a significant number of these treatment systems need to be upgraded to improve effectiveness and to remove additional pollutants.

Among the physical-chemical treatment technologies in use include:

- *Equalization Tanks.* Equalization dampens variation in hydraulic and pollutant loadings, thereby reducing shock loads and increasing treatment facility performance.
- *Neutralization.* Neutralization dampens pH variation prior to treatment or discharge.
- *Coagulation/Flocculation.* Coagulation/flocculation is used to assist clarification of biological treatment effluent.
- *Gravity Separation.* Gravity-assisted separation allows suspended matter, heavier than water, to become quiescent and settle; and suspended matter, lighter than water, to float.
- *Emulsion Breaking.* The addition of de-emulsifiers (heat, acid, metal coagulants, polymers, and clays) break down emulsions to produce a mixture of water and free oil and/or an oily floc.
- *Dissolved Air Flotation (DAF).* DAF separates solid or liquid particles from

[3] Process wastewater is defined in 40 CFR 122.2 as ''any water which, during manufacturing or processing, comes into direct contact with or results from the production or use of any raw material, by-product, intermediate product, finished product, or waste product.''

a liquid phase by introducing air bubbles into the liquid phase. The bubbles attach to the particles and rise to the top of the mixture.

• *Chemical Precipitation.* The addition of chemicals to wastewater to convert soluble metal salts to insoluble metal oxides which are then removed by sedimentation and/or filtration.

• *Chemical Oxidation/Reduction.* By chemical addition, the structure of pollutants are changed so as to disinfect, increase biodegradation and adsorption, or convert pollutants to terminal end products.

• *Air/Steam Stripping.* Air/Steam stripping involves the removal of pollutants from wastewater by the transfer of volatile compounds from the liquid phase to a gas stream.

• *Multimedia/Sand Filtration.* Multimedia/sand filtration involves a fixed (gravity or pressure) or moving bed of porous media that traps and removes suspended solids from water passing though the media.

• *Ultrafiltration.* Extremely fine grade filters are used to remove organic pollutants from wastewater according to the organic molecule size.

• *Reverse Osmosis.* Reverse osmosis relies on differences in dissolved solids concentrations and selective semipermeable membranes to primarily remove dissolved inorganic pollutants.

• *Fabric Filters.* Fabric filters screen suspended matter by means of a cloth or paper barrier.

• *Plate and Frame Pressure Filtration.* Fabric filters under pressure are used to separate solids from liquid streams.

• *Carbon Adsorption.* In this process, wastewater is passed over a medium of activated carbon which adsorbs certain pollutants.

• *Ion Exchange.* The use of certain resins in contact with wastewater removes contaminants of similar charge.

Biological treatment technologies in use include:

• *Aerobic Systems.* Aerobic systems utilize an acclimated community of aerobic microorganisms to degrade, coagulate, and remove organic and other contaminants. They are typically ponds, lagoons or tanks without recycle of biomass.

• *Activated Sludge.* Activated sludge is a continuous flow, aerobic biological treatment process which employs suspended-growth aerobic microorganisms to biodegrade organic contaminants with recycle of biomass.

• *Sequential Batch Reactors.* A sequential batch reactor contains acclimated microorganisms to degrade organic material. The batch process permits equalization, aeration, and clarification in a single tank.

• *Powdered Activated Carbon Biological Treatment.* The addition of granular activated carbon to biological treatment systems enhances the removal of certain organic pollutants.

The typical treatment sequence for a facility depends upon the type of waste accepted for treatment. Most facilities treating metal-bearing wastes use precipitation/sedimentation/filtration to remove metals. Those that treat oily wastes rely on emulsion breaking/gravity separation and/or dissolved air flotation largely to remove oil and grease, organics, and metals. Aerobic batch processes and conventional activated sludge systems were the most widely-used treatment technology for the organic-bearing wastes.

B. Technology Options Considered and Treatment Systems Selected for Basis of Regulation

This section explains how EPA selected the effluent limitations and standards proposed today for the metals, oils, and organics subcategories. To determine the technology basis and performance level for the proposed regulations, EPA developed a database consisting of daily effluent data collected from the Detailed Monitoring Questionnaire and the EPA wastewater sampling program. This database is used to support the BPT, BCT, BAT, NSPS, PSES, and PSNS effluent limitations and standards proposed today. While EPA establishes effluent limitations and pretreatment standards based on a treatment technology, EPA does not require a discharger to use that technology in treating CWT wastewater. Rather, the technologies which may be used to treat wastewater are entirely left to the discretion of the individual CWT operator, as long as the numerical discharge limits are achieved.

In order to establish the proposed limits, EPA reviewed data from treatment systems in operation at a number of treatment facilities to calculate concentration limits that are achievable based on a well-operated system using the proposed technologies. Below is a summary of the technology basis for the proposed effluent limitations in each subcategory.

1. Best Practicable Control Technology Currently Available (BPT)

a. Introduction. EPA today proposes BPT effluent limitations for the three discharge subcategories for the Centralized Waste Treatment Point Source Category. The BPT effluent limitations proposed today would control identified conventional, priority, and non-conventional pollutants when discharged from CWT facilities.

b. Rationale for BPT limitations by subcategory. As previously discussed, CWA Section 304(b)(1)(A) requires EPA to identify effluent reductions attainable through the application of ''best practicable control technology currently available for classes and categories of point sources.'' The Senate Report for the 1972 amendments to the CWA explained how EPA must establish BPT effluent reduction levels. Generally, EPA determines BPT effluent levels based upon the average of the best existing performances by plants of various sizes, ages, and unit processes within each industrial category or subcategory. In industrial categories where present practices are uniformly inadequate, however, EPA may determine that BPT requires higher levels of control than any currently in place if the technology to achieve those levels can be practicably applied. *See A Legislative History of the Federal Water Pollution Control Act Amendments of 1972,* U.S. Senate Committee of Public Works, Serial No. 93–1, January 1973, p. 1468.

In addition, CWA Section 304(b)(1)(B) requires a cost-reasonableness assessment for BPT limitations. In determining the BPT limits, EPA must consider the total cost of treatment technologies in relation to the effluent reduction benefits achieved. This inquiry does not limit EPA's broad discretion to adopt BPT limitations that are achievable with available technology *unless* the required additional reductions are ''wholly out of proportion to the costs of achieving such marginal level of reduction.'' See *Legislative History,* op. cit. p. 170. Moreover, the inquiry does not require the Agency to quantify benefits in monetary terms. See, for example, *American Iron and Steel Institute* v. *EPA,* 526 F. 2d 1027 (3rd Cir., 1975).

In balancing costs against the benefits of effluent reduction, EPA considers the volume and nature of expected discharges after application of BPT, the general environmental effects of pollutants, and the cost and economic impacts of the required level of pollution control. In developing guidelines, the Act does not require or permit consideration of water quality problems attributable to particular point sources, or water quality improvements in particular bodies of water. Therefore, EPA has not considered these factors in developing the limitations being proposed today. See *Weyerhaeuser Company* v. *Costle,* 590 F. 2d 1011 (D.C. Cir. 1978).

In assessing BPT for this industry, EPA considered age, size, process, other engineering factors, and non-water

quality impacts pertinent to the facilities treating waste in each subcategory. For all subcategories, no basis could be found for identifying different BPT limitations based on age, size, process, or other engineering factors for the reasons previously discussed. For a service industry whose service is wastewater treatment, the pertinent factors for establishing the limitations are costs of treatment, the level of effluent reductions obtainable, and non-water quality effects.

EPA determined that, while some CWT facilities are providing adequate treatment of all waste streams, wastewater treatment at some CWT facilities is poor. EPA is concerned that facilities which mix different types of highly concentrated CWT wastes with non-CWT waste streams or with stormwater may not be providing BPT treatment. In addition, while some CWT facilities pretreat subcategory waste streams for effective removal prior to commingling, some facilities mix wastes from different subcategories without pretreatment. This practice reduces the effectiveness of treatment and may lead to inadequate treatment for some waste streams. As a result, the mass of pollutants being discharged at some CWT facilities is higher than that which can be achieved, given the demonstrated removal capacity of certain of the treatment systems that the Agency reviewed. EPA has observed that many CWT facilities recognize that commingling often leads to less effective treatment, and have encouraged their customers to segregate wastes as much as possible. Waste minimization techniques at most manufacturing facilities have also led to increased waste stream segregation.

Comparison of EPA sampling data and CWT industry-supplied monitoring information establishes that, in the case of metal-bearing waste streams, virtually all the facilities are discharging large total quantities of heavy metals. As measured by total suspended solids (TSS) levels following treatment, TSS concentrations are substantially in excess of levels observed at facilities in other industry categories employing the very same treatment technology—10 to 20 times greater than those observed for other point source categories. EPA believes these higher TSS effluent concentrations are due to improper or ineffective treatment of these wastes rather than TSS influent concentration differences between CWT wastewaters and other industrial category wastewaters.

In the case of oil discharges, many facilities are achieving poor removal of oil and grease relative to the performance required for other point source categories. In addition, many sample infrequently for metal and organic constituents in their discharge since these parameters are not included in their discharge permits. Further, some facilities treating organic wastes, while successfully removing organic pollutants through biological treatment, fail to remove metals associated with these organic wastes.

EPA's options to evaluate treatment systems in place at direct discharging CWT facilities were extremely limited since most of the facilities in this industry are indirect dischargers. This is particularly true of the metals and oils facilities. Many CWT indirect dischargers are not required to control discharges of conventional pollutants because the receiving POTWs are designed to achieve removal of conventional pollutants. Therefore, in general, indirect dischargers currently do not monitor or optimize the performance of their treatment systems for control of conventional pollutants. Because BPT applies to direct dischargers, the data used to establish limitations and standards are normally collected from such facilities. For this rule, EPA relied on information and data from widely available treatment technologies in use at CWT facilities discharging indirectly. For non-conventional pollutants, EPA concluded that some technology in place at indirect discharging CWT facilities is appropriate to use as the basis for regulation of direct dischargers. For conventional pollutants, however, EPA largely relied on information and data collected for other point source categories.

(i) *Subcategory A—Metals Subcategory*. The Agency is today proposing BPT limitations for the metals subcategory for 19 pollutants. In developing these limitations, EPA reexamined the treatment options it had looked at for the 1995 proposal at the same time it was assessing one new treatment option. As a result of this reexamination, EPA continues to believe that single-stage, chemical precipitation of mixed, disparate metal-bearing waste streams is not an acceptable technological basis for BPT limitations. As explained in the earlier proposal (60 FR 5478), adequate metals removals are not obtained through single-stage chemical precipitation of mixed-metals waste streams. In the case of complex cyanide, metal-bearing streams, EPA is still proposing to require cyanide removal prior to metals treatment as discussed in the 1995 proposal (60 FR 5477).

For today's proposal, EPA considered three regulatory options (two previously assessed as well as one new treatment option), all relying on chemical precipitation, to reduce the discharge of pollutants from CWT facilities. The three currently available treatment systems for which the EPA assessed performance for the metals subcategory BPT are as follows:

- Option 2[4] Selective Metals Precipitation, Liquid-Solid separation, Secondary Precipitation, and Liquid-Solid Separation.
- Option 3[4] Selective Metals Precipitation, Liquid-Solid Separation, Secondary Precipitation, Liquid-Solid Separation, Tertiary Precipitation, and Clarification.
- Option 4[4] Batch precipitation, Liquid-Solid Separation, Secondary Precipitation, Clarification, and Sand Filtration.

For a more detailed discussion of the basis for the limitations and the basis for the technologies selected, see the technical development document as well as the discussion in the 1995 proposal at 60 FR 5477.

The first treatment option (Option 2) that EPA evaluated as a basis for today's proposed BPT limitations for CWT facilities is based on ''selective metals precipitation.'' ''Selective metals precipitation'' is a specialized metals removal technology that tailors precipitation conditions to the metal to be removed. The extent to which a metal is precipitated from a solution will vary with a number of factors, including pH, temperature, and treatment chemicals. Selective metals precipitation adjusts these conditions sequentially in order to provide maximum precipitation of metals. Selective metals precipitation requires segregation of incoming waste streams and careful characterization of the metals content of the waste stream. Next, there are multiple precipitations in batches at different pH levels in order to achieve maximum removal of specific metals. Selective metals precipitation results in formation of a metal-rich filter cake. This treatment option requires numerous treatment tanks and personnel to handle incoming waste streams, greater quantities of treatment chemicals, and increased monitoring of the batch treatment processes. One of the benefits of this technology, however, is that it results in a metal-rich filter

[4] The numbering of options reflects the numbering for the 1995 proposal. Options 2 and 3 were first considered for that proposal. Option 4 is a new technology EPA evaluated for this proposal. EPA is no longer evaluating Option 1 as the treatment basis for proposed limitations and standards.

cake that facilities employing this treatment have the option of selling as feed material for metal reclamation. For metals streams which contain concentrated cyanide complexes, achievement of the BPT limitations under this option would require alkaline chlorination in a two step process prior to metals treatment. These BPT cyanide limitations are discussed in greater detail below.

The second treatment option EPA evaluated (Option 3) is the same as Option 2 with an additional, third precipitation step added for increased pollutant removals. Again, for metals streams which contain concentrated cyanide complexes, like Option 2, for Option 3, BPT limitations are also based on alkaline chlorination in a two step process before metal precipitation.

The new technology EPA evaluated as the basis of BPT for this regulation (Option 4) is a two stage precipitation process. The first stage of this technology is similar to the Option 1 chemical precipitation technology considered (and rejected) for the earlier proposal. It is based on chemical precipitation followed by some form of solids separation and sludge dewatering. In Option 4, however, a second precipitation step is also performed followed by clarification and sand filtration. Generally, BPT limitations based on Option 4 would require some facilities to use increased quantities of treatment chemicals, perform additional monitoring of batch processes, perform an additional precipitation step, and add a clarification and sand filtration step. Once again, for metals streams which contain concentrated cyanide complexes, like Options 2 and 3, alkaline chlorination in a two step process prior to metals treatment is also part of the Option 4 treatment process that forms the basis for BPT limitations.

At the time of the original proposal, the Agency considered treatment Options 1, 2 and 3 only, and proposed to adopt BPT limitations based on Option 3. In today's proposal, the Agency is proposing to adopt BPT effluent limitations based on Option 4 for the metals subcategory.

EPA's decision to base BPT limitations on Option 4 treatment reflects primarily an evaluation of two factors: the degree of effluent reductions attainable through this technology and the total cost of the proposed treatment in relation to the effluent reductions benefits. The Agency is proposing to adopt BPT limitations based on the removal performance of the Option 4 treatment system for the following reasons. First, the Option 4 technology is one that is readily applicable to all facilities that are treating metal-bearing waste streams. It is currently used at 25 percent of the facilities in this subcategory. Second, the adoption of this level of control would represent a significant reduction in pollutants discharged into the environment by facilities in this subcategory. Option 4 would remove approximately 13.8 million pounds annually of conventional pollutants now discharged to the Nation's waters. Third, the Agency assessed the total cost of water pollution controls likely to be incurred for Option 4 in relation to the effluent reduction benefits and determined these costs were economically reasonable—less than $0.19 per pound.

The Agency has decided not to propose BPT limitations based on Option 3, selective metals precipitation, for a number of reasons. First, while both Option 3 and Option 4 provide significant pollutant removals, are economically achievable, and expected to result in non-water quality benefits through increased recycling of metals, Option 3 is nearly four times as costly as Option 4. Furthermore, there is little, if any, expected increase in total removals associated with the Option 3 technology. (Total removals associated with Option 3 are virtually identical to those achieved by Option 4—less than 1.25 percent greater.) Second, EPA has some concern about whether selective metals precipitation could be applied throughout the industry because, currently, only one facility is employing this technology. Moreover, as noted above, the effectiveness of selective metals precipitation depends, in part, on the separation and holding of waste streams in numerous treatment tanks. EPA is aware that there may be physical constraints on the ability of certain facilities to install the additional, required treatment tanks. These and other factors support EPA's determination not to propose limitations based on the Option 3 technology. Because Option 2 treatment also includes selective metals precipitation, the Agency is similarly rejecting it as a basis for BPT.

The Agency used chemical precipitation treatment technology performance data from the Metal Finishing regulation (40 CFR Part 433) to establish direct discharge limitations for TSS because the facility from which the Option 4 limitations were derived is an indirect discharger and the treatment system is not designed to optimize removal of conventional parameters. EPA has concluded that the transfer of this data is appropriate given the absence of adequate treatment technology for this pollutant at the only otherwise well-operated BPT CWT facility. Based on a review of the data, EPA believes that similar wastes (in terms of TSS concentrations) are being treated at both metal finishing and centralized waste treatment facilities, and that the use of the metal finishing data to derive TSS limits for this subcategory is warranted. Since the technology basis for the transferred limitations includes clarification rather than sand filtration, the Agency also included a clarification step prior to sand filtration (which the Option 4 facility does not have) in the technology basis for Option 4 for facilities subject to BPT. Therefore, because the technology basis for CWT is based on primary chemical precipitation, primary clarification, secondary chemical precipitation, secondary clarification, and sand filtration and the technology basis for Metal Finishing is based on primary precipitation and clarification only, EPA concluded that CWT facilities will perform similarly (or better) when treating TSS in wastes in this subcategory. EPA requests comment on its approach to developing TSS limitations for this subcategory.

EPA believes it is important to note that BPT limitations established by Option 4 are based on data from a single, well-operated system. Generally, for purposes of defining BPT effluent limitations, EPA looks at the performance of the best treatment technology and calculates limitations from some level of average performance measured at facilities which employ this ''best'' treatment technology. In reviewing technologies currently in use in this subcategory, however, EPA found that facilities generally utilize a single stage chemical precipitation step—a technology which generally does not achieve adequate metals removals for the waste streams observed at these operations. EPA did identify a handful of facilities which utilize additional metals wastewater treatment, generally secondary chemical precipitation. Of these facilities, EPA believes that only one accepts a full spectrum of waste, often with extremely high metals concentrations and provides, therefore, a suitable basis to determine the performance that a well-designed and operated system can achieve for a wide range of raw waste concentrations. Consequently, EPA is proposing to adopt BPT limitations based on performance data from this facility.

Cyanide Subset. The presence of high cyanide concentrations, as discussed above, detrimentally affects the performance of metal precipitation

processes due to the formation of metal-cyanide complexes. Effective treatment of such wastes typically involves a cyanide destruction step prior to any metal precipitation steps. Consequently, in the case of metal streams which contain concentrated cyanide complexes, EPA based BPT limitations on an additional treatment step to destroy cyanide before metals precipitation. EPA considered three regulatory options for the destruction of cyanide:

- Cyanide Option 1 Alkaline Chlorination.
- Cyanide Option 2 Alkaline Chlorination in a two step process.
- Cyanide Option 3 Confidential Cyanide Destruction.

The Option 1 technology, alkaline chlorination, is widely used for cyanide destruction in this industry as well as others. For this subset, therefore, it represents current performance. EPA also evaluated Option 2 BPT limitations based on the use of alkaline chlorination in a two-step process. In the first step, cyanide is oxidized to cyanate in a pH range of 9 to 11. The second step oxidizes cyanate to carbon dioxide and nitrogen at a controlled pH of 8.5. In addition, EPA considered a third technology which is extremely effective in reducing cyanide. Application of this technology resulted in cyanide reductions of 99.8 percent for both amenable and total cyanide. The Option 3 technology is claimed as confidential.

At the time of the original proposal, the Agency proposed limitations based on what is Cyanide Option 2 for the cyanide subset of the metals subcategory. This technology remains the basis for the BPT limitations for metals streams with concentrated cyanide complexes proposed today. Although Option 3 provides greater removals than Option 2, the Agency has decided to reject Option 3 as a basis for BPT limitations because the technology is not publicly available. The cyanide destruction system used at the one facility employing Option 3 is a proprietary process that does not employ off-the-shelf technology. There are, in addition, several reasons supporting the selection of limitations based on Option 2. First, the facility achieving Option 2 removals accepts a full spectrum of cyanide waste. Consequently, the treatment used by the Option 2 facility can be readily applied to all facilities in the subset of this subcategory. Second, adoption of this level of control would represent a significant reduction in pollutants discharged into the environment by facilities in this subset. Finally, the Agency assessed the total cost for Option 2 in relation to the effluent reduction benefits and determined these costs were economically reasonable.

The proposal would require monitoring for compliance with the cyanide limitations for cyanide-bearing wastes when the wastewater exits the cyanide destruction process rather than after mixing with other process wastewater. Alternatively, the facility may monitor for compliance after mixing if the cyanide limitations are adjusted using the ''building block approach'' (see Section XIV.F), assuming the adjusted cyanide limitations do not fall below the minimum analytical detection limit.

(ii). Subcategory B—Oils Subcategory. The Agency is today proposing BPT limitations for the oils subcategory for 22 pollutants. EPA examined four regulatory options in establishing BPT effluent reduction levels for this subcategory of the CWT Industry. EPA is no longer considering any of the four options it proposed in 1995 (60 FR 5478).

The four technology options considered today for the oils subcategory BPT limitations are based on emulsion breaking/gravity separation and:

- Option 8[5] Dissolved Air Flotation
- Option 8v[5] Air Stripping with Emissions Control and Dissolved Air Flotation
- Option 95 Secondary Gravity Separation and Dissolved Air Flotation
- Option 9v[5] Air Stripping with Emissions Control, Secondary Gravity Separation, and Dissolved Air Flotation

For a more detailed discussion of the basis for the limitations and the basis for the technologies selected, see the technical development document.

As previously noted, at the time of the original proposal, the Agency also evaluated four other options. The first treatment option considered was based on emulsion breaking/gravity separation only. Next, EPA considered BPT limitations based on emulsion breaking/gravity separation and ultrafiltration. The third treatment operation evaluated included emulsion breaking/gravity separation, ultrafiltration, carbon adsorption, and reverse osmosis. Finally, EPA looked at basing limitations on adding an additional carbon adsorption step to the third treatment system. While emulsion breaking/gravity separation alone is widely used in this subcategory, the Agency dropped it from further consideration at the time of the original proposal because EPA believed that emulsion breaking/gravity separation alone did not adequately control the pollutants of concern relative to other widely available technologies, and, therefore, did not represent a BPT technology. The Agency dropped the final option from consideration at the time of the original proposal because EPA's analysis showed that some pollutant concentrations actually increased following the additional carbon adsorption.

At the time of the 1995 proposal, the Agency co-proposed BPT limitations based on emulsion breaking/gravity separation and ultrafiltration as well as emulsion breaking/gravity separation and ultrafiltration with added carbon adsorption and reverse osmosis to remove metals compounds found at significant levels in this subcategory. Because the costs associated with the latter option were four times higher than emulsion breaking/gravity separation and ultrafiltration, EPA was concerned about its impacts on facilities in this subcategory. EPA co-proposed BPT based on both options, because the oil and grease limits based on emulsion breaking/gravity separation and ultrafiltration were less stringent than BPT effluent limitations guidelines promulgated for other industries. EPA was concerned that the effect of promulgating such limitations would be to encourage ineffective off-site treatment of oily waste streams. As mentioned previously, after the 1995 proposal, EPA collected additional information on facilities in the oils subcategory and revisited its conclusion about the size and nature of the oils subcategory. Further, as detailed earlier, EPA published a Notice of Data Availability in 1996 describing the new information and EPA's revised assessment of the oils subcategory. Based on analyses presented in the 1996 Notice, EPA determined it should no longer consider emulsion breaking/gravity separation and ultrafiltration with added treatment steps as the basis for BPT limitations because the projected total costs relative to effluent reduction benefits were not economically reasonable.

Based on comments to the 1995 proposal and the 1996 Notice of Data Availability, EPA was strongly encouraged to look at alternate technology options to emulsion breaking/gravity separation and ultrafiltration. This concern was driven in large measure by the fact that many of the facilities in the oils subcategory are classified as ''small businesses'' and

[5] As noted above, EPA is no longer considering Oils Option 1–4 proposed in 1995. During development of today's proposal, EPA also preliminarily considered seven other options numbered 5–9v. EPA has chosen to focus its attention on Option 8 through 9v.

the economic cost of installing and operating the ultrafiltration technology was quite high. Additionally, many commenters stated that ultrafiltration is a sophisticated technology which would be difficult to operate and maintain with the majority of these waste streams. Commenters also noted that the Agency had failed to consider non-water quality impacts adequately, particularly those associated with the disposal of the concentrated filtrate from these operations. As a result, based on comments to the original proposal, the 1996 Notice of Data Availability, and additional site visits, EPA identified several other treatment options that were efficient, produced tighter oil and grease limits, and were less expensive. As such, EPA is no longer considering emulsion breaking/gravity separation and ultrafiltration as an appropriate technology for limitations for the oils subcategory.

Small entity representatives and SBREFA panel members requested that EPA examine emulsion breaking/gravity separation and secondary gravity separation as a potential treatment technology basis for the oils subcategory. Secondary gravity separation employs additional separation steps following the initial emulsion breaking/gravity separation step. During development of today's proposal, EPA examined emulsion breaking/gravity separation and secondary gravity separation as a possible BPT technology. EPA has data from a single facility which utilizes this technology (as a pretreatment step prior to dissolved air flotation and biological treatment). As previously noted, the oils subcategory wastewaters often contain significant concentrations of metals pollutants. The data show that this technology alone did not adequately control the metal pollutants of concern relative to other widely available technologies. That is, removals of metals were much lower than those obtained from single-stage chemical precipitation and DAF units. Therefore, the Agency is not proposing that emulsion breaking/gravity separation and secondary gravity separation without further treatment as BPT treatment for this subcategory. EPA requests comment on this issue and paired influent/effluent data from well-operated facilities employing this technology.

The first option evaluated for today's proposed BPT limitations for the oils subcategory, Option 8, is based on the use of emulsion breaking/gravity separation and dissolved air flotation (DAF). DAF separates solid or liquid particles from a liquid phase by introducing air bubbles into the liquid phase. The bubbles attach to the particles and rise to the top of the mixture. Often, chemicals are added to increase the removal of metal constituents. Generally, BPT limitations based on this option would require some facilities to install and operate a DAF system or, for some facilities with currently installed DAF systems, to improve monitoring and operation. For oils streams with significant concentrations of metals, this option would also require some facilities to use increased quantities of treatment chemicals to enhance metals removals. The second technology evaluated for BPT limitations, Option 9, is emulsion breaking/gravity separation and secondary gravity separation in combination with dissolved air flotation. Secondary gravity separation involves using a series of tanks to separate the oil and water and then skimming the oily component off. The resulting water moves to the next step. The gravity separation steps are then followed by dissolved air flotation (DAF). As mentioned previously, EPA believes all oils facilities currently utilize some form of gravity separation, although most perform primary gravity separation only. Generally, BPT limitations based on this option would require some facilities to perform additional gravity separation steps, perform better monitoring and operation of their DAF system, or install and operate a DAF system. For oils streams with relatively high concentrations of metals, this option would also require some facilities to use increased quantities of treatment chemicals to enhance the removal of metals.

EPA also considered both options in combination with air stripping (with emissions control) to control the emission of volatile pollutants into the air.

The Agency is today proposing BPT limitations for the oils subcategory based on Option 9, emulsion breaking/gravity separation, secondary gravity separation and dissolved air flotation for two reasons. First, the adoption of this level of control would represent a significant reduction in pollutants discharged into the environment by facilities in this subcategory. Second, the Agency assessed the total costs of water pollution controls likely to be incurred for this option in relation to the effluent reduction benefits and determined these costs were reasonable at $0.69/lb ($1997).

EPA proposes to reject Option 8 because BPT pollutant removals based on Option 8, for a number of parameters (particularly oil and grease), are much less stringent than current BPT effluent limitations guidelines promulgated for other industries. EPA believes that the vast majority of DAF systems in use in this subcategory are not performing optimally. As mentioned earlier, all of the DAF systems studied by EPA were used at facilities that discharge to POTWs. As such, optimal control of oil and grease is not required. Many do not even monitor the oil and grease levels in the material entering, and in some cases, leaving the DAF.

For direct dischargers, EPA's cost analysis was not able to distinguish between Option 8 and Option 9. All of the direct discharging facilities in this subcategory for which EPA estimated costs currently employ rather extensive treatment (relative to the rest of the facilities in the oils subcategory), but the treatment technologies for the majority of the facilities are different from the technology basis for Option 8 or Option 9. While EPA believes these treatment technologies would allow these facilities to comply with either option for many pollutants, none of these in-place treatment technologies would achieve significant removals of metals pollutants. Therefore, for both options, EPA included costs of installing and operating dissolved air flotation. EPA believes its estimates (for both options) are, in fact, overestimates. EPA does, however, believe that meeting the more stringent Option 9 will result in additional removals while the cost differences will be negligible. EPA solicits comments on its conclusion as well as quantitative information on the cost differences for such facilities.

EPA has studied the performance of DAF systems in other largely indirect discharging industries and has found the same lack of optimal performance. EPA believes that all facilities, including indirect dischargers, should monitor the levels of oil and grease entering and leaving the DAF system. Even though oil and grease levels are not of great concern for indirect dischargers, removal of many organic compounds is directly related to removal of oil and grease. As such, the overall efficacy of the DAF system in removing the vast majority of specific toxic parameters can be improved by improving removals of oil and grease.

As explained above, the facilities sampled were not required to optimize their oil and grease or TSS removals because they discharge to POTWs that treat these pollutants. Current POTW/local permit limitations for oil and grease in this subcategory range from 100 mg/L to 2,000 mg/L and for TSS from 250 mg/L to 10,000 mg/L. Many have no oil and grease or TSS limits at all. EPA believes that only one of the

systems in this subcategory for which EPA has data was designed to remove oil and grease and TSS effectively. EPA believes the oil and grease and TSS removals are uniformly inadequate at the other facilities included in the proposed BPT limitations calculations for other parameters. Consequently, EPA based the proposed oil and grease and TSS limitations on data from a single facility. EPA solicits additional data on oil and grease and TSS discharges from oils facilities which are designed and operated to effectively remove these parameters.

Additionally, EPA is aware of a direct discharging oils facility which has an oil and grease daily maximum permit limit of 13 mg/L and a TSS daily maximum permit limit of 55 mg/L. EPA plans to request discharge data from this facility when it commences commercial operation and intends to revisit the oil and grease and TSS limitations as proposed today based on its review of new data received, including data from the newly discharging facility. EPA has also reviewed data from the Industrial Laundries and the TECI rulemaking for dissolved air flotation systems. Given the similarities in the treated waste, EPA is considering whether use of this data is appropriate in determining CWT limitations for oil and grease for this subcategory. EPA requests comments on this issue as well as data on the efficacy of dissolved air flotation systems in treating CWT wastewaters.

EPA projects additional pollutant removals associated with the technology basis for the proposed limitations, has costed facilities for the additional technology (a series of gravity separation steps) associated with this option, and has determined that it is economically achievable. However, EPA believes that many CWT facilities may be able to achieve these limitations using emulsion breaking/gravity separation and DAF only. As described above, EPA believes that many DAF systems in this industry are not performing optimally. Careful observation of the influent and effluent of these systems would allow facilities to better understand and control the resulting effluent.

The Agency is not proposing BPT limitations based on air stripping with overhead recovery or destruction. While air stripping with overhead recovery or destruction would seem to provide some additional protection from volatile and semi-volatile pollutants to all environmental media, no substantial additional removal of volatile and semi-volatile parameters from the water would be achieved through these options since the proposed wastewater discharge limits would be the same with or without the additional technology basis of air stripping with overhead recovery. The use of air stripping coupled with emissions capture reduces or eliminates the air emissions that otherwise would occur by the volatilization of the volatile organic pollutants in gravity separation and dissolved air flotation systems. However, compliance with any proposed limitation would not require installation of such equipment.

EPA highly recommends that plants incorporate air stripping with overhead recovery or destruction into their wastewater treatment systems for more complete environmental protection. EPA also notes that CWT facilities determined to be major sources of hazardous air pollutants are currently subject to maximum achievable control technology (MACT) as promulgated for off-site waste and recovery operations on July 1, 1996 (61 FR 34140).

(iii). *Subcategory C—Organics Subcategory.* The Agency is today proposing BPT limitations for the organics subcategory for 17 pollutants. For this proposal, EPA identified two new regulatory options for consideration in establishing BPT effluent reduction levels for this subcategory of the CWT industry.

At the time of the original proposal, EPA also identified two regulatory options for consideration in establishing BPT effluent reduction levels for this subcategory (60 FR 5479). EPA is no longer considering these options as a basis for BPT limitations. The first treatment system EPA examined as a basis for BPT limitations included the following treatment steps: equalization, two air strippers in series equipped with a carbon adsorption unit for control of air emissions, biological treatment in the form of a sequential batch reactor, and finally a multimedia filtration unit. The second option was the same as the first, but included a final carbon adsorption step.

At the time of the original proposal, the Agency selected BPT limitations based on the first treatment system even though, theoretically, the second system under consideration should have provided greater removal of pollutants. EPA selected the first system as the technology basis since EPA's sampling data showed that, following the carbon adsorption treatment step, specific pollutants of concern actually increased. Therefore, for today's proposal, EPA is no longer considering the second system which includes the final carbon adsorption unit as the basis for BPT limitations. Additionally, EPA has concluded that it should no longer consider the first system (equalization, air stripping, biological treatment, and multimedia filtration) as the basis for BPT limitations. The multimedia filtration step is primarily included in the treatment train to protect the carbon adsorption unit installed downstream from high TSS levels. Since EPA rejected the option which includes the carbon adsorption unit, EPA similarly rejects the option which includes the multimedia filtration step.

The two technology options considered for the organics subcategory BPT are as follows:

- Option 3—Equalization, Air-Stripping with emissions control, and Biological Treatment.
- Option 4—Equalization and Biological Treatment.

For a more detailed discussion of the basis for the limitations and the basis for the technologies selected see the technical development document.

The first option, Option 3, evaluated for today's proposed BPT limitations for the organics subcategory is based on the following treatment system: equalization, two air-strippers in series equipped with a carbon adsorption unit for control of air emissions, and biological treatment in the form of a sequential batch reactor. BPT Option 4 effluent limitations are based on the same treatment system as Option 3 without the use of air strippers (and associated carbon adsorption units).

The Agency is today proposing to adopt BPT effluent limitations based on the Option 4 technology for the organics subcategory. As mentioned earlier, the Agency decision is based primarily on the pollutant reductions, the cost and impacts to the industry, and non-water quality impacts. Unlike the other BPT limitations proposed today, the adoption of limitations based on Option 4 would not represent a significant reduction in pollutants discharged into the environment by facilities in this subcategory. EPA believes that all direct discharging facilities in this subcategory currently employ equalization and biological treatment systems. EPA has assumed that all facilities which currently utilize equalization and biological treatment will be able to meet the BPT limitations without additional capital or operating costs. While EPA recognizes that some facilities may incur increased operating costs associated with the proposed limits, EPA believes these increases are negligible and has not quantified them. EPA solicits comments on its assumptions for these facilities as well as specific data which would aid in quantifying these increases. Additionally, many of these facilities

are not currently required to monitor for organic parameters or are only required to monitor a couple of times a year. The estimated costs associated with complying with BPT limitations for this subcategory are associated with additional monitoring only. The Agency believes the additional monitoring is warranted, and will promote more effective and consistent treatment at these facilities. The Agency recognizes that in some cases this monitoring may lead to changes in operating procedures that could involve additional costs to the facilities, but does not expect these additional costs will be significant.

The Agency proposes to reject Option 3. BPT effluent limitations associated with Option 3 treatment would be essentially the same as those established by Option 4. The main difference between Option 4 and Option 3 is that Option 3, which includes air stripping with emissions control, would be effective in reducing the levels of volatile and semi-volatile organic pollutants in all environmental media, not just the water. The use of air stripping with emissions control would reduce or eliminate the air emissions that otherwise would occur by the volatilization of the volatile organic pollutants in the biological system.

However, while EPA is concerned about volatile pollutants, particularly for this subcategory, compliance with proposed limitations would not necessarily require installation of equipment to capture air emissions. EPA notes that CWT facilities determined to be major sources of hazardous air pollutants are subject to maximum achievable control technology (MACT) as promulgated for off-site waste and recovery operations on July 1, 1996 (61 FR 34140) as 40 CFR Part 63.

Once again, the selected BPT option is based on the performance of a single indirect discharging facility. While EPA identified four direct discharging organics subcategory facilities which utilize biological treatment, EPA could not use data from these facilities to establish limitations because they commingle organics subcategory wastewaters with other CWT subcategory wastewaters or other categorical wastewaters. Many facilities that are treating wastes that will be subject to effluent limitations for the Organic Waste Subcategory also operate other industrial processes that generate much larger amounts of wastewater than the quantity of off-site generated organic waste receipts. The off-site generated organic waste receipts are directly mixed with the wastewater from the other industrial processes for treatment. Therefore, identifying facilities to sample for limitations development was difficult because the waste receipts and treatment unit effectiveness could not be properly characterized for off-site generated waste. The treatment system on which Option 4 is based was one of the few facilities identified which treated organic waste receipts separately from other on-site industrial wastewater.

The Agency used biological treatment performance data from the Thermosetting Resin Subcategory of the OCPSF regulation to establish direct discharge limitations for BOD_5 and TSS because the facility from which Option 4 limitations were derived is an indirect discharger and the treatment system is not operated to effectively remove conventional pollutants. EPA has concluded that the transfer of this data is appropriate given the absence of adequate treatment technology for these pollutants at the only otherwise well-operated BPT CWT facility in this subcategory that the Agency was able to evaluate. Moreover, EPA concluded that the biological treatment systems at CWT facilities will perform similarly to those at OCPSF facilities. EPA based this conclusion on its review of the NPDES permits for the four direct discharging facilities in this subcategory. Two of these facilities are located at manufacturing facilities which commingle their wastewater for treatment and are already subject to OCPSF. The other two facilities have conventional pollutant limits which are lower than those proposed today. EPA has concluded that all of these facilities should be able to comply with the transferred limitations without incurring additional costs. Likewise, EPA has not estimated any additional pollutant removals associated with this data transfer. EPA requests comment on its approach for developing conventional pollutant limitations for this subcategory.

2. Best Conventional Technology (BCT)

In today's rule, for the conventional pollutants covered under BPT for all subcategories, EPA is not proposing effluent limitations guidelines and standards different from those proposed for BPT. In deciding whether to propose BCT limits, EPA considered whether there are technologies that achieve greater removals of conventional pollutants than proposed for BPT, and whether those technologies are cost-reasonable under the standards established by the CWA—the ''BCT Cost Test.'' For all three subcategories, EPA identified no technologies that can achieve greater removals of conventional pollutants than those that are the basis for BPT that are also cost-reasonable under the BCT Cost Test. Accordingly, EPA is proposing BCT effluent limitations equal to the proposed BPT effluent limitations guidelines and standards. For additional information on the ''BCT Cost Test,'' refer to XI.E.

3. Best Available Technology Economically Achievable (BAT)

EPA today is proposing BAT effluent limitations for all subcategories of the CWT Industry based on the same technologies selected as the basis for BPT for each subcategory. Therefore, the proposed BAT limitations are the same as the proposed BPT limitations. The BAT effluent limitations proposed today would control identified priority and non-conventional pollutants discharged from facilities. As described in the BPT discussion, in general, the adoption of this level of control would represent a significant reduction in pollutants discharged into the environment by facilities in this subcategory. Additionally, EPA has evaluated the economic impacts associated with adoption of these limitations and found them to be economically achievable. This analysis is discussed in detail in Section XI.F.

With the exception of the metals subcategory, EPA has not identified any more stringent treatment technology option different from those evaluated for BPT that might represent best available technology economically achievable for this industry. For the metals subcategory of today's proposed rule, EPA did consider as BAT technology two treatment technologies that it had evaluated for the 1995 proposal, Option 2 and Option 3, based on the use of selective metals precipitation. However, the costs to the industry for Option 2 and Option 3 are more than four times greater than the cost of the BPT option, Option 4, with little additional toxics removal.[6] Given the comparable toxic removals, EPA has concluded it should not adopt a more costly option.

For the oils and organics subcategories, EPA has evaluated treatment technologies for BAT limitations, which theoretically should provide greater removal of pollutants of concern. For example, EPA identified an add-on treatment technology to technologies considered for BPT—carbon adsorption—that should have further increased removals of pollutants of concern. However, EPA's data show

[6] EPA's data show that Option 3 would remove approximately 2% more additional toxic pound-equivalents than Option 4.

increases rather than decreases in concentrations of specific pollutants of concern. Consequently, EPA is not proposing BAT limitations based on this technology.

As with BPT limitations, EPA is proposing to require monitoring for compliance with the limitations at a point after treatment, but prior to combining the CWT process wastewater with other wastewater as explained below. Alternatively, as detailed in Section XIV.F, EPA is proposing that the facilities may monitor for compliance after mixing if the limitations are adjusted using the ''building block approach'', assuming the adjusted limitations do not fall below the minimum analytical detection limit. Many facilities operate other processes that generate wastewater. The common treatment of this wastewater with CWT wastewater may result in dilution due to the difference in concentration of waste streams. Also, when a facility mixes CWT wastewater with non-contaminated stormwater before discharge, compliance may be due to dilution rather than treatment. Also, as with BPT, monitoring for compliance for the Total Cyanide limitations at facilities in the metals subcategory which treat concentrated cyanide-bearing metal waste is after cyanide pretreatment and prior to metals treatment, unless the building block approach can be used to calculate end-of-pipe limitations that are not below the detection limit. This ensures that cyanide will not interfere with metals treatment. Therefore, EPA's estimate of compliance monitoring costs associated with the proposed BAT limitations is based on the assumption that facilities will monitor at a point after treatment, but prior to commingling.

While EPA has based its monitoring cost estimates on separate monitoring for each subcategory (and Total Cyanide), as with BPT limitations, if the facility can demonstrate to the permitting authority the capability of achieving the effluent limitations for each subpart (and Total cyanide), the facility may monitor for compliance after mixing. See Section IX.D for further information regarding monitoring to demonstrate compliance with the regulation.

4. New Source Performance Standards (NSPS)

As previously noted, under Section 306 of the Act, EPA must propose and promulgate Federal standards for performance for new sources for categories of sources. Section 306(e) provides that, after the effective date of the standards of performance, the owner or operator of a new source may not operate the source in violation of any applicable standard of performance. The statute defines ''standard of performance'' as a standard for the control of the discharge of pollutants which reflect the greatest degree of effluent reduction achievable through application of the best available demonstrated control technologies, processes, operating methods or other alternatives, including, where practicable, a standard permitting no discharge of pollutants. See Section 306(a)(1) of the CWA, 33 U.S.C. 1316(a)(1). Congress envisioned that new treatment systems could meet tighter controls than existing sources because of the opportunity to incorporate the most efficient processes and treatment systems into plant design. See general discussion of legislative history in *American Iron and Steel Institute* v. *EPA*, 526 F.2d 1027, 1057–59 (3rd Cir. 1975). In establishing these standards, Congress directed EPA to consider the cost of achieving the effluent reduction and any non-water quality environmental impacts and energy requirements. As the legislative history of the CWA makes clear, consideration of cost in establishing new source standards is given less weight than in establishing BAT limitations because pollution control alternatives are available to new sources that would not be available to existing sources. See Legis. Hist. (Sen. Muskie statement of House-Senate Conference Report on 1972 Act).

For the oils and the organics subcategory, EPA is proposing NSPS that would control the same conventional, priority, and non-conventional pollutants proposed for control by the BPT effluent limitations. The technologies used to control pollutants at existing facilities are fully applicable to new facilities. Furthermore, EPA has not identified any technologies or combinations of technologies that are demonstrated for new sources that are different from those used to establish BPT/BCT/BAT for existing sources. Therefore, EPA is establishing NSPS oils and organics subcategories similar to the oils and organics subcategories for existing facilities, and proposing NSPS limitations that are identical to those proposed for BPT/BCT/BAT.

For the metals subcategory, however, EPA is proposing NSPS effluent limitations based on the technology proposed in 1995—selective metals precipitation, liquid-solid separation, secondary precipitation, liquid-solid separation, and tertiary precipitation and clarification. This technology (Option 3) provides the most stringent controls attainable through the application of demonstrated technology. On the other hand, Option 4 provides slightly lower removals than Option 3 at significantly lower costs. EPA's determination to propose limitations based on Option 3 is closely tied to its preliminary conclusion that facilities will generally choose to recover and reuse metals, whereas facilities employing technologies to comply with Option 4 limitations will generally dispose of metal-bearing sludges in landfills. EPA believes that the selection of either Option 3 or Option 4 for NSPS satisfies the requirements that Congress established in the Clean Water Act for new sources. However, provided new sources employ recovery and reuse, Option 3 also promotes the objectives of the Pollution Prevention Act.

EPA believes that this technology is fully applicable to all metal waste streams in the CWT industry, including those with high concentrations of total dissolved solids (TDS). Commenters to the original proposal had questioned whether the level of TDS in wastewater would increase the solubility of the metals, and negatively affect the ability of the Option 3 treatment technology to perform optimally. As detailed in VI.I, EPA has concluded that the evidence do not either support or refute a direct relationship between TDS and the solubility of metals in water. Finally, EPA has concluded that there is no barrier to entry for new sources to install, operate, and maintain treatment systems that will achieve discharge levels associated with these Option 3 technologies. See XI.H for a more detailed discussion of EPA's barrier to entry analysis.

While EPA has concluded that the Option 3 technology does not pose a barrier to entry for new sources (using EPA's standard methodology for evaluating economic impacts for new sources), EPA recognizes that aside from the projected non-water quality benefits, EPA only estimates an additional 3.6 percent removal of pollutants and an additional 2.3 percent removals of toxics associated with the Option 3 technology as compared to the Option 4 technology. Additionally, EPA estimates that the start-up costs associated with the Option 3 technology range from about 46% to 50% greater than those associated with the Option 4 technology. (These estimates do not account for costs associated with RCRA permits, which may be a substantial portion of the start-up costs depending on the flow for which the facility is designed.) Finally, EPA acknowledges that the operating and maintenance

costs associated with Option 3 range from about 23% to 160% greater than those associated with Option 4. These estimates do not include monitoring costs which would be the same for either option, and which can be substantial. These estimates also do not include the reduction in landfilling costs associated with Option 3 or the revenue generated from the sale of recovered metals. For more information on the cost of pollutant removals for existing sources, see Table XI.M–1. EPA solicits comments and data on the market for recovered metals, and revenue generated from the sale of recovered metals. Finally, EPA solicits comments on the extent to which new sources may choose to recover and reuse metals through the Option 3 technology basis or simply comply with the limitations and continue to dispose of their metal sludges in a landfill.

EPA's determination to propose limitations based on Option 3 is closely tied to its preliminary conclusion that facilities will choose to recover and reuse metals. In the event that EPA concludes that new sources would not generally recover and reuse metals despite the improved ability to do so, EPA will promulgate NSPS based on the proposed BAT technology basis, Metals Option 4.

The Agency used performance data from the CWT metals subcategory BAT limitations data set to establish NSPS limitations for oil and grease because the facility from which the NSPS limitations were derived did not have oil and grease in its influent at treatable levels during EPA's sampling episodes. EPA has concluded that transfer of this data is appropriate given that the technology basis for NSPS includes selective metals precipitation and an additional precipitation step. As such, EPA has every reason to believe that facilities employing the NSPS technology could achieve the limitations, given the fact that the oil and grease limitation is based on performance at a facility employing less treatment steps.

5. Pretreatment Standards for Existing Sources (PSES)

Indirect dischargers in the CWT industry, like direct dischargers, accept wastes for treatment that contain many priority and non-conventional pollutants. Like direct dischargers, indirect dischargers may be expected to discharge many of these pollutants to POTWs at significant mass and concentration levels. EPA estimates that CWT indirect dischargers annually discharge approximately 10.2 million pounds of metal and organic pollutants to POTWs.

CWA Section 307(b) requires EPA to promulgate pretreatment standards to prevent pass-through of pollutants from POTWs to waters of the U.S. or to prevent pollutants from interfering with the operation of POTWs. EPA is establishing PSES for this industry to prevent pass-through of the same pollutants controlled by BAT from POTWs to waters of the U.S.

a. Pass-through analysis. Before proposing pretreatment standards, the Agency examines whether the pollutants discharged by the industry pass through a POTW or interfere with the POTW operation or sludge disposal practices. In determining whether pollutants pass through a POTW, the Agency compares the percentage of a pollutant removed by POTWs with the percentage of the pollutant removed by discharging facilities achieving BAT removals. A pollutant is deemed to pass through the POTW when the average percentage removed nationwide by well-operated POTWs (those meeting secondary treatment requirements) is less than the percentage removed by facilities complying with BAT effluent limitations guidelines for that pollutant.

This approach to the definition of pass-through satisfies two competing objectives set by Congress: (1) that standards for indirect dischargers be equivalent to standards for direct dischargers, and (2) that the treatment capability and performance of the POTW be recognized and taken into account in regulating the discharge of pollutants from indirect dischargers. Rather than compare the mass or concentration of pollutants discharged by the POTW with the mass or concentration of pollutants discharged by a BAT facility, EPA compares the percentage of the pollutants removed by the plant with the POTW removal. EPA takes this approach because a comparison of mass or concentration of pollutants in a POTW effluent with pollutants in a BAT facility's effluent would not take into account the mass of pollutants discharged to the POTW from non-industrial sources nor the dilution of the pollutants in the POTW effluent to lower concentrations from the addition of large amounts of non-industrial wastewater.

For this effluent guideline as well as past effluent guidelines, in conducting the pass-through analysis, EPA used a study of 50 well-operated POTWs (''Fate of Priority Pollutants in Publicly Owned Treatment Works,'' September 1982, EPA 440/1–82/303) to estimate the percent removals of CWT pollutants in POTWs. Additionally, due to the large number of pollutants applicable for this industry, EPA also used data from the National Risk Management Research Laboratory (NRMRL) database to augment the POTW database for the pollutants which the 50 POTW Study did not cover. The editing criteria are described in Section VI.F and in Chapter Seven of the technical development document.

In addition to the pass-through analysis described above, EPA has historically considered pass-through analysis for volatile pollutants by applying a volatile override test which is based on the Henry's law constant. Pollutants which are deemed to be volatile by this test are deemed to pass through because a substantial part of the overall percent removal estimated at the POTW represents emission of the pollutant into the air rather than treatment. For this proposal, however, EPA has not applied this test. EPA chose not to apply this test because the overall percent removal for many of these volatile pollutants estimated for the proposed technologies also represents emission of the pollutant into the air rather than treatment. As described under the discussion of BPT and BAT, EPA considered technology options which would have controlled these volatile pollutants in all media, but is proposing not to set limitations based on these technologies. While EPA is concerned about emissions of pollutants in all environmental media, EPA has concluded that limitations based on such technologies (e.g., air stripping with overhead recovery) would not be significantly different from the limitations being proposed today. Thus, EPA has concluded that the use of authorities other than the CWA to address air emissions from CWT wastewater is preferable. As such, EPA did not apply the volatile override test in conducting its pass-through analyses for this industry.

b. PSES options considered. For the metals and organics subcategories, the Agency today is proposing to establish pretreatment standards for existing sources (PSES) based on the same technologies as proposed for BPT and BAT.[7] These standards would apply to existing facilities in the metals or organics subcategories of the CWT industry that discharge wastewater to publicly-owned treatment works (POTWs) and would prevent pass-through of pollutants and help control sludge contamination. Based on EPA's

[7] For the metals subcategory, the technology basis for PSES does not include the second clarification step since this step was only included to meet the transferred TSS limitations which apply to direct dischargers only.

pass-through analysis, all of the BAT pollutants controlled by the metals subcategory and six of the BAT pollutants controlled by the organics subcategory would pass through and are proposed for PSES. The pollutants in the organics subcategory that were determined not to pass-through are antimony, copper, zinc, acetophenone, phenol, pyridine, 2-butanone, 2-propanone, and 2,4,6-trichlorophenol.

As explained earlier, in establishing PSES, the Agency generally sets the technology basis for PSES equivalent to BAT and then conducts a pass-through analysis. The Agency also considers the economic achievability of alternative technology options. In developing PSES for the oils subcategory, EPA carefully considered several types of economic impacts: to the CWT oils facilities, to the CWT oils firms, and to specific segments of the CWT industry such as small businesses. Early results from these analyses supported basing PSES on Option 8 rather than Option 9 (the basis for the BAT limitations) since the additional technology associated with Option 9, while removing some additional pollutants, was associated with higher costs and greater adverse economic impact. Therefore, EPA preliminarily concluded that Option 9 was not economically achievable for indirect dischargers.

As previously explained, EPA held a number of discussions with the small business community engaged in oils treatment operations. EPA also convened a SBREFA review panel for this proposal. The panel and the small entity representatives provided many pertinent discussions and insights on possible impacts of this regulation to small businesses. Many commented that even Option 8 was too expensive. However, as detailed in Section V.B, EPA believes that all CWT wastes should be treated effectively. EPA has concluded based on its economic analysis, that Option 8 is economically achievable—even in light of the projected level of impacts to small businesses.

More recent results of the economic analysis for this proposal (which include final cost estimates, etc.) indicate that projected impacts for Option 9, while greater than Option 8, were not as high as originally projected in our preliminary analyses. However, EPA estimates that removals for Option 9 for indirect dischargers are only about one percent higher than removals for Option 8. As such, the difference in the removals between the two options may be negligible.

In contrast, in estimating the economic impacts associated with Option 9, EPA costed facilities for the additional treatment technology associated with the Option 9 technology basis. While not as high as originally projected, these impacts are still significant. In particular, EPA estimates additional process closures and impacts to small businesses associated with the Option 9 technology basis.

Therefore, EPA today is proposing to establish PSES standards for the oils subcategory based on the oils Option 8 technology—emulsion breaking/gravity separation and dissolved air flotation. Fourteen of the BAT pollutants controlled by the oils subcategory would pass through and are proposed for regulation. The six pollutants in the oils subcategory that were determined not to pass through are arsenic, butyl benzyl phthlate, cadmium, chromium, lead, and mercury. Additionally, EPA requests comments on whether any treatment technology basis more expensive than the Option 8 technology basis (dissolved air flotation) produces significantly greater pollutant removals and is economically achievable for indirect dischargers in this subcategory.

6. Pretreatment Standards for New Sources (PSNS)

Section 307 of the Act requires EPA to promulgate pretreatment standards for new sources (PSNS) at the same time it promulgates new source performance standards (NSPS). Such pretreatment standards must prevent the discharge of any pollutant into a POTW that may interfere with, pass through, or may otherwise be incompatible with the POTW (Section 307(c) of the CWA, 33 U.S.C. § 1317(c)). EPA promulgates categorical pretreatment standards for existing sources based on BAT technology for existing sources. EPA promulgates pretreatment standards for new sources based on best available demonstrated technology for new sources (*National Ass'n of Metal Finishers* v. *EPA*, 719 F.2d 624 (3rd Circ. 1983)). The legislative history explains that Congress required simultaneous establishment of new source standards and pretreatment standards for new sources for two reasons. First, Congress wanted to ensure that any new source industrial user achieve the highest degree of internal effluent controls necessary to insure that such user's contribution to the POTW would not cause a violation of the POTW's permit. Second, Congress wished to eliminate from the new user's discharge any pollutant that would pass through, interfere, or was otherwise incompatible with POTW operations.

As set forth in Section IX.B.5(a) of this preamble, EPA determined that a broad range of pollutants discharged by CWT industry facilities pass through POTWs. EPA considered the same technologies discussed previously for BAT, NSPS, and PSES as the basis for PSNS.

EPA is proposing that pretreatment standards for new sources be set equal to NSPS for priority and non-conventional pollutants for all subcategories. Since the pass-through analysis remains unchanged, the Agency is proposing to establish PSNS for the same priority and non-conventional pollutants as are being proposed for PSES. In addition, given the potential for co-dilution, EPA is again proposing that monitoring to demonstrate compliance with these standards be required immediately following treatment of the regulated streams. However, as with PSES, EPA is alternatively proposing to allow facilities to monitor for compliance after mixing if the standards are adjusted using the combined waste stream formula (see Section XIV.F), assuming the standards do not fall below the minimum analytical detection limits. EPA considered the cost of the proposed PSNS technology for new facilities. EPA concluded that such costs are not so great as to present a barrier to entry, as demonstrated by the fact that currently operating facilities are using these technologies.

C. Non-Regulated Pollutants of Concern

Section VIII.B discusses the pollutants of concern for each of the subcategories. EPA has not chosen to regulate all of these pollutants. Chapter 7 of the technical development document lists the pollutants of concern that EPA proposes not to regulate and the bases for these decisions.

D. Monitoring To Demonstrate Compliance With the Regulation

The effluent limitations and pretreatment standards EPA is proposing today are intended to apply to discharges resulting from treatment of the subcategory wastes and not to mixtures of subcategory wastes with other wastes or mixtures of different subcategory wastes. However, in certain circumstances on a site specific basis, these effluent limitations or pretreatment standards may apply, through the use of the combined waste stream formula or the building block approach (see Section XIV.F), to discharges from the treatment of subcategory wastes that are mixed prior to or after treatment with other wastewater streams prior to discharge. EPA is not proposing to establish a single set of limits (and pretreatment standards) for the pollutants proposed

to be regulated in this category at the point of discharge for mixed waste streams, given the difficulty of ensuring comparable treatment to what would be achieved by the separate subcategory limitations (or standards).

Currently, many facilities in this industry may operate other processes which generate wastes requiring treatment and may add these wastes to CWT wastes before treatment and discharge. If the addition of these other wastes was not taken into account in developing site-specific permit limitations, this may result in dilution rather than required treatment of CWT wastes due to the difference in concentration of waste streams. In addition, if a facility discharges its non-contact stormwater in combination with its CWT discharge and if it was not accounted for in the development of the facility's permit limitations, a similar problem of dilution, rather than treatment of wastes, may result.

Similarly, for facilities which treat concentrated cyanide-bearing metal wastes, the development of limitations and pretreatment standards for Total Cyanide was based on cyanide levels that are demonstrated to be achieved after cyanide pretreatment and prior to metals precipitation. Separate pretreatment of cyanide in metal-bearing waste streams is necessary in order to ensure that cyanide will not interfere with metals treatment. However, in certain circumstances, these Total Cyanide limitations (or standards) may apply, through the use of the combined waste stream formula or the building block approach, to discharges of Total Cyanide mixed with other wastewaters.

Consequently, EPA has preliminarily determined that many plants may need to conduct compliance monitoring immediately following treatment of subcategory waste streams (for example, metal-bearing, oily, or organic-bearing, as appropriate). EPA does not believe that the use of the combined waste stream formula or the building block approach will be possible for all plants in this industry either, because the proportion of wastes being treated from different subcategories will change frequently, or because co-dilution of different subcategory waste types with another would require mixed-waste limits or standards below the minimum analytical detection limit for some regulated pollutants. In such situations, permits will require separate monitoring of each subcategory wastestream following treatment and prior to mixing. Consequently, all compliance monitoring cost estimates presented today are based on separate monitoring of each subcategory. A detailed discussion of compliance monitoring for facilities which accept waste in more than one subcategory can be found in Section XIV.F of today's notice and in Chapter 14 of the technical development document.

In estimating compliance costs and developing limitations, EPA assumed daily monitoring for conventional pollutants by direct dischargers, and monitoring for toxic and non-conventional pollutants by both indirect and direct dischargers as follows: for the metals subcategory, daily monitoring for metals, and for the oils and organics subcategories, weekly monitoring for both metals and organics. EPA believes these frequencies are appropriate given the variability of receipts generally seen on a day-to-day and week-to-week basis at CWT facilities. EPA notes that the recommended monitoring frequencies, as proposed today, are greatly reduced from the recommended monitoring frequencies in the original proposal. Even so, EPA recognizes that, in many cases, monitoring costs still represent a significant share of the compliance costs of this proposed rule, particularly for many of the small businesses in the oils subcategory.

As such, for facilities in the oils subcategory, EPA is considering an alternative monitoring scheme. Facilities may either (1) monitor for all pollutants as proposed today; or (2) monitor for the conventional, metal parameters, and an indicator parameter such as hexane extractable material (HEM) or silica gel treated-hexane extractable material (SGT–HEM) in lieu of the organic pollutants. EPA is currently conducting a study to determine which organic pollutants are measured by SGT–HEM and HEM. If facilities choose to monitor for organics with an indicator parameter, the facility must comply with all applicable requirements, including the requirement that pollutant reductions must not be achieved through dilution. EPA solicits comments on this monitoring scheme and the use of indicator parameters in general.

As another alternative that would target monitoring relief to small businesses, the SBREFA panel discussed at length the merits and disadvantages of providing alternative limitations and pretreatment standards for small businesses based on an assumption of less frequent monitoring for facilities owned and operated by small businesses. Under this approach, EPA would establish two sets of effluent limitations and pretreatment standards. Three major issues with this approach were raised during the panel process.

First, current permit application forms do not require facilities to indicate whether or not they are owned and operated by small businesses. EPA defines small CWT companies as those having sales less than $6 million (the Small Business Administration definition of a small business for SIC code 4953, Refuse Systems). Information on a firm's sales is not always publicly available. Industry representatives have indicated that revenue would be a suitable criterion to identify small businesses for purposes of a reduced monitoring regime and that facilities would be comfortable providing firm-level economic information to the federal, state, or local permitting authority as long as confidentiality is protected. Note that the designation of small business could not be claimed confidential for facilities that are granted monitoring relief or alternative limitations on this basis, although the data on which the designation was based could be. EPA solicits comment on this potential basis for identifying small businesses for purposes of monitoring relief.

Second, EPA does not generally establish nationally-applicable monitoring frequency requirements. Even when EPA has established minimum monitoring requirements (See 63 FR 18504 April 15, 1998), state and local permitting authorities are free to establish more frequent monitoring than that specified by EPA. Permitting authorities have historically used factors such as raw waste variability, wastewater flow, type of treatment, and compliance history to determine appropriate monitoring frequencies. EPA is uncertain whether or not, and to what extent, recommendations on monitoring frequency based upon firm revenue would be considered by permitting authorities. This is even more uncertain given that the factors historically used by permitting authorities do not correlate to firm size in this industry. Permitting authorities that establish more frequent monitoring requirements for facilities that pose a greater threat to water quality or POTW treatment system effectiveness may not be inclined to allow facilities with higher loadings to monitor less frequently than other facilities due to the revenues of the parent firm. EPA solicits comment on the likelihood that permitting authorities would follow EPA recommendations regarding reduced monitoring frequencies for small business owned and operated facilities.

Third, although the technology basis and the long-term average for both sets of limitations would be the same, the

monthly average limitations calculated based upon reduced monitoring assumptions would be higher (less stringent). This is due to the influence of variability on the limitation calculation which is much more pronounced with reduced monitoring: a ''monthly average'' limitation based upon an assumption of once a month monitoring equals the calculated daily maximum limitation; a ''monthly average'' limitation based on daily monitoring would have a value closer to that of the long-term average. While both limitations (daily maximum and monthly average) are based upon the same technology and same long-term average performance, EPA is concerned that higher monthly average limitations for facilities with less frequent required monitoring might allow these facilities to target a less stringent level of treatment than that reflected by the long-term average. Although they would run a greater risk of violation if they did this, they might be able to reduce their liability for violation by monitoring early in the month, and conducting subsequent monitoring within the month if that first event is in violation of their (higher) monthly average. EPA recognizes that this potential exists to some extent even without higher limitations based on less frequent monitoring, but it becomes more pronounced as required monitoring frequencies decrease. One way of addressing this concern would be to allow the alternative limitations to apply only when compliance monitoring is conducted at a comparable frequency to that assumed in the development of the alternate limitations. For example, a facility could be required to determine in advance a random day on which compliance monitoring for a month would be conducted. Any other monitoring that the facility might perform for its own purposes (eg., process control) could not be used to lower the monthly average for compliance purposes. EPA solicits comment on this and other alternatives to ensure that any monitoring relief the Agency might provide does not jeopardize environmental performance.

EPA has issued guidance to permit authorities on implementing reduced reporting and monitoring requirements in its ''Interim Guidance for Performance-based Reduction of NPDES Permit Monitoring Frequencies'' (EPA–833–B–96–001, April 1996). Ordering information is available from http://www.epa.gov/OWM/avail.htm.

E. Determination of Long-Term Averages, Variability Factors, and Limitations

This subsection describes the statistical methodology used to develop long-term averages, variability factors, and limitations for BPT, BCT, BAT, NSPS, PSES, and PSNS. The same basic procedures apply to the calculation of all limitations and standards for this industry, regardless of whether the technology is BPT, BCT, BAT, NSPS, PSES, or PSNS. For simplicity, the following discussion refers only to ''limitations''; however, the discussion also applies to standards.

The proposed limitations for pollutants for each option, as presented in today's notice, are provided as ''daily maximums'' and ''maximums for monthly averages.'' Definitions provided in 40 CFR 122.2 state that the daily maximum limitation is the ''highest allowable 'daily discharge' '' and the maximum for monthly average limitation is the ''highest allowable average of 'daily discharges' over a calendar month, calculated as the sum of all 'daily discharges' measured during a calendar month divided by the number of 'daily discharges' measured during that month.'' Daily discharges are defined to be the '' 'discharge of a pollutant' measured during a calendar day or any 24-hour period that reasonably represents the calendar day for purposes of sampling.''

EPA calculates the limitations based upon percentiles chosen with the intention, on one hand, to be high enough to accommodate reasonably anticipated variability within control of the facility and, on the other hand, to be low enough to reflect a level of performance consistent with the Clean Water Act requirement that these effluent limitations be based on the ''best'' technologies. The daily maximum limitation is an estimate of the 99th percentile of the distribution of the daily measurements. The maximum for monthly average limitation is an estimate of the 95th percentile of the distribution of the monthly averages of the daily measurements. The percentiles for both types of limitations are estimated using the products of long-term averages and variability factors.

In the first of two steps in estimating both types of limitations, EPA determines an average performance level (the ''long-term average'') that a facility with well-designed and operated model technologies (which reflect the appropriate level of control) is capable of achieving. This long-term average is calculated from the data from the facilities using the model technologies for the option. EPA expects that all facilities subject to the limitations will design and operate their treatment systems to achieve the long-term average performance level on a consistent basis because facilities with well-designed and operated model technologies have demonstrated that this can be done. In the second step of developing a limitation, EPA determines an allowance for the variation in pollutant concentrations when processed through extensive and well designed treatment systems. This allowance for variance incorporates all components of variability including shipping, sampling, storage, and analytical variability. This allowance is incorporated into the limitations through the use of the variability factors which are calculated from the data from the facilities using the model technologies. For a few pollutants, EPA transferred the long-term average, variability factors, or limitations from another source such as another pollutant group or industrial category (as explained briefly in Section IX.B.1 and in detail in Chapter 10 of the technical development document). If a facility operates its treatment system to meet the relevant long-term average, EPA expects the facility to be able to meet the limitations. Variability factors assure that normal fluctuations in a facility's treatment are accounted for in the limitations. By accounting for these reasonable excursions above the long-term average, EPA's use of variability factors results in limitations that are generally well above the actual long-term averages. The data sources, the selection of pollutants and data, and the calculations of pollutant long-term averages and variability factors are briefly described below. More detailed explanations are provided in the technical development document.

The long-term averages, variability factors, and limitations were based upon pollutant concentrations collected from three data sources: EPA sampling episodes, the 1991 Detailed Monitoring Questionnaire, and data submitted by industry after the 1995 proposal. These data sources are described in Sections VI.B and VI.C. When the data from the EPA sampling episodes at a facility met the data editing criteria described below, EPA used the sampling data and any monitoring data provided by the facility.

EPA calculated long-term averages for the initial pollutant of concern list for each option and each subcategory. As described in section VIII.B, the initial pollutant of concern list for each subcategory consisted of parameters that were detected at treatable levels in at

least 10 percent of the daily influent wastewater samples collected in the EPA sampling episodes. Treatable levels were defined as those equal to or greater than ten times the minimum analytical detection limit. Generally, the ''minimum analytical detection limit'' was the value published in the chemical analytical method. Chapter 15 of the technical development document identifies the minimum analytical detection limit for all pollutants proposed to be regulated. In calculating long-term averages, EPA applied two additional criteria to the concentration data sets for the pollutants of concern. If a pollutant data set from an EPA sampling episode met both criteria, the EPA sampling data and any monitoring data from that facility were used in calculating the long-term averages for the pollutant. The first criteria EPA applied was whether EPA had detected the pollutant at treatable levels in 50 percent or more of the daily influent wastewater samples. If not detected at treatable levels in 50 percent or more of the samples, then EPA looked to see if the long-term average value of the daily influent wastewater samples for a particular pollutant was equal to or greater than the treatable levels for that pollutant and the pollutant was detected in at least 50% of the influent wastewater samples (at any level). If the pollutant data set met the first criteria, then EPA applied the second criteria. In the second criteria, EPA confirmed that the percent removal for the data set was greater than zero. (Percent removal was calculated as 100 times the ratio of the difference between the influent and effluent averages to the influent average.) If the concentration data for any of the pollutant data sets met both criteria, then EPA calculated a long-term average for the pollutant. For some pollutants in some options, none of the data sets from the EPA sampling episodes met both criteria; thus, EPA did not calculate a long-term average for that pollutant for that option. Further, as a result of applying the criteria, EPA may have proposed slightly different lists of regulated pollutants for the options within a given subcategory.

For each facility that met the criteria and that had the model technologies, the long-term average for each pollutant was calculated by arithmetically averaging the daily values of the pollutant concentrations. (For facilities with continuous flow systems, a daily value was the average of the concentrations of a pollutant on a given calendar day. For facilities with batch systems, a daily value was the average of the concentrations of a pollutant in a batch.) The pollutant long-term average for an option was the median of the long-term averages from the facilities with the model technologies for the option.

The daily variability factors for each option were developed in four steps for each group of pollutants with similar chemical structures. (The group for each pollutant is identified in the technical development document.) The first step evaluated the size of the facility data set that met the criteria and the censoring types of its daily values. As described in Chapter 10 of the technical development document, a facility data set was excluded if the number of non-censored values was too small to reliably estimate the statistical distributional parameters used in calculating the daily variability factor. (A non-censored value is a measured value, i.e., a concentration value greater than the minimum analytical detection limit.) The second step was to develop a daily variability factor for each pollutant at each facility by fitting a modified delta-lognormal distribution to the daily values for the pollutant at each facility. The daily variability factor for each pollutant at each facility is the ratio of the estimated 99th percentile of the distribution of the daily pollutant concentration values divided by the expected value, or mean, of the distribution of the daily values. The third step was to develop one daily variability factor for each pollutant for each option by averaging the daily variability factors for the selected facilities with the technology basis for the option. The fourth step was to develop group daily variability factors for each option. The daily variability factor for each group was the median of the daily variability factors obtained in the third step for the pollutants in the group and option. The daily maximum limitation for a pollutant was the product of the pollutant long-term average and its group daily variability factor.

Similarly, the monthly variability factors for each option were developed in the same basic four steps described for the daily variability factors. However, in the second step, the modified delta-lognormal distribution was fit to monthly averages rather than daily measurements. Another change was that the 95th percentile was used rather than the 99th percentile. Thus, the monthly variability factor for each pollutant at each facility was the ratio of the estimated 95th percentile of the distribution of the monthly average divided by the expected value, or mean, of the distribution of the monthly averages. Although the monitoring frequency necessary for a facility to demonstrate compliance is determined by the local permitting authority, EPA must assume a monitoring frequency in order to develop the distribution of monthly averages. The distribution fit to averages of 20 daily values will be different from the distribution fit to averages of 4 daily values. The number of measurements used to calculate the monthly averages corresponds to the number of days that the pollutant is assumed to be monitored during the month. For example, the organic compounds are expected to be monitored once a week (which is approximately four times a month); therefore, the monthly variability factor was based upon the distribution of monthly averages comprising four daily values. Certain pollutants such as oil and grease (HEM) are expected to be monitored daily; therefore, the monthly variability factor was based upon the distribution of averages comprising 20 daily values (most facilities operate only on weekdays of which there are approximately 20 in each month). The assumed monitoring frequency of each pollutant is identified in Table IX.E–1. The maximum for monthly average limitation for a pollutant was the product of the pollutant long-term average and its group monthly variability factor.

TABLE IX.E–1.—MONITORING FREQUENCIES USED TO ESTIMATE MONTHLY VARIABILITY FACTORS

Assumed monitoring frequency	Metals subcategory	Oils subcategory	Organics subcategory
Daily Monitoring (20 per month) ...	Hexane-Extractable Oil and Grease (HEM). TSS ..... Antimony Arsenic Cadmium Chromium	Hexane-Extractable Oil and Grease (HEM). TSS	BOD_5. TSS.

TABLE IX.E–1.—MONITORING FREQUENCIES USED TO ESTIMATE MONTHLY VARIABILITY FACTORS—Continued

Assumed monitoring frequency	Metals subcategory	Oils subcategory	Organics subcategory
	Chromium, hex Cobalt Copper Lead Manganese Mercury Nickel Selenium Silver Tin Titanium Vanadium Zinc Total Cyanide (if applicable).		
Weekly Monitoring	None	Antimony Arsenic Barium Cadmium Chromium Cobalt Copper Lead Mercury Molybdenum Tin Titanium Zinc Alpha terpineol Bis-2-ethylhexyl phthalate. Butyl benzyl phthlate. Carbazole. Flouranthene. n-decane. n-octadecane.	Antimony. Copper. Molybdenum. Zinc. Acetophenone. Aniline. Benzoic Acid. o-cresol. p-cresol. Phenol. Pyridine. 2-butanone. 2-propanone. 2,3-dichloroaniline. 2,4,6-trichlorophenol.

In section XVI of today's reproposal, EPA is soliciting comment on two specific aspects of the procedures used to determine the limitations. Both of these requests are described further below.

First, EPA reiterates its request for additional data that can be used to evaluate autocorrelation in the data. When data are said to be positively autocorrelated, it means that measurements taken at different time periods are similar. For example, positive autocorrelation would be present in the data if the final effluent concentration of oil and grease was relatively high one day and was likely to remain at similar high values the next and possibly succeeding days. In many industries, measurements in final effluent are likely to be similar from one day to the next because of the consistency from day-to-day in the production processes and in final effluent discharges due to the hydraulic retention time of wastewater in basins, holding ponds, and other components of wastewater treatment systems. EPA believes that autocorrelation is unlikely to be present in daily measurements from wastewater from this industry. Unlike other industries, where the industrial processes are expected to produce the same type of wastewater from one day to the next, the wastewater from CWT industry is generated by treating wastes from different sources and industrial processes. The wastes treated on a given day will often be different from the waste treated on the following day. Because of this, autocorrelation would be expected to be absent from measurements of wastewater from the CWT industry. In the preamble to the 1995 proposal, EPA requested additional monitoring data that would allow for evaluating autocorrelation in daily measurements. The monitoring data that EPA has received thus far are insufficient for the purpose of evaluating the autocorrelation in CWT operations. To determine autocorrelation in the data, many measurements for each pollutant would be required with values for every single day over an extended period of time. Such data were not available to EPA. EPA again requests additional monitoring data for this purpose in Section XVI.

Second, EPA solicits comment on using pollutant variability factors rather than group variability factors in calculating the limitations. The pollutant variability factor is the average of the variability factors for a particular pollutant from facilities with the model technologies for the option. The group variability factor is the median of the pollutant variability factors from pollutants with similar chemical structures. For the 1995 proposed limitations and in today's proposed limitations, EPA generally used the group variability factor, multiplied by the pollutant long-term average, to calculate each pollutant limitation. (Exceptions are described in Chapter 10 of the technical development document.) For today's reproposal, EPA alternatively considered using the pollutant variability factor instead of the group variability factor. For pollutants where pollutant variability factors could not be calculated (due to data constraints), EPA would continue to use the group variability factor. Using the group variability factor eliminates the low and high pollutant variability factors. Thus, using individual

variability factors, limitations for some pollutants would be more stringent and for others less stringent. EPA solicits comment on whether the pollutant or group variability factors or some combination should be used in calculating the limitations to accurately reflect the variability of the pollutants discharged by the CWT industry.

X. Costs and Impacts of Regulatory Alternatives

A. Methodology for Estimating Costs and Pollutant Reductions Achieved by Treatment Technologies

EPA estimated industry-wide compliance costs and pollutant loadings associated with the effluent limitations and standards proposed today using data collected through survey responses, site visits, sampling episodes, and comments submitted on the 1995 proposal and 1996 Notice of Data Availability. EPA calculated costs based on a computerized design and cost model developed for each of the technology options considered. The Agency estimated current pollutant loads and projected pollutant load reductions using treatment data collected from industry and EPA sampling data.

EPA developed industry-wide costs and pollutant loads using data for 145 facilities which responded to the 308 Questionnaire or commented to the 1996 Notice of Data Availability. These 145 facilities represent a census of the metals and organics subcategory, but only a subset of the facilities in the oils subcategory. For the oils facilities, EPA calculated costs and loads for the subset and then modeled the national population by adjusting the oils results upward to estimate the entire oils subcategory population.

In order to develop costs and to estimate the pollutant reductions associated with this proposal, EPA estimated the current performance of existing wastewater treatment at each of the facilities. In the 308 Questionnaire and in the Detailed Monitoring Questionnaire, EPA had solicited effluent monitoring data in order to estimate current performance. For the majority of facilities, however, data were not available either for all pollutants of concern or for pollutants before mixing CWT wastewater and non-CWT wastewater. Therefore, EPA developed methodologies to estimate current discharge concentrations of each pollutant of concern for each facility. The methodologies vary between subcategory and facility based on: 1) the analytical data available; 2) the characteristics of the facilities in the subcategory; and 3) the facility's treatment train. For facilities in multiple subcategories, EPA estimated loadings for that portion of the waste stream in each subcategory and then added them together. Chapter 12 of the technical development document describes the methodologies used to estimate loadings for each subcategory in detail.

For its costing analysis, EPA assumed that facilities whose current discharge concentrations were not meeting the limitation concentrations proposed in today's notice would incur costs as a result of compliance with this guideline. EPA developed costs for a facility which did not have the BPT treatment technology in place to install the BPT technology. In the case of a facility already having BPT treatment technology in place but not currently meeting the proposed limits, EPA determined the applicable upgrade to the treatment system. Typical upgrades included increasing aeration capacity or residence time, installing new equipment, or increasing chemical usage.

Next, EPA used a computer cost model to estimate compliance costs for the selected technology options after taking into account treatment in place, current discharge concentrations of pollutants, and wastewater flow rates for each facility. EPA programmed the computer cost model with technology-specific modules which calculated the costs for various combinations of technologies as required by the BPT/BAT options and the facilities' wastewater characteristics. The model calculated the following costs for each facility:

- Capital costs for installed wastewater treatment technologies;
- Operating and maintenance (O&M) costs for installed wastewater treatment technologies, including labor, electrical, and chemical usage costs; and
- Solids handling costs, including capital, O&M, and disposal.

EPA developed additional cost factors for the capital and O & M costs in order to account for site work, interface piping, general contracting, engineering, instrumentation and controls, buildings, site improvements, legal/administrative fees, interest, contingency, and taxes and insurance.

Other direct costs associated with compliance included retrofit costs associated with integrating the existing on-site treatment with new equipment, RCRA part B permit modification costs for hazardous facilities, additional land, if any, and monitoring costs.

During the SBREFA panel, one industry representative noted that EPA may have underestimated the costs associated with dissolved air flotation for low-flow facilities. In fact, this industry representative suggested that capital costs for dissolved air flotation for low-flow facilities may be twice as high as EPA's estimate. Subsequently, EPA reexamined its costing curves for dissolved air flotation, and determined that EPA had underestimated DAF costs for low-flow facilities. The DAF costs included in the analyses presented today reflect the revised DAF cost curves.

Detailed information on EPA's compliance cost estimates and methodologies, including the cost curves for all treatment technologies considered as the basis for today's proposed rule, is located in the ''Detailed Costing Document for the Centralized Waste Treatment Industry.'' EPA encourages all interested parties to refer to this document and provide comment on any aspect of the methodology or the data used to estimate compliance costs associated with today's proposal.

B. Regulatory Costs

The Agency estimated the cost for CWT facilities to achieve each of the effluent limitations and standards proposed today. This section summarizes these estimated costs and the technical development document discusses them in more detail. All cost estimates in this section are expressed in terms of 1997 dollars. The cost components reported in this section represent estimates of the investment cost of purchasing and installing equipment, the annual operating and maintenance costs associated with that equipment, land costs associated with that equipment, costs for facilities to modify existing RCRA permits, and additional costs for discharge monitoring.

1. BPT Costs

Table X.B–1 summarizes, by subcategory, the total capital expenditures, and annual O&M costs for implementing BPT (on a pre-tax basis). The total capital expenditures for the process change component of BPT are estimated to be $4.08 million with annual O&M costs of $1.77 million.

TABLE X.B–1.—COST OF IMPLEMENTING BPT REGULATIONS (IN 1997 DOLLARS)

Subcategory	Number of facilities [1]	Total capital and land costs	Annual O&M costs	Pre-tax annual costs [2]
Metals Treatment and Recovery	9	3,195,900	2,471,400	2,852,800
Oils Treatment and Recovery	5	943,200	391,400	485,200
Organics Treatment	4	80,000	215,800	233,200
Combined Regulatory Option	14	4,219,100	3,078,600	3,560,000

[1] There are 14 direct dischargers. Because some direct dischargers include operations in more than one subcategory, the sum of the facilities with operations in any one subcategory exceeds the total number of facilities.

[2] Because annual costs are used to evaluate the economic impacts of options for each subcategory as well as the CWT industry as a whole, lump-sum costs for modifying a RCRA permit are included in the annual costs for each RCRA facility in a subcategory and in the combined option. These costs are counted only once in the combined option, but may appear in the annual costs for more than one subcategory if a RCRA facility has operations in more than one subcategory. Therefore, the annual cost of the combined option is not equal to the sum of the subcategory combined costs. For the combined BPT option, the total lump-sum costs across all facilities of modifying RCRA permits are $340,800.

EPA notes that the BPT costs and all analyses presented today do not include the additional capital costs that may be associated with the transferred TSS limitations for the metals subcategory. For some metals subcategory facilities, EPA intends to include capital costs in addition to the costs associated with the BPT metals subcategory technology basis in order to comply with the transferred TSS limitation. These additional costs are projected to increase EPA's current estimate of the annualized costs for these metals subcategory facilities by zero to fifteen percent, depending on treatment in place. EPA will refine its BPT costs estimates for this subcategory prior to promulgation.

2. BCT/BAT Costs

The Agency estimated that there would be no incremental cost of compliance for implementing BCT/BAT because the technology used to develop BCT/BAT limitations is identical to BPT, and the costs are included with BPT.

3. PSES Costs

The Agency estimated the cost for implementing PSES applying the same assumptions and methodology used to estimate cost of implementing BPT. Table X.B–2 summarizes, by subcategory, the capital expenditures and annual O&M costs for implementing PSES. The total capital expenditures for the process change component of PSES are estimated to be $36.1 million with annual O&M costs of $10.5 million.

TABLE X.B–2.—COST OF IMPLEMENTING PSES REGULATIONS (IN 1997 DOLLARS)

Subcategory	Number of facilities [1]	Total capital and land costs	Annual O&M costs	Pre-tax annual costs [2]
Metals Treatment and Recovery	41	8,014,200	7,140,100	8,088,200
Oils Treatment and Recovery	123	18,519,000	11,343,400	13,362,000
Organics Treatment	14	11,226,200	1,730,800	2,929,200
Combined Regulatory Option	147	40,316,500	20,078,600	24,300,000

[1] There are 147 indirect dischargers. Because some indirect dischargers include operations in more than one subcategory, the sum of the facilities with operations in any one subcategory exceeds the total number of facilities.

[2] Because annual costs are used to evaluate the economic impacts of options for each subcategory as well as the CWT industry as a whole, lump-sum costs for modifying a RCRA permit are included in the annual costs for each RCRA facility in a subcategory and in the combined option.

These costs are counted only once in the combined option, but may appear in the annual costs for more than one subcategory if a RCRA facility has operations in more than one subcategory. Therefore, the annual cost of the combined option is not equal to the sum of the subcategory combined costs. For the combined PSES option, the total lump-sum costs across all facilities of modifying RCRA permits are $2,557,100.

C. Pollutant Reductions

The Agency estimated pollutant reductions for CWT activities achieving each of the effluent limitations and standards proposed today. This section summarizes these estimated reductions and Chapter 12 of the technical development document discusses them in detail. Chapter 12 details the methodologies used to estimate reductions as well as some methodological issues related to the loadings estimates.

Some members of the SBREFA panel expressed concern that the Agency's estimates of baseline loadings, post-regulation loadings, and pollutant removals may be too high for certain parameters due to methodological issues. These issues relate to the relatively small number of CWT plants that EPA uses to characterize typical conditions of the industry as a whole at baseline and post-regulation, EPA's representation of ''non-detect'' data, EPA's method of imputing data, and EPA's randomization procedure for assigning baseline pollutant loadings for the oils subcategory. Following the completion of the SBREFA panel, EPA reexamined all methodological issues raised by the panel. For this proposal, EPA modified its approach to attributing pollutant concentrations values to non-detects in samples with very high sample specific detection values. This, and other issues raised by the panel, is discussed in detail in Chapter 12 of technical development document and the SBREFA Panel Report. EPA encourages all interested parties to refer to these documents and provide comment on any aspect of the methodology used to estimate baseline loadings, post-regulation loadings, and pollutant removals.

1. Conventional Pollutant Reductions

EPA has calculated how adoption of the proposed BPT/BCT limitations

would reduce the total quantity of conventional pollutants that are discharged. To do this, the Agency developed an estimate of the long-term average (LTA) loading of BOD_5, TSS, and Oil and Grease[8] that would be discharged after the implementation of BPT. Next, these BPT/BCT LTAs for BOD_5, TSS, and Oil and Grease were multiplied by annual wastewater flows for each direct discharging facility in the subcategory to calculate BPT/BCT mass discharge loadings for BOD_5, TSS, and Oil and Grease for each facility. The BPT/BCT mass discharge loadings were subtracted from the estimated current loadings to calculate the pollutant reductions for each facility. Each subcategory's BPT/BCT pollutant reduction was summed to estimate the total facility's pollutant reduction for those facilities treating wastes in multiple subcategories. Subcategory reductions, obviously, were obtained by summing individual subcategory results. The Agency estimates that the proposed regulation will reduce BOD_5 discharges by approximately 8.05 million pounds per year, TSS discharges by approximately 6.3 million pounds per year, and oil and grease discharges by approximately 0.32 million pounds per year.

2. Priority and Non-conventional Pollutant Reductions

Today's proposal would reduce discharges of priority and non-conventional pollutants. Applying the same methodology used to estimate conventional pollutant reductions attributable to application of BPT/BCT control technology, EPA has also estimated priority and non-conventional pollutant reductions for each facility by subcategory. Because EPA has proposed BAT limitations equivalent to BPT, there are no additional pollutant reductions associated with BAT limitations.

a. Direct Facility Discharges (BPT/BAT). The estimated reductions in priority and non-conventional pollutants directly discharged in treated final effluent resulting from implementation of BPT/BAT are listed in Table X.C–1. The Agency estimates that proposed BPT/BAT regulations will reduce direct facility discharges of priority and non-conventional pollutants by approximately 1.39 million pounds per year.

TABLE X.C–1.—REDUCTION IN DIRECT DISCHARGE OF PRIORITY AND NON-CONVENTIONAL POLLUTANTS AFTER IMPLEMENTATION OF BPT/BAT REGULATIONS

Subcategory	Priority metal and organics compounds lbs/year	Non-priority metal and organic compounds lbs/year	Total metal and organic compounds lbs/year	Total lbs-equivalent/ year
Metals Treatment and Recovery	582,200	781,400	1,363,600	372,000
Oils Treatment and Recovery	6,490	17,300	23,800	14,810
Organics Treatment[1]	0	0	0	0
Total Removals for all Subcategories	588,700	798,700	1,387,400	386,810

[1] EPA estimates there will be no additional removal of organic compounds for the organics subcategory, because all facilities had the treatment-in-place for removal of organic compounds.

b. PSES Effluent Discharges to POTWs. Table X.C–2 lists the estimated reductions in priority and non-conventional pollutants indirectly discharged to POTWs resulting from implementation of PSES. The Agency estimates that proposed PSES regulations would reduce indirect facility discharge to POTWs by 8.5 million pounds per year. These figures are not adjusted for pollutant removals expected from POTWs, and thus do not reflect reductions in dischargers to waters of the U.S. Estimated reductions in pollutants discharged indirectly to surface waters are provided on a subcategory basis in Tables 12–10 through 12–13 of the technical development document.

TABLE X.C–2.—REDUCTION IN DISCHARGES TO POTWS OF PRIORITY AND NON-CONVENTIONAL POLLUTANTS AFTER IMPLEMENTATION OF PSES REGULATIONS

Subcategory	Priority metal and organics compounds lbs/year	Non-priority metal and organic compounds lbs/year	Total metal and organic compounds lbs/year	Total lbs-equivalent/ year
Metals Treatment and Recovery	51,270	341,500	392,760	372,003
Oils Treatment and Recovery	689,800	3,722,500	4,412,300	9,876,128
Organics Treatment	816,500	2,905,500	3,721,900	110,149
Combined Regulatory Option	1,557,600	6,973,500	8,527,000	10,358,280

XI. Economic Analyses

A. Introduction

EPA's economic impact assessment for this proposal is set forth in a report titled ''Economic Analysis of Proposed Effluent Limitations Guidelines and Standards for the Centralized Waste Treatment Industry'' (hereinafter ''EA''). This report estimates the economic and financial impacts of compliance with the proposed regulation in terms of process and facility closures and company effects. Impacts on new sources are also considered. Community

[8] Oil and grease removals were not included for the metals subcategory since EPA's data show that these wastes do not contain significant concentrations of oil and grease.

impacts, foreign trade impacts, market impacts, and an ''environmental justice'' analysis are also presented there. The EA also includes a Regulatory Flexibility Analysis detailing the effects on small CWT businesses. Results of a cost-effectiveness analysis are presented in a report titled ''Cost-Effectiveness Analysis of Proposed Effluent Limitations Guidelines and Standards for the CWT Industry.''

As discussed previously, EPA identified 205 CWT facilities, including 14 direct dischargers, 147 indirect dischargers, and 44 zero discharge facilities. EPA calculated the economic impact on each of the facilities based on the cost of compliance with the proposed options and the other options considered for the proposal. For direct dischargers, EPA calculated impacts for compliance with the proposed BPT/BCT/BAT; for indirect dischargers, EPA calculated impacts for compliance with PSES. The proposed limitations and standards are based on Metals Option 4, Oils Option 9, and Organics Option 4 for direct dischargers. (As previously noted, for direct dischargers in the organics subcategory, the proposed BPT/BAT is already in place. The only costs associated with this option are monitoring costs.) For indirect dischargers, the proposed limitations and standards are based on Metals Option 4, Oils Option 8, and Organics Option 4. A facility with processes in multiple subcategories was assigned costs for meeting the limits or standards in each subcategory. Section IX.B of this preamble describes the technical basis for each of these options.

The technologies which are the basis for today's proposal are estimated to have a total pre-tax annualized cost of $27.9 million (unlike the costs presented in Section X.B, these costs are annualized to represent the yearly cost of compliance). Table XI.A–1 presents the total annualized costs for BPT/BCT/BAT and PSES in 1997 dollars (these costs are extrapolated to represent the entire universe of CWT facilities). This notice differentiates between pre-tax annualized costs and post-tax annualized costs. The pre-tax annualized costs are the engineering estimates of annualized control costs, but the post-tax costs more accurately reflect the costs businesses will incur. For that reason, post-tax costs are used in the economic impact analysis. Pre-tax costs, however, more accurately reflect the total cost to society of the rule and are used in the cost-effectiveness analysis and elsewhere.

TABLE XI.A–1.—TOTAL ANNUALIZED COSTS ($1997)

	Pre-tax costs ($ million)	Post-tax costs ($ million)
BPT/BCT/BAT Costs (Direct Dischargers)	3.56	2.17
PSES Costs (Indirect Dischargers)	24.3	13.2
Total Costs	27.9	15.4

Impacts on facilities are calculated using a market model (described in Section XI.C and the EA) to determine closures and other impacts at individual CWT facilities. The market model also estimates changes in market prices, quantities, and losses in employment. The facility-specific changes in revenues and costs are aggregated to the company level to predict company-level impacts. The changes in employment are also used in the community-level analysis.

B. Economic Description of the CWT Industry and Baseline Conditions

One source of data used in this analysis is the questionnaire sent in 1991 under authority of Section 308 of the CWA (see Section VI of today's notice and Chapter 2 of the EA for a full discussion of data sources used in the economic analysis). The Agency recognizes that its questionnaire database may not precisely reflect current conditions in the industry. Nevertheless, EPA has concluded that the data provide a sound and reasonable basis for assessing the overall ability of the industry to achieve compliance with the regulations. This survey provided detailed data on 85 facilities. Additional data for the economic analyses are from the Toxic Release Inventory databases and several financial databases.

As detailed in Section VI.E, comments on the original proposed rule indicated that a large number of oils treatment and recovery facilities were not included in the original survey. EPA estimated profiles for these additional oils facilities and analyzed the impacts on these facilities from the proposed rule and published this analysis in the 1996 Notice of Data Availability. EPA sent profiles describing the data used for each additional oils facility to that facility, and received comments and corrections from many of these facilities. Not all facilities who received profiles, however, provided comments. EPA polled non-commenting facilities, and based on this communication, EPA assigned weights to the commenting oils facilities to account for the non-commenting facilities and to represent the total number of CWT facilities in the subcategory. Generally, when dealing with facility-specific information in the oils subcategory, results are weighted to extrapolate to the entire subcategory. When not dealing with facility-specific information, they may or may not be weighted. When dealing with aggregate impacts for a specific geographic area (for example, community-level impacts or water quality benefits), they are not weighted. The choice to weight or not will be described in the relevant sections.

Of the 205 CWT facilities, 201 facilities are commercial, accepting waste generated by other facilities and/or generators for treatment and management for a fee. Four facilities are non-commercial facilities that accept waste from off-site for treatment exclusively from facilities under the same ownership. Some facilities perform both commercial and non-commercial operations. For the purposes of this analysis, a facility's commercial status refers only to the operations subject to today's proposal and not other operations at that facility. That is, a facility that performs non-commercial CWT operations along with other non-CWT commercial operations would still be considered a non-commercial facility.

The companies owning CWT facilities range from large, multi-facility companies to small companies that operate only a single facility. Company-level information is available or estimated for 145 facilities (unweighted). One hundred and fourteen companies own these 145 facilities. Of these 114 companies, EPA has reliable company-level information for 74 companies; for the remaining 40

companies, EPA based its estimate of company revenues on facility-level information. In the case of companies owning only CWT facilities with profiles from the NOA, that company's information was weighted to represent the universe of CWT companies.

EPA currently estimates that 82 companies owning CWT facilities (including zero discharge facilities) are small businesses (for the purposes of this analysis, EPA has defined small businesses as companies with less than $6 million in annual revenues—see Section XI.L). Sixty-three small companies own two direct discharging facilities and 61 indirect discharging facilities.

EPA made a number of assumptions when formulating its company-level profiles. For facilities that had no reliable company-level information, EPA assumed that the facility-level data accurately represented the company, although this may underestimate company-level revenues (if the company has revenues not associated with the facility). In weighting many of these companies to let them represent other companies in the universe of CWT companies, EPA may have exacerbated this underestimation. Furthermore, the weights were based on a survey of facilities and applying these weights to companies may not be accurate. Finally, in order to maintain a consistent baseline, a facility's status of ownership is based on the year data was collected for that facility—1989 or 1995. Although EPA has information about changes in ownership status for many of these facilities, which would decrease the number of small businesses, EPA conservatively is still using its earlier information to maintain consistency with its engineering database. EPA believes that these assumptions overestimate the number of (and therefore impacts to) small businesses owning the CWT facilities in EPA's database. EPA solicits comment on these assumptions, and on its conclusion that small business impacts are overestimated.

At the time of the original CWT proposal, about 20 percent of the commercial CWT facilities appeared to be unprofitable based on the data available to EPA (see Table VI.C–2 in the preamble to the original proposal, 60 FR 5490). Several others were only marginally profitable. The industry had expanded capacity during the 1980s, but in the late 1980s, there was a reduction in demand for these services (perhaps due to pollution prevention efforts by industrial waste generators). EPA believes this trend may have reversed in the 1990s. EPA has learned in conversations with personnel at a number of these facilities that, while some of these facilities were now profitable, most of the remaining unprofitable facilities were still in operation three years after the questionnaire. The continued operation of such a large share of unprofitable facilities in the industry raises a significant question. It suggests that some of the traditional tools of economic analysis used to project potential closures in an industry due to the costs of compliance may not accurately predict real world behavior in a market where owners have historically demonstrated a willingness to continue operating unprofitable facilities. Therefore, while some number of facilities are likely to be unprofitable at baseline, for purposes of today's proposal, EPA is not eliminating baseline closures from its analysis of economic impacts. This decision represents a significant departure from previous effluent guidelines. However, given the nature of the industry, EPA believes that this is a reasonable approach. EPA solicits comments on this decision and on alternative methods that could be used to identify baseline closures.

C. Economic Impact and Closure Methodology

1. Overview of Economic Impact Methodology

Standard economic and financial analysis methods are used to assess the economic effects of the proposed regulation. These methods incorporate an integrated view of CWT facilities, the companies that own these facilities, the markets the facilities serve, and the communities where they are located.

CWT facilities are divided into two groups: commercial (those that charge a fee for their services) and noncommercial (those that handle intracompany waste). Impacts on commercial CWT facilities are estimated based on the results of a market model that allows facilities to adjust operations in response to changes in operating costs. The market model predicts adjustments in market prices and quantities and facility-level changes in revenues and employment. After the markets and facilities have responded to the regulation, facilities are assumed to close CWT treatment operations (or processes) for which operating costs (including compliance costs) exceed operating revenues. Impacts on non-commercial CWT facilities are estimated at the company level, assuming that the firm must absorb the full cost of compliance, because these facilities do not operate in the markets defined by the model.

a. Impacts on commercial facilities. Because industrial wastewater is costly to transport, the markets for CWT services are localized. The model defines six geographic regions for CWT services across the continental U.S. Each commercial CWT facility is assigned to one of the six regions. Within each region, each facility can be assigned to one or more markets for CWT services. These markets are defined by operations or processes (metals recovery, metals treatment, oil recovery, oil treatment, and organics treatment) and cost of treatment (high, medium, and low-cost for metals recovery, metals treatment, and oil recovery, high and low cost for organics treatment, and one market for oil treatment). The markets are divided in this way because of the variability in treatment costs and revenues shown in EPA's data; EPA, therefore, assumes that substantially different costs and revenues reflect distinct operations. Since a facility may provide more than one CWT service, each process line at every facility is assigned to a market based on responses to the 308 questionnaire, Notice of Data Availability (NOA) modeling assumptions, and comments on the NOA assumptions. Each process line is also assigned wastewater quantities and treatment costs.

After assigning facilities to markets, the structure of each regional market is determined by the number of facilities in that market: monopoly for one facility, duopoly for two facilities, or competitive for three or more facilities. The market supply curve is modeled as a step function using process line average costs at each facility (see Appendix C of the EA). Costs of CWT facilities include both those that vary with the quantity of CWT services provided (variable costs) and those whose value is fixed, but, for this analysis, all costs are modeled as variable. Revenues from CWT operations are estimated by multiplying an estimated market price of the CWT service by the quantity of waste treated in the CWT market. The market price is estimated as the average cost of the high-cost facility in each market, consistent with economic theory. (Actual prices vary by waste stream and facility, and would not be possible to include in the analysis.) Compliance treatment costs are added to the baseline costs to form a new post-compliance supply curve. Different assumptions are used about the amount of costs that can be passed on to consumers for each market structure: monopolists or

duopolists can pass on a larger portion of costs than facilities in competitive markets. The model then solves for a new market price and market quantity within each regional market.

The demand for CWT services is characterized based on the responsiveness of quantity demanded to price. In an economic context, CWT services are intermediate goods demanded because they are inputs to production of other goods and services. CWT facilities treat wastewater that results from production of goods at other facilities—a service which these other facilities pay CWT facilities to perform. Therefore, the economic theory on which EPA's analysis is based is the theory of intermediate goods. The sensitivity of quantity demanded to price (elasticity of demand) for an intermediate good depends on the elasticity of demand for the final good, the share of manufacturing costs (for the other good) represented by costs of the intermediate good, and the availability of substitutes for the intermediate good. The elasticity of demand for manufactured products which require CWT services varies widely. The cost of CWT services as a share of manufacturing costs is generally quite small. Substitutes for CWT services include other types of off-site waste management such as underground injection, on-site treatment, or pollution prevention. Overall, as long as generators have alternatives to commercial treatment (for example, on site treatment, or pollution prevention), the quantity of most services traded may be expected to fall (to some extent) as a result of the guidelines and standards. But for some services, such as cyanide treatment or treatment of concentrated metals sludges, there are no other commercially viable alternatives to commercial treatment. EPA's choice of elasticities was governed, in part, by these considerations and a review of the empirical literature.

During the SBREFA panel consideration of the proposal (see discussion in Section VI.H), the Small Business Administration (SBA) expressed concern that EPA's economic methodology understates impacts. In particular, SBA questioned the elasticity of demand assumption used by the Agency. As discussed in the EA and this notice, the elasticity of demand (which varies depending on the number of facilities in each market) is based on economic reasoning that the Agency believes to be sound and reflects the limited empirical evidence available in the literature. In response to SBA's comment, EPA has reexamined the literature and attempted to contact waste generators to obtain further information on their responsiveness to the price of CWT services. EPA has identified several additional empirical studies that support the elasticity parameters used in the EA. The Agency has not been successful, however, in eliciting information from waste generators. For a complete discussion of the elasticity parameters used in this analysis, see Appendix E of the EA.

Each CWT faced with higher costs of providing CWT services may find it economical to shut down a process line in a given market or to reduce the quantity of waste it treats (in fact, the model allows only a single facility in a competitive market to reduce the amount of waste that it treats without closing down a process line although both facilities in a duopoly can reduce the amount of waste that they treat). This decision is simultaneously modeled for all facilities within a regional market (if, during the model run, a process line is shut down, the model continues to run, eliminating that process line from the market supply curve) to develop consistent estimates of facility and market impacts.

EPA notes that its current model, unlike the market model used for the original proposal, does not allow wastewater from processes or facilities that close to go to another facility in the market. Although the price increase caused by increased compliance costs forces the total quantity of waste treated in the market to decline (the amount of this decline is governed by the elasticity of demand for a market), some of the waste treated by facilities that close should be treated at other facilities. To the extent that the EPA's model does not account for transfers, the model may overstate economic impacts. Prior to promulgation of the final rule, EPA may reconfigure its model to allow waste from facilities or process lines that close to be treated elsewhere in the market. EPA solicits comments on this issue and on appropriate ways to model this transfer.

b. Impacts on non-commercial and mixed facilities. For non-commercial facilities, economic impacts were estimated only on the company level, not the facility level. This is because the non-commercial facilities generally do not generate revenues for their companies. They exist to perform a service for the rest of the company and are not expected to be ''profitable'' as a unit. Facilities with mixed commercial and non-commercial operations are included in the market analysis because prices charged for their commercial operations may change. Companies with some commercial operations will raise prices to cover the variable costs of the treatment and help pay for some of their fixed costs (for example to underwrite the company waste treatment costs), but only a share of treatment costs proportionate to the quantity of waste treated commercially is assigned to the commercial portion of the facility. Therefore, a ''closure'' of the commercial portion of a mixed facility indicates that the facility ceases to perform commercial operations. No change in the quantity of CWT wastes treated is projected for the non-commercial aspects of these facilities, nor are market effects analyzed for the products of the parent company, since the share of waste treatment costs in the marketed products are minimal. Employment impacts are also calculated for those facilities with some commercial and some non-commercial operations.

c. Other impacts. Changes in facility revenues and costs result in changes in the revenues and costs of the companies owning the facilities, and thus changes in company profits. Increased borrowing and changes in the assets owned by the companies, together with changes in profits, result in changes in overall company financial health. EPA evaluates company-level impacts by examining changes in company profit margins and returns-to-assets test. These results are presented separately for small businesses. For small businesses, EPA also evaluated the economic impacts of this proposal using a cost-to-sales test, comparing company compliance costs to baseline sales (unadjusted for cost pass-through).

Finally, the communities where the CWT facilities are located may be impacted. Obviously, if facilities cut back operations, employment and income may fall, sending ripple effects throughout the local community. On the other hand, there may be increased employment associated with operating the pollution controls associated with the regulation, resulting in increased community employment and income. Facility-level changes in employment are used to calculate total employment changes. At the same time, for the communities in which CWT facilities are located, water quality may be expected to improve.

2. Changes From Previous Methodology (at Original Proposal and Notice of Availability)

There are two major differences between the economic methodology used for the 1995 proposal and the current methodology. First, EPA assumed there were no competitive markets at proposal. Since EPA now

estimates a large increase in the number of oils facilities, some markets are now structured as competitive. Second, at proposal, EPA examined facility-level profitability, but did not identify closures because so many facilities were unprofitable at baseline. For the current analysis, EPA examines impacts at the process level and has identified facility closures when all processes at a facility are projected to close.

In the proposal analysis, EPA identified 85 facilities, 70 of which were commercial (including zero dischargers). These 70 facilities were assigned to one of six multi-state regions, and one or more of at most nine waste treatment or recovery service markets within each region. The markets were defined in terms of type and cost of treatment or recovery (for example, metals wastewater treatment) and region. These markets were very similar to the markets used in today's proposal.

With at most 12 facilities in a single regional waste treatment or recovery market (39 of 43 regional waste management markets had 5 or fewer facilities), the markets were defined as oligopolistic (small number of competitors) or monopolistic (only one supplier). Because EPA had data that allowed computation of average variable cost of each waste management process at each facility, but not enough data to estimate upward sloping cost curves, each facility's average variable cost for a treatment process was assumed to be constant. EPA used a simultaneous equation solution algorithm to estimate the with-regulation prices, quantities, and profits for each commercial facility.

For the current analysis, EPA has data for 142 commercial CWT facilities (including zero dischargers); these include the 73 facilities identified at proposal (three facilities were redefined as commercial based on updated information) plus 69 NOA oil recovery facilities. Furthermore, some of the NOA facilities are weighted and ultimately represent more than one facility, but no more than two. EPA redesigned the economic impact analysis model, incorporating the new oil facilities into oil recovery or oily wastewater treatment markets in the appropriate regions and also made some adjustments to the market definitions. The addition of the NOA facilities to the oil recovery and oil treatment markets meant that there were now a larger number of facilities in most of the oil markets. For this reason, EPA decided to model them as perfectly competitive. (Perfect competition requires that the number of sellers in a market be sufficiently high that no single seller can influence the market; rather, they accept the market price as a ''given,'' and decide the most profitable quantity of waste to treat based on the given price.) EPA therefore had to redesign the model so that it would allow either a perfectly competitive market structure or imperfect competition. Markets are defined as monopoly, duopoly (two sellers), or perfect competition, depending on the number of sellers. In this modeling approach, any market in any of the subcategories with more than two sellers is defined as perfectly competitive. In reality, markets with three to eight or ten sellers are probably imperfectly competitive oligopolies, but the current modeling approach does not allow that market structure. This may tend to overstate impacts on markets with only a few sellers because they may be able to pass compliance costs on to customers to a greater degree than assumed in the model. Conversely, some of the facilities assigned to monopoly or duopoly markets may actually face some more competition than the model projects, particularly at higher prices, from other segments of the CWT industry or from other waste disposal/reduction opportunities that may be available to their customers. In this case, the model may underestimate impacts because they may be unable to pass on as large a share of compliance costs to their customers as the model projects. As a sensitivity analysis, EPA also estimated process and facility closures assuming no cost pass-through (see Appendix E of the EA). This represents a worst case scenario.

In the proposal analysis, EPA initially analyzed facility closure by focusing on overall facility profits. If a facility was not profitable, EPA assumed it would shut down. Examination of baseline questionnaire data indicated, however, that 22 CWT facilities were unprofitable at baseline. When 18 of these unprofitable facilities were contacted two years after the survey, 16 were still in operation. Owners of CWT facilities did not immediately close their facilities when they were unprofitable (for a variety of reasons):

- 30 of the 70 commercial CWT facilities treated some waste generated by other facilities owned by the same company. They, thus, provide a service to the rest of the company for which they may not receive revenue, and, therefore, may not close if their revenues understate their true value.
- Similarly, some facilities perform a service for the rest of their company. For example, one facility generates a metal-rich sludge which may be incorporated into the parent company's smelting process.
- Many of the CWT facilities are RCRA-regulated and are subject to RCRA clean closure requirements, which would entail expensive long-term monitoring and possibly clean-up of the site. Facilities may decide to try to ''ride out'' an unprofitable period in the hopes of avoiding RCRA closure costs.
- Facility owners may feel that the negative profits are due to the rapidly changing demand conditions in the market, and may hope that once demand conditions stabilize, the facility will become profitable. Additionally, many facilities stay in business hoping that new environmental regulation, such as the RCRA Phase 3 rule, may create more business for facilities.

For whatever reason, many apparently unprofitable CWT facilities continue to operate for years. Thus, EPA decided in 1995 that facility profitability was not a closure criterion. In that impact analysis, EPA, therefore, examined the impacts of the regulation on facility profit, paying particular attention to facilities that had been profitable without the regulation, but became unprofitable with the regulation in effect (but not termed ''closures''). In adjusting to the costs of complying with the regulation, a CWT facility would shut down an individual CWT process (metal recovery, for example) if it became unprofitable, but the facility as a whole would continue to operate, even if it became unprofitable.

In 1995, EPA also examined the data on CWT operation costs and revenues, and found that at most of the unprofitable facilities, the individual CWT operations were at least breaking even (revenues from wastewater treatment, for example, were at least as great as costs of wastewater treatment). The negative profits were due to other conditions at the facility, not the actual operations themselves. Therefore, as in 1995, EPA has decided to focus exclusively on CWT operations and ignore overall facility profits that may be affected by other activities, revenues, or costs at CWT facilities.

In the reproposal analysis, EPA examines impacts on commercial CWT facilities in terms of closures, but focuses on potential closures of CWT processes by examining the costs and revenues of each waste treatment or recovery operation with the regulation in effect (this isolated the analysis to only examine CWT operations and not overall facility operations). If with-regulation costs of the operation exceed revenues, then the operation will be shut down. This is called a ''process closure.'' If all the waste treatment processes at a facility are shut down, this is called a ''facility closure.''

D. Costs and Economic Impacts of Proposed BPT

For BPT, EPA evaluates treatment options first by calculating pre-tax total annualized costs and total pollutant removals in pounds. The ratio of the costs to the removals for each option are presented in Table XI.D–1.

For BPT, EPA is proposing Option 4 for the metals subcategory and Option 9 for the oils subcategory. Direct dischargers in the organics subcategory are only assigned costs for monitoring, so there are no other compliance costs, nor are there incremental conventional removals.

TABLE XI. D–1.—BPT COST ANALYSIS

Option	Pre-tax total annualized costs ($1997 M)	Removals (M lbs)	Average cost reasonableness (1997 $/b)
Metals Subcategory—9 Facilities:			
4	$2.85	15.21	$0.19
2	13.7	14.79	0.93
3	14.2	15.40	0.96
Oils Subcategory—5 Facilities:			
8	[9]0.486	0.625	0.78
9	[9]0.486	0.663	0.69
Organics Subcategory—4 Facilities:			
4	0.237	0	n/a
3	0.426	0	n/a

[9] For direct dischargers, EPA's cost analysis was not able to distingish between Option 8 and Option 9. EPA does, however, believe that meeting the more stringent Option 9 will result in additional removals while the cost differences will be negligible.

Table XI.D–2 presents the economic impact results for the proposed BPT (economic impacts for the options rejected for BPT are presented in section XI.F where those options are considered for BAT). Options in the Metals and Organics subcategories more stringent than proposed BPT are evaluated in Sections XI.E and XI.F. Impacts are presented for process closures, facility closures, and employment losses. Process closures are a direct output of the market model; facility closures are designated if all of the processes at a facility close. Employment losses are calculated from process closures, facility closures, and from reductions in waste treated by process lines that do not close. In all cases, the reduction in employment is calculated as a percentage decrease of the facility's total employment proportionate to the percentage reduction in waste treated.

TABLE XI.D–2.—ECONOMIC IMPACTS OF BPT OPTIONS

Option	Post-tax total annualized costs ($1997 M)	Process closures	Facility closures	Total employment losses
Metals Subcategory—9 Facilities:				
4	$1.72	1	1	35
Oils Subcategory—5 Facilities:				
9	0.310	0	0	0
Organics Subcategory—4 Facilities:				
4	0.138	2	0	0

Economic impacts of the proposed BPT regulations are only one process closure and one facility closure in the metals subcategory; there are no closures in the oils subcategory; and there are only 2 process closures, but no facility closures, in the organics subcategory. Total job losses for the BPT options are 35. (There are no job losses associated with the organics subcategory even though there are two process closures because job losses are proportional to flow. The organics flow at the facilities with the process closures is so low compared to the facility flow that there are no proportional job losses.)

Many facilities in the CWT industry have operations in more than one subcategory. EPA therefore evaluated the impacts of a combined BPT option on all direct dischargers. This Combined Option consists of Metals Option 4, Oils Option 9, and Organics Option 4. The combined impacts of this option are presented in Table XI.D–3.

TABLE XI.D–3.—ECONOMIC IMPACTS OF COMBINED BPT OPTION

Option	Post-tax total annualized costs ($1997 M)	Process closures	Facility closures	Total employment losses
All Direct Dischargers—14 Facilities:				
Combined	$2.17	1	2	40

The economic impacts of the combined option are one process closure, two facility closures, and a total employment loss of 40 jobs. The impacts of the chosen BPT options shown in Table XI.D–2 do not add to the impacts shown in Table XI.D–3 because a facility closure is counted when all of the processes at a given facility close, and a process closure is counted when one, but not all, of the processes close. Therefore, for facilities with process closures in more than one subcategory, the analysis of the combined option can show a lower number of process closures and a higher number of facility closures.

As noted above, EPA also conducted a sensitivity analysis assuming no cost pass-through. For direct dischargers (those subject to BPT limitations), the number of projected process and facility closures was unaffected by this worst-case assumption.

E. Results of BCT Cost Test

In July 1986, EPA explained how it developed its BCT methodology (51 FR 24974). EPA evaluates the reasonableness of BCT candidate technologies—those that remove more conventional pollutants than BPT—by applying a two-part cost test: a POTW test and an industry cost-effectiveness test.

EPA first calculates the cost per pound of conventional pollutant removed by industrial dischargers in upgrading from BPT to a BCT candidate technology, and then compares this cost to the cost per pound of conventional pollutant removed in upgrading POTWs from secondary treatment. The upgrade cost to industry must be less than the POTW benchmark of $0.25 per pound (in 1976 dollars). In the industry cost-effectiveness test, the ratio of the incremental BPT to BCT cost divided by the BPT cost for the industry must be less than 1.29 (that is, the cost increase must be less than 29 percent).

Table XI.E–1 presents the results of the BCT cost test for the metals subcategory. For both Option 2 and Option 3, the table presents costs and conventional removals and compares them to the BPT baseline, Option 4. For one of the BCT options to pass the POTW test, incremental cost reasonableness (compared to the BPT option, the ratio of incremental costs to incremental conventional removals) for each option must be less than $0.71 ($1997) per pound. Option 2 removes fewer conventional pounds (see Table XI.D–2), so it is not a candidate BCT technology. Option 3 has an incremental cost-reasonableness of $23.65, well above the benchmark of $0.71, so it fails the POTW test. This option is therefore not BCT, and since it fails the POTW test, it is not necessary to perform the industry cost-effectiveness test. Because the only BCT option fails the POTW test, BCT is set equal to BPT.

TABLE XI.E–1.—BCT COST TEST RESULTS (METALS SUBCATEGORY)

Option	Pre-tax total annualized costs ($1997 M)	Conventional removals (M lbs)	Incremental cost-reasonableness ($/ lb.)	Pass POTW test?
4	$2.85	13.84	n/a	n/a
3	14.2	14.32	$23.65	no

F. Costs and Economic Impacts of BAT Options

EPA also evaluated options more stringent than BPT in the metals and organics subcategories for BAT (in the oils subcategory, EPA set BPT equal to the most stringent option that it considered). These are Metals Option 2 and Option 3 and Organics Option 3. For a given technology to be the basis for BAT limitations it must be economically achievable. EPA is today proposing BAT limitations equivalent to proposed BPT for all subcategories; economic impacts are, therefore, equivalent to those presented in Section XI.D for the final BPT limits. Table XI.F-1 presents the economic impact results for the options considered for BAT.

TABLE XI.F–1.—ECONOMIC IMPACTS OF BAT OPTIONS

Option	Post-tax total annualized costs ($1997 M)	Process closures	Facility closures	Total employment losses
Metals Subcategory—9 Facilities:				
4	$1.72	1	1	35
2	8.28	1	1	37
3	8.60	1	1	37

TABLE XI.F–1.—ECONOMIC IMPACTS OF BAT OPTIONS—Continued

Option	Post-tax total annualized costs ($1997 M)	Process closures	Facility closures	Total employment losses
Oils Subcategory—5 Facilities:				
8	0.310	0	0	0
9	0.310	0	0	0
Organics Subcategory—4 Facilities:				
4	0.138	2	0	0
3	0.263	2	0	0

The economic impacts of the proposed BAT options are minimal: three process closures, one facility closure and 35 job losses. In all cases, the closure impacts for the rejected options (Metals options 2 and 3 and Organics option 3) are equivalent to the impacts for the proposed BPT options, although there are slightly more employment losses for the rejected metals options. However, as discussed in Section IX.B.3, EPA is not proposing these options for BAT.

G. Costs and Economic Impacts of Proposed PSES Options

In addition to evaluating impacts to direct dischargers for BPT/BCT/BAT, EPA evaluated the impacts to indirect dischargers for complying with PSES. EPA considered the same technology options for PSES that it did for BPT and BAT. For the metals and organics subcategories, EPA is proposing the same options for PSES that is for BPT/BAT: Metals Option 4 and Organics Option 4. For the oils subcategory, however, EPA is proposing Option 8 rather than Option 9 as discussed in Section IX.B. The impacts of the PSES options are presented in Table XI.G–1. Impacts are presented for process closures, facility closures, and employment losses. Process closures are a direct output of the market model; facility closures are designated if all of the processes at a facility close. Employment losses are calculated from process closures, facility closures, and from reductions in waste treated by process lines that do not close. In all cases, the reduction in employment is calculated as a decrease of the facility's total employment proportionate to the reduction in waste treated.

TABLE XI.G–1.—IMPACTS OF PSES OPTIONS

Option	Post-tax total annualized costs ($1997 M)	Process closures	Facility closures	Total employment losses
Metals Subcategory—41 Facilities:				
4	$4.23	5	0	124
2	14.7	8	1	126
3	15.5	8	1	126
Oils Subcategory—123 Facilities:				
8	7.35	12	11	216
9	10.7	14	11	213
Organics Subcategory—14 Facilities				
4	1.66	6	0	4
3	2.12	7	0	27

For each subcategory, EPA is proposing the least costly option for PSES. For the metals and organics subcategory, PSES is set equal to BAT. In the metals subcategory, Option 4 results in five process closures, no facility closures, and 124 job losses. Options 2 and 3 results in eight process closures, one facility closure, and 126 job losses. For the organics subcategory, Option 4 results in six process closures and no facility closures, with 4 job losses. Organics Option 3 results in seven process closures and 27 job losses. There are fewer employment losses with the more stringent Oils Option 9 because different facilities with different numbers of employees close in the market model under the two options.

Many facilities in the CWT industry have operations in more than one subcategory. EPA, therefore, evaluated the impacts of a combined PSES option on all indirect dischargers. This option consists of Metals Option 4, Oils Option 8, and Organics Option 4. To further evaluate the impacts of Oils Option 9, a combined option with this option was also considered. The impacts of both combined options are presented in Table XI.G–2. The impacts of the selected PSES options shown in Table XI.G–1 do not add to the impacts shown in Table XI.G–2 because a facility closure is counted if all of the processes at a given facility close while a process closure is counted if one, but not all, processes close. Therefore, in the combined options, the number of process closures can go down while facility closures go up if processes in difference subcategories close. The employment losses also do not add up because of rounding. The economic impacts of the combined option with Oils Option 9 are higher than the combined option with Oils Option 8, and the former also has more extensive impacts on small businesses (see Section XI.L) .

TABLE XI.G–2.—ECONOMIC IMPACTS OF COMBINED PSES OPTION

Option	Post-tax total annualized costs ($1997 M)	Process closures	Facility closures	Total employment losses
All Indirect Dischargers—147 Facilities:				
w/Oils 8	$13.2	15	13	298
w/Oils 9	16.6	19	13	302

In the sensitivity analysis in which no costs are passed through to customers, among indirect dischargers, 29 process closures and 16 facility closures are projected under the proposed options.

H. Economic Impacts for New Sources

EPA is establishing NSPS limitations equivalent to the limitations that are established for BPT/BCT/BAT for both the organics and oils subcategories. In general, EPA believes that new sources will be able to comply at costs that are similar to, or less than, the costs for existing sources, because new sources can apply control technologies more efficiently than sources that need to retrofit for those technologies. BPT/BCT/BAT limitations are found to be economically achievable; therefore, NSPS limitations will not present a barrier to entry for new facilities in these subcategories. EPA is setting PSNS equal to PSES limitations for existing sources for the oils and organics subcategories. As a result, given EPA's finding of economic achievability for PSES in those two subcategories, EPA also finds that the PSNS regulation will be economically achievable and will not constitute a barrier to entry for new sources.

For the metals subcategory, however, EPA is proposing Option 3 for NSPS and for PSNS. While EPA acknowledges that Option 3 achieves slightly greater removals than Option 4 at much higher costs for existing sources (see detailed discussion in Section IX.B.4), EPA does not believe that this option is a barrier to entry for new sources. Unlike the oils subcategory, the information collected by the Agency indicates that the metals subcategory is stable over time, with little entry or exit, and EPA does not expect this trend to change. Furthermore, metals facilities tend to be involved in specialized operations and are frequently RCRA-permitted. Therefore, EPA has concluded that start-up costs are not the primary factor considered in starting a new facility. However, EPA solicits comment on this conclusion.

I. Firm Level Impacts

Complying with the proposed effluent limitations guidelines and standards affects the revenues and profitability of firms owning CWT facilities. In Section 6.1.4 of the EA, the Agency examines two financial ratios to assess the magnitude of these impacts: firm profit margin (profit/revenues) and return on assets or ROA (profit/total assets). Baseline values are compared to post-regulation values that are determined by calculating changes in profits based on output from the market model. EPA does not have complete data for all firms, but the two measures decline for more than half of the firms for which EPA has data. EPA also examined these measures by size categories, including a category for small businesses. For most size categories, median profit margin and median ROA decline. If not, they stay the same. EPA has profit data on 56 small firms and asset data for 15 small firms; profit margin declines for 34 of the 56 firms and ROA declines for 7 of the 15 firms. As discussed more fully in the EA, these results are dependent on the assumptions used in the market model and the market in which EPA placed the facilities. EPA is currently considering how to refine this analysis for the final rule.

J. Community Impacts

EPA estimated impacts on communities in which CWT facilities were located by estimating the overall change in employment in the community as a result of the CWT rule. EPA estimated the change in employment at each CWT associated with reductions in the quantity of waste treated at facilities incurring economic impacts. Then, EPA applied state-specific direct-effect employment multipliers to estimate the total change in employment. Most of the change in employment will occur in the community where the CWT is located. Thus, EPA estimated the change in community employment as a result of the rule by assigning all of the change in employment to the community. Table XI.J–1 shows a distribution of the estimated changes in community employment resulting from the economic impacts of the regulation. Community employment losses range from zero to 213 full time equivalents. Even the largest reduction in employment represents only 0.7 percent of the baseline employment in that community. Thus, the Agency expects the negative employment impacts of the regulation to be extremely small. In fact, EPA estimates that most facilities will have to hire from one to three additional workers to comply with the regulation (although this is not taken into account in Table XI.J–1). Taking these impacts into effect, almost all facilities will experience increases in employment due to the regulation. The overall impact of the regulation on community employment is, therefore, generally expected to be positive.

TABLE XI.J–1.—ESTIMATED COMMUNITY EMPLOYMENT IMPACTS OF THE CWT REGULATION [1]

Reductions in community employment as a result of process and facility closures	Number of communities
Greater than 50 full time equivalents	5
20 to 50	11
1 to 20	14
0 to 1	12
Zero	100

[1] Does not account for employment gains associated with compliance.

The Agency also examined the distribution of benefits across communities with different socioeconomic and ethnic characteristics. Pursuant to Executive Order 12898, EPA must, to the greatest extent practicable and permitted by law, make achieving environmental justice part of its mission. Environmental justice concerns arise when communities of color and/or low income communities experience disproportionately high and adverse human health or environmental impacts. CWT facilities are frequently located in industrial areas; as such, the communities frequently have higher minority populations and greater poverty than their surrounding states or

the nation as a whole. Reductions in pollutant exposures to these populations would, therefore, improve environmental justice. Table XI.J–2 characterizes the communities in which CWT facilities are located.

TABLE XI.J–2.—SOCIOECONOMIC PROFILE OF COMMUNITIES IN WHICH CWT FACILITIES ARE LOCATED

Percentage	Number of communities
Percent of the Population that are Non-Caucasian (National Percentage=16.8%)	
Less than 10	32
10 to 20	17
20 to 30	35
30 to 50	39
Over 50	23
Percent of the Population With Incomes Below Poverty Level (National Percentage=13.5)	
Less than 7	19
7 to 13	33
13 to 20	56
20 to 30	31
Over 30	7

Using the most recent census data, in 1990, the nation as a whole had a population that was 16.8 percent non-Caucasian. Of the communities in which CWT facilities were located, on the other hand, 38 percent had populations that were at least 30 percent minority, and 54 percent of communities had populations whose minority percentage exceeded that of the state in which they were located by more than five percentage points. In 1990, 13.5 percent of the U.S. population had incomes below the poverty level, 22 percent of communities with CWT facilities had at least 20 percent of their residents in poverty, and 33 percent had percentages of the population in poverty that exceeded by at least 5 percentage points the percentage of the population in poverty for the states in which they were located. Thus, environmental justice is a concern for these communities. The costs of the rule fall disproportionately on facilities in minority and low-income communities. Benefits may also accrue to these communities as a result of this rule, but a large share of benefits are likely to accrue to communities downstream from the CWT or POTW, which may not be the same community.

K. Foreign Trade Impacts

The EA does not project any foreign trade impacts as a result of the effluent limitations guidelines and standards. Many of the affected CWT facilities treat waste that is considered hazardous under RCRA and international trade in CWT services for treatment of hazardous wastes is virtually nonexistent. There is also very little, if any, international trade in treatment of non-hazardous CWT wastes.

L. Regulatory Flexibility Analysis

The Agency prepared an initial regulatory flexibility analysis to assess the impacts on small companies owning CWT facilities. For purposes of this analysis, EPA defines small CWT companies as those having sales less than $6 million—the Small Business Administration definition of a small business for SIC code 4953, Refuse Systems. This is the SIC code that most CWT facilities listed in their questionnaire responses (see EA Chapter 3). Two small companies own facilities that discharge directly. There are 61 small companies that own facilities that discharge indirectly (the total number of small indirects includes applying weights to some of the facilities). EPA evaluated the impact on small CWT companies using a cost-to-sales test, which compares baseline sales to compliance costs (adjusted for inflation so that the costs and sales are expressed in the same year's dollars). This assessment does not account for any ability of the companies to pass any increase in operating costs through to their customers. EPA recognizes that costs-to-sales ratios in excess of one percent, and particularly those in excess of three percent, may represent significant impacts because they will generally correspond to much higher rates of cost to pre-compliance profits, and, thus, serve as a signal for additional analysis.

The two small companies that own direct discharging facilities, both in the oils subcategory, have cost-to-sales ratios of over three percent. Results of the cost-to-sales test for the PSES options are presented in Table XI.L–1 for the number of facilities with costs exceeding one percent and three percent. Some companies own facilities with operations in more than one subcategory.

TABLE XI.L–1.—RESULTS OF COST-TO-SALES TEST FOR PSES OPTIONS FOR SMALL BUSINESSES

Option	Number of small companies with cost/sales >1%	Number of small companies with cost/sales >3%
Metals Subcategory—4 Small Businesses:		
4	3	1
2	3	3
3	3	3
Oils Subcategory—57 Small Businesses:		
8	40	21
9	49	31
Organics Subcategory—2 Small Businesses:		
4	2	1
3	2	1

As can be seen from Table XI.L–1, the economic impact on small businesses of the proposed PSES options is not as great as for the other alternatives. In particular, Oils Option 8 has 40 firms (70 percent of the small businesses) with cost-to-sales ratios in excess of 1 percent and 21 firms (37 percent of the small businesses) with cost-to-sales ratios in excess of 3 percent (without adjustment for pass-through of costs). On the other hand, Oils Option 9 has 49 firms (87 percent of the small businesses) with cost-to-sales ratios in excess of 1 percent and 31 firms (55 percent of the small businesses) with cost-to-sales ratios in excess of 3 percent.

Many of the facilities owned by small businesses operate processes in more than one subcategory so, as with the economic impact analyses presented

earlier in this section, cost-to-sales test results are presented for two combined PSES options: one with Oils Option 8 and one with Oils Option 9. These results are presented in Table XI.L–2.

TABLE XI.L–2.—RESULTS OF COST-TO-SALES TEST FOR COMBINED PSES OPTIONS FOR SMALL BUSINESSES

Combined option	Number of small companies with cost/sales >1%	Number of small companies with cost/sales >3%
Indirect Dischargers—61 Small Businesses:		
w/ Oils Option 8	43	23
w/ Oils Option 9	52	33

The PSES options combined with Oils Option 8 has 43 firms (70 percent of small businesses) with cost-to-sales ratios in excess of 1 percent and 23 firms (38 percent of small businesses) with cost-to-sales ratios in excess of 3 percent. On the other hand, the combined option with Oils Option 9 has 52 firms (85 percent of small businesses) with cost-to-sales ratios in excess of 1 percent and 33 firms (54 percent of small businesses) with cost-to-sales ratios in excess of 3 percent.

As detailed in Section VI.H, EPA convened a SBREFA panel during the development of this rule. As part of those exercises, EPA considered several regulatory alternatives to provide relief for small businesses. Some of these alternatives are discussed in detail in other sections of this document. For example, one option considered by EPA was a reduced monitoring alternative. This option is discussed in Section IX.D.

EPA also analyzed several bases for not including small businesses within the scope of this proposal. EPA examined several criteria for establishing an exclusion for small businesses such as the volume of wastewater flow, employment, or annual revenues. The objective was to minimize the impacts on small businesses, still achieve the environmental benefits, and stay responsive to the Clean Water Act. EPA is defining small CWT businesses according to the SBA size definition of $6 million in annual revenue, but considered other criteria that would be easier to implement in practice, such as wastewater flow. To target relief to small businesses, EPA examined the correlation between these criteria and the size definition.

Since most CWT facilities have similar numbers of employees regardless of their size, EPA first eliminated employment as a basis for establishing a small business exclusion. While EPA also found no correlation between annual volume of wastewater and the size of a facility, EPA retained this criteria due to the anticipated ease in implementing an exclusion based on this criteria. If an exclusion based on volume of wastewater is ultimately selected, the regulation would exclude both small and large businesses.

EPA evaluated alternative levels for criteria based on wastewater flow and size as potential bases for limiting the scope of the proposed regulation to: (i) indirect dischargers with flows greater than 3.5 million gallons per year (MGY), (ii and iii) indirect dischargers that manage non-hazardous wastes only with flows greater than either 3.5 MGY or 7.5 MGY. EPA also considered limiting the applicability of the proposed regulation to indirect dischargers not owned by small businesses without any specific reference to flow (referred to as ''no smalls'' below). The justification for EPA's choice of these particular exclusion alternatives is included in the record in materials submitted to the SBREFA panel.

For each potential limitation, EPA estimated the projected economic impacts, both in absolute terms and in relative terms (that is, whether the impacts were higher, proportionately, for small businesses). The economic impacts that EPA considered for small companies include process closures, facility closures, employment losses, and the cost-to-sales test. Table XI.L–3 shows the results of the facility-level analyses (if current facility receipts do not change) and the results of the analyses for the selected options for comparison purposes for all indirect dischargers. Table XI.L–4 shows the results of the cost-to-sales test, which are company-level impacts for small companies that own indirect dischargers. Preliminary versions of these results were provided to all small entity representatives and SBREFA panel members.

TABLE XI.L.—IMPACTS OF PSES OPTIONS WITH LIMITED SCOPE

Option	Post-tax total annualized costs ($1997 M)	Process closures (small/large)	Facility closures (small/large)	Total employment losses
All Indirect Dischargers—147 Facilities				
Combined Option w/ Oils 8	$13.2	5/10	7/6	298
Reduced monitoring	11.03	5/11	4/7	286
>3.5 MGY, non-hazardous	11.7	5/10	3/3	273
>3.5 MGY	10.3	2/7	0/1	161
>7.5 MGY, non-hazardous	10.9	5/10	3/3	273
''No smalls''	8.81	0/12	0/12	142

TABLE XI.L–4.—RESULTS OF COST-TO-SALES TEST FOR SMALL BUSINESSES FOR PSES OPTIONS WITH LIMITED SCOPE

Option	Cost/ sales>1%	Cost/ sales>3%
Indirect Dischargers—61 Small Businesses		
Combined Option w/Oils Option 8	43	23
Reduced monitoring	32	14
>3.5 MGY, non-hazardous	27	18
>3.5 MGY	22	14
>7.5 MGY, non-hazardous	22	18
"No smalls"	0	0

Some panel members and small entity representatives (SERs) believe that these results support not including small businesses in the regulation. As described in the Panel's final report, these panel members and SERs believe that the ''lost'' pollutant reductions associated with not including small businesses would not be environmentally significant. Based on analysis available at the time of the panel, limiting the applicability to not include all oils facilities owned by small businesses would have reduced removals by 12 percent. Not including indirect dischargers with flows under 3.5 MGY would have reduced removals by 6 percent. They also suggested that these facilities provide an important ''safety valve'' for an affordable and effective treatment alternative for industrial facilities that would otherwise find it prohibitively expensive to comply with industry-specific categorical standards.

Other SERs opposed this approach. These commenters believe that not including small businesses in the scope of this rule would adversely impact the image of the industry. One of these commenters preferred reduced monitoring and also suggested that small businesses might be granted additional time to comply with the new standards, rather than not including those businesses within the scope of the rule. EPA expressed concern that the absence of categorical standards for CWT facilities has been a major ''loophole'' in a national program to control industrial pollution, allowing wastes to be treated off-site less effectively than would be required of the same wastes if treated on-site. One of EPA's primary concerns with any of the alternatives that limit the scope of the rule is that they represent one snapshot of a rapidly changing industry. If a segment of the industry is not subject to national regulation, these companies might quickly expand leading to much greater discharges within a few years than predicted by existing data—with environmentally deleterious consequences. In addition, EPA believes that most CWT facilities have substantial amounts of unused capacity. Because this industry is extremely competitive, by limiting the scope of the CWT rule, EPA could actually be encouraging ineffective treatment while discouraging effective treatment.

The panel discussed several ways of addressing this concern. One idea was to put mass-based limits on receipts as part of the eligibility requirement for not subjecting certain facilities to the rule, ensuring that these facilities would not handle significant volumes of contaminated wastes. However, this approach would also limit the flexibility of small businesses not subjected to this rule, and might require CWT facilities owned by small companies to give up a significant share of their existing waste receipts.

In summary, in an effort to limit the rule's applicability to mitigate small business impacts and still preserve the benefits of the rule, EPA considered a variety of potential alternatives. For the reasons discussed elsewhere, however, EPA is not proposing to include any alternatives that limit the scope of the rule for small businesses. However, EPA has followed the panel recommendation that it include a full and balanced discussion of possible small business relief measures in this preamble and solicits both comments and data that might address some of the concerns that have been raised. Examples of such data would include plant capacity, as well as influent and effluent concentrations. Finally, as recommended by the panel, EPA will strongly consider developing some form of regulatory relief for small businesses for the final rule if its analyses continue to show significant economic impacts on a substantial number of small businesses.

M. Cost-Effectiveness Analysis

EPA also conducted an analysis of the cost-effectiveness of the alternative treatment technology options that were considered. The report, ''Cost-Effectiveness Analysis of Proposed Effluent Limitations Guidelines and Standards for the CWT Industry'' (hereinafter, ''Cost-Effectiveness Report''), describes the methodology, data, and results; the report is included in the record of this rulemaking. The results of this cost-effectiveness analysis are expressed in terms of the costs (in 1981 dollars) per pound-equivalent removed, where pounds-equivalent removed for a particular pollutant is determined by multiplying the number of pounds of a pollutant removed by each option by a toxic weighting factor. The toxic weighting factors account for the differences in toxicity among pollutants and are derived using ambient water quality criteria. Cost effectiveness results are presented in 1981 dollars as a reporting convention. Cost-effectiveness is calculated as the ratio of pre-tax annualized costs of an option to the annual pounds-equivalent removed by that option, and can be expressed as the average or incremental cost-effectiveness for an option.

Average cost-effectiveness can be thought of as the ''increment'' between no regulation and the selected option for any given rule. For direct dischargers, the technologies used as the basis for BPT/BCT/BAT in all subcategories have an average cost-effectiveness ratio of $5.58/lb-equivalent. For indirect dischargers, the technologies used as the basis for PSES in all subcategories have an average cost-effectiveness ratio of $23.59/lb-equivalent. These results incorporate all subcategories with their selected options.

Incremental cost-effectiveness is the appropriate measure for comparing one regulatory option to an alternative, less stringent regulatory option for the same subcategory. Cost-effectiveness results by subcategory and option are presented for direct dischargers in Table XI.M–1 and indirect dischargers in Table XI.M–2. The options are listed in order of increasing removals. The calculations reflect only those increments that are ''efficient,'' in that they remove more for an incremental cost. In this context,

''inefficient'' options (i.e., those that cost more but remove less) are eliminated from the analysis. For example, Metals Subcategory Option 4 for direct dischargers has greater removals than Option 2, but costs less. Therefore, the incremental ''cost-effectiveness'' of the ''inefficient'' option—Option 2—is displayed as ''n/a'' for ''not applicable,'' and Option 4 becomes the first option in the series against which further increments are compared.

TABLE XI.M–1.—BPT/BCT/BAT COST-EFFECTIVENESS ANALYSIS

Option	Pre-tax total annualized costs ($1981 M)	Removals (lbs-eq)	Average cost effectiveness (1981 $/lb-eq)	Incremental cost-effectiveness (1981 $/lb-eq)
Metals Subcategory—9 Facilities:				
2	$8.85	369,112	$23.99	n/a
4	1.84	370,040	4.95	
3	9.18	379,571	24.18	974.19
Oils Subcategory—5 Facilities:				
8	0.314	13,943	22.49	
9	0.314	14,811	21.17	n/a [a]
Organics Subcategory—4 Facilities:				
4	0.151	0		
3	0.275	27,055	10.17	4.58

[a] EPA is not able to distinguish between the costs to direct dischargers to comply with Options 8 and 9, and therefore is not able to compute incremental cost-effectiveness.

TABLE XI.M–2.—PSES COST-EFFECTIVENESS ANALYSIS

Option	Pre-tax total annualized costs ($1981 M)	Removals (lbs-eq)	Average cost effectiveness (1981 $/lb-eq)	Incremental cost-effectiveness (1981 $/lb-eq)
Metals Subcategory—9 Facilities:				
4	$5.23	25,843	$202.22	.....
2	17.86	26,943	662.86	11,484.84
3	18.84	27,480	685.58	1,825.82
Oils Subcategory—5 Facilities:				
8	8.63	510,740	16.90	.....
9	12.30	514,398	23.91	725.50
Organics Subcategory—4 Facilities:				
4	1.89	87,917	21.53	.....
3	2.42	165,392	14.63	6.80

One of the issues discussed at length by the SBREFA panel members was EPA's analyses of toxic loadings and removals which underlie the cost-effectiveness analysis for the various regulatory options for the oils subcategory. For the oils subcategory, the cost-effectiveness analysis appears to be driven largely by a limited number of observations for one or two pollutants. For example, a single pollutant, benzo(a)pyrene, accounts for 88% of the estimated toxic removals by indirect dischargers and 80% of the estimated toxic removals by direct dischargers in the oils subcategory. Benzo(a)pyrene was detected in the effluent from the emulsion breaking/gravity separation process (which EPA used to establish baseline loadings for this subcategory) in four out of nine daily composite samples from one of the facilities sampled in this subcategory. One of the four daily composite samples was biphasic—the technology did not completely separate the oil from the water phase. The concentration of benzo(a)pyrene in the oil phase of this sample was several orders of magnitude greater than the concentration in the water phase and in the other samples at that facility. Therefore, the average concentration of benzo(a)pyrene for that facility is largely driven by its concentration in the oil phase of the biphasic sample. Applying its baseline loading methodology (see detailed discussion in Chapter 12 of the technical development document), EPA also attributed the average concentration of benzo(a)pyrene for the facility with the biphasic sample to 10 other facilities (approximately 13% of all the oils subcategory indirect dischargers). Consequently, the benzo(a)pyrene concentration detected in the oil phase of the daily composite biphasic sample accounts for a third to a half of the total pound-equivalent removals estimated for indirect dischargers in the oils subcategory.

EPA acknowledges that this daily composite sample significantly influences its estimate of pound-equivalent removals for indirect dischargers in the oils subcategory. However, EPA believes it is reasonable to project that some portion of other oils subcategory indirect discharging facilities may experience biphasic effluents from emulsion breaking/gravity separation and may thus also contain high baseline concentrations of highly toxic pollutants. Even if the concentration of benzo(a)pyrene in this sample were non-representative of other oily waste facilities, there may be other, highly toxic pollutants that were not detected in the waste streams of the plants sampled. The nature of this industry is to accept highly variable waste streams, so there is no ''typical'' set of pollutants and representative

concentrations. EPA solicits comment and data on this conclusion.

Finally, EPA notes that its extension of the average pollutant concentrations for the facility with the biphasic sample to 10 other facilities (unscaled) in this subcategory was conducted without consideration of whether these facilities treat non-hazardous materials or a mixture of hazardous and non-hazardous materials. If EPA were to analyze facilities on this basis, it might also effect EPA's estimate of toxic removals for this subcategory. This issue is discussed in more detail in Section IV.S.

XII. Water Quality Analysis and Environmental Benefits

In addition to costs and impacts, EPA also estimated the environmental and human health benefits of today's proposed requirements. Benefits identified as a result of this proposed rule are associated with improvements in water quality. Section X.C of this notice and Chapter 12 of the technical development document (TDD) describe the estimated reductions in effluent discharges. Those reductions and the estimates of incremental environmental improvements are derived by a comparison of estimated post-compliance discharges to a baseline of current discharges. Because current discharges are a function of current technology, this is the same baseline that is used to establish the costs of complying with this rule.

EPA is confident that its estimate of compliance costs is a full and accurate account of such costs. EPA is less confident, however, that its estimate of benefits is similarly complete. EPA is not currently able to evaluate all human health and ecosystem benefits associated with water quality improvements quantitatively. EPA is even more limited in its ability to assign monetary values to these benefits. The economic benefit values described below and in the ''Economic Analysis of the Proposed Effluent Limitations, Guidelines and Standards for the Centralized Waste Treatment Industry'' (EA) should be considered a subset of the total benefits of this rule and should be evaluated along with descriptive assessments of benefits and the acknowledgment that even these may fall short of the real-world benefits that may result from this rule. For example, the analyses consider the effects of metals and organic pollutants, but do not evaluate the impacts of other classes of pollutants, such as five-day biochemical oxygen demand (BOD_5), chemical oxygen demand (COD), and total suspended solids (TSS), which can produce significant adverse environmental impacts. In addition, EPA has not calculated any benefits from water quality improvement at facilities that are represented by survey weights from the NOA (Notice of Data Availability) facilities. Assigning benefits to these facilities requires data specific to the reach into which the facility discharges. The monetized benefits presented in this section are therefore underestimated, and should not be directly compared with the costs presented in Section XI.

Within these confines, EPA analyzes the effects of current water discharges and assesses the benefits of reductions in these discharges resulting from this proposed regulation. EPA evaluated water quality benefits of controlling the discharge from CWT facilities to surface waters and POTWs for direct and indirect dischargers located throughout the United States. CWT industry waste effluents contain pollutants that, when discharged into freshwater and estuarine ecosystems, may alter aquatic habitats, affect aquatic life, and adversely affect human health. In fact, all 105 pollutants of concern considered in this analysis have at least one toxic effect (they are a human health carcinogen and/or human health systemic toxicant or aquatic life toxicant). Many of these pollutants are persistent and bioaccumulate in aquatic organisms. In addition, many of these pollutants can also adversely affect POTW operations or contribute to POTW biosolid contamination.

Water quality problems from four direct discharging CWT facilities and nine POTWs (which receive discharges from 14 indirect facilities) have been documented in State 304(l) Short Lists of impaired water bodies. In the case of indirect dischargers, the 9 POTWs have had water quality problems with pollutants that are typical of CWT discharges and these POTWs receive discharges from CWT facilities. However, EPA cannot definitely link the water quality problems with these CWT facilities. Finally, EPA has documented seven cases of impairment of POTW operations.

EPA expects a variety of human health, environmental, and economic benefits to result from these reductions in effluent loadings (see ''Environmental Assessment of the Proposed Effluent Guidelines for the Centralized Waste Treaters Industry,'' (Environmental Assessment)). In particular, the benefits assessment addresses the following benefit categories: a) human health benefits due to reductions in excess cancer risk; b) human health benefits due to reductions in lead exposure; c) human health benefits due to reductions in non-carcinogenic hazard (systemic); d) ecological and recreational benefits due to improved water quality with respect to toxic pollutants; and e) benefits to POTWs from reductions in interference, pass-through, and biosolid contamination, and elimination of some of the efforts associated with establishing local pretreatment limits.

Out of a total of 205 CWT facilities, EPA evaluated 10 direct wastewater dischargers and 85 indirect wastewater dischargers discharging up to 105 pollutants. Facilities not evaluated either are zero dischargers (44) or had insufficient data to conduct the water quality analysis. To estimate some of the benefits from the improvements in water quality expected to result from this rule, instream concentration estimates are modeled and then compared to both aquatic life and human health ambient water quality criteria (AWQC) or toxic effect levels to evaluate whether these discharges pose risk to aquatic organisms or to human health. The analyses were first performed on a subcategory-specific basis. The subcategory-specific analyses, however, consider only impacts of discharges from individual subcategories, and therefore, underestimate overall water quality impacts for facilities that treat wastes in more than one subcategory. At least 20 percent of facilities in the CWT industry accept wastes in multiple subcategories. In order to evaluate overall benefits of the proposed technologies, EPA also analyzed water quality and POTW impacts for subcategory combinations, as appropriate, for individual facilities.

For indirect dischargers, EPA also evaluates the potential inhibition of POTW operations and biosolid contamination (thereby limiting its use for land application) based on current and proposed pretreatment levels. Inhibition of POTW operations are projected by comparing modeled POTW influent concentrations to known inhibition levels from the literature; potential contamination of biosolids is estimated by comparing projected pollutant concentrations in biosolids to available EPA biosolid regulatory standards.

EPA monetizes the estimated benefits for reduced cancer risk, reduced lead health risk, improved recreational activity, improved nonuse (intrinsic) value, and reduced biosolid contamination at POTWs. However, EPA is unable to quantify the dollar value of benefits from the other benefit categories such as reduced noncarcinogenic hazards. The methodology and data used in the

estimate of all benefits are described in detail in the EA.

A. Reduced Human Health Cancer Risk

EPA expects that reduced loadings to surface waters associated with the proposal will reduce cancer incidences by approximately 0.65 per year with estimated monetized benefits of $1.5 to $8.0 million ($1997) per year. These estimated benefits are attributable to reducing the cancer risks associated with consuming contaminated fish tissue. EPA developed these benefit estimates by applying an existing estimate of the value of a statistical life to the estimated number of excess cancer cases avoided. The estimated range of the value of a statistical life used in this analysis is $2.3 million to 12.4 million ($1997).

B. Reduced Lead Health Risk

EPA expects that reduced loadings to surface waters will significantly reduce lead. Under the proposed treatment levels, the ingestion of lead-contaminated fish tissues by recreational and subsistence anglers would be substantially reduced at four water bodies. Because elevated blood lead levels can cause intellectual impairment in exposed children 0 to 6 years of age, benefits to the at-risk child populations are quantified by estimating the reduced potential IQ point loss. Benefits to adults are quantified by estimating the reduced risk for cardiovascular diseases including hypertension, coronary heart disease, and strokes (the benefits of reduced heart disease and strokes include both fatal and non-fatal cases). The benefits are quantified and monetized using methodologies developed in the Retrospective Analysis of the Clean Air Act (Final Report to Congress on Benefits and Costs of the Clean Air Act, 1970 to 1990; EPA 410–R–97–002). EPA estimates that this proposed regulation would reduce annual cases of these adverse health effects: 3.209 cases of hypertension valued at $838 per case, 0.185 cases of heart disease valued at $63,690 per case, 0.012 cases of cerebrovascular accidents valued at $246,000 per case for men and $123,000 per case for women, 0.008 cases of brain infarctions also valued at $246,000 per case for men and $123,000 per case for women, .222 cases of premature mortality valued at $2.3 million to $12.4 million per case, 72 increased IQ points in children valued at $3,637 per case, and 34 children with an IQ that is prevented from going below 70 (and thus requiring special education) valued at $64,800 per case. The total benefit for these reductions would range from approximately $3.0 million to $5.2 million ($1997). EPA also solicits comment on the methods that it used to calculate benefits from the reduction of lead health risks.

C. Reduced Noncarcinogenic Human Health Hazard

Exposure to toxic substances poses risk of systemic and other effects to humans, including effects on the circulatory, respiratory or digestive systems, and neurological and developmental effects. This proposed rule is expected to generate human health benefits by reducing exposure to these substances, thus reducing the hazards of these associated effects. EPA expects that reduced loadings to surface waters would reduce the number of persons potentially exposed to non-cancer effects due to consumption of contaminated fish tissue by 19,000 people. Presently, EPA does not have methodology for monetizing these benefits.

D. Improved Ecological Conditions and Recreational Activity

EPA expects this proposed rule to generate environmental benefits by improving water quality. There is a wide range of benefits associated with the maintenance and improvement of water quality. These benefits include use values (e.g., recreational fishing), ecological values (e.g., preservation of habitat), and passive-use values. For example, water pollution might affect the quality of the fish and wildlife habitat provided by water resources, thus affecting the species using these resources. This, in turn, might affect the quality and value of recreational experiences of users, such as anglers fishing in the affected streams. EPA considers the value of the recreational fishing benefits and intrinsic benefits resulting from this proposed rule, but does not evaluate the other types of recreational benefits and improvements to other recreational activities, such as swimming, boating, water skiing, and wildlife observation due to data limitations.

The projected reductions in loadings of metals and organics to surface waters and POTWs are significant. Modeled (unscaled) end-of-pipe metals and organic pollutant loadings are estimated to decline by about 83 percent, from 5.04 million pounds per year under current conditions to 0.88 million pounds per year under this proposed rule. The analysis comparing modeled instream pollutant levels to AWQC estimates that current discharge loadings result in 110 contraventions at 18 receiving water locations. The proposed rule would reduce this to 53 contraventions at 13 receiving water locations.

EPA estimates that the annual monetized recreational benefits to anglers associated with the expected changes in water quality range from $0.41 million to $1.2 million ($1997). EPA evaluates these recreational benefits, applying a model that considers the increase in value of a ''contaminant-free fishery'' to recreational anglers resulting from the elimination of all pollutant concentrations in excess of AWQC at 5 of the 18 receiving water locations. The monetized value of impaired recreational fishing opportunity is estimated by first calculating the baseline value of the receiving stream using a value per person day of recreational fishing, and the number of person-days fished on the receiving stream. The value of improving water quality in this fishery, based on the increase in value to anglers of achieving contaminant-free fishing, is then calculated. Because the valuation of these benefits is based on estimates of a willingness to pay for recreational fishing benefits in different fisheries with different water quality conditions, EPA recognizes that they are only approximate.

In addition, EPA estimates that the annual monetized intrinsic benefits to the general public, as a result of the same improvements in water quality, range from at least $0.20 million to $0.60 million ($1997). These intrinsic benefits are estimated as half of the recreational benefits and may be over or underestimated.

E. Improved POTW Operations

EPA considers two potential sources of benefits to POTWs from this proposed regulation: (1) reductions in the likelihood of interference, pass-through, and biosolid contamination problems; and (2) reductions in costs potentially incurred by POTWs in analyzing toxic pollutants and determining whether to, and the appropriate level at which to, set local limits. EPA is unable to quantify these benefits, but they are discussed qualitatively below.

First, regarding potential interference, pass-through and biosolid contamination, this proposed rule is expected to help reduce these problems by reducing pollutant loadings in the industry's effluent and reducing shock releases. Anecdotal evidence from POTW operators and sampling results indicate that such effects can occur. EPA also expects the proposed rule to improve the biosolid quality of 4,100

metric tons permitting the use of less expensive disposal mechanisms. The estimated monetized benefit for improving biosolid quality is $0.15–$0.93 million ($1997).

EPA recognizes that POTWs already have responsibility and full authority to prevent interference and pass-through due to discharges by industrial users by the establishment and enforcement of local limits. Reducing the pollutant load to local POTWs may eliminate some of the efforts associated with establishing these local limits for new CWT facilities or existing CWT facilities which begin to accept different waste types other than those upon which their permits are based. (Local limits have already been established for existing CWT facilities, and will need to be recalculated based on the new limits once promulgated.) Local limits are sometimes required to protect against pass-through and interference, and to protect worker health and safety. Several POTWs indicated that establishment of more effective national pretreatment standards would reduce the time and effort required to establish local limits.

Furthermore, reducing the discharge of toxic pollutants reduces the likelihood that the POTW effluents will exhibit excessive toxicity. When POTW effluent exhibits excessive toxicity, the POTW must enact a rigorous, costly analytical program to identify and reduce the source of toxicity. As noted above, however, POTWs generally address this issue through the establishment of local limits.

F. Other Benefits Not Quantified

The above benefit analyses focus mainly on identified compounds with quantifiable toxic or carcinogenic effects. This potentially leads to an underestimation of benefits, since some pollutant characterizations are not considered. For example, the analyses do not include the benefits associated with reducing the particulate load (measured as TSS), or the oxygen demand (measured as BOD_5 and COD) of the effluents. TSS loads can degrade ecological habitat by reducing light penetration and primary productivity, and from accumulation of solid particles that alter benthic spawning grounds and feeding habitats. BOD_5 and COD loads can deplete oxygen levels, which can produce mortality or other adverse effects in fish, as well as reduce biological diversity.

G. Summary of Benefits

EPA estimates that the annual monetized benefits resulting from this proposed rule are in the range of $5.3 million to $15.9 million ($1997). Table XII.F.1 summarizes these benefits, by category. The range reflects the uncertainty in evaluating the effects of this proposed rule and in placing a dollar value on these effects. As indicated in Table XII.F.1, these monetized benefits ranges do not reflect some of the benefit categories such as improved POTW operations. Therefore, the reported benefit estimate may understate the total benefits of this proposed rule. On the other hand, EPA has not applied a discount factor to any of the monetized health and environmental benefits, although there are likely to be significant lags between implementation of the rule and realization of some types of benefits. This would tend to overstate the benefits of the rule. However, EPA also repeats that benefits were quantified and/or monetized for the 105 (out of the 205 total) CWT facilities for which EPA had enough data to perform the analysis, whereas the costs of the rule accounted for 205 facilities.

TABLE XII.F.1—POTENTIAL ECONOMIC BENEFITS

Benefit category	Millions of 1997 dollars per year
Reduced Cancer Risk	1.5–8.0.
Reduced Lead Health Risk	3.0–5.2.
Reduced Non-Carcinogenic Hazard	Unquantified.
Improved Ecological Conditions	Unquantified.
Improved Recreation Value	0.41–1.2.
Improved Intrinsic Value	0.20–0.60.
Reduced Biosolid Contamination at POTW	0.65–0.93.
Improved POTW Operation (inhibition)	Unquantified.
Improved Occupational Conditions at POTWs	Unquantified.
Total Monetized Benefits	5.3–15.9.

XIII. Non-Water Quality Environmental Impacts

The elimination or reduction of one form of pollution may create or aggravate other environmental problems. Therefore, Sections 304(b) and 306 of the Act require EPA to consider non-water quality environmental impacts of effluent limitations guidelines and standards. Accordingly, EPA has considered the effect of these regulations on air pollution, solid waste generation, and energy consumption.

While it is difficult to balance environmental impacts across all media and energy use, the Agency has determined that the impacts identified below are acceptable in light of the benefits associated with compliance with the limitations and standards.

A. Air Pollution

CWT facilities generate wastewater that contain significant concentrations of organic compounds, some of which are also on the list of Hazardous Air Pollutants (HAP) in title 3 of the Clean Air Act Amendments (CAAA) of 1990. These wastewaters often pass through a series of collection and treatment units that are open to the atmosphere and allow wastewater containing organic compounds to contact ambient air. Atmospheric exposure of the organic-containing wastewater may result in significant volatilization of both volatile organic compounds (VOC), which contribute to the formation of ambient ozone, and HAP from the wastewater.

As discussed previously, EPA considered including air stripping in the technology basis for today's proposed limitations and standards, but rejected it because it would not have resulted in significantly different limitations. Because the proposed rule would not allow any less stringent control of VOCs than is currently in place at most CWT facilities, EPA does not project any net increase in air emissions of volatile pollutants due to today's proposal. As such, no adverse air impacts are expected to occur as a result of the proposed regulations.

Finally, while this proposal does not require the use of air stripping with emissions control to control the

emission of volatile pollutants, EPA encourages all facilities which accept waste containing volatile pollutants to incorporate air stripping with overhead recovery or destruction into their wastewater treatment systems. Additionally, EPA also notes that CWT sources of hazardous air pollutants are subject to maximum achievable control technology (MACT) as promulgated for off-site waste and recovery operations on July 1, 1996 (61 FR 34140) as 40 CFR Part 63.

B. Solid Waste

Solid waste will be generated due to a number of the proposed treatment technologies. These wastes include sludge from biological treatment systems, chemical precipitation and clarification systems, and gravity separation and dissolved air flotation systems. EPA costed off-site disposal in Subtitle C and D landfills of the solid wastes generated due to the implementation of the technologies discussed above. These costs were included in the economic evaluation of the proposed technologies.

The precipitation and subsequent separation proposed as the technology basis for the metals subcategory will produce a metal-rich filter cake which requires disposal. EPA estimates that metals subcategory facilities will generate annually 3.7 million gallons of filter cake. Dissolved air flotation and additional gravity separation steps proposed as the technology basis for the oils subcategory will also produce a metal-rich filter press cake requiring disposal. EPA estimates that oils subcategory facilities will generate annually 22.7 million gallons of filter press cake. Finally, the biological treatment system proposed for the organics subcategory will also produce a sludge requiring disposal. EPA estimates that 4.3 million gallons will be generated annually by the organics subcategory facilities.

C. Energy Requirements

EPA estimates that the attainment of BPT, BCT, BAT, and PSES will increase energy consumption by a small increment over present industry use. With the exception of the oils subcategory, the projected increase in energy consumption is primarily due to the incorporation of components such as power pumps, mixers, blowers, and controls. For the metals subcategory, EPA projects an increased energy usage of 3.3 million kilowatt hours per year and, for the organics subcategory, an increased energy usage of 0.5 million kilowatt hours per year. For the oils subcategory, however, the main energy requirement in today's proposed rule is for the operation of dissolved air flotation units. Dissolved air flotation units require air sparging to help separate the waste stream. For the oils subcategory, EPA projects an increased energy usage of 3.5 million kilowatt hours per year. Overall, an increase of 7.5 million kilowatt-hours per year would be required for the proposed regulation which equates to 20 barrels of oil per day. In 1996, the United States consumed 18.3 million barrels of oil per day. The costs associated with these energy requirements are included in EPA's estimated operating costs for compliance with the proposed rule.

XIV. Regulatory Implementation

A. Applicability

The regulation proposed today is just that—a proposed regulation. While today's proposal represents EPA's best judgment at this time, the effluent limitations and standards may still change based on additional information or data submitted by commenters or developed by the Agency. Consequently, the permit writer should consider the proposed limits in developing permit limits, but should continue to base limits on BPJ until final limits for this industry are promulgated. Although the information provided in this preamble and the accompanying documents may provide useful information and guidance to permit writers in determining BPJ permit limits, the permit writer will still need to justify any permit limits based on the conditions at the individual facility.

B. Upset and Bypass Provisions

A ''bypass'' is an intentional diversion of waste streams from any portion of a treatment facility. An ''upset'' is an exceptional incident in which there is unintentional and temporary noncompliance with technology-based permit effluent limitations because of factors beyond the reasonable control of the permittee. EPA's regulations concerning bypasses and upsets for direct dischargers are set forth at 40 CFR 122.41(m) and (n) and for indirect dischargers at 40 CFR 403.16 and 403.17.

C. Variances and Modifications

The CWA requires application of the effluent limitations established pursuant to Section 301 or the pretreatment standards of Section 307 to all direct and indirect dischargers. However, the statute provides for the modification of these national requirements in a limited number of circumstances. Consequently, the Agency has established administrative mechanisms to provide an opportunity for relief from the application of national effluent limitations guidelines and pretreatment standards for categories of existing sources for priority, conventional, and non-conventional pollutants.

1. Fundamentally Different Factors Variances

EPA has established procedures for determining effluent limitations or standards different from the otherwise applicable requirements if an individual existing discharging facility is fundamentally different with respect to factors considered in establishing the limitations or standards applicable to the individual facility. Such a modification is known as a ''fundamentally different factors'' (FDF) variance. The SBREFA panel that reviewed this proposal encouraged the consideration of ways to streamline the Agency's processes for obtaining an FDF variance. One suggestion advanced was that the Agency provide for facilities to submit ''group'' FDF requests.

Early on, EPA, by regulation, provided for FDF modifications from BPT effluent limitations, BAT limitations for priority and non-conventional pollutants, and BCT limitations for conventional pollutants for direct dischargers. For indirect dischargers, EPA provided for FDF modifications from pretreatment standards for existing facilities. FDF variances for priority pollutants were challenged judicially and ultimately sustained by the Supreme Court (*Chemical Manufacturers Ass'n* v. *NRDC*, 479 U.S. 116 (1985)).

Subsequently, in the Water Quality Act of 1987, Congress added new Section 301(n) of the Act explicitly to authorize modification of the otherwise applicable BAT effluent limitations or categorical pretreatment standards for existing sources if a facility is fundamentally different with respect to the factors specified in Section 304 (other than costs) from those considered by EPA in establishing the effluent limitations or pretreatment standards. Section 301(n) also defined the conditions under which EPA may establish alternative requirements. Under Section 301(n), an application for approval of FDF variance must be based solely on (1) information submitted during the rulemaking raising the factors that are fundamentally different, or (2) information the applicant did not have an opportunity to submit. The alternate limitation or standard must be no less stringent than justified by the difference, and not result in markedly more adverse non-water quality

environmental impacts than the national limitation or standard.

EPA regulations at 40 CFR part 125 Subpart D, authorizing the Regional Administrators to establish alternative limitations and standards, further detail the substantive criteria used to evaluate FDF variance requests for existing direct dischargers. Thus, 40 CFR 125.31(d) identifies six factors (for example, volume of process wastewater, age, and size of a discharger's facility) that may be considered in determining if a facility is fundamentally different. The Agency must determine whether, on the basis of one or more of these factors, the facility in question is fundamentally different from the facilities and factors considered by the EPA in developing the nationally applicable effluent guidelines. The regulation also lists four other factors (for example, infeasibility of installation within the time allowed or a discharger's ability to pay) that may not provide a basis for an FDF variance. In addition, under 40 CFR 125.31(b)(3), a request for limitations less stringent than the national limitation may be approved only if compliance with the national limitations would result in either (a) a removal cost wholly out of proportion to the removal cost considered during development of the national limitations, or (b) a non-water quality environmental impact (including energy requirements) fundamentally more adverse than the impact considered during development of the national limits. EPA regulations provide for an FDF variance for existing indirect dischargers at 40 CFR 403.13. The conditions for approval of a request to modify applicable pretreatment standards and factors considered are the same as those for direct dischargers.

In reality, the Agency has only granted a limited number of the requests for FDF variances.

The legislative history of Section 301(n) underscores the necessity for the FDF variance applicant to establish eligibility for the variance. EPA's regulations at 40 CFR 125.32(b)(1) are explicit in imposing this burden upon the applicant. The applicant must show that the factors relating to the discharge controlled by the applicant's permit which are claimed to be fundamentally different are, in fact, fundamentally different from those factors considered by the EPA in establishing the applicable guidelines. The pretreatment regulations incorporate a similar requirement at 40 CFR 403.13(h)(9).

The Agency requests comment on how to modify its existing regulation to provide additional flexibility to small businesses in obtaining FDF variances in light of the specific statutory requirement that each individual discharger establish the fundamental difference in its operations through information submitted during development of the limitations and standards or show there was no opportunity to submit such information. It would be helpful if commenters supplied specific suggested changes to the regulatory language found at 40 CFR 125.32 and 403.13.

An FDF variance is not available to a new source subject to NSPS or PSNS.

2. Permit Modifications

Even after EPA (or an authorized State) has issued a final permit to a direct discharger, the permit may still be modified under certain conditions. (When a permit modification is under consideration, however, all other permit conditions remain in effect.) A permit modification may be triggered in several circumstances. These could include a regulatory inspection or information submitted by the permittee that reveals the need for modification. Any interested person may request a permit modification. There are two classifications of modifications: major and minor. From a procedural standpoint, they differ primarily with respect to the public notice requirements. Major modifications require public notice while minor modifications do not. Virtually any modification that results in less stringent conditions is treated as a major modification, with provisions for public notice and comment. Conditions that would necessitate a major modification of a permit are described in 40 CFR 122.62. Minor modifications are generally non-substantive changes. The conditions for minor modification are described in 40 CFR 122.63.

3. Removal credits

The CWA establishes a discretionary program for POTWs to grant ''removal credits'' to their indirect discharges. This credit, in the form of a less stringent pretreatment standard, allows an increased concentration of a pollutant in the flow from the indirect discharger's facility to the POTW. *See* 40 CFR 403.7. EPA has promulgated removal credit regulations as part of its pretreatment regulations. Under EPA's pretreatment regulations, the availability of a removal credit for a particular pollutant is linked to the POTW method of using or disposing of its sewage sludge. The regulations provide that removal credits are only available for certain pollutants regulated in EPA's 40 CFR Part 503 sewage sludge regulations (58 FR 9386). The pretreatment regulations at 40 CFR Part 403 provide that removal credits may be made potentially available for the following pollutants:

(1) If a POTW applies its sewage sludge to the land for beneficial uses, disposes of it on surface disposal sites, or incinerates it, removal credits may be available, depending on which use or disposal method is selected (so long as the POTW complies with the requirements in Part 503). When sewage sludge is applied to land, removal credits may be available for ten metals. When sewage sludge is disposed of on a surface disposal site, removal credits may be available for three metals. When the sewage sludge is incinerated, removal credits may be available for seven metals and for 57 organic pollutants (40 CFR 403.7(a)(3)(iv)(A)).

(2) In addition, when sewage sludge is used on land or disposed of on a surface disposal site or incinerated, removal credits may also be available for additional pollutants so long as the concentration of the pollutant in sludge does not exceed a concentration level established in Part 403. When sewage sludge is applied to land, removal credits may be available for two additional metals and 14 organic pollutants. When the sewage sludge is disposed of on a surface disposal site, removal credits may be available for seven additional metals and 13 organic pollutants. When the sewage sludge is incinerated, removal credits may be available for three other metals (40 CFR 403.7(a)(3)(iv)(B)).

(3) When a POTW disposes of its sewage sludge in a municipal solid waste landfill (MSWLF) that meets the criteria of 40 CFR Part 258, removal credits may be available for any pollutant in the POTW's sewage sludge (40 CFR 403.7(a)(3)(iv)(C)).

Given the statutory requirements for removal credits, the Agency has only received a very limited number of removal credit requests (2 or fewer).

Given compliance with the requirements of EPA's removal credit regulations, following promulgation of the pretreatment standards being proposed today, removal credits may be authorized for any pollutant subject to pretreatment standards if the applying POTW disposes of its sewage sludge in a MSWLF that meets the requirements of 40 CFR Part 258. If the POTW uses or disposes of its sewage sludge by land application, surface disposal or incineration, removal credits may be available for the following metal pollutants (depending on the method of use or disposal): arsenic, cadmium, chromium, copper, lead, mercury, molybdenum, nickel, selenium, and zinc.

Some facilities may be interested in obtaining removal credit authorization for other pollutants being considered for regulation in this rulemaking for which removal credit authorization would not otherwise be available under Part 403. Under Sections 307(b), EPA may authorize removal credits only when EPA determines that, if removal credits are authorized, the increased discharges of a pollutant to POTWs resulting from removal credits will not prevent POTW sewage sludge use or disposal in accordance with EPA's regulations. As discussed in the preamble to amendments to the Part 403 regulations (58 FR 9382–83), EPA has interpreted these sections to authorize removal credits for a pollutant only in one of two circumstances. Removal credits may be authorized for any categorical pollutant for which EPA either has established a numerical pollutant limit in Part 503, or determined will not threaten human health and the environment when used or disposed of in sewage sludge. The pollutants described in paragraphs (1)—(3) above include all those pollutants that EPA either specifically regulated in Part 503 or evaluated for regulation and determined would not adversely affect sludge use and disposal.

EPA will soon propose to amend Part 403 to make removal credits available for those pollutants that are not now listed in Appendix G as eligible for removal credits provided a POTW seeking removal credit authority studies the impact that granting removal credits would have on the concentration of the pollutant in the POTW's sewage sludge, and establishes that the pollutants will not interfere with sewage sludge use or disposal. This proposed change would provide POTWs and their industrial users with additional opportunities to use removal credits to efficiently allocate treatment.

The proposal addresses the availability of removal credits for pollutants for which EPA has not developed a Part 503 pollutant limit or determined through a national study a concentration for the pollutant in sewage sludge below which public health and the environment are protected when the sewage sludge is used or disposed. Because EPA is only considering two additional pollutants for regulation under Part 503, the proposal would provide a mechanism for evaluating other pollutants for removal credit purposes. As noted above, EPA has interpreted the Court's decision in NRDC v. EPA as only allowing removal credits for a pollutant if EPA had either regulated the pollutant or established a concentration of the pollutant in sewage sludge below which public health and the environment are protected when sewage sludge is used or disposed. The proposal would allow the POTW to perform the study that would establish that allowable concentration. The POTW analysis would need to establish that the granting of removal credits will not increase the level of pollutants in the POTW's sewage sludge to a level that would fail to protect public health and the environment from reasonably anticipated adverse effects of the pollutant.

D. Relationship of Effluent Limitations and Pretreatment Standards to Monitoring Requirements

Effluent limitations and pretreatment standards act as a primary mechanism to control the discharges of pollutants to waters of the United States. These limitations are applied to individual facilities through NPDES permits and local limits developed for POTWs issued by the EPA or authorized States under Section 402 of the Act and local pretreatment programs under Section 307 of the Act.

The Agency has developed the limitations and standards for this proposed rule to cover the discharge of pollutants for this industrial category. In specific cases, the NPDES permitting authority or local POTW may elect to establish technology-based permit limits or local limits for pollutants not covered by this proposed regulation. In addition, if State water quality standards or other provisions of State or Federal law require limits on pollutants not covered by this regulation (or require more stringent limits or standards on covered pollutants to achieve compliance), the permitting authority must apply those limitations or standards.

Working in conjunction with the effluent limitations and standards are the monitoring conditions set out in an NPDES or local POTW pretreatment permit. An integral part of the monitoring conditions is the point at which a facility must monitor to demonstrate compliance. The point at which a sample is collected can have a dramatic effect on the monitoring results for that facility. Therefore, it may be necessary to require internal monitoring points in order to assure compliance. EPA's regulations authorize establishment of monitoring requirements for internal waste streams in prescribed circumstances. See 40 CFR 122.44(i)(1)(iii), 122.45(h), and 403.6(e). Control authorities may establish additional internal monitoring points to the extent consistent with EPA's regulations.

Some observers have questioned EPA's authority to require in-plant monitoring in light of the recent decision in *American Iron and Steel Institute (AISI)* v. *EPA*, 115 F.3d 979 (D.C. Cir. 1997). There, a court held that, although EPA has the authority to require monitoring of internal waste streams, *see AISI*, 115 F.3d at 995, the CWA does not authorize EPA to require compliance with water quality-based effluent limitations at a point inside the facility and thereby deprive a permittee of the ability to choose its own control system to meet the limitations, see *id*. at 966. EPA does not believe that decision would affect the Agency's approach taken for today's proposal. The *AISI* court did not consider the question of whether EPA has authority to take internal waste streams into consideration in establishing technology-based controls such as BPT/BAT, PSES, and NSPS/PSNS. Unlike water quality-based effluent limitations, which are calculated to ensure that water quality standards for the receiving water are attained, technology-based limitations and standards are derived to measure the performance of specific model technologies that EPA is required by statute to identify. In identifying these technologies, EPA is directed to consider precisely the type of internal controls that are irrelevant to the development of water quality-based effluent limitations, such as the processes employed, process changes, and the engineering aspects of various types of control technologies. EPA's technology-based effluent limitations are intended to reflect, for each industrial category or subcategory, the ''base level'' of technology (including process changes) and to ensure that ''in no case * * * should any plant be allowed to discharge more pollutants per unit of production than is defined by that base level'' (*E.I. du Pont de Nemours & Co. v. Train*, 430 U.S. at 129 (1973)).

EPA concluded that it can require in-plant monitoring to demonstrate compliance with technology-based effluent limitations in accordance with the CWA and its regulations at 40 CFR 122.44(i), 122.45(h), 122.3(e), and 403.6(e) if such monitoring is necessary to demonstrate that wastes are being treated to a level corresponding to the technology basis of the standards. In today's rule, EPA is, therefore, requiring in-plant monitoring for compliance with limitations in the circumstances described above. Were EPA to require compliance monitoring of the final effluent without adjustment for the amount of dilution, there would be no

way to determine whether the facility had adequately controlled for pollutants or whether the effluent had simply been diluted below the analytical detection level. Diluting pollutants in this manner, rather than preventing their discharge, is inconsistent with achieving the removals represented by the technology-based levels of control and hence with the purposes of the limitations. It is also inconsistent with the goals of the CWA in general.

E. Subcategorization Determination

EPA believes that the paperwork and analyses currently performed at CWT facilities, as part of their waste acceptance procedures (as detailed in V.A), provide CWT facilities with sufficient information for them to determine into which of the proposed subcategories their treated waste would fall. EPA tried to base its recommended subcategorization determination procedure on information generally obtained during these waste acceptance and confirmation procedures. In EPA's view, permit writers and local pretreatment authorities should not (because they need not) require additional monitoring or paperwork solely for the purpose of subcategory determinations. EPA believes that if CWT facilities follow EPA's recommendations, they should easily classify their wastes. Permit writers and local authorities, in these, circumstances, would only need to satisfy themselves that the facility made a good-faith effort to determine the category of wastes treated. In most cases, as detailed below, EPA believes the subcategory determination can be made on the type of waste receipt, e.g., metal-bearing sludge, waste oil, or landfill leachate. Certainly, in EPA's estimation, all CWT facilities should, at a minimum, collect adequate information from the generator on the type of waste received at the CWT facility, because this is the minimum information required by CWT facilities to treat off-site wastes effectively.

To determine an existing facility's subcategory classification(s), the facility should review data for a period of one year on its incoming wastes. Information in Table XIV.E–1 below should aid CWT facilities in classifying each of its waste receipts for that one year period into a subcategory.

TABLE XIV.E–1.—WASTE RECEIPT CLASSIFICATION

Metals Subcategory	spent electroplating baths and/or sludges
	metal finishing rinse water and sludges
	chromate wastes
	air pollution control blow down water and sludges
	spent anodizing solutions
	incineration wastewaters
	waste liquid mercury
	cyanide-containing wastes (> 136 mg/L)
	waste acids and bases with or without metals
Oils Subcategory	used oils
	oil-water emulsions or mixtures
	lubricants
	coolants
	contaminated groundwater clean-up from petroleum sources
	used petroleum products
	oil spill clean-up
	bilge water
	rinse/wash waters from petroleum sources
	interceptor wastes
	off-specification fuels
	underground storage remediation waste
	tank clean-out from petroleum or oily sources
Organics Subcategory	landfill leachate
	contaminated groundwater clean-up from non-petroleum sources
	solvent-bearing wastes
	off-specification organic product
	still bottoms
	used glycols
	wastewater from paint washes
	wastewater from adhesives and/or epoxies
	wastewater from chemical product operations
	tank clean-out from organic, non-petroleum sources

If the CWT facility receives the wastes listed above, the subcategory determination may be made solely from this information. If, however, the wastes are unknown or not listed above, EPA recommends that the facility use the following hierarchy to determine how to characterize the wastes it is treating, so as to identify the appropriate regulatory subcategory.

(1) If the waste receipt contains oil and grease at or in excess of 100 mg/L, the waste receipt should be classified in the oils subcategory;

(2) If the waste receipt contains oil and grease <100 mg/L, and has any of the pollutants listed below in concentrations in excess of the values listed below, the waste receipt should be classified in the metals subcategory.

Cadmium: 0.2 mg/L

Chromium: 8.9 mg/L

Copper: 4.9 mg/L

Nickel: 37.5 mg/L

(3) If the waste receipt contains oil and grease < 100 mg/L, and does not have concentrations of cadmium, chromium, copper, or nickel above any of the values listed above, the waste receipt should be classified in the organics subcategory.

Once all wastes receipts have been categorized, the facility should determine the relative percent of the amount of off-site wastes accepted in each subcategory (by volume). For ease of implementation during development of this proposal, EPA considered an approach which would allow the facility to round the relative percent of wastes in each subcategory to the nearest five percent (by volume). Thus, under such an approach, a facility which discharges one million gallons per year, 950,000 gallons of which is classified in the metals subcategory and 50,000 gallons of which is classified in the oils subcategory, would be considered a metals subcategory facility only. However, EPA is concerned that this approach would potentially allow facilities to discharge large quantities of untreated pollutants on a mass basis, particularly from facilities with large discharge flows. Therefore, for today's notice, EPA is not proposing this approach. At the same time, EPA recognizes the practical difficulty of implementing limits for facilities that may receive waste in more than one subcategory due to the significant paperwork involved in detailed tracking of waste receipts. Thus, EPA solicits comments on this approach and ways to implement it while ensuring treatment, rather than dilution.

Members of the CWT industry have expressed concern that wastes may be received from the generator as a ''mixed waste'', i.e., the waste may be classified in more than one subcategory. Using the subcategorization procedure recommended in this section, EPA has had no difficulty classifying each waste receipt in one of the subcategories. Therefore, EPA believes that these ''mixed waste receipt'' concerns have been addressed in the current subcategorization procedure. EPA requests comments on the subcategorization determination procedure in general. Additionally, EPA requests specific information on mixed waste receipts that cannot be classified into a single subcategory using this procedure, as well as information on additional types of waste receipts that EPA should include in Table XIV.E–1 above.

Once a facility's subcategory determination has been made, EPA does not believe the facility should be required to repeat this annual determination process unnecessarily. However, if a single subcategory facility alters its operation to accept wastes from another subcategory or if a mixed waste facility alters its annual operations to change the relative percentage of waste receipts in one subcategory by more than 20 percent, the facility should notify the appropriate permit writer or pretreatment authority and the subcategory determination should be revisited. EPA notes that current permit regulations require notification to the permitting authority when significant changes occur. EPA also recommends that the subcategory determination be reevaluated whenever the permit is reissued, though this would not necessarily require complete characterization of a subsequent year's waste receipts if there were no indication that the make-up of the facility's receipts had significantly changed.

For new CWT facilities, the facility should estimate the percentage of waste receipts expected in each subcategory. Alternatively, the facility could compare the treatment technologies being installed to the selected treatment technologies for each subcategory. After the initial year of operation, the permit writer or pretreatment authority should revisit the facility's subcategory determination and follow the procedure outlined for existing facilities.

F. Implementation for Facilities in Multiple Subcategories

EPA estimates that many facilities in the CWT industry accept wastes in two or more of the subcategories being proposed for regulation here. In other words, the facilities actively accept a variety of waste types. This situation is different from the case in which metal-bearing waste streams may include low-level organics or that oily wastes may include metals due to the origin of the waste stream accepted for treatment.

In implementing this rule for multiple subcategory CWT facilities, the permit writer or pretreatment authority needs to ensure that the CWT facility has an optimal waste management program. First, the control authority should verify that the CWT facility is identifying and segregating waste streams appropriately since segregation of similar waste streams is the first step in obtaining optimal mass removals of pollutants from industrial wastes. Next, the control authority should verify that the CWT facility is employing treatment technologies designed to treat all off-site waste receipts effectively. If a facility accepts for treatment a mixture of waste types, it is still subject to limitations and standards (and monitoring to demonstrate compliance) that reflect the treatment performance achievable for the unmixed streams. In other words, if a facility accepts metal-bearing and oily waste for treatment, the facility must comply with the limitations and standards based on a treatment system which achieves the same pollutant reductions as the model system (dissolved air flotation or secondary gravity separation and dissolved air flotation) to ''adequately treat'' the oily waste for the oils and organics constituents. Similarly, discharges from the metal-bearing stream must comply with the limitations and standards defined by a treatment system that achieves the same reduction as the model system (two stage chemical precipitation and multimedia filtration).

EPA wants to ensure that wastes treated at multiple subcategory facilities are treated to the same level as wastes at single subcategory facilities. Therefore, EPA has costed all CWT facilities for compliance monitoring immediately following treatment of subcategory waste streams.

EPA recognizes, however, that the costs associated with monitoring immediately following treatment of subcategory waste streams can be significant. Additionally, EPA recognizes that requiring compliance monitoring immediately following treatment of subcategory waste streams would require some facilities to reconfigure their facility. Consequently, EPA is additionally proposing a monitoring alternative which would allow compliance monitoring at the discharge point only. Under this alternative, a multi subcategory CWT facility's limitations or pretreatment standards would be determined using the combined waste stream formula (CWF) or ''building block approach.'' Limitations or standards developed through the use of the combined waste stream formula or building block approach are essentially flow-weighted combinations of BPT/BAT/PSES limitations for the applicable subcategories.

The source of information used for calculating ''building block approach'' NPDES categorical limitations for direct dischargers is the ''U.S. EPA NPDES Permit Writer's Manual'' (December 1996, EPA–833–B–96–003). The sources of information that should be used for the CWT point source category for applying the combined waste stream formula in calculating federal pretreatment standards for indirect dischargers are 40 CFR Part 403.6 and ''EPA's Industrial User Permitting Guidance Manual.'' However, for this subcategory, EPA is proposing to amend the CWF to define an individual parameter as having a ''regulated flow'' if the pollutant is limited through BAT (not PSES). For pollutants which are limited through BAT and not PSES, EPA has included an allowance which is

based on the PSES standard if one had been proposed. EPA is proposing this approach, since a pollutant may pass the pass-through test and not be regulated as PSES, but still provide a significant contribution of that pollutant in the combined waste stream. By adopting this approach, EPA can ensure that standards for indirect dischargers are equivalent to standards for direct dischargers, and still allow for any contribution by this pollutant to the combined waste stream.

Chapter 14 of the technical development document provides a more thorough discussion, including specific examples, of the use of the combined waste stream formula or building block approaches. EPA encourages all interested parties to refer to this document and provide comment on its selected and alternative compliance monitoring requirements.

Some facilities, such as those located near auto manufacturers, claim that their waste streams vary significantly for very limited time spans each year, and that they would be unable to meet limitations based on their annual waste receipts during these time periods. In these cases, one set of limits or standards may not be appropriate for the permit's entire period. EPA recommends that a tiering approach be used in such situations. In tiered permits, the control authority issues one set of permits for ''standard'' conditions and another set which take effect when there is a significant change in the waste receipts accepted. ''EPA's Industrial User Permitting Guidance Manual'' (September 1989) recommends that tiered permits should be considered when production rate varies by 20 percent or greater. Since this rule is not production based, EPA recommends that for the CWT industry, tiered permits should be considered when the subcategory determination varies for selected time periods by more than 20 percent. An example when a tiered approach may be appropriate in the CWT industry would be if a CWT facility's major customer (in terms of flow) does not operate for a two week period in December. The CWT facility would not be receiving waste receipts from the generating facility during its two week closure which could greatly alter the relative percent of waste accepted by the CWT facility for the two week period only.

As explained previously, many facilities have waste streams that vary on a daily basis. EPA cautions that the tiering approach should only be used for facilities which have limited, well-defined, ''non-standard'' time periods. A tiered permit should only be considered when the control authority thoroughly understands the CWT facility's operations and when a substantial change in the relative percentages of waste in each subcategory would effect permit conditions.

Finally, as described in Section VII.D, the Agency considered, but is not proposing to establish, and rejected the suggestion to establish, a separate set of limitations for facilities that commingle flows from all subcategories. EPA is concerned that this approach would not address its concerns about co-dilution, instead of treatment, occurring as a result of commingling different types of waste streams. The Agency solicits comment on its approach to multiple subcategory facilities, particularly in regard to ensuring effective treatment. EPA is requesting commenters to supply additional data which they may have that would aid in characterizing the efficiency of waste treatment systems for facilities which commingle waste from multiple subcategories prior to treatment. If adequate data become available, EPA will reconsider this issue for the final rule.

XV. Related Acts of Congress, Executive Orders, and Agency Initiatives

A. Executive Order 12866

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

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

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

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

(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 proposal is a ''significant regulatory action.'' 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.

B. Regulatory Flexibility Act as Amended by the Small Business Regulatory Enforcement Fairness Act

Under the Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA), EPA generally is required to prepare an initial regulatory flexibility analysis (IRFA) describing the impact of a proposed rule on small entities as part of rulemaking. Under section 605(b) of the RFA, if the Administrator certifies that the rule will not have a significant economic impact on a substantial number of small entities, EPA is not required to prepare an IRFA.

Based on its preliminary assessment of the economic impact of regulatory options being considered for the proposed rule, EPA had concluded that the proposal might significantly affect a number of small entities. Accordingly, EPA prepared an IRFA pursuant to section 603(b) of the RFA.

The IRFA is discussed at Section XI.L and found in Chapter 8 of the ''Economic Analysis of Proposed Effluent Limitations Guidelines and Standards for the Centralized Waste Treatment Industry.'' As described above, while there is not a large number of small businesses in absolute terms that would be subject to the proposal, a large percentage of those that would be (forty-five out of 63) would incur annual costs under the proposal greater than one percent of sales (that is, annual costs as a percentage of annual revenue). Somewhat fewer (twenty-three firms) would have costs exceeding three percent of sales. EPA notes that this analysis does not account for the extent that a company can pass the additional costs of compliance on to their customers, and so may overstate the impacts of the proposed rule.

Pursuant to the RFA as amended by SBREFA, EPA convened a Small Business Advocacy Review panel as described above at VI.H. Section VI.H. provides detail on the purpose of the panel and summarizes the issues raised by the panel. The panel's findings are presented in the ''Final Report of the SBREFA Small Business Advocacy Review Panel on EPA's Planned Proposed Rule for Effluent Limitations Guidelines and Standards for the Centralized Waste Treatment Industry—January 23, 1998.'' (This document is included in the public record). The panel made several recommendations that are reflected in today's proposal. Because the panel discussions and recommendations addressed integral

analyses and decision factors that formed the basis of today's proposal, their discussions and recommendations have been identified throughout this notice. In addition, the following discussion summarizes the panel's recommendations, describes EPA's actions, and identifies where the issues are discussed in today's notice.

(a) *EPA should solicit comment on the number of small entities that would be subject to this rule.* EPA solicited names and addresses of additional CWT facilities in the specific data and comments solicitation section, XVI.B.

(b) *EPA should consider alternatives to reduce monitoring costs.* EPA today solicits comments on an alternative monitoring scheme in which facilities may either (1) monitor for all pollutants as regulated today, or (2) monitor for the conventional, metal parameters, and an indicator parameter such as hexane extractable material (HEM) for the organic pollutants. EPA also solicits comments on recommending reduced monitoring frequencies for small businesses to alleviate economic impacts. These issues, as well as potential bases for identifying small businesses for purposes of providing monitoring relief, are discussed in more detail in IX.D and in the comment solicitation section, XVI.B.

(c) *EPA should consider ways to streamline the FDF variance process for small businesses.* EPA considered ways to streamline the FDF variance process for small businesses to the extent permitted by the Clean Water Act. One option considered would have allowed facilities to submit a ''group'' FDF request. However, EPA determined that the Clean Water Act requires that facilities submit FDF requests on a facility-specific basis. FDF variances are discussed in detail in XIV.C.1 of today's notice.

(d) *EPA should consider less costly technology, specifically, emulsion breaking and secondary gravity separation for the oils subcategory.* EPA is concerned that emulsion breaking and secondary gravity separation may not achieve acceptable pollutant removals as evidenced by EPA's limited sampling data for facilities employing this technology. EPA is requesting comment and additional data on this issue. This issue is discussed in greater detail in IX.B.1.ii. In addition, for indirect dischargers in all three subcategories, EPA is proposing pretreatment standards based on the least expensive technology option considered. In fact, PSES for the oils subcategory are based on less costly and less effective technology than the oils subcategory BAT limitations. The less costly and effective technology was selected for the basis of PSES largely due to small business impact concerns. Finally, in Section XVI.B, EPA solicits comments on alternative treatment technologies that would accomplish the stated objectives of the CWA and minimize any significant economic impact on small entities.

(e) *EPA should include a full and balanced discussion of possible small business relief measures.* In addition to the monitoring alternatives discussed above and the selection of the less costly PSES technology basis, EPA also considered several other regulatory alternatives to provide relief for small businesses. These alternatives, all of which involve different bases for exemptions, and the results of EPA's analyses are discussed in detail in XI.L Additionally, EPA solicits comment in IV.S and XVI.B on regulatory alternatives for small businesses. Specifically, EPA solicits comments on whether exclusions are warranted for any portion of this industry.

(f) *EPA should consider the degree of flexibility available under the Clean Water Act to select a cost-effective treatment option on which to base new source standards for the metals subcategory.* Under the Clean Water Act, in establishing NSPS, EPA is directed to select the most stringent controls attainable through the application of the best control technology for all pollutants. In addition, EPA is directed to take into consideration the cost of achieving the effluent reduction and any non-water quality environmental impacts and energy requirements. EPA does not consider the increased cost of NSPS for the metals subcategory to be a barrier to entry for new sources in that subcategory (see Section XI.H). However, EPA's technology basis for the proposed limitations is closely tied to its preliminary conclusion that facilities will choose to recover and reuse metals. In the event that EPA concludes that new sources would not generally do so, EPA will promulgate NSPS based on the proposed BAT technology basis. EPA solicits comments on the technology basis selected for NSPS for the metals subcategory and its barrier to entry analysis in Section XI.H.

(g) *EPA should identify any limitations of the pollutant loadings estimate methodologies.* Based on recommendations by panel members, EPA reviewed its loadings methodologies, specifically its use of non-detects and its modeling procedures for assigning current performance estimates to oils subcategory facilities. Section X.C of today's notice discusses all of the pollutant loading methodological issues raised during the SBREFA panel and requests comment on them. Additionally, each of the issues is discussed in detail in the technical development document. Finally, in XVI.B, EPA solicits wastewater monitoring data, current performance information, and current pollutant loadings from the treatment and/or recovery of oily wastes, wastewaters and/or used materials.

(h) *EPA should solicit additional data and perhaps itself perform additional sampling to determine if an adequate basis exists for distinguishing between hazardous and non-hazardous flows.* EPA is not proposing a regulatory distinction based on whether a facility has a RCRA permit because its current analyses do not support such a distinction. This issue is discussed further in Section IV.T. As discussed in VI.C, following the completion of the SBREFA panel, EPA obtained grab samples of non-hazardous oily wastewaters from 10 additional oils facilities. Additionally, in today's notice, EPA solicits additional analytical data on the pollutants and concentration of pollutants in non-hazardous CWT waste receipts and hazardous CWT waste receipts. While the analytical results of the recent sampling episodes are in the appendix of the technical development document, EPA has not included these results in the analyses presented today. EPA will reconsider this issue based on the recent sampling data and any analytical data submitted during the comment period prior to promulgation.

C. 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 the final rule with an explanation of 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 the proposed rule, if promulgated, would not contain a Federal mandate that will 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. Accordingly, today's proposal is not subject to the requirements of sections 202 and 205 of the UMRA. EPA has determined that this proposal contains no regulation requirements that might significantly or uniquely effect small governments, and, thus, is not subject to the requirements of section 203 of UMRA. The proposal itself, if promulgated, would not establish requirements that would apply to small governments. Any new costs that may result would arise from previously promulgated regulatory requirements, not promulgation of CWT limitations and standards. EPA has, however, sought meaningful and timely input from the private sector, states, and small governments on the development of this notice. Prior to issuing this proposed rule, EPA met with members of private sector as discussed earlier in the preamble.

As noted, EPA has determined that the requirements being proposed today will not significantly or uniquely affect small governments, including tribal governments. EPA recognizes that small governments may own or operate POTWs that will need to enter into pretreatment agreements with the indirect dischargers of the CWT industry that would be subject to this proposed rule. However, EPA currently estimates that the added costs of entering into or modifying existing pretreatment agreements will be minimal. The main costs resulting from this proposed rule will fall upon the private entities that own and operate CWT facilities.

D. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, EPA must submit an information collection request covering information collection requirements in proposed rules to the Office of Management and Budget (OMB) for review and approval. OMB has previously approved information collection requirements for CWA direct dischargers to comply with their NPDES permits and for indirect dischargers to comply with pretreatment requirements. Burden estimates for direct dischargers to comply with this rule are contained in the ''National Pollutant Discharge Elimination System (NPDES)/Compliance Assessment/ Certification Information'' ICR (OMB control no. 2040–0110). Burden estimates for indirect discharging facilities to comply with 40 CFR Part 403 are included in the ''National Pretreatment Program (40 CFR Part 403)'' ICR (OMB control no. 2040–0009).

E. National Technology Transfer and Advancement Act

Under § 12(d) of the National Technology Transfer and Advancement Act (NTTAA), the Agency is required to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, business practices, etc.) that are developed or adopted by voluntary consensus standards bodies. Where available and potentially applicable voluntary consensus standards are not used by EPA, the Act requires the Agency to provide Congress, through the Office of Management and Budget (OMB), an explanation of the reasons for not using such standards. The following discussion summarizes EPA's response to the requirements of the NTTAA.

EPA performed a search of the technical literature to identify any applicable analytical test methods from industry, academia, voluntary consensus standard bodies, and other parties that could be used to measure the analytes in today's proposed rulemaking. EPA's search revealed that there are consensus standards for many of the analytes specified in the tables at 40 CFR 136.3. Even prior to enactment of the NTTAA, EPA has traditionally included any applicable consensus test methods in its regulations. Consistent with the requirements of the CWA, those applicable consensus test methods are incorporated by reference in the tables at 40 CFR 136.3. The consensus test methods in these tables include American Society for Testing Materials (ASTM) and Standard Methods.

Today's proposal would require dischargers to monitor for up to 18 metals, 18 organics, BOD_5, total cyanide, hexavalent chromium, TSS, and Oil and Grease (HEM). Examples of pollutants with consensus methods promulgated by reference in today's rule include the metals, total cyanide, BOD_5, TSS, and some organic pollutants such as fluoranthene and 2,4,6-trichlorophenol. In addition, EPA is developing additional data for certain nonconventional pollutants not included in the tables at 40 CFR 136.3 in support of the centralized waste treatment rule and the relevant analytical methods are discussed in section VI.D of this preamble. The pollutants for which additional data are being gathered include acetophenone, aniline, pyridine, o-cresol, p-cresol, 2,3-dichloroaniline, and benzoic acid. EPA notes that no applicable consensus methods were found for those pollutants. EPA plans to approve use of test methods for these pollutants, including any applicable consensus methods, if available, in conjunction with the promulgation of the CWT final rule. Commenters should identify any potentially applicable voluntary consensus standards for EPA's consideration.

F. Executive Order 13045: Protection of Children from Environmental Health Risks and Safety Risks

Executive Order 13045 (62 FR 19885, April 23, 1997) applies to any rule that (1) is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health risk or safety risk that the Agency has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to E.O. 13045 because it is not an economically significant rule as defined under Executive Order 12866. However, EPA did evaluate children's health effects (specifically, impaired IQ) in its analysis of environmental benefits (see XII.B).

G. The Edible Oil Regulatory Reform Act

The Edible Oil Regulatory Reform Act, Public Law 104–55, requires most federal agencies to differentiate between, and establish separate classes for (1) animal fats and oils and greases, fish and marine mammal oils, and oils of vegetable origin, and (2) other greases and oils, including petroleum, when issuing or enforcing any regulation or establishing any interpretation or guideline relating to the transportation, storage, discharge, release, emission, or disposal of a fat, oil, or grease.

The Agency believes that vegetable oils and animal fats pose similar types of threats to the environment as petroleum oils when spilled to the environment (62 FR 54508 Oct. 20, 1997).

The deleterious environmental effects of spills of petroleum and non-petroleum oils, including animal fats and vegetable oils, are produced through physical contact and destruction of food sources (via smothering or coating) as well as toxic contamination (62 FR 54511). However, the permitted discharge of CWT wastewater containing residual and dilute quantities of petroleum and non-petroleum oils is significantly different from an uncontrolled spill of pure petroleum or non-petroleum oil products.

CWT facilities that would be subject to the proposal do not typically accept wastes with appreciable amounts of animal fats and oils, etc. The exception are grease trap wastes. Today's proposal would not apply to that portion of wastewater treated at CWT facilities that represents grease trap wastes.

H. Executive Order 12875: Enhancing Intergovernmental Partnerships

Under Executive Order 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 12875 requires EPA to provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected State, local and tribal governments, the nature of their concerns, any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local and tribal governments ''to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates.''

Today's proposed rule would not, if promulgated, create a mandate on State, local, or tribal governments. The rule does not impose any enforceable duties on these entities. The proposal would establish requirements that apply to directly and indirectly discharging CWT facilities and not to State, local, or tribal governments. Accordingly, the requirements of section 1(a) of Executive Order 12875 would not apply to this rule.

I. Executive Order 13084: Consultation and Coordination With Indian Tribal Governments

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments ''to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities.''

Today's proposed rule would not, if promulgated, significantly or uniquely affect the communities of Indian tribal governments or impose substantial direct compliance costs on those communities. The proposal would establish requirements that apply to directly and indirectly discharging CWT facilities and not to tribal governments or their communities. Accordingly, the requirements of Executive Order 13084 would not apply to this rule.

XVI. Solicitation of Data and Comments

A. Introduction and General Solicitation

EPA invites and encourages public participation in this rulemaking. The Agency asks that comments address any perceived deficiencies in the record of this proposal and that suggested revisions or corrections be supported by data.

The Agency invites all parties to coordinate their data collection activities with EPA to facilitate mutually beneficial and cost-effective data submissions. EPA is interested in participating in study plans, data collection and documentation. Please refer to the ''For Further Information'' section at the beginning of this preamble for technical contacts at EPA. Comments on the proposal must be received by [60 days after publication in Federal Register].

B. Specific Data and Comment Solicitations

1. Estimation of Industry Size

Based on data gathered from various sources for today's proposal, EPA has estimated there are 205 facilities in the CWT industry. EPA solicits general comments on this estimate as well as specific information on the number, name, location, and company information (particularly size status) of facilities within the industry (See Section V.A and Section VI). In addition, EPA is aware that an emerging activity at many CWT facilities is the recovery of used glycols. EPA requests information on CWT facilities that are performing this service alone or in combination with other CWT activities.

2. Applicability to Facilities Subject to 40 CFR (Parts 400 through 471)

As described in Section IV.B, EPA is today proposing to include within the scope of the CWT rule wastewater received from off-site (and commingled for treatment with on-site wastewater) at facilities currently subject to limitations or standards unless the wastes received from off-site for treatment would be subject to the limitations or standards as the on-site generated wastes.

Alternatively, EPA is considering an option that allows (subject to permit writer's discretion) manufacturing facilities who treat off-site wastes to meet all categorical limitations and standards that would otherwise apply to the off-site wastewater and to set limitations and pretreatment standards using the ''combined waste stream formula'' or ''building block approach'' as modified by today's notice. EPA envisions that the second alternative

would be preferable for facilities that only receive continuous flows of process wastewaters with relatively consistent pollutant profiles from a limited number of customers. The decision to base limitations in this manner would be at the permit writers' discretion only. EPA solicits comment on this alternative as well as the application of the CWT rule to manufacturing facilities in general.

3. Applicability to Manufacturing Facilities That Are Not Subject to 40 CFR (Parts 400 through 471)

EPA has not established effluent limitations guidelines or pretreatment standards for all manufacturing industries. Under EPA regulations, the permit writer would develop BPJ limits for such facilities. However, like the facilities described in Solicitation 2 above, some of these may accept off-site wastewater that is commingled for treatment with on-site process wastewater. These off-site wastewaters may be subject to existing guidelines and standards. EPA's present thinking is that, with respect to such wastewater, the facility would be a CWT facility and the associated wastewater, subject to CWT limits. Its on-site wastewater would be subject to BPJ limits. Alternatively, applying either a building block or combined waste stream formula approach, on-site wastewater would be subject to BPJ limits or standards and the off-site categorical wastewater subject to categorical limits. The Agency solicits comment on how it should treat such facilities. (See discussion in Section IV.B.).

4. Zero Discharge Requirement for Facilities Engaged in High Temperature Metals Recovery

EPA's data show that high temperature metals recovery (HTMR) operations generate no process wastewater. Accordingly, EPA excluded HTMR recovery operations from the scope of the CWT rule. EPA is also considering whether this rule, when promulgated, should include a subcategory for HTMR operations with a zero discharge requirement. EPA is requesting comment on such an approach and specifically seeks any data on facilities that may produce a process wastewater in their HTMR operations.

5. Used Oil Filter Recycling

EPA's data show that used oil filter recycling operations generate no process wastewater. Therefore, EPA excluded used oil filter recycling operations from the scope of the CWT rule as proposed today. EPA is also considering whether this rule, when promulgated, should include a subcategory for used oil filter recycling with a zero discharge requirement for such operations. EPA is requesting comment on such an approach and the number of facilities engaged in this activity. EPA specifically seeks any data on any such facilities that may produce a process wastewater in their operations.

6. Stabilization

EPA's data show that waste solidification/stabilization operations are dry and do not produce a wastewater. As such, stabilization/solidification processes are not subject to the CWT rule as proposed today. EPA is also considering whether this rule, when promulgated, should include a subcategory for stabilization operations with a zero discharge requirement. EPA is requesting comment on such an approach and specifically seeks any data on facilities that may produce a process wastewater in their stabilization operations.

7. Other Applicability Issues

In addition to the applicability issues discussed above, EPA solicits comments on each of the issues discussed in IV as well as any other applicability issues that are not specifically addressed in today's notice.

8. Mixed Waste Subcategory

Based on comments on the original proposal, for today's proposal, EPA considered a fourth subcategory, a mixed waste subcategory, that would apply to facilities that accept wastes in multiple subcategories. Limitations and pretreatment standards for this subcategory would combine pollutant limitations from all three subcategories, selecting the most stringent value where they overlap. EPA has chosen, however, not to propose a mixed waste subcategory. EPA is eager to ensure that mixed wastes receive adequate treatment. In many cases, facilities that accept wastes in multiple subcategories do not have treatment in place to provide effective treatment of all waste receipts. EPA solicits comments on ways to develop a ''mixed waste subcategory'' while ensuring treatment rather than dilution (See discussion in Section VII.D).

Alternatively, EPA considered an approach which would allow facilities to round the relative percent of wastes in each subcategory to the nearest five percent (by volume). However, EPA is concerned that this approach may allow facilities to discharge large quantities of untreated pollutants on a mass basis, particularly from facilities with large discharge flows. Therefore, for today's notice, EPA is not proposing this approach. EPA solicits comments on this approach and ways to implement it while ensuring treatment, rather than dilution.

Finally, EPA requests additional data that would aid in characterizing the efficiency of waste treatment systems that commingle waste from multiple subcategories prior to treatment.

9. Characterization of Wastewater Resulting From Dissolved Air Flotation

EPA solicits data on the chemical composition of wastewaters resulting from the effective treatment of CWT wastewaters using dissolved air flotation (DAF). EPA is particularly interested in obtaining data on DAF systems which are designed and operated to effectively remove oil and grease and TSS. All of the DAF systems studied by EPA were used at facilities that discharge to POTWs and, therefore, optimal control of oil and grease and TSS is not required. In addition, EPA solicits data on the effectiveness of dissolved air flotation systems in general. As such, EPA solicits data on the composition of CWT wastewaters entering and leaving dissolved air flotations systems. (See discussion in Section IX.B.1.b.ii).

10. Economic Achievability of Oils Subcategory PSES Options

As detailed in IX.B of today's notice, while EPA generally sets the technology basis for PSES equivalent to BAT, EPA is proposing a less stringent option for PSES for the oils subcategory than that established for BAT based on economic achievability concerns. EPA requests comments on whether any treatment technology basis more stringent, albeit more expensive, than dissolved air flotation is economically achievable.

11. Use of Indicator Parameters for Organic Pollutants

EPA recognizes that monitoring costs represent a significant portion of the compliance costs of this proposed rule. This is particularly true for facilities in the oils subcategory, many of which are owned by small businesses. The majority of the costs associated with EPA's recommended monitoring scheme are for organic pollutants. As such, EPA is considering an alternative to allow facilities to either (1) monitor for all pollutants as regulated today, or (2) monitor for the conventional and metal parameters and an indicator parameter such as hexane extractable material (HEM) or silica gel treatment—hexane extractable material (SGT–HEM) for the organic pollutants. EPA solicits

comment on this alternative, the appropriateness of HEM or SGT–HEM as an indicator parameter, alternative indicator parameters, and the use of indicator parameters in general. (See Section IX.D).

12. Reduced Monitoring Frequencies for Facilities Owned by Small Businesses

EPA recognizes that monitoring costs represent a significant share of the compliance costs of this proposed rule, particularly for small businesses. EPA is considering offering facilities an alternative monitoring scheme involving indicator parameters to alleviate some of the costs associated with monitoring. In the event that a suitable indicator parameter cannot be found, EPA is also considering recommending reduced monitoring frequencies for small businesses to alleviate economic impacts.

As detailed in Section IX.D, under a reduced monitoring alternative, two sets of limitations and pretreatment standards would be promulgated. Although the long-term average for both sets of limitations would be based upon the same technology and same long-term average performance, the monthly average limitations calculated based upon reduced monitoring assumptions would be higher (less stringent). EPA is concerned that facilities may target the monthly average as the basis for their design and operation of pollution control and treatment to comply with the regulation, rather than the long-term average that formed the basis of the limitations. One way to ensure that the appropriate level of control is not jeopardized in favor of reduced monitoring costs would be to allow the alternative limitations to apply only when monitoring is conducted at a lower frequency than assumed in the development of the limitations that apply to non-small business facilities. EPA solicits comment on this and other alternatives to ensure that the monitoring relief provides relief without jeopardizing environmental performance. EPA also solicits comment on the likelihood that permitting authorities would follow EPA recommendations regarding reduced monitoring frequencies for small-business owned and operated facilities.

Finally, EPA solicits comments on potential bases for defining small businesses for purposes of this monitoring relief. (See discussion in Section IX.D).

13. Loadings Methodology

Section X.C and Chapter 12 of the technical development document detail the methodologies EPA used to estimate baseline loadings, post-regulation loadings, and pollutant removals. EPA solicits comment on these methodologies. Specifically, EPA requests comment on its representation of ''non-detect'' data, its method of imputing data, and the modeling procedures used for estimating baseline pollutant loadings for the oils subcategory.

14. Regulatory Costs

Section X.B, Chapter 11 of the technical development document, and the ''Detailed Costing Document for the Centralized Waste Treatment Industry'' discuss EPA's estimates of the cost for CWT facilities to achieve the effluent limitations and standards proposed today. EPA solicits comment on all aspects of the methodology and data used to estimate these compliance costs.

15. Cost Estimates for Direct Dischargers in Oils Subcategory

For direct dischargers, EPA's cost analysis was not able to distinguish between Option 8 and Option 9. All of the direct discharging facilities in this subcategory for which EPA estimated costs currently employ rather extensive treatment (relative to the rest of the facilities in the oils subcategory), but the treatment technologies for the majority of the facilities are different from the technology basis for Option 8 or Option 9. While EPA believes these treatment technologies would allow these facilities to comply with either option for many pollutants, none of these in-place treatment technologies would achieve significant removals of metals pollutants. Therefore, for both options, EPA included costs of installing and operating dissolved air flotation. EPA believes its estimates (for both options) are, in fact, overestimates. EPA does, however, believe that meeting the more stringent Option 9 will result in additional removals while the cost differences will be negligible. EPA solicits comments on its conclusion as well as quantitative information on the cost differences for such facilities.

16. Cost Estimates for Direct Dischargers in Organics Subcategory

EPA believes that all direct discharging facilities in the organics subcategory currently employ equalization and biological treatment systems. EPA has assumed that all facilities which currently utilize equalization and biological treatment will be able to meet the BPT limitations without additional capital or operating costs. While EPA recognizes that some facilities may incur increased operating costs associated with the proposed limits, EPA believes these increases are negligible and has not quantified them. EPA solicits comments on its assumptions for these facilities as well as specific data which would aid in quantifying these increases.

17. Baseline Closures

Based on information obtained in the Waste Treatment Industry Questionnaire, at the time of the original proposal EPA estimated that approximately 20 percent of the commercial CWT facilities were unprofitable. Through telephone calls to these facilities, EPA found that many of these facilities were still in operation three years later, even though they continued to be unprofitable. The continued operation of such a large share of unprofitable facilities in the industry raises a significant issue. It suggests that some of the traditional tools of economic analysis used to project potential closures in an industry due to costs of compliance may not accurately predict real world behavior in a market where owners have historically demonstrated a willingness to continue operating unprofitable facilities. Therefore, for this proposal, EPA has not eliminated baseline closures from its analysis of economic impacts. EPA solicits comments on this approach and on alternative methods that could be used to identify baseline closures for this industry (See Section XI.B).

18. Market Model Approach

For this industry, EPA developed a market model to predict the impact of the regulation on the industry. Markets are defined as monopoly, duopoly, or perfect competition, depending on the number of facilities. Any market with more than three facilities is defined as perfectly competitive. This approach may overstate impacts in markets with one or two facilities, and may understate impacts on markets with three to ten facilities. EPA solicits comments on this approach and on appropriate ways to determine levels of competition for CWT markets (See XI.C.2).

19. SBREFA Panel Recommendations

In today's notice, VI.H. and XV.B detail the Small Business Regulatory Enforcement Fairness Act (SBREFA) and the recommendations of the SBREFA Small Business Advocacy Review panel. Additional references to the panel discussions and recommendations have been identified throughout this notice. In particular, Section XV.B describes many of the panel's recommendations and

summarizes EPA's response. EPA solicits data and comments on all issues raised by the panel members.

20. Regulatory Alternatives for Small Businesses

Because EPA projects significant costs for many CWT facilities owned by small firms, EPA analyzed several alternatives which would exempt various portions of the industry.

EPA's primary concern with an exclusion based on these analyses is that they represent one snapshot of a rapidly changing industry. EPA is concerned that if any segment of the industry were excluded, the segment might quickly expand as a result of the exclusion, leading to much greater discharges within a few years than predicted by existing data. In addition, EPA believes that most CWT facilities have substantial unused capacity.

EPA solicits comments on a small business exclusion that would minimize impacts on small firms for which projected compliance costs represent a significant share of costs or net income, or, more generally, any regulatory alternative that would minimize the economic impacts on small businesses. EPA is particularly interested in obtaining information on any less costly, but effective, treatment technology alternatives. Additionally, EPA solicits information on the current amount of unused capacity in the CWT industry (See Section XI.L).

21. Waste Receipt Characterization

As detailed in Sections VIII.B, industry has provided very little information on the concentration of pollutants in their waste receipts. EPA requests qualitative and quantitative data on a subcategory basis on the types of waste accepted for treatment as well as constituents found in the incoming wastes, wastewaters, and used materials. EPA specifically requests quantitative data on waste receipts from the organics subcategory that have not been commingled with waste receipts from other subcategories.

22. Characterization of Wastewater

EPA is interested in the pollutant levels in wastewater resulting from treatment processes currently in place at CWT facilities including the technologies discussed in this preamble and any other effective technologies. EPA is particularly interested in the pollutant levels currently being discharged in the treated final effluent resulting solely from the treatment of organics wastes and wastewaters at organics facilities. Specifically, EPA requests discharge monitoring data from treatment trains that treat wastes from a sole subcategory prior to commingling with wastewaters from other subcategories, non-contaminated stormwater, or other sources of water. As supporting information for this information, EPA requests the concentrations of pollutants in waste receipts and in intermediate waste streams that correspond to the reporting period of the final effluent discharges.

EPA also requests detailed information about the treatment system at the facility. To determine autocorrelation in the data, EPA requests final effluent data that contain many measurements for each pollutant for every single day over an extended period of time. (When data are said to be positively autocorrelated, it means that measurements taken at different time periods are similar. See discussion in IX.E)

Prior to submitting information about the wastewater currently in place at your CWT facility, please discuss your data submission with one of the technical contacts in the ''For Further Information'' section at the beginning of this preamble.

23. RCRA Classification

EPA's database contains information that was collected at facilities which treat hazardous waste only, non-hazardous waste only, and a mixture of hazardous and non-hazardous wastes. EPA solicits comments and data on the pollutants and concentration of pollutants in non-hazardous CWT waste receipts and in hazardous CWT waste receipts.

24. Waste Receipt Subcategorization Determination Procedure

EPA solicits comment on the subcategorization determination procedure outlined in XIV.E of this notice. Specifically, EPA requests data on waste receipts that have not been subcategorized and mixed waste receipts that can not be classified into a single subcategory using the recommended approach.

25. Facility Subcategorization Determination

In developing today's notice, for ease of implementation, EPA considered a facility subcategorization approach which would allow CWT facilities to round the relative percentage of wastes in each subcategory to the nearest five percent (by volume). EPA solicits comments on this approach and ways to implement it while ensuring treatment, rather than co-dilution (see XIV.E).

26. Status of Companies Owning CWT Facilities

EPA had to make a number of assumptions when formulating its company-level profiles, as detailed in Section XI.B EPA solicits comments on these assumptions.

27. New Source Performance Standards Selection for Metals Subcategory

In establishing NSPS, EPA is directed to select the technology basis that represents the most stringent controls attainable through the application of the best control technology for all pollutants. EPA is also directed to take into consideration the cost of achieving the effluent reduction and any non-water quality environmental impact. In today's proposal, EPA proposed limitations and standards for the metals subcategory based on the metals option 3 technology. The model facility for metals Option 3 recovers metals and sells them to a smelter for reuse. EPA solicits comments and data on the market for recovered metals and revenue generated from the sale of recovered metals. EPA also solicits comments on the extent to which new sources may chose to recover and reuse metals through the Option 3 technology basis or simply comply with the limitations and continue to dispose of their metal sludges in a landfill.

Finally, for today's proposal, in evaluating NSPS for the metals subcategory, EPA used a ''barrier to entry'' analysis. EPA has traditionally evaluated different technologies for NSPS by testing whether the cost of a particular technology is so great as to act as a barrier to the entry of new firms into the business. EPA has tentatively determined that the proposed technology basis will not pose a barrier to entry. However, as discussed further in Section IX.B, EPA also considered another technology basis that would remove only slightly less pollutants at significantly lower costs. EPA solicits comment on its technology basis selected for NSPS for the metals subcategory.

28. Transfer of Oil and Grease Limitations From Industrial Laundries or TECI

As discussed in IX.B, EPA has reviewed data from the Industrial Laundries and the TECI rulemaking for dissolved air flotation systems. For similar influent oil and grease concentrations, these systems removed oil and grease to levels well below those achieved at the DAF systems sampled for development of this regulation. Given the similarities in the oil and

grease levels of these wastes, EPA is considering whether use of this data is appropriate in determining CWT limitations. EPA requests comments on this issue as well as data generally on the efficacy of dissolved air flotation systems in treating CWT wastewaters.

29. Group FDF Requests

The Agency requests comment on how to modify its existing regulation to provide additional flexibility to small businesses in obtaining FDF variances in light of the specific statutory requirement that each individual discharger establish the fundamental difference in its operations through information submitted during development of the limitations and standards or show there was no opportunity to submit such information. It would be helpful if commenters supplied specific suggested changes to the regulatory language found at 40 CFR 125.32 and 403.13.

30. Small Business Identification

EPA defines small CWT companies as those having sales less than $6 million—the Small Business Administration definition of a small business for SIC Code 4953, Refuse Systems. Industry representatives have indicated that revenue would be a suitable criterion to identify small businesses for purposes of any small business regulatory alternatives (including reduced monitoring) and that facilities would be comfortable providing firm-level economic information to the federal, state, or local permitting authority as long as confidentiality is protected. EPA solicits comment on this basis, particularly from CWT facilities that are owned by a parent company, as well as alternative bases for identifying small businesses.

31. Effect of TDS on Chemical Precipitation

As detailed in Section VI.I, EPA conducted a laboratory study designed to determine the effect of TDS levels on chemical precipitation treatment performance. The resulting data and analysis are included in the record. EPA solicits comments on this data and analyses. Additionally, EPA consulted various literature sources to obtain information about the effect of TDS levels on chemical precipitation. EPA found no data or information which related directly to TDS effects on chemical precipitation. EPA solicits comment on and copies of any such literature sources.

Finally, the facility which forms the technology basis for Metals Option 4 (see Section IX.B.1.b.i) had high influent levels of TDS in their wastewaters during EPA's sampling episode. Consequently, the proposed BPT, BAT, and PSES limitations and standards can be achieved by all metals subcategory facilities, even those with high levels of TDS. EPA solicits comment and any data commenters may have bearing on this issue.

32. Benefits of Lead Health Risk Reduction

EPA quantified and monetized the benefits of health risk reductions from lower discharges of lead using methodologies developed in the Retrospective Analysis of the Clean Air Act (Final Report to Congress on Benefits and Costs of the Clean Air Act, 1970 to 1990; EPA 410–R–97–002). This exercise required a number of assumptions. EPA solicits comment on the methodology used to calculate lead benefits.

33. Elasticity Assumptions Used in the Economic Model

As discussed in Section XI.C, EPA chose specific elasticity parameters for use in the economic model based on reasoning that it believes to be sound and on the available literature. EPA solicits comments on the elasticity assumptions and, in particular, requests additional studies that provide elasticity estimates. EPA prefers studies that have been peer-reviewed, but is interested in any well-done study. EPA also requests data that could be used to calculate an elasticity and has placed a detailed description of data requirements in the record.

34. Variability Factors

Today's proposal discusses two different approaches to calculate variability factors—one based on pollutant variability factors and one based on group variability factors. The pollutant variability factor is the average of the variability factors from facilities with the model technologies for the option, and the group variability factor is the median of the pollutant variability factors from pollutants with similar chemical structures. In today's proposal, EPA generally used the product of the group variability factor and the pollutant long-term average in calculating each pollutant limitation. The calculation of variability factors is discussed in more detail in Section IX.E. EPA solicits comment on whether the pollutant or group variability factors or some combination should be used in calculating the limitations to accurately reflect the variability of the pollutants discharged by the CWT industry.

Appendix A: Definitions, Acronyms, and Abbreviations Used in This Notice

ADMINISTRATOR—The Administrator of the U.S. Environmental Protection Agency.

AGENCY—The U.S. Environmental Protection Agency.

AVERAGE MONTHLY DISCHARGE LIMITATION-The highest allowable average of ''daily discharges'' over a calendar month, calculated as the sum of all ''daily discharges'' measured during the calendar month divided by the number of ''daily discharges'' measured during the month.

BAT—The best available technology economically achievable, applicable to effluent limitations to be achieved by July 1, 1984, for industrial discharges to surface waters, as defined by section 304(b)(2)(B) of the CWA.

BCT—The best conventional pollutant control technology, applicable to discharges of conventional pollutants from existing industrial point sources, as defined by section. 304(b)(4) of the CWA.

BPT—The best practicable control technology currently available, applicable to effluent limitations to be achieved by July 1, 1977, for industrial discharges to surface waters, as defined by section 304(b)(1) of the CWA.

CENTRALIZED WASTE TREATMENT FACILITY—Any facility that treats and/or recovers or recycles any hazardous or non-hazardous industrial waste, hazardous or non-hazardous industrial wastewater, and/or used material from off-site.

CENTRALIZED WASTE TREATMENT WASTEWATER—Wastewater generated as a result of CWT activities. CWT wastewater sources may include, but are not limited to: liquid waste receipts, solubilization water, used oil emulsion-breaking wastewater, tanker truck/drum/roll-off box washes, equipment washes, air pollution control scrubber blow-down, laboratory-derived wastewater, on-site industrial waste combustor wastewaters, on-site landfill wastewaters, and contaminated stormwater.

CLEAN WATER ACT (CWA)—The Federal Water Pollution Control Act Amendments of 1972 (33 U.S.C. Section 1251 *et seq.*), as amended by the Clean Water Act of 1977 (Pub. L. 95–217), and the Water Quality Act of 1987 (Pub. L. 100–4).

CLEAN WATER ACT (CWA) SECTION 308 QUESTIONNAIRE—A questionnaire sent to facilities under the authority of Section 308 of the CWA, which requests information to be used in the development of national effluent guidelines and standards.

COMMERCIAL FACILITY—A CWT facility that accepts off-site generated wastes, wastewaters, or used material from other facilities not under the same ownership as this facility. Commercial operations are usually made available for a fee or other remuneration.

CONTAMINATED Stormwater—Stormwater which comes in direct contact with the waste or waste handling and treatment areas.

CONVENTIONAL POLLUTANTS—Constituents of wastewater as determined by Sec. 304(a)(4) of the CWA, including, but not limited to, pollutants classified as

biochemical oxygen demand, total suspended solids, oil and grease, fecal coliform, and pH.

CWT—Centralized Waste Treatment

DAILY DISCHARGE—The discharge of a pollutant measured during any calendar day or any 24-hour period that reasonably represents a calendar day.

DETAILED MONITORING QUESTIONNAIRE (DMQ)—Questionnaires sent to collect monitoring data from 20 selected CWT facilities based on responses to the Section 308 Questionnaire.

DIRECT DISCHARGER—A facility that discharges or may discharge treated or untreated wastewaters into waters of the United States.

EFFLUENT LIMITATION—Any restriction, including schedules of compliance, established by a State or the Administrator on quantities, rates, and concentrations of chemical, physical, biological, and other constituents which are discharged from point sources into navigable waters, the waters of the contiguous zone, or the ocean (CWA Sections 301(b) and 304(b)).

EXISTING SOURCE—Any facility from which there is or may be a discharge of pollutants, the construction of which is commenced before the publication of the proposed regulations prescribing a standard of performance under Sec. 306 of the CWA.

FACILITY—All contiguous property owned, operated, leased, or under the control of the same person or entity

FUEL BLENDING—The process of mixing waste, wastewater, or used material for the purpose of regenerating a fuel for reuse.

HAZARDOUS WASTE—Any waste, including wastewater, defined as hazardous under RCRA, TSCA, or any state law.

HIGH TEMPERATURE METALS RECOVERY (HTMR)—A metals recovery process in which solid forms of metal containing materials are processed with a heat-based pyrometallurgical technology to produce a remelt alloy which can then be sold as feed material in the production of metals.

IN-SCOPE—Facilities and/or wastewaters that EPA proposes to be subject to this guideline.

INDIRECT DISCHARGER—A facility that discharges or may discharge wastewaters into a publicly-owned treatment works.

INTERCOMPANY—Facilities that treat and/or recycle/recover waste, wastewater, and/or used material generated by off-site facilities not under the same corporate ownership. These facilities are also referred to as ''commercial'' CWT facilities.

INTRACOMPANY TRANSFER—Facilities that treat and/or recycle/recover waste, wastewater, and/or used material generated by off-site facilities under the same corporate ownership. These facilities are also referred to as ''non-commercial'' CWT facilities.

LTA (Long-Term Average)—For purposes of the effluent guidelines, average pollutant levels achieved over a period of time by a facility, subcategory, or technology option. LTAs were used in developing the limitations and standards in today's proposed regulation.

MARINE-GENERATED WASTE—Waste, wastewater, and/or used material generated as part of the normal maintenance and operation of a ship, boat, or barge operating on inland, coastal, or open waters.

METAL-BEARING WASTES—Wastes and/or used materials that contain significant quantities of metal pollutants, but not significant quantities of oil and grease (generally less than 100 mg/L), from manufacturing or processing facilities or other commercial operations. These wastes include, but are not limited to, the following: spent electroplating baths and sludges, metal finishing rinse water and sludges, chromate wastes, air pollution control blow down water and sludges, spent anodizing solutions, incineration air pollution control wastewaters, waste liquid mercury, cyanide containing wastes greater than 136 mg/L, and waste acids and bases with or without metals.

MINIMUM LEVEL—the lowest level at which the entire analytical system must give a recognizable signals and an acceptable calibration point for the analyte.

MIXED COMMERCIAL/NON-COMMERCIAL FACILITY—Facilities that treat and/or recycle/recover waste, wastewater, and/or used material generated by off-site facilities both under the same corporate ownership and different corporate ownership.

NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM (NPDES) PERMIT—A permit to discharge wastewater into waters of the United States issued under the National Pollutant Discharge Elimination system, authorized by Section 402 of the CWA.

NEW SOURCE—Any facility from which there is or may be a discharge of pollutants, the construction of which is commenced after the proposal of regulations prescribing a standard of performance under section 306 of the Act and 403.3(k).

NON-COMMERCIAL FACILITY—Facilities that accept waste from off-site for treatment and/or recovery from generating facilities under the same corporate ownership as the CWT facility.

NON-CONTAMINATED STORMWATER—Stormwater which does not come into direct contact with the waste or waste handling and treatment areas.

NON-CONVENTIONAL POLLUTANTS—Pollutants that are neither conventional pollutants nor priority pollutants listed at 40 CFR Section 401.

NON-DETECT VALUE—The analyte is below the level of detection that can be reliably measured by the analytical method. This is also known, in statistical terms, as left-censoring.

NON-WATER QUALITY ENVIRONMENTAL IMPACT—Deleterious aspects of control and treatment technologies applicable to point source category wastes, including, but not limited to air pollution, noise, radiation, sludge and solid waste generation, and energy used.

NSPS—New Sources Performance Standards, applicable to industrial facilities whose construction is begun after the publication of the proposed regulations, as defined by Sec. 306 of the CWA.

OCPSF—Organic chemicals, plastics, and synthetic fibers manufacturing point source category. (40 CFR Part 414).

OFF SITE—Outside the boundaries of a facility.

OILY WASTES—Wastes and/or used materials that contain oil and grease (generally at or in excess of 100 mg/L) from manufacturing or processing facilities or other commercial operations. These wastes include, but are not limited to, the following: used oils, oil-water emulsions or mixtures, lubricants, coolants, contaminated groundwater clean-up from petroleum sources, used petroleum products, oil spill clean-up, bilge water, rinse/wash waters from petroleum sources, interceptor wastes, off-specification fuels, underground storage remediation waste, and tank clean out from petroleum or oily sources.

OLIGOPOLY—A market structure with few competitors, in which each producer is aware of his competitors' actions and has a significant influence on market price and quantity.

ON SITE—The same or geographically contiguous property, which may be divided by a public or private right-of-way, provided the entrance and exit between the properties is at a crossroads intersection, and access is by crossing as opposed to going along the right-of-way. Non-contiguous properties owned by the same company or locality but connected by a right-of-way, which it controls, and to which the public does not have access, is also considered on-site property.

ORGANIC-BEARING WASTES—Wastes and/or used materials that contain organic pollutants, but not a significant quantity of oil and grease (generally less than 100 mg/L) from manufacturing or processing facilities or other commercial operations. These wastes include, but are not limited to, landfill leachate, contaminated groundwater clean-up from non-petroleum sources, solvent-bearing wastes, off-specification organic product, still bottoms, used glycols, wastewater from paint washes, wastewater from adhesives and/or epoxies, wastewater from chemical product operations, and tank clean-out from organic, non-petroleum sources.

OUTFALL—The mouth of conduit drains and other conduits from which a facility effluent discharges into receiving waters.

OUT-OF-SCOPE—Out-of-scope facilities are facilities which only perform centralized waste treatment activities which EPA has not proposed to be subject to provisions of this guideline. Out-of-scope operations are centralized waste treatment operations which EPA has not proposed to be subject to provisions of this guideline.

PIPELINE—Pipeline means an open or closed conduit used for the conveyance of material. A pipeline includes a channel, pipe, tube, trench, ditch, or fixed delivery system.

PASS THROUGH—A pollutant is determined to ''pass through'' a POTW when the average percentage removed by an efficiently operated POTW is less than the average percentage removed by the industry's direct dischargers that are using well-defined, well-operated BAT technology.

POINT SOURCE—Any discernable, confined, and discrete conveyance from which pollutants are or may be discharged.

POLLUTANTS OF CONCERN (POCs)—Pollutants commonly found in centralized waste treatment wastewaters. For the purposes of this guideline, a POC is a pollutant that is detected at or above a treatable level in influent wastewater samples from centralized waste treatment facilities. Additionally, a CWT POC must be present in at least ten percent of the influent wastewater samples.

PRIORITY POLLUTANT—One hundred twenty-six compounds that are a subset of the 65 toxic pollutants and classes of pollutants outlined in Section 307 of the CWA. The priority pollutants are specified in the NRDC settlement agreement (*Natural Resources Defense Council et al* v. *Train,* 8 E.R.C. 2120 [D.D.C. 1976], modified 12 E.R.C. 1833 [D.D.C. 1979]).

PRODUCT STEWARDSHIP—A program practiced by many manufacturing facilities which involves taking back spent, used, or unused products, shipping and storage containers with product residues, off-specification products, and waste materials from use of products.

PSES—Pretreatment standards for existing sources of indirect discharges, under Sec. 307(b) of the CWA.

PSNS—Pretreatment standards for new sources of indirect discharges, under Sec. 307(b) of the CWA.

PUBLICLY OWNED TREATMENT WORKS (POTW)—Any device or system, owned by a state or municipality, used in the treatment (including recycling and reclamation) of municipal sewage or industrial wastes of a liquid nature that is owned by a state or municipality. This includes sewers, pipes, or other conveyances only if they convey wastewater to a POTW providing treatment (40 CFR 122.2).

RCRA—The Resource Conservation and Recovery Act of 1976 (RCRA) (42 U.S.C. Section 6901 *et seq.*), which regulates the generation, treatment, storage, disposal, or recycling of solid and hazardous wastes.

RE-REFINING—Distillation, hydrotreating, and/or other treatment employing acid, caustic, solvent, clay and/or chemicals of used oil in order to produce high quality base stock for lubricants or other petroleum products.

SIC—Standard Industrial Classification (SIC)—A numerical categorization system used by the U.S. Department of Commerce to catalogue economic activity. SIC codes refer to the products, or group of products, produced or distributed, or to services rendered by an operating establishment. SIC codes are used to group establishments by the economic activities in which they are engaged. SIC codes often denote a facility's primary, secondary, tertiary, etc. economic activities.

SMALL-BUSINESS—Businesses with annual sales revenues less than $6 million. This is the Small Business Administration definition of small business for SIC code 4953, Refuse Systems (13 CFR Ch.1, § 121.601) which is being used to characterize the CWT industry.

SOLIDIFICATION—The addition of sorbents to convert liquid or semi-liquid waste to a solid by means of adsorption, absorption or both. The process is usually accompanied by stabilization.

STABILIZATION—A waste process that decreases the mobility of waste constituents by means of a chemical reaction. For the purpose of this rule, chemical precipitation is not a technique for stabilization.

VARIABILITY FACTOR—Used in calculating a limitation (or standard) to allow for reasonable variation in pollutant concentrations when processed through extensive and well designed treatment systems. Variability factors assure that normal fluctuations in a facility's treatment are accounted for in the limitations. By accounting for these reasonable excursions above the long-term average, EPA's use of variability factors results in limitations that are generally well above the actual long-term averages. WASTE RECEIPT—Wastes, wastewater, or used material received for treatment and/or recovery. Waste receipts can be liquids or solids.

ZERO OR ALTERNATIVE DISCHARGE—No discharge of pollutants to waters of the United States or to a POTW. Also included in this definition is disposal of pollutants by way of evaporation, deep-well injection, off-site transfer, and land application.

List of Subjects in 40 CFR Part 437

Environmental protection, Waste treatment and disposal, Water pollution control.

Dated: December 29, 1998.

Carol M. Browner,

Administrator.

For the reasons set out in the preamble, title 40, chapter I of the code of Federal Regulations is proposed to be amended by adding part 437 as follows:

PART 437—THE CENTRALIZED WASTE TREATMENT INDUSTRY POINT SOURCE CATEGORY

GENERAL PROVISIONS

Sec.
437.01 Applicability.
437.02 Definitions.
437.03 Monitoring requirements.

Subpart A—Metals Treatment and Recovery Subcategory

437.10 Applicability; description of the Metals Subcategory.
437.11 Effluent limitations representing the degree of effluent reduction attainable by the application of best practicable control technology currently available (BPT).
437.12 Effluent limitations representing the degree of effluent reduction attainable by the application of best conventional pollutant control technology (BCT).
437.13 Effluent limitations representing the degree of effluent reduction attainable by the application of best available technology economically achievable (BAT).
437.14 New source performance standards (NSPS).
437.15 Pretreatment standards for existing sources (PSES).
437.16 Pretreatment standards for new sources (PSNS).

Subpart B—Oils Treatment and Recovery Subcategory

437.20 Applicability; description of the Oils Subcategory.
437.21 Effluent limitations representing the degree of effluent reduction attainable by the application of best practicable control technology currently available (BPT).
437.22 Effluent limitations representing the degree of effluent reduction attainable by the best conventional pollutant control technology (BCT).
437.23 Effluent limitations representing the degree of effluent reduction attainable by the application of best available technology economically achievable (BAT).
437.24 New source performance standards (NSPS).
437.25 Pretreatment standards for existing sources (PSES).
437.26 Pretreatment standards for new sources (PSNS).

Subpart C—Organics Treatment or Recovery Subcategory

437.30 Applicability; description of the Organics Subcategory.
437.31 Effluent limitations representing the degree of effluent reduction attainable by the application of best practicable control technology currently available (BPT).
437.32 Effluent limitations representing the degree of effluent reduction attainable by the application of best conventional pollutant control technology (BCT).
437.33 Effluent limitations representing the degree of effluent reduction attainable by the application of best available technology economically achievable (BAT).
437.34 New source performance standards (NSPS).
437.35 Pretreatment standards for existing sources (PSES).
437.36 Pretreatment standards for new sources (PSNS).

Subpart D—Combined Waste stream Formula

437.40 Combined waste stream formula.

Authority: Sections 301, 304, 306, 307, 308, 402, and 501 of the Clean Water Act, as amended (33 U.S.C. 1311, 1314, 1316, 1317, 1318, 1342, and 1361).

GENERAL PROVISIONS

§ 437.01 Applicability.

(a) Except as provided in paragraphs (b) through (g) of this section, this part applies to that portion of wastewater discharges from a centralized waste treatment (CWT) facility that results from any of the following activities:

(1) The treatment of metal-bearing wastes, oily wastes and organic-bearing wastes received from off-site.

(2) The treatment of CWT wastewater.

(3) Used oil re-refining operations.

(4) Solvent recovery operations based on fuel blending.

(b) This part does not apply to that portion of wastewater discharges from a CWT facility that results from:

(1) The treatment of wastes that are generated on-site and are subject to another part of subchapter N.

(2) The treatment of a mixture of wastes that are generated off-site and on-site so long as the wastewater resulting from the treatment of the off-site wastes, if discharged at the site where generated, would have been subject to the same provisions of subchapter N as the wastewater resulting from the treatment of wastes generated on-site.

(3) The treatment of wastes received from off-site solely via conduit (e.g., pipelines, channels, ditches, trenches, etc.) from the facility that generates the wastes. A facility that acts as a waste collection or consolidation center is not a facility that generates wastes.

(4) The treatment of sanitary wastes and wastes of domestic origin including chemical toilet wastes, septage, and restaurant wastes.

(5) The treatment or recovery of animal or vegetable fats/oils from grease traps or interceptors generated by facilities engaged in food service activities.

(c) This part does not apply to the discharge of wastewater from facilities which are engaged exclusively in cleaning the interiors of tanker trucks, rail tank cars, or barges. The discharge resulting from the treatment of off-site wastewater generated in cleaning transportation equipment (or on-site wastewater generated in cleaning equipment) treated at a CWT facility along with other off-site wastes not generated in cleaning transportation equipment is, however, subject to this part.

(d) This part does not apply to the discharge of wastewater that results from the treatment of landfill wastes generated on-site at a CWT facility so long as landfill wastes are not mixed with other wastes for treatment. The discharge resulting from the treatment of landfill wastewater, whether generated on-site or off-site, treated at CWT facilities along with other off-site waste is, however, subject to this part.

(e) This part does not apply to wastewater discharges at a CWT facility that is exclusively engaged in the treatment of wastewater generated by industrial waste combustors. The discharge resulting from the treatment of off-site wastewater generated in the incineration of industrial waste that is treated at a CWT facility along with other off-site waste streams is subject to this part.

(f) This part does not apply to the discharge of wastewater generated in solvent recovery operations so long as the solvent recovery operations involve the separation of solvent mixtures by distillation. The discharge of wastewater resulting from distillation-based solvent recovery operations is subject to 40 CFR part 414.

(g) This part does not apply to marine generated wastes including wash water from equipment and tank cleaning, ballast water, bilge water, and other wastes generated as part of routine ship maintenance and operation as long as they are treated and discharged at the ship servicing facility where it is off-loaded. The discharges resulting from the treatment of marine generated wastes that are off-loaded and subsequently sent to a centralized waste treatment facility at a separate location are, however, subject to this part.

§ 437.02 Definitions.

As used in this part:

(a) The general definitions, abbreviations and methods of analysis in 40 CFR parts 122 and 401 and 403 shall apply.

(b) The term *centralized waste treatment (CWT) facility* means any facility that treats any hazardous or non-hazardous industrial wastes received from off-site by tanker truck, trailer/roll-off bins, drums, barge, or other forms of shipment. ''CWT facility'' includes both a facility that treats waste received from off-site exclusively, as well as a facility that treats wastes generated on-site and waste received from off-site. For example, an organic chemical manufacturing plant may, in certain circumstances, be a CWT facility if it treats industrial wastes received from offsite as well as industrial waste generated at the organic chemical manufacturing plant. The term CWT facility does not apply to facilities engaged in the following activities:

(1) Solids recovery operations so long as the wastes recovered are from non-industrial sources, do not generate a wastewater, or do not leach any metal or organic chemicals into the water. Solids recovery operations include, but are not limited to, the recycling of aluminum cans, glass, and plastic bottles.

(2) High temperature metals recovery operations that use heat-based pyrometallurgical technologies to recover metals.

(3) Used oil filter recycling operations generating no process wastewater.

(4) Waste solidification/stabilization operations that generate no process wastewater.

(5) Electrolytic plating operation with metallic replacement silver recovery operations on used photographic and x-ray materials. A facility that treats off-site silver-bearing wastes using other processes is a CWT.

(c) The term *centralized waste treatment wastewater* means water that comes in contact with wastes received from off-site for treatment or recovery, or water that comes in contact with the area in which the off-site wastes are received, stored or collected.

(d) The term *conventional pollutants* means those pollutants EPA has identified as conventional pollutant pursuant to section § 304(a)(4) of the CWA (see 40 CFR § 401.16)

(e) The term *electrolytic plating operation* means the application of various types of processes which lower the concentration of dissolved metals in solution by the passage of current through an electrolyte.

(F) The term *facility* means all contiguous property owned, operated, leased or under the control of the same person or entity. The contiguous property may be divided by public or private right-of-way may .

(g) The term *fuel blending* means the process of mixing hydrocarbon wastes for the purpose of regenerating a fuel for reuse. However, fuel blending may be loosely applied to any process where recovered hydrocarbons are combined as a fuel product where some pretreatment operations generate wastewater.

(h) The term *high temperature metals recovery* means a metals recovery process in which solid forms of metal containing materials are processed with a heat-based pyrometallurgical technology to produce a remelt alloy which can then be sold as feed material in the production of metals.

(i) The term *metal-bearing wastes* means wastes and/or used materials that contain significant quantities of metal pollutants, but not significant quantities of oil and grease (generally less than 100 mg/L), from manufacturing or processing facilities or other commercial operations. Examples of these wastes are spent electroplating baths and sludges, metal finishing rinse water and sludges, chromate wastes, air pollution control blow down water and sludges, spent anodizing solutions, incineration air pollution control wastewaters, waste liquid mercury, cyanide containing wastes greater than 136 mg/L, and waste acids and bases with or without metals.

(j) The term *off-site* means outside the boundaries of a facility.

(k) The term *oily wastes* means wastes and/or used materials that contain oil and grease (generally at or in excess of

100 mg/L) from manufacturing or processing facilities or other commercial operations. Examples of these wastes are used oils, oil-water emulsions or mixtures, lubricants, coolants, contaminated groundwater clean-up from petroleum sources, used petroleum products, oil spill clean-up, bilge water, rinse/wash waters from petroleum sources, interceptor wastes, off-specification fuels, underground storage remediation waste, and tank clean out from petroleum or oily sources, and wastes that contain oil and grease from manufacturing or processing facilities or other commercial operations.

(l) The term *on-site* means within the boundaries of a facility.

(m) The term *organic wastes* means wastes and/or used materials that contain organic pollutants, but not a significant quantity of oil and grease (generally less than 100 mg/L) from manufacturing or processing facilities or other commercial operations. Examples of these wastes are landfill leachate, contaminated groundwater clean-up from non-petroleum sources, solvent-bearing wastes, off-specification organic product, still bottoms, used glycols, wastewater from paint washes, wastewater from adhesives and/or epoxies, wastewater from chemical product operations, and tank clean-out from organic, non-petroleum sources.

(n) The term *pipeline* means an open or closed conduit used for the conveyance of material. A pipeline includes a channel, pipe, tube, trench, or ditch.

(o) The term *solvent recovery* includes fuel blending operations and the recycling of spent solvents through separation of solvent mixtures in distillation columns. Solvent recovery may require an additional, pretreatment step prior to distillation.

(p) The term *treatment* means any method, technique, or process designed to change the physical, chemical or biological character or composition of any metal-bearing, oily, or organic waste so as to neutralize such wastes, to render such wastes amenable to discharge or to recover energy or recover metal, oil, or organic content from the wastes.

(q) The term *used oil filter recycling* means crushing and draining of used oil filters of entrained oil and/or shredding and separation of used oil filters.

(r) The term *waste* includes aqueous, non-aqueous and solid wastes.

§ 437.03 Monitoring requirements.

(a) Permit compliance monitoring is required for each regulated pollutant.

(b) Any CWT facility that discharges wastewater resulting from the treatment of metal-bearing waste, oily waste, or organic-bearing waste must monitor as follows:

(1) Facilities subject to more than one subpart must monitor for compliance for each subpart after treatment and before mixing of the waste with any other subpart wastes, stormwater, or wastewater subject to another effluent limitation or standard in Subchapter N. If, however, the facility can demonstrate to the receiving POTW or permitting authority the capability of achieving the effluent limitation or standard for each subpart, the facility may monitor for compliance after mixing.

(2) Whenever a CWT facility is treating any waste receipt that contains more than 136 mg/l of Total Cyanide, the CWT facility must monitor for cyanide after cyanide treatment and before dilution with other waste streams. If, however, the facility can demonstrate to the receiving POTW or permitting authority the capability of achieving the Total Cyanide limitation or standard after cyanide treatment and before mixing with other waste steams, the facility may monitor for compliance after mixing.

Subpart A—Metals Treatment and Recovery Subcategory

§ 437.10 Applicability; description of the Metals Subcategory.

The provisions of this subpart are applicable to that portion of wastewater discharges from a centralized waste treatment facility that results from the treatment of, or recovery of metals from, metal-bearing wastes received from off-site and that CWT facility's contact water.

§ 437.11 Effluent limitations 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 through 125.32, any existing point source subject to this subpart must achieve the effluent limitations listed in the following table. These limitations apply to the pretreatment of metal-bearing waste which contain cyanide and the metals treatment effluent.

IN-PLANT BPT LIMITATIONS FOR CYANIDE PRETREATMENT—METALS SUBCATEGORY

[mg/L]

Pollutant or pollutant parameter	Maximum for any one Day	Monthly average
Total Cyanide	500	178

BPT EFFLUENT LIMITATIONS—METALS SUBCATEGORY

[mg/L]

Pollutant or pollutant parameter	Maximum for any one day	Monthly average
Conventional Pollutants:		
TSS	60.0	31.0
Oil and Grease	88.4	27.8
Priority and non-conventional pollutants:		
Antimony	0.214	.176
Arsenic	0.106	0.087
Cadmium	0.111	0.052
Chromium	2.93	1.37
Chromium, hexavalent	2.68	0.988
Cobalt	0.285	0.133
Copper	1.45	0.674
Lead	0.290	0.135
Manganese	0.121	0.057
Mercury	0.0027	0.0013
Nickel	2.66	1.24
Selenium	2.83	0.583
Silver	0.057	0.026
Tin	0.223	0.104
Titanium	0.141	0.066
Vanadium	0.124	0.058
Zinc	1.05	0.489

§ 437.12 Effluent limitations representing the degree of effluent reduction attainable by the application of best conventional pollutant control technology (BCT).

Except as provided in 40 CFR 125.30 through 125.32, any existing point source subject to this subpart must achieve the effluent limitations representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT). The limitations for TSS and oil and grease are the same as those specified in § 437.11 of this subpart.

§ 437.13 Effluent limitations representing the degree of effluent reduction attainable by the application of best available technology economically achievable (BAT).

Except as provided in 40 CFR 125.30 through 125.32, any existing point source subject to this subpart must achieve the effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT). Except for the conventional pollutants, the limitations are the same as those specified in § 437.11 of this subpart.

§ 437.14 New source performance standards (NSPS).

Any new source subject to this subpart must achieve new source performance standards (NSPS). These limitations apply to the metals treatment effluent. The cyanide

pretreatment limitations are the same as those specified in § 437.11 of this subpart. The NSPS limitations are:

NSPS EFFLUENT LIMITATIONS—METALS SUBCATEGORY

[mg/L]

Pollutant or pollutant parameter	Maximum for any one day	Monthly average
Conventional Pollutants:		
TSS	29.6	11.3
Oil and Grease	88.4	27.8
Priority and non-conventional pollutants:		
Antimony	0.111	0.031
Arsenic	0.059	0.017
Cadmium	0.319	0.104
Chromium	0.155	0.051
Chromium, hexavalent	0.138	0.057
Cobalt	0.224	0.073
Copper	0.658	0.216
Lead	0.215	0.070
Manganese	0.058	0.019
Mercury	0.0008	0.0003
Nickel	1.05	0.345
Silver	0.039	0.013
Tin	0.117	0.038
Titanium	0.020	0.006
Vanadium	0.195	0.064
Zinc	0.803	0.263

§ 437.15 Pretreatment standards for existing sources (PSES).

Except as provided in 40 CFR 403.7 and 403.13, any existing user subject to this subpart must comply with 40 CFR Part 403 and achieve the following pretreatment standards for existing sources (PSES).

IN-PLANT PSES FOR CYANIDE PRETREATMENT—METALS SUBCATEGORY (MG/L)

Pollutant or pollutant parameter	Maximum for any one day	Monthly average
Total Cyanide	500	178

PSES—METALS SUBCATEGORY

[mg/L]

Pollutant or pollutant parameter	Maximum for any one day	Monthly average
Priority and non-conventional pollutants:		
Antimony	0.214	.176
Arsenic	0.106	0.087
Cadmium	0.111	0.052
Chromium	2.93	1.37
Chromium, hexavalent	2.68	0.988
Cobalt	0.285	0.133
Copper	1.45	0.674

PSES—METALS SUBCATEGORY—Continued

[mg/L]

Pollutant or pollutant parameter	Maximum for any one day	Monthly average
Lead	0.290	0.135
Manganese	0.121	0.057
Mercury	0.003	0.001
Nickel	2.66	1.24
Selenium	2.83	0.583
Silver	0.057	0.026
Tin	0.223	0.104
Titanium	0.141	0.066
Vanadium	0.124	0.058
Zinc	1.05	0.489

§ 437.16 Pretreatment standards for new sources (PSNS).

Except as provided in 40 CFR 403.7, any new user subject to this subpart must comply with 40 CFR Part 403. The cyanide pretreatment limitations are the same as those specified in § 437.15. The pretreatment standards for new sources (PSNS) are:

PSNS—METALS SUBCATEGORY

[mg/L]

Pollutant or pollutant parameter	Maximum for any one day	Monthly average
Priority and non-conventional pollutants:		
Antimony	0.111	0.031
Arsenic	0.059	0.017
Cadmium	0.319	0.104
Chromium	0.155	0.051
Chromium, hexavalent	0.138	0.057
Cobalt	0.224	0.073
Copper	0.658	0.216
Lead	0.215	0.070
Manganese	0.058	0.019
Mercury	0.0008	0.0003
Nickel	1.05	0.345
Silver	0.039	0.013
Tin	0.117	0.038
Titanium	0.020	0.006
Vanadium	0.195	0.064
Zinc	0.803	0.263

Subpart B—Oils Treatment and Recovery Subcategory

§ 437.20 Applicability; description of the Oils Subcategory.

The provisions of this subpart are applicable to that portion of wastewater discharges from a centralized waste treatment facility that results from the treatment of, or recovery of oils from, oily waste received from off-site and CWT facility contact water.

§ 437.21 Effluent limitations representing the degree of effluent reduction attainable by the application of best practicable control technology currently available (BPT).

Except as provided in 40 CFR 125.30 through 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).

BPT EFFLUENT LIMITATIONS—OILS SUBCATEGORY

[mg/L]

Pollutant or pollutant parameter	Maximum for any one day	Monthly average
Conventional pollutants:		
Oil & Grease	127	38.0
TSS	74.1	30.6
Priority and non-conventional pollutants:		
Antimony	0.237	0.141
Arsenic	1.81	1.08
Barium	0.783	0.359
Cadmium	0.027	0.012
Chromium	0.650	0.298
Cobalt	26.3	12.1
Copper	0.400	0.183
Lead	0.350	0.160
Mercury	0.011	0.005
Molybdenum	5.48	2.51
Tin	0.380	0.174
Titanium	0.077	0.035
Zinc	7.20	3.30
Alpha-terpineol	0.166	0.081
Bis-2-ethylhexylphthalate	0.215	0.101
Butyl benzyl phthlate	0.188	0.089
Carbazole	0.520	0.255
Fluoranthene	0.045	0.024
n-decane	0.778	0.403
n-octadecane	0.662	0.343

§ 437.22 Effluent limitations representing the degree of effluent reduction attainable by the application of best conventional pollutant control technology (BCT).

Except as provided in 40 CFR 125.30 through 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). The limitations for oil and grease and TSS are the same as those specified in § 437.21 of this subpart.

§ 437.23 Effluent limitations representing the degree of effluent reduction attainable by the application of best available technology economically achievable (BAT).

Except as provided in 40 CFR 125.30 through 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). Except for the conventional pollutants, the limitations are the same as those specified in § 437.21 of this subpart.

§ 437.24 New source performance standards (NSPS).

Any new source subject to this subpart must achieve the following new source performance standards (NSPS). These limitations apply to the oils treatment effluent. The limitations are the same as those specified in § 437.21 of this subpart.

§ 437.25 Pretreatment standards for existing sources (PSES).

Except as provided in 40 CFR 403.7 and 403.13, any existing user subject to this subpart must comply with 40 CFR Part 403 and achieve the following pretreatment standards for existing sources (PSES).

PSES—OILS SUBCATEGORY

[mg/L]

Pollutant or pollutant parameter	Maximum for any one day	Monthly average
Priority and non-conventional pollutants:		
Antimony	0.237	0.141
Barium	0.703	0.340
Cobalt	23.7	11.4
Copper	0.500	0.242
Molybdenum	4.92	2.38
Tin	0.341	0.165
Titanium	0.069	0.034
Zinc	10.0	4.84
Alpha-terpineol	0.141	0.071
Bis-2-ethylhexylphthalate	0.267	0.158
Carbazole	0.440	0.222
Fluoranthene	0.611	0.347
n-decane	5.96	3.48
n-octadecane	1.99	1.16

§ 437.26 Pretreatment standards for new sources (PSNS).

Except as provided in 40 CFR 403.7, any new user subject to this subpart must comply with 40 CFR Part 403 and achieve the following pretreatment standards for new sources (PSNS).

PSNS—OILS SUBCATEGORY

[mg/L]

Pollutant or pollutant parameter	Maximum for any one day	Monthly average
Priority and non-conventional pollutants:		
Antimony	0.237	0.141
Barium	0.783	0.359
Cobalt	26.3	12.1
Copper	0.400	0.183
Molybdenum	5.48	2.51
Tin	0.380	0.174
Titanium	0.077	0.035
Zinc	7.20	3.30
Alpha-terpineol	0.166	0.081
bis-2-ethylhexylphthalate	0.215	0.101
carbazole	0.520	0.255
fluoranthene	0.045	0.024
n-decane	0.778	0.403
n-octadecane	0.662	0.343

Subpart C—Organics Treatment or Recovery Subcategory

§ 437.30 Applicability; description of the Organics Subcategory.

The provisions of this subpart are applicable to that portion of wastewater discharges from a centralized waste treatment facility that result from the treatment of, or recovery of organics from, organic-bearing waste received from off-site and CWT facility contact water.

§ 437.31 Effluent limitations representing the degree of effluent reduction attainable by the application of best practicable control technology currently available (BPT).

Except as provided in 40 CFR 125.30 through 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).

BPT EFFLUENT LIMITATIONS—ORGANICS SUBCATEGORY

[mg/L]

Pollutant or pollutant parameter	Maximum for any one day	Monthly average
Conventional pollutants:		
BOD_5	163	53
TSS	216	61
Priority and non-conventional pollutants:		
Antimony	0.972	0.691
Copper	0.850	0.752
Molybdenum	1.14	1.01
Zinc	0.461	0.408

BPT EFFLUENT LIMITATIONS—ORGANICS SUBCATEGORY—Continued

[mg/L]

Pollutant or pollutant parameter	Maximum for any one day	Monthly average
Acetophenone	0.155	0.072
Aniline	0.046	0.021
Benzoic Acid	1.39	0.638
o-cresol	1.89	0.556
p-cresol	0.677	0.199
Phenol	3.70	1.09
Pyridine	0.370	0.182
2-butanone	8.83	2.62
2-propanone	20.7	6.15
2,3-dichloroaniline	0.100	0.046
2,4,6-trichlorophenol	0.155	0.106

§ 437.32 Effluent limitations representing the degree of effluent reduction attainable by the application of best conventional pollutant control technology (BCT).

Except as provided in 40 CFR 125.30 through 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). The limitations for BOD5 and TSS are the same as those specified in § 437.31 of this subpart.

§ 437.33 Effluent limitations representing the degree of effluent reduction attainable by the application of best available technology economically achievable (BAT).

Except as provided in 40 CFR 125.30 through 125.32, any existing point source subject to this subpart must achieve limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT). Except for the conventional pollutants, the limitations are the same as those specified in § 437.31 of this subpart.

§ 437.34 New source performance standards (NSPS).

Any new source subject to this subpart must achieve the following new source performance standards (NSPS). These limitations apply to the organics treatment effluent. The limitations are the same as those specified in § 437.31 of this subpart.

§ 437.35 Pretreatment standards for existing sources (PSES).

Except as provided in 40 CFR 403.7 and 403.13, any existing user subject to this subpart must comply with 40 CFR Part 403 and achieve the following pretreatment standards for existing sources (PSES).

PSES—ORGANICS SUBCATEGORY

[mg/L]

Pollutant or pollutant parameter	Maximum for any one day	Monthly average
Priority and non-conventional pollutants:		
Molybdenum	1.14	1.01
Aniline	0.046	0.021
Benzoic Acid	1.39	0.638
o-cresol	1.89	0.556
p-cresol	0.677	0.199
2,3-dichloroaniline	0.100	0.046

§ 437.36 Pretreatment standards for new sources (PSNS).

Except as provided in 40 CFR 403.7, any new user subject to this subpart must comply with 40 CFR Part 403 and achieve pretreatment standards for new sources (PSNS). The standards are the same as those specified in § 437.35 of this subpart.

Subpart D—Combined Waste stream Formula

§ 437.40 Combined waste stream formula.

Whenever any new or existing user subject to pretreatment standards mixes wastewater subject to subparts A, B, or C of this Part prior to treatment, the Control Authority, as defined in § 403.12(a) or Industrial User with the written concurrence of the Control Authority, must calculate fixed alternative discharge concentration limits using the ''combined waste stream formula'' of § 403.7(e). For purposes of calculating fixed alternative discharge limits pursuant to § 403.6(e), wastewater subject to this part is a ''regulated flow.'' In calculating fixed alternative discharge limits pursuant to § 403.6(e), the Control Authority should use the following categorical concentration limits:

(a) *Metals subcategory categorical concentration standards.* There are no allowances for the metals subcategory.

(b) Oils subcategory categorical concentration limits.

OILS SUBCATEGORY

[mg/L]

Pollutant or Pollutant Parameter	Maximum for any one day	Monthly average
Arsenic	1.81	1.08

OILS SUBCATEGORY—Continued

[mg/L]

Pollutant or Pollutant Parameter	Maximum for any one day	Monthly average
Cadmium	0.024	0.012
Chromium	0.584	0.283

(c) Organics subcategory categorical concentration limits.

ORGANICS SUBCATEGORY

[mg/L]

Pollutant or Pollutant Parameter	Maximum for any one day	Monthly average
Antimony	0.972	0.691
Copper	0.850	0.752
Zinc	0.461	0.408
Acetophenone	0.155	0.072
Phenol	3.70	1.09
Pyridine	0.370	0.182
2-butanone	8.83	2.62
2-propanone	20.7	6.15
2,4,6-trichlorophenol	0.155	0.106

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Part III

Department of Education

Foreign Language Assistance Grants (Local and State Education Agencies): New Awards Applications, Fiscal Year 1999; Notices

DEPARTMENT OF EDUCATION

[CFDA No.: 84.293B]

Foreign Language Assistance Grants (Local Educational Agencies) Notice Inviting Applications for New Awards for Fiscal Year (FY) 1999

Note to Applicants: This notice is a complete application package. Together with the statute authorizing the program and applicable regulations governing the program, including the Education Department General Administrative Regulations (EDGAR), this notice contains all of the information, application forms, and instructions needed to apply for an award under this competition.

Purpose of Program: This program provides grants to pay for the Federal share of the cost of innovative model programs providing for the establishment, improvement, or expansion of foreign language study for elementary and secondary school students.

In awarding grants under this program, the Secretary supports projects that—

(A) show the promise of being continued beyond their project period;

(B) demonstrate approaches that can be disseminated and duplicated in other local educational agencies; and

(C) may include a professional development component.

Eligible Applicants: Local educational agencies.

Deadline for Transmittal of Applications: February 26, 1999.

Deadline for Intergovernmental Review: April 26, 1999.

Available Funds: $4,800,000.

Estimated Range of Awards: $50,000–$175,000.

Estimated Average Size of Awards: $112,500.

Estimated Number of Awards: 43.

Note: The Department is not bound by any estimates in this notice.

Project Period: 36 months.

Applicable Regulations

(a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 75, 77, 79, 80, 81, 82, 85 and 86.

(b) 34 CFR part 299.

Description of Programs

Part B of Title VII of the Elementary and Secondary Education Act of 1965, as amended (the Act), authorizes the Foreign Language Assistance Grants program. Appropriations for this program are authorized by section 7206 of the Act. Applicants should note that section 7203(c)(1) provides that the Federal share of the cost of activities assisted under this part for each fiscal year is 50 percent. The Secretary may waive this requirement for any local educational agency which the Secretary determines does not have adequate resources to pay the non-Federal share of the cost of the activities assisted under this part. Section 7203(c)(3) of the Act provides that at least 75 percent of the funds appropriated under section 7206 must be used for the expansion of foreign language learning in elementary grades. The Secretary does not fund projects that propose Native American languages.

Priority

Under 34 CFR 75.105(b)(2)(iv) and (c)(2)(i) and section 7204(b) of the Act (20 U.S.C. 7514(b)), the Secretary gives preference to applications that meet the following competitive priority. The Secretary awards three points depending on how well an application meets this competitive priority. These points would be in addition to any points the application earns under the selection criteria for the program.

Competitive Preference Priority—Special Considerations (3 points)

Projects that propose to carry out one or more of the following activities: (1) intensive summer foreign language programs for professional development; (2) linking non-native English speakers in the community with the schools in order to promote two-way language learning; or (3) promoting the sequential study of a foreign language, beginning in elementary schools.

Selection Criteria

(a)(1) The Secretary uses the following selection criteria in 34 CFR 75.209 and 75.210 and section 7203 of the Act to evaluate applications for new grants under this competition.

(2) The maximum score for all of these criteria is 100 points.

(3) The maximum score for each criterion is indicated in parentheses.

(b)(1) *Need for the project.* (10 points).

The Secretary considers the need for the project. In determining the need for the proposed project, the Secretary considers the following factors:

(i) The magnitude of the need for the services to be provided or the activities to be carried out by the proposed project.

(ii) The extent to which specific gaps or weaknesses in services, infrastructure, or opportunities have been identified and will be addressed by the proposed project, including the nature and magnitude of those gaps or weaknesses.

(2) *Significance.* (20 points).

The Secretary reviews each application to determine how well the proposed project will implement foreign language instructional programs that will:

(i) Show the promise of being continued beyond the grant period; and

(ii) Demonstrate approaches that can be disseminated and duplicated in other local educational agencies.

(3) *Quality of the project design.* (25 points).

The Secretary considers the quality of the design of the proposed project. In determining the quality of the design of the proposed project, the Secretary considers the following factors:

(i) The extent to which the goals, objectives, and outcomes to be achieved by the proposed project are clearly specified and measurable.

(ii) The extent to which the design of the proposed project is appropriate to, and will successfully address, the needs of the target population or other identified needs.

(iii) The extent to which the design for implementing and evaluating the proposed project will result in information to guide possible replication of project activities or strategies, including information about the effectiveness of the approach or strategies employed by the project.

(4) *Quality of Project Services* (20 points).

(i) The Secretary considers the quality of services to be provided by the proposed project.

(ii) In determining the quality of the services to be provided by the proposed project, the Secretary considers the quality and sufficiency of strategies for ensuring equal access and treatment for eligible project participants who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability.

(iii) In addition, the Secretary considers the following factors:

(A) The extent to which the services to be provided by the proposed project are appropriate to the needs of the intended recipients or beneficiaries of those services.

(B) The extent to which the services to be provided by the proposed project reflect up-to-date knowledge from research and effective practice.

(C) The likelihood that the services to be provided by the proposed project will lead to improvements in the achievement of students as measured against rigorous academic standards.

(5) *Quality of Project Personnel.* (10 points).

(i) The Secretary considers the quality of the key personnel who will carry out the proposed project.

(ii) In determining the quality of project personnel, the Secretary considers the extent to which the applicant encourages applications for employment from persons who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age or disability.

(iii) In addition, the Secretary considers the following factors:

(A) The qualifications, including relevant training and experience, of the project director or principal investigator.

(B) The qualifications, including relevant training and experience, of key project personnel.

(6) *Adequacy of resources.* (4 points).

The Secretary considers the adequacy of resources for the project. In determining the adequacy of resources for the proposed project, the Secretary considers the following factors:

(i) The extent to which the budget is adequate to support the proposed project.

(ii) The extent to which the costs are reasonable in relation to the objectives, design, and potential significance of the proposed project.

(7) *Quality of the management plan.* (5 points).

The Secretary considers the quality of the management plan for the proposed project. In determining the quality of the management plan for the proposed project, the Secretary considers the following factors:

(i) The adequacy of the management plan to achieve the objectives of the proposed project on time and within budget, including clearly defined responsibilities, timelines, and milestones for accomplishing project tasks.

(ii) The extent to which the time commitments of the project director and principal investigator and other key project personnel are appropriate and adequate to meet the objectives of the proposed project.

(8) *Quality of project evaluation plan.* (6 points).

The Secretary considers the quality of the evaluation to be conducted of the proposed project. In determining the quality of the evaluation, the Secretary considers the following factors:

(i) The extent to which the methods of evaluation are thorough, feasible, and appropriate to the goals, objectives, and outcomes of the proposed project.

(ii) The extent to which the methods of evaluation will provide performance feedback and permit periodic assessment of progress toward achieving intended outcomes.

(iii) The extent to which the evaluation will provide guidance about effective strategies suitable for replication or testing in other settings.

Intergovernmental Review of Federal Programs

This program is subject to the requirements of Executive Order 12372 (Intergovernmental Review of Federal Programs) and the regulations in 34 CFR Part 79.

The objective of the Executive order is to foster an intergovernmental partnership and to strengthen federalism by relying on State and local processes for State and local government coordination and review of proposed Federal financial assistance.

Applicants must contact the appropriate State Single Point of Contact to find out about, and to comply with, the State's process under Executive order 12372. Applicants proposing to perform activities in more than one State should immediately contact the Single Point of Contact for each of those States and follow the procedure established in each State under the Executive order. If you want to know the name and address of any State Single Point of Contact, see the list published in the **Federal Register** on November 3, 1998 (63 FR 59452 through 59455).

In States that have not established a process or chosen a program for review, State, areawide, regional, and local entities may submit comments directly to the Department.

Any State Process Recommendation and other comments submitted by a State Single Point of Contact and any comments from State, areawide, regional, and local entities must be mailed or hand-delivered by the date indicated in this notice to the following address: The Secretary, E.O. 12372—CFDA# 84.293B, U.S. Department of Education, Room 6213, 600 Independence Avenue, SW, Washington, D.C. 20202–0124.

Proof of mailing will be determined on the same basis as applications (see 34 CFR 75.102). Recommendations or comments may be hand-delivered until 4:30 p.m. (Eastern time) on the date indicated in this notice.

Please note that the above address is not the same address as the one to which the applicant submits its completed application. *Do not send applications to the above address.*

Instructions for Transmittal of Applications

(a) If an applicant wants to apply for a grant, the applicant must—

(1) Mail the original and two copies of the application on or before the deadline date to: U.S. Department of Education, Application Control Center, Attention: (CFDA# 84.293B), Washington, D.C. 20202–4725

or

(2) Hand deliver the original and two copies of the application by 4:30 p.m. (Eastern time) on or before the deadline date to: U.S. Department of Education, Application Control Center, Attention: (CFDA# 84.293B), Room #3633, Regional Office Building #3, 7th and D Streets, SW, Washington, D.C.

(b) An applicant must show one of the following as proof of mailing:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary.

(c) If an application is mailed through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

Notes: (1) The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

(2) The Application Control Center will mail a Grant Application Receipt Acknowledgment to each applicant. If an applicant fails to receive the notification of application receipt within 15 days from the date of mailing the application, the applicant should call the U.S. Department of Education Application Control Center at (202) 708–9494.

(3) The applicant *must* indicate on the envelope and—if not provided by the Department—in Item 10 of the Application for Federal Assistance (Standard Form 424) the CFDA number—and suffix letter, if any—of the competition under which the application is being submitted.

Application Instructions and Forms:

The appendix to this application is divided into three parts plus a statement regarding estimated public reporting burden, guidance on addressing the EDGAR selection criteria, and various assurances, certifications, and required documentation. These parts and

additional materials are organized in the same manner that the submitted application should be organized. The parts and additional materials are as follows:

Part I: Application for Federal Assistance (ED 424) and instructions.

Part II: Budget Information—Non-Construction Programs (ED Form No. 524) and instructions.

Part III: Application Narrative.

ADDITIONAL MATERIALS:

a. Estimated Public Reporting Burden.

b. Part B of Title VII of the Elementary and Secondary Education Act of 1965, as amended (the Act).

c. Program Questions and Answers.

d. Group Application Certification.

e. Student Data.

f. Assurances—Non-Construction Programs (Standard Form 424B) and instructions.

g. Certifications Regarding Lobbying; Debarment, Suspension, and Other Responsibility Matters; and Drug-Free Workplace Requirements (ED 80–0013) and instructions.

h. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion: Lower Tier Covered Transactions (ED 80–0014, 9/90) and instructions. (NOTE: ED 80–0014 is intended for the use of grantees and should not be transmitted to the Department).

i. Disclosure of Lobbying Activities (Standard Form LLL) (if applicable) and instructions. This document has been marked to reflect statutory changes. See the notice published in the **Federal Register** at (61 FR 1413)by the Office of Management and Budget on January 19, 1996).

j. Notice to All Applicants concerning a new provision in the Department of Education's General Education Provisions Act (GEPA).

An applicant may submit information on a photostatic copy of the application and budget forms, the assurances, and the certifications. However, the application form, the assurances, and the certifications must each have an original signature. All applicants must submit ONE original signed application, including ink signatures on all forms and assurances, and TWO copies of the application. Please mark each application as ''original'' or ''copy''. No grant may be awarded unless a completed application form has been received.

For Further Information Contact: Rebecca Richey, or Ki Lee U.S. Department of Education, 400 Maryland Avenue, SW, Room 5090, Switzer Building, Washington, D.C. 20202–6510. Rebecca Richey, Telephone: (202) 205–9717 or Ki Lee Telephone: (202) 205–8730. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

Individuals with disabilities may obtain this notice in an alternate format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph. Please note, however, that the Department is not able to reproduce in an alternate format the standard forms included in the notice.

Electronic Access to This Document:

Anyone may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or portable document format (pdf) on the World Wide Web at either of the following sites:

http://ocfo.ed.gov/fedreg.htm

http://www.ed.gov/news.html

To use the pdf you must have the Adobe Acrobat Reader Program with search, which is available free at either of the preceding sites. If you have questions about using the pdf, call the U.S. Government Printing Office toll free at 1–800–293–6498.

Anyone may also view these documents in text copy only on an electronic bulletin board of the Department. Telephone: (202)219–1511 or, toll free, 1–800–222–4922. The documents are located under Option G—Files/Announcements, Bulletins and Press Releases.

Note: The official version of this document is the document published in the **Federal Register**.

Program Authority: 20 U.S.C. 7511–7514.

Dated: January 8, 1999.

Delia Pompa,

Director, Office of Bilingual Education and Minority Languages Affairs.

Editor's Note: An excerpt of Public Law 103–382 is published for the convenience of the reader. The official text is published at 108 Stat. 3737.

BILLING CODE 4000–01–P

APPENDIX

Part I

Application for Federal Education Assistance

U.S. Department of Education

Form Approved
OMB No. 1875-0106
Exp. 06/30/2001

Applicant Information

1. Name and Address
   Legal Name: _____
   Address: _____
   _____
   City _____ State _____ County _____ ZIP Code + 4 _____ - _____

   Organizational Unit

2. Applicant's D-U-N-S Number

3. Catalog of Federal Domestic Assistance #: 8 4 ➡ Title: _____

4. Project Director: _____
   Address: _____
   City _____ State _____ ZIP Code + 4 _____ - _____
   Tel. #: ( ) _____-_____ Fax #: ( ) _____-_____
   E-Mail Address: _____

5. Is the applicant delinquent on any Federal debt? Yes No
   (If "Yes," attach an explanation.)

6. Type of Applicant *(Enter appropriate letter in the box.)*

A State	H Independent School District
B County	I Public College or University
C Municipal	J Private, Non-Profit College or University
D Township	K Indian Tribe
E Interstate	L Individual
F Intermunicipal	M Private, Profit-Making Organization
G Special District	N Other *(Specify)*: _____

7. Novice Applicant Yes No

Application Information

8. Type of Submission:

—PreApplication	*—Application*
Construction	Construction
Non-Construction	Non-Construction

9. Is application subject to review by Executive Order 12372 process?
   Yes *(Date made available to the Executive Order 12372 process for review):* ___/___/_____
   No *(If "No," check appropriate box below.)*
   Program is not covered by E.O. 12372.
   Program has not been selected by State for review.

10. Proposed Project Dates: Start Date: ___/___/_____ End Date: ___/___/_____

11. Are any research activities involving human subjects planned at any time during the proposed project period? Yes No
    a. If "Yes," Exemption(s) #: b. Assurance of Compliance #:

    OR

    c. IRB approval date: _____ Full IRB or Expedited Review

12. Descriptive Title of Applicant's Project:

Estimated Funding

13a. Federal	$	.00
b. Applicant	$	.00
c. State	$	.00
d. Local	$	.00
e. Other	$	.00
f. Program Income	$	.00
g. **TOTAL**	$	.00

Authorized Representative Information

14. To the best of my knowledge and belief, all data in this preapplication/application are true and correct. The document has been duly authorized by the governing body of the applicant and the applicant will comply with the attached assurances if the assistance is awarded.
    a. Typed Name of Authorized Representative
    b. Title
    c. Tel. #: ( ) _____-_____ Fax #: ( ) _____-_____
    d. E-Mail Address: _____
    e. **Signature of Authorized Representative** Date:

Instructions for ED 424

1. **Legal Name and Address.** Enter the legal name of applicant and the name of the primary organizational unit which will undertake the assistance activity.

2. **D-U-N-S Number.** Enter the applicant's D-U-N-S Number. If your organization does not have a D-U-N-S Number, you can obtain the number by calling 1-800-333-0505 or by completing a D-U-N-S Number Request Form. The form can be obtained via the Internet at the following URL: **http://www.dnb.com/dbis/aboutdb/intlduns.htm.**

3. **Catalog of Federal Domestic Assistance (CFDA) Number.** Enter the CFDA number and title of the program under which assistance is requested.

4. **Project Director.** Name, address, telephone and fax numbers, and e-mail address of the person to be contacted on matters involving this application.

5. **Federal Debt Delinquency.** Check **"Yes"** if the applicant's organization is delinquent on any Federal debt. (This question refers to the applicant's organization and not to the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.) Otherwise, check **"No."**

6. **Type of Applicant.** Enter the appropriate letter in the box provided.

7. **Novice Applicant.** Check **"Yes"** only if assistance is being requested under a program that gives special consideration to novice applicants and you meet the program requirements for novice applicants. By checking "Yes" the applicant certifies that it meets the novice applicant requirements specified by ED. Otherwise, check **"No."**

8. **Type of Submission.** Self-explanatory.

9. **Executive Order 12372.** Check **"Yes"** if the application is subject to review by Executive Order 12372. Also, please enter the month, date, and four (4) digit year (e.g., 12/12/2000). Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process. Otherwise, check **"No."**

10. **Proposed Project Dates.** Please enter the month, date, and four (4) digit year (e.g., 12/12/2000).

11. **Human Subjects.** If research activities involving human subjects are <u>not</u> planned <u>at any time</u> during the proposed project period, check **"No."** The remaining parts of item 11 are then not applicable.

    If research activities involving human subjects, whether or not exempt from Federal regulations for the protection of human subjects, <u>are</u> planned <u>at any time</u> during the proposed project period, either at the applicant organization or at any other performance site or collaborating institution, check **"Yes."** If the research activities are designated to be exempt under the regulations, enter, in item 11a, the exemption number(s) corresponding to one or more of the six exemption categories listed in **"PROTECTION OF HUMAN SUBJECTS IN RESEARCH"** attached to this form. Provide sufficient information in the application to allow a determination that the designated exemptions are appropriate.

    If the planned research activities involving human subjects are covered (not exempt), complete the remaining parts of item 11 and follow the instructions in **"PROTECTION OF HUMAN SUBJECTS IN RESEARCH"** attached to this form. If the applicant organization has an approved Multiple Project Assurance of Compliance on file with the Grants Policy and Oversight Staff (GPOS), U.S. Department of Education, or with the Office for Protection from Research Risks (OPRR), National Institutes of Health, U.S. Department of Health and Human Services, that covers the specific activity, enter the Assurance number in item 11b and the date of approval by the Institutional Review Board (IRB) of the proposed activities in item 11c. This date must be no earlier than one year before the receipt date for which the application is submitted and must include the four (4) digit year (e.g., 2000). Check the type of IRB review in the appropriate box. An IRB may review an application through an expedited review procedure only if it complies with Section 97.110 of the human subjects regulations 34 CFR 97. If the IRB review is unavoidably delayed beyond the submission of the application, enter **"Pending"** in item 11c. A follow-up certification of IRB approval from an official signing for the applicant organization must then be sent to and received by the designated ED official. The certification must be received within 30 days of a specific formal request from the designated ED official. The certification must include: the PR Award number, title of the project from item #12, name of the principal investigator, project director, fellow, or other, institution, Multiple Assurance number, date of IRB approval, and appropriate signatures.

    If the applicant organization does not have on file with GPOS or OPRR an approved Assurance of Compliance that covers the proposed research activity, enter **"None"** in item 11b. In this case, the applicant organization, by the signature on the application, is declaring that it will comply with 34 CFR 97 within 30 days of a specific formal request from the designated ED official.

    For additional instructions regarding proposals that involve human subjects research see, **"PROTECTION OF HUMAN SUBJECTS IN RESEARCH"** attached to this form.

12. **Project Title.** Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.

13. **Estimated Funding.** Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate <u>only</u> the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 13.

14. **Certification.** To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office.

    Be sure to enter the telephone and fax number and e-mail address of the authorized representative. Also, in item 14e, please enter the month, date, and four (4) digit year (e.g., 12/12/2000) in the date signed field.

Paperwork Burden Statement

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless such collection displays a valid OMB control number. The valid OMB control number for this information collection is **1875-0106**. The time required to complete this information collection is estimated to average between 15 and 45 minutes per response, including the time to review instructions, search existing data resources, gather the data needed, and complete and review the information collection. **If you have any comments concerning the accuracy of the estimate(s) or suggestions for improving this form, please write to:** U.S. Department of Education, Washington, D.C. 20202-4651. **If you have comments or concerns regarding the status of your individual submission of this form write directly to:** Joyce I. Mays, Application Control Center, U.S. Department of Education, 7th and D Streets, S.W. ROB-3, Room 3633, Washington, D.C. 20202-4725.

PROTECTION OF HUMAN SUBJECTS IN RESEARCH (Attachment to ED 424)

I. Instructions to Applicants if Research Activities Involving Human Subjects are Planned

If you marked item 11 on the application "Yes" and designated exemptions from the human subjects regulations, provide sufficient information in the application to allow a determination that the designated exemptions are appropriate. Research involving human subjects that is exempt from the regulations is discussed under **II.B. "Exemptions,"** below.

If you marked "Yes" to item 11 on the Face Page, and designated no exemptions from the regulations, address the following six points. In addition, if research involving human subjects will take place at collaborating site(s) or other performance site(s), provide this information before discussing the six points. Although no specific page limitation applies to this section of the application, be succinct. Be sure to provide this information on a separate page(s) entitled "Protection of Human Subjects Attachment."

(1) Provide a detailed description of the proposed involvement of human subjects. Describe the characteristics of the subject population, including their anticipated number, age range, and health status. Identify the criteria for inclusion or exclusion of any subpopulation. Explain the rationale for the involvement of special classes of subjects, such as children, children with disabilities, adults with disabilities, persons with mental disabilities, pregnant women, prisoners, institutionalized individuals, or others who are likely to be vulnerable.

(2) Identify the sources of research material obtained from individually identifiable living human subjects in the form of specimens, records, or data. Indicate whether the material or data will be obtained specifically for research purposes or whether use will be made of existing specimens, records, or data.

(3) Describe plans for the recruitment of subjects and the consent procedures to be followed. Include the circumstances under which consent will be sought and obtained, who will seek it, the nature of the information to be provided to prospective subjects, and the method of documenting consent. State if the Institutional Review Board (IRB) has authorized a modification or waiver of the elements of consent or the requirement for documentation of consent.

(4) Describe potential risks (physical, psychological, social, legal, or other) and assess their likelihood and seriousness. Where appropriate, describe alternative treatments and procedures that might be advantageous to the subjects.

(5) Describe the procedures for protecting against or minimizing potential risks, including risks to confidentiality, and assess their likely effectiveness. Where appropriate, discuss provisions for ensuring necessary medical or professional intervention in the event of adverse effects to the subjects. Also, where appropriate, describe the provisions for monitoring the data collected to ensure the safety of the subjects.

(6) Discuss why the risks to subjects are reasonable in relation to the anticipated benefits to subjects and in relation to the importance of the knowledge that may reasonably be expected to result.

II. Information on Research Activities Involving Human Subjects

A. Definitions.

A research activity involves human subjects if the activity is research, as defined in the Department's regulations, and the research activity will involve use of human subjects, as defined in the regulations.

—Is it a research activity?

The ED Regulations for the Protection of Human Subjects, Title 34, Code of Federal Regulations, Part 97, define research as "a systematic investigation, including research development, testing and evaluation, designed to develop or contribute to generalizable knowledge." *If an activity follows a deliberate plan whose purpose is to develop or contribute to generalizable knowledge, such as an exploratory study or the collection of data to test a hypothesis, it is research.* Activities which meet this definition constitute research whether or not they are conducted or supported under a program which is considered research for other purposes. For example, some demonstration and service programs may include research activities.

—Is it a human subject?

The regulations define human subject as "a living individual about whom an investigator (whether professional or student) conducting research obtains (1) data through intervention or interaction with the individual, or (2) identifiable private information." *(1) If an activity involves obtaining information about a living person by manipulating that person or that person's environment, as might occur when a new instructional technique is tested, or by communicating or interacting with the individual, as occurs with surveys and interviews, the definition of human subject is met. (2) If an activity involves obtaining private information about a living person in such a way that the information can be linked to that individual (the identity of the subject is or may be readily determined by the investigator or associated with the information), the definition of human subject is met.* [Private information includes information about behavior that occurs in a context in which an individual can reasonably expect that no observation or recording is taking place, and information which has been provided for specific purposes by an individual and which the individual can reasonably expect will not be made public (for example, a school health record).]

B. Exemptions.

Research activities in which the only involvement of human subjects will be in one or more of the following six categories of ***exemptions*** are not covered by the regulations:

(1) Research conducted in established or commonly accepted educational settings, involving normal educational practices, such as (a) research on regular and special education instructional strategies, or (b) research on the effectiveness of or the comparison among instructional techniques, curricula, or classroom management methods.

(2) Research involving the use of educational tests (cognitive, diagnostic, aptitude, achievement), survey procedures, interview procedures or observation of public behavior, unless: (a) information obtained is recorded in such a manner that human subjects can be identified, directly or through identifiers linked to the subjects; and (b) any disclosure of the human subjects' responses outside the research could reasonably place the subjects at risk of criminal or civil liability or be damaging to the subjects' financial standing, employability, or reputation. ***If the subjects are children, this exemption applies only to research involving educational tests or observations of public behavior when the investigator(s) do not participate in the activities being observed.*** [Children are defined as persons who have not attained the legal age for consent to treatments or procedures involved in the research, under the applicable law or jurisdiction in which the research will be conducted.]

(3) Research involving the use of educational tests (cognitive, diagnostic, aptitude, achievement), survey procedures, interview procedures or observation of public behavior that is not exempt under section (2) above, if the human subjects are elected or appointed public officials or candidates for public office; or federal statute(s) require(s) without exception that the confidentiality of the personally identifiable information will be maintained throughout the research and thereafter.

(4) Research involving the collection or study of existing data, documents, records, pathological specimens, or diagnostic specimens, if these sources are publicly available or if the information is recorded by the investigator in a manner that subjects cannot be identified, directly or through identifiers linked to the subjects.

(5) Research and demonstration projects which are conducted by or subject to the approval of department or agency heads, and which are designed to study, evaluate, or otherwise examine: (a) public benefit or service programs; (b) procedures for obtaining benefits or services under those programs; (c) possible changes in or alternatives to those programs or procedures; or (d) possible changes in methods or levels of payment for benefits or services under those programs.

(6) Taste and food quality evaluation and consumer acceptance studies, (a) if wholesome foods without additives are consumed or (b) if a food is consumed that contains a food ingredient at or below the level and for a use found to be safe, or agricultural chemical or environmental contaminant at or below the level found to be safe, by the Food and Drug Administration or approved by the Environmental Protection Agency or the Food Safety and Inspection Service of the U.S Department of Agriculture.

Copies of the Department of Education's Regulations for the Protection of Human Subjects, 34 CFR Part 97 and other pertinent materials on the protection of human subjects in research are available from the Grants Policy and Oversight Staff (GPOS) Office of the Chief Financial and Chief Information Officer, U.S. Department of Education, Washington, D.C., telephone: (202) 708-8263, and on the U.S. Department of Education's Protection of Human Subjects in Research Web Site at http://ocfo.ed.gov/humansub.htm.

Part II

U.S. DEPARTMENT OF EDUCATION
BUDGET INFORMATION
NON-CONSTRUCTION PROGRAMS

OMB Control No. 1875-0102

Expiration Date: 9/30/98

Name of Institution/Organization

Applicants requesting funding for only one year should complete the column under "Project Year 1." Applicants requesting funding for multi-year grants should complete all applicable columns. Please read all instructions before completing form.

SECTION A - BUDGET SUMMARY
U.S. DEPARTMENT OF EDUCATION FUNDS

Budget Categories	Project Year 1 (a)	Project Year 2 (b)	Project Year 3 (c)	Project Year 4 (d)	Project Year 5 (e)	**Total (f)**
1. Personnel						
2. Fringe Benefits						
3. Travel						
4. Equipment						
5. Supplies						
6. Contractual						
7. Construction						
8. Other						
9. Total Direct Costs (lines 1-8)						
10. Indirect Costs						
11. Training Stipends						
12. Total Costs (lines 9-11)						

ED FORM NO. 524

Name of Institution/Organization	Applicants requesting funding for only one year should complete the column under "Project Year 1." Applicants requesting funding for multi-year grants should complete all applicable columns. Please read all instructions before completing form.

SECTION B - BUDGET SUMMARY
NON-FEDERAL FUNDS

Budget Categories	Project Year 1 (a)	Project Year 2 (b)	Project Year 3 (c)	Project Year 4 (d)	Project Year 5 (e)	**Total (f)**
1. Personnel						
2. Fringe Benefits						
3. Travel						
4. Equipment						
5. Supplies						
6. Contractual						
7. Construction						
8. Other						
9. Total Direct Costs (lines 1-8)						
10. Indirect Costs						
11. Training Stipends						
12. Total Costs (lines 9-11)						

SECTION C - OTHER BUDGET INFORMATION (see instructions)

ED FORM NO. 524

Public reporting burden for this collection of information is estimated to vary from 13 to 22 hours per response, with an average of 17.5 hours, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the U.S. Department of Education, Information Management and Compliance Division, Washington, D.C. 20202-4651; and the Office of Management and Budget, Paperwork Reduction Project 1875-0102, Washington, D.C. 20503.

INSTRUCTIONS FOR ED FORM NO. 524

General Instructions

This form is used to apply to individual U.S. Department of Education discretionary grant programs. Unless directed otherwise, provide the same budget information for each year of the multi-year funding request. Pay attention to applicable program specific instructions, if attached.

Section A - Budget Summary U.S. Department of Education Funds

All applicants must complete Section A and provide a breakdown by the applicable budget categories shown in lines 1-11.

Lines 1-11, columns (a)-(e): For each project year for which funding is requested, show the total amount requested for each applicable budget category.

Lines 1-11, column (f): Show the multi-year total for each budget category. If funding is requested for only one project year, leave this column blank.

Line 12, columns (a)-(e): Show the total budget request for each project year for which funding is requested.

Line 12, column (f): Show the total amount requested for all project years. If funding is requested for only one year, leave this space blank.

Section B - Budget Summary Non-Federal Funds

If you are required to provide or volunteer to provide matching funds or other non-Federal resources to the project, these should be shown for each applicable budget category on lines 1-11 of Section B.

Lines 1-11, columns (a)-(e): For each project year for which matching funds or other contributions are provided, show the total contribution for each applicable budget category.

Lines 1-11, column (f): Show the multi-year total for each budget category. If non-Federal contributions are provided for only one year, leave this column blank.

Line 12, columns (a)-(e): Show the total matching or other contribution for each project year.

Line 12, column (f): Show the total amount to be contributed for all years of the multi-year project. If non-Federal contributions are provided for only one year, leave this space blank.

Section C - Other Budget Information Pay attention to applicable program specific instructions, if attached.

1. Provide an itemized budget breakdown, by project year, for each budget category listed in Sections A and B.

2. If applicable to this program, enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period. In addition, enter the estimated amount of the base to which the rate is applied, and the total indirect expense.

3. If applicable to this program, provide the rate and base on which fringe benefits are calculated.

4. Provide other explanations or comments you deem necessary.

BILLING CODE 4000–01–C

Part III—Application Narrative

Application Narrative Instructions

Mandatory Page Limit for the Application Narrative

The narrative is the section of the application where you address the selection criteria used by reviewers in evaluating the application. You must limit the narrative to the equivalent of no more than 35 pages, using the following standards:

(1) A page is 8.5″ × 11″, on one side only with 1″ margins at the top, bottom, and both sides.

(2) You must double space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.

If you use a proportional computer font, you may not use a font smaller than a 12-point font. If you use a non-proportional font or a typewriter, you may not use more than 12 characters per inch.

The page limit does not apply to the Application for Federal Education Assistance Form (ED 424); the Budget Information Form (ED 524) and attached itemization of costs; the other application forms and attachments to those forms; the assurances and certifications; or the one-page abstract and table of contents described below.

IF, IN ORDER TO MEET THE PAGE LIMIT, YOU USE PRINT SIZE, SPACING, OR MARGINS SMALLER THAN STANDARDS SPECIFIED IN THIS NOTICE, YOUR APPLICATION WILL NOT BE CONSIDERED FOR FUNDING.

Additional Guidance

Abstract

The narrative section should be preceded by a one-page abstract that includes a short description of the population to be served by the project, project objectives, and planned project activities.

Table of contents

The application should include a table of contents listing the parts of the narrative in the order of the selection criteria. Be sure that the table includes the page numbers where the parts of the narrative are found.

Budget

Budget line items must support the goals and objectives of the proposed project and must be directly related to the instructional design and all other project components.

Selection Criteria

The narrative should address fully all aspects of the selection criteria in the order listed and should give detailed information regarding each criterion. Do not simply paraphrase the criteria. Do not include resumes or curriculum vitae for project personnel; provide position descriptions instead. Do not include bibliographies, letters of support, or appendices in your application.

Final Application Preparation

Submit three copies of the application, including an original copy containing an original signature for each form requiring the signature of the authorized representative. Do not use elaborate bindings or covers. The application package must be mailed or hand-delivered to the Application Control Center (ACC) and postmarked by the deadline date.

Additional Materials

Estimated Burden Statement

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless such collection displays a valid OMB control number. The valid OMB control number for this information collection is 1885–0540 (Exp. 12/31/2001). The time required to complete this information collection is estimated to average 80 hours per response, including the time to review instructions, search existing data resources, gather the data needed, and complete and review the information collection. *If you have any comments concerning the accuracy of the time estimate(s) or suggestions for improving this form, please write to:* U.S. Department of Education, Washington, D.C. 20202–4651.

If you have comments or concerns regarding the status of your individual submission of this form, write directly to: Office of Bilingual Education and Minority Languages Affairs, U.S. Department of Education, 400 Maryland Avenue, SW., Room 5603, Switzer Building, Washington, D.C. 20202–6510.

BILLING CODE 4000–01–P

"PART B—FOREIGN LANGUAGE ASSISTANCE PROGRAM

Foreign Language Assistance Act of 1994.
20 USC 7511.

"SEC. 7201. SHORT TITLE.

"This part may be cited as the 'Foreign Language Assistance Act of 1994'.

"SEC. 7202. FINDINGS.

20 USC 7512.

"The Congress finds as follows:

"(1) Foreign language proficiency is crucial to our Nation's economic competitiveness and national security. Significant improvement in the quantity and quality of foreign language instruction offered in our Nation's elementary and secondary schools is necessary.

"(2) All Americans need a global perspective. To understand the world around us, we must acquaint ourselves with the languages, cultures, and history of other nations.

"(3) Proficiency in two or more languages should be promoted for all American students. Multilingualism enhances cognitive and social growth, competitiveness in the global marketplace, national security, and understanding of diverse people and cultures.

"(4) The United States lags behind other developed countries in offering foreign language study to elementary and secondary school students.

"(5) Four out of five new jobs in the United States are created from foreign trade.

"(6) The optimum time to begin learning a second language is in elementary school, when children have the ability to learn and excel in several foreign language acquisition skills, including pronunciation, and when children are most open to appreciating and valuing a culture other than their own.

"(7) Foreign language study can increase childrens' capacity for critical and creative thinking skills and children who study a second language show greater cognitive development in areas such as mental flexibility, creativity, tolerance, and higher order thinking skills.

"(8) Children who have studied a foreign language in elementary school achieve expected gains and score higher on standardized tests of reading, language arts, and mathematics than children who have not studied a foreign language.

"SEC. 7203. PROGRAM AUTHORIZED.

20 USC 7513.

"(a) PROGRAM AUTHORITY.—

"(1) IN GENERAL.—The Secretary shall make grants, on a competitive basis, to State educational agencies or local educational agencies to pay the Federal share of the cost of innovative model programs providing for the establishment, improvement or expansion of foreign language study for elementary and secondary school students.

"(2) DURATION.—Each grant under paragraph (1) shall be awarded for a period of three years.

"(b) REQUIREMENTS.—

"(1) GRANTS TO STATE EDUCATIONAL AGENCIES.—In awarding a grant under subsection (a) to a State educational agency, the Secretary shall support programs that promote systemic approaches to improving foreign language learning in the State.

"(2) GRANTS TO LOCAL EDUCATIONAL AGENCIES.—In awarding a grant under subsection (a) to a local educational agency, the Secretary shall support programs that—

"(A) show the promise of being continued beyond the grant period;

"(B) demonstrate approaches that can be disseminated and duplicated in other local educational agencies; and

"(C) may include a professional development component.

"(c) FEDERAL SHARE.—

"(1) IN GENERAL.—The Federal share for each fiscal year shall be 50 percent.

"(2) WAIVER.—The Secretary may waive the requirement of paragraph (1) for any local educational agency which the Secretary determines does not have adequate resources to pay the non-Federal share of the cost of the activities assisted under this part.

"(3) SPECIAL RULE.—Not less than three-fourths of the funds appropriated under section 7206 shall be used for the expansion of foreign language learning in the elementary grades.

"(4) RESERVATION.—The Secretary may reserve not more than 5 percent of funds appropriated under section 7206 to evaluate the efficacy of programs under this part.

20 USC 7514.

"SEC. 7204. APPLICATIONS.

"(a) IN GENERAL.—Any State educational agency or local educational agency desiring a grant under this part shall submit an application to the Secretary at such time, in such form, and containing such information and assurances as the Secretary may require.

"(b) SPECIAL CONSIDERATION.—The Secretary shall give special consideration to applications describing programs that—

"(1) include intensive summer foreign language programs for professional development;

"(2) link non-native English speakers in the community with the schools in order to promote two-way language learning; or

"(3) promote the sequential study of a foreign language for students, beginning in elementary schools.

FOREIGN LANGUAGE ASSISTANCE PROGRAM
GRANTS TO LOCAL EDUCATIONAL AGENCIES
(Program Questions and Answers)

Q. How will the Secretary comply with the statutory requirement, set out in Section 7204(b) of the Elementary and Secondary Education Act, to give special consideration to applications that describe programs that (1) include intensive summer foreign language programs for professional development; (2) link non-native English speakers in the community; or (3) promote the sequential study of a foreign language for students, beginning in elementary schools?

A. The Secretary has established a competitive priority to comply with this statutory requirement. Under that priority, the Secretary awards three additional points to applications that propose to carry out one or more of the activities specified in Section 7204(b) of the Act in a particularly effective way. These points would be in addition to any points the application earns under the Selection Criteria. This priority is set out in full in the Application Notice.

Q. How can an applicant promote two-way language learning?

A. Two-way language learning is promoted through encouraging interaction between non-native English speakers and foreign language learners in an instructional setting for purposes of facilitating foreign language acquisition. Although improvement of the English language skills of non-native English speakers is a desirable ancillary benefit of a project that utilizes two-way language learning, the primary focus of projects funded under the Foreign Language Assistance program must be on foreign language learning. As a consequence, funds received under the Foreign Language Assistance program should not be used to fund English language instruction.

Q. What is the definition of "elementary school" or "secondary school"?

A. The definitions of these two terms are set out in 34 CFR 77.1(c). The term "elementary school" means: "a day or residential school that provides elementary education, as determined under State law." The term "secondary school" means: "a day or residential school that provides secondary education as determined under State law. In the absence of State law, the Secretary may determine, with respect to that State, whether the term includes education beyond the twelfth grade."

Q. What is the State or LEA's share of costs for the Foreign Language Assistance program for each fiscal year?

A. The State or LEA's share is 50 percent. However, a waiver may be granted for an LEA

if the Secretary determines that the LEA does not have adequate resources to pay the non-Federal share of the cost of the activities. (Section 7203(c), 20 U.S.C. 7513(c)). The Education Department General Administrative Regulations, at 34 CFR 80.24, also addresses Federal Cost sharing requirements.

Q. How does an LEA apply for a waiver of the non-Federal share of costs?

A. The Secretary suggests that local educational agencies -- wishing to do so -- request a waiver from the requirements of Section 7203(c) of the Act as a part of their grant application. This waiver request should include information that will assist the Secretary in determining whether the local educational agency seeking a waiver "does not have adequate resources to pay the non-Federal share of the costs of the activities assisted under [the Foreign Language Assistance program]." (Section 7203(b) of the Act, 20 U.S.C. 7513(c)(2)).

Q. Under this program, may an applicant propose to hire foreign language teachers?

A. Yes, program funds may be used to hire foreign language teachers.

Q. May two districts apply together if they are already working together in an elementary school foreign language program?

A. Yes, the statute does not prohibit school districts from applying together. The requirements on group applications are in 34 CFR 75.127-75.129.

Q. How can an LEA ensure that their proposed program design will lead to an enhanced and effective foreign language program?

A. An LEA may consider the National and State foreign language content standards when designing their program.

GROUP APPLICATION CERTIFICATION

NOTE: This form must be completed by eligible parties applying as a group for a grant. This form must be accompanied by a group agreement that details the activities that each member of the group plans to perform under the grant.

(34 CFR 75.128(b)-(c)).

To the best of my knowledge and belief, all data in this application are true and correct. I agree to be bound to every statement and assurance made in this application.

Authorized Representative					Name of Institution/ Organization
Typed Name	Title	Signature	Date Signed	Telephone Number (including Area Code)	

FOREIGN LANGUAGE DATA

Name of Local Educational Agency

NOTE: This section must be completed by local educational agencies applying under the following program:

- **Foreign Language Assistance Grants**

1. Total number of students in the school district	
2. Total number of students in the district enrolled in a foreign language program	

3. Foreign languages taught in the school district

Elementary	Secondary

4. Name of project school	Language(s) to be taught	Grade(s) to be served	Number of students to be served

Assurances

The Applicant hereby assures and certifies that it will comply with the regulations, policies, guidelines and requirements, as they relate to the application, acceptance and use of Federal funds for this Federally assisted project. Also the Applicant assures and certifies that:

1. It possesses legal authority to apply for the grant; that a resolution, motion or similar action has been dully adopted or passed as an official act of the applicant's governing body, authorizing the filing of the application, including all understandings and assurances contained therein, and directing and authorizing the person identified as the official representative of the applicant to act in connection with the application and to provide such additional information as may be required.

2. It will comply with Title VI of the Civil Rights Act of 1964 (P.L. 88-352) and in accordance with Title VI of the Act, no person in the United States shall, on the grounds of race, color or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity for which the applicant receives Federal financial assistance and will immediately take any measures necessary to effect this agreement.

3. It will comply with Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d) prohibiting employment discrimination where (1) the primary purpose of a grant is to provide employment or (2) discriminatory employment practices will result in unequal treatment of persons who are or should be benefiting from the grant-aided activity.

4. It will comply with Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 794, which prohibits discrimination on the basis of handicap in programs and activities receiving Federal financial assistance.

5. It will comply with Title IX of the Education Amendments of 1972, as amended, 20 U.S.C. 1681 et seq., which prohibits discrimination on the basis of sex in education programs and activities receiving Federal financial assistance.

6. It will comply with the Age Discrimination Act of 1975, as amended, 42 U.S.C. 6101 et seq., which prohibits discrimination on the basis of age in programs or activities receiving Federal financial assistance.

7. It will comply with requirements of the provisions of the Uniform Relocation Assistance and Real Property Acquisitions Act of 1970 (P.L. 91-646) which provides for fair and equitable treatment of persons displaced as a result of Federal and Federally-assisted programs.

8. It will comply with provisions of the Hatch Act which limit the political activity of employees.

9. It will comply with the minimum wage and maximum hours provisions of the Federal Fair Labor Standards Act, as they apply to hospital and educational institution employees of State and local governments.

10. It will establish safeguards to prohibit employees from using their positions for a purpose that is or gives the appearance of being motivated by a desire for private gain for themselves or others, particularly those with whom they have family, business, or other ties.

11. It will give the sponsoring agency or the Comptroller General through any authorized representative the access to and the right to examine all records, books, papers, or documents related to the grant.

12. It will comply with all requirements imposed by the Federal sponsoring agency concerning special requirements of law, program requirements, and other administrative requirements.

13. It will insure that the facilities under its ownership, lease or supervision which shall be utilized in the accomplishment of the project are not listed on the Environmental Protection Agency's (EPA) list of Violating Facilities and that it will notify the Federal grantor agency of the receipt of any communication from the Director of the EPA Office of Federal Activities indicating that a facility to be used in the project is under consideration for listing by the EPA.

14. It will comply with the flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973, P.L. 93-234, 87 Stat. 975, approved December 31, 1976. Section 102(a) requires, on or after March 2, 1975, the purchase of flood insurance in communities where such insurance is available as a condition for the receipt of any Federal financial assistance for construction or acquisition purposes for use in any area that has been identified by the Secretary of the Department of Housing and Urban Development as an area having special flood hazards. The phrase "Federal financial assistance" includes any form of loan, grant, guaranty, insurance payment, rebate subsidy, disaster assistance loan or grant, or any other form of direct or indirect Federal assistance.

15. It will assist the Federal grantor agency in its compliance with Section 106 of the National Historic Preservation Act of 1966 as amended (16 U.S.C. 470), Executive Order 11593, and the Archeological and Historic Preservation Act of 1966 (16 U.S.C. 469a-1 et seq.) by (a) consulting with the State Historic Preservation Officer on the conduct of investigations, as necessary, to identify properties listed in or eligible for inclusion in the National Register of Historic Places that are subject to adverse effects (see 36 CFR Part 800.8) by the activity, and notifying the Federal grantor agency of the existence of any such properties, and by (b) complying with all requirements established by the Federal grantor agency to avoid or mitigate adverse effects upon such property.

OMB Approval No. 0348-0040

ASSURANCES — NON-CONSTRUCTION PROGRAMS

Note: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant I certify that the applicant:

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management and completion of the project described in this application.

2. Will give the awarding agency, the Comptroller General of the United States, and if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.

3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.

4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.

5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§ 4728-4763) relating to prescribed standards for merit systems for programs funded under one of the nineteen statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).

6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C.§§ 6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse: (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. § 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.

7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.

8. Will comply with the provisions of the Hatch Act (5 U.S.C. §§ 1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§ 276a to 276a-7), the Copeland Act (40 U.S.C. § 276c and 18 U.S.C. §§ 874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327-333), regarding labor standards for federally assisted construction subagreements.

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Prescribed by OMB Circular A-102

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10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program andto purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.

11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§ 1451 et seq.); (f) conformity of Federal actions to State (Clear Air) Implementation Plans under Section 176(c) of the Clear Air Act of 1955, as amended (42 U.S.C. § 7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (P.L. 93-523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended, (P.L. 93-205).

12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§ 1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a-1 et seq.).

14. Will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.

15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. 2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.

16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4801 et seq.) which prohibits the use of lead based paint in construction or rehabilitation of residence structures.

17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act of 1984.

18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations and policies governing this program.

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL	TITLE
APPLICANT ORGANIZATION	DATE SUBMITTED

SF 424B (4-88) Back

Certifications Regarding Lobbying; Debarment, Suspension and Other Responsibility Matters; and Drug-Free Workplace Requirements

Applicants should refer to the regulations cited below to determine the certification to which they are required to attest. Applicants should also review the instructions for certification included in the regulations before completing this form. Signature of this form provides for compliance with the certification requirements under 34 CFR Part 82, "New Restrictions on Lobbying," and 34 CFR Part 85, "Government-wide Debarment and Suspension (Nonprocurement) and Government-wide Requirements for Drug-Free Workplace (Grants)." The certifications shall be treated as a material representation of fact upon which reliance will be placed when the Department of Education determines to award the covered transaction, grant, or cooperative agreement.

1. Lobbying: As required by Section 1352, Title 31, of the U.S. Code, and implemented at 34 CFR Part 82, for persons entering into a grant or cooperative agreement over $100,000 as defined at 34 CFR Part 82.105 and 82.110, the applicant certifies that:

(a) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making of any Federal grant, the entering into of any cooperative, and theextension, continuation, renewal, amendment, or modification of any Federal grant or cooperative agreement;

(b) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, or an employee of a Member of Congress in connection with this Federal grant or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions;

(c) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subgrants, contracts under grants and cooperative agreements, and subcontracts) and that all subrecipients shall certify and disclose accordingly.

2. Debarment, Suspension, and Other Responsibility Matters: As required by Executive Order 12549, Debarment and Suspension, and implemented at 34 CFR Part 85, for prospective participants in primary covered transactions, as defined at 34 CFR Part 85, Sections 85.105 and 85-110-

A. The applicant certifies that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded form covered transactions by any Federal department or agency;

(b) Have not within a three-year period preceding this application been convicted of or had a civil judgement rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a government entity (Federal, State, or local) with commission of any offenses enumerated in paragraph (1)(b) of this certification; and

(d) Have not within a three-year period preceding this application had one or more public transactions (Federal, State, or local) terminated for cause or default; and

B. Where the applicant is unable to certify to any of the statements in this certification, he or she shall attach an explanation to this application.

3. Drug-Free Workplace: (Grantees Other Than Individuals) As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Section 85.605 and 85.610-

A. The applicant certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an on-going drug-free awareness program to inform employees about-

(1) The dangers of drug abuse in the workplace;

(2) The grantee's policy of maintaining a drug-free workplace;

(3) Any available drug counseling, rehabilitation, and employee assistance programs; and

(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will-

(1) Abide by the terms of the statement; and
(2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later that five calendar days after such conviction;

(e) Notifying the agency, in writing, within 10 calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to: Director, Grants and Contracts Service, U.S. Department of Education, 400 Maryland Avenue, SW (Room 3124, GSA Regional Office building No. 3), Washington, DC 20202-4571. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted-

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with he requirements of the Rehabilitation Act of 1973, as amended; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e), and (f).

B. The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant:

Place of Performance (Street address, city, county, state, zip code)

_____

_____

_____

Check ☐ if there are workplaces on file that are not identified here.

Drug-Free Workplace (Grantees Who Are Individuals)
As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610-

A. As a condition of the grant, I certify that I will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conduction any activity with the grant; and

B. If convicted of a criminal drug offense resulting from a violation occurring during the conduct of any grant activity, I will report the conviction, in writing, within 10 calendar days of the conviction, to: Director, Grants and Contracts Service, U.S. Department of Education, 400 Maryland Avenue, S.W. (Room 3124, GSA Regional Office building No. 3), Washington, DC 20202-4571. Notice shall include the identification number(s) of each affected grant.

As the duly authorized representative of the applicant, I hereby certify that the applicant will comply with the above certifications.

NAME OF APPLICANT	PR/AWARD NUMBER AND/OR PROJECT NAME
PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE	
SIGNATURE	DATE

ED 80-0013

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion -- Lower Tier Covered Transactions

This certification is required by the Department of Education regulations implementing Executive Order 12549, Debarment and Suspension, 34 CFR Part 85, for all lower tier transactions meeting the threshold and tier requirements stated at Section 85.110.

Instructions for Certification

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.

2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.

5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transactions be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

6. The prospective lower tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion -- Lower Tier Covered Transactions," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of it principals. Each participant may, but is not required to, check the Nonprocurement List.

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

Certification

(1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

NAME OF APPLICANT	PR/AWARD NUMBER AND OR PROJECT NAME
PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE	
SIGNATURE	DATE

ED 80-0014, 9/90 (Replaces GCS-009 (REV. 12/88), which is obsolete)

Approved by OMB
0348-0046

DISCLOSURE OF LOBBYING ACTIVITIES

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352
(See reverse for public burden disclosure.)

1. Type of Federal Action: ☐ a. contract b. grant c. cooperative agreement d. loan e. loan guarantee f. loan insurance	2. Status of Federal Action: ☐ a. bid/offer/application b. initial award c. post-award	3. Report Type: ☐ a. initial filing b. material change For Material Change Only: year _____ quarter _____ date of last report _____
4. Name and Address of Reporting Entity: ☐ Prime ☐ Subawardee Tier _____, if known 0. Congressional District, if known:	5. If Reporting Entity in No. 4 is Subawardee, Enter Nam and Address of Prime: Congressional District, if known:	
6. Federal Department/Agency:	7. Federal Program Name/Description: CFDA Number, if applicable: _____	
8. Federal Action Number, if known:	9. Award Amount, if known: $	
10. a. Name and Address of Lobby Entity (if individual, last name, first name, MI):	b. Individuals Performing Services (including address if different from No. 10a) (last name, first name, MI):	
~~(attach Continuation Sheet(s) SF-LLL-A if necessary)~~		
~~11. Amount of Payment (check all that apply):~~ ~~☐ actual~~ ~~$ _____ ☐ planned~~	~~13. Type of Payment (check all that apply):~~ ~~☐ a. retainer~~ ~~☐ b. one-time fee~~ ~~☐ c. commission~~ ~~☐ d. contingent fee~~ ~~☐ e. deferred~~ ~~☐ f. other; specify: _____~~	
~~12. Form of Payment (check all that apply):~~ ~~☐ a. cash~~ ~~☐ b. in-kind; specify: nature _____~~ ~~value _____~~		
~~14. Brief Description of Services Performed or to be Performed and Date(s) of Service, including officer(s), employee(s), or Member(s) contacted, for Payment indicated in Item 11:~~ ~~(attach Continuation Sheet(s) SF-LLL-A, if necessary)~~		
~~15. Continuation Sheet(s) SF-LLL-A attached: ☐ Yes ☐ No~~		
16. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public information. Any person who fails to file the required	Signature: _____ Print Name: _____ Title: _____ Telephone No.: _____ Date: _____	
Federal Use Only:		Authorized for Local Reproduction Standard Form LLL

INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. ~~Use the SF-LLL-A Continuation Sheet for additional information if the space on the form is inadequate.~~ Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.
2. Identify the status of the covered Federal action.
3. Identify the appropriate classification of this report. If this is a followup report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.
4. Enter the full name, address, city, state and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.
5. If the organization filing the report in item 4 checks "Subawardee", then enter the full name, address, city, state and zip code of the prime Federal recipient. Include Congressional District, if known.
6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.
7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.
8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitation for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP-DE-90-001."
9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.
10. (a) Enter the full name, address, city, state and zip code of the lobbying entity engaged by the reporting entity identified in item 4 to influence the covered Federal action.

    (b) Enter the full names of the individual(s) performing services, and include full address if different from 10 (a). Enter Last Name, First Name, and Middle Initial (MI).

~~11. Enter the amount of compensation paid or reasonably expected to be paid by the reporting entity (item 4) to the lobbying entity (item 10). Indicate whether the payment has been made (actual) or will be made (planned). Check all boxes that apply. If this is a material change report, enter the cumulative amount of payment made or planned to be made.~~

~~12. Check the appropriate box(es). Check all boxes that apply. If payment is made through an in-kind contribution, specify the nature and value of the in-kind payment.~~

~~13. Check the appropriate box(es). Check all boxes that apply. If other, specify nature.~~

~~14. Provide a specific and detailed description of the services that the lobbyist has performed, or will be expected to perform, and the date(s) of any services rendered. Include all preparatory and related activity, not just time spent in actual contact with Federal officials. Identify the Federal official(s) or employee(s) contacted or the officer(s), employee(s), or Member(s) of Congress that were contacted.~~

~~15. Check whether or not a SF-LLL-A Continuation Sheet(s) is attached.~~

16. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

OMB Control No. 1801-0004 (Exp. 8/31/2001)

NOTICE TO ALL APPLICANTS

The purpose of this enclosure is to inform you about a new provision in the Department of Education's General Education Provisions Act (GEPA) that applies to applicants for new grant awards under Department programs. This provision is Section 427 of GEPA, enacted as part of the Improving America's Schools Act of 1994 (Pub. L. 103-382).

To Whom Does This Provision Apply?

Section 427 of GEPA affects applicants for new grant awards under this program. **ALL APPLICANTS FOR NEW AWARDS MUST INCLUDE INFORMATION IN THEIR APPLICATIONS TO ADDRESS THIS NEW PROVISION IN ORDER TO RECEIVE FUNDING UNDER THIS PROGRAM.**

(If this program is a State-formula grant program, a State needs to provide this description only for projects or activities that it carries out with funds reserved for State-level uses. In addition, local school districts or other eligible applicants that apply to the State for funding need to provide this description in their applications to the State for funding. The State would be responsible for ensuring that the school district or other local entity has submitted a sufficient section 427 statement as described below.)

What Does This Provision Require?

Section 427 requires each applicant for funds (other than an individual person) to include in its application a description of the steps the applicant proposes to take to ensure equitable access to, and participation in, its Federally-assisted program for students, teachers, and other program beneficiaries with special needs.

This provision allows applicants discretion in developing the required description. The statute highlights six types of barriers that can impede equitable access or participation: gender, race, national origin, color, disability, or age. Based on local circumstances, you should determine whether these or other barriers may prevent your students, teachers, etc. from such access or participation in, the Federally-funded project or activity. The description in your application of steps to be taken to overcome these barriers need not be lengthy; you may provide a clear and succinct description of how you plan to address those barriers that are applicable to your circumstances. In addition, the information may be provided in a single

narrative, or, if appropriate, may be discussed in connection with related topics in the application.

Section 427 is not intended to duplicate the requirements of civil rights statutes, but rather to ensure that, in designing their projects, applicants for Federal funds address equity concerns that may affect the ability of certain potential beneficiaries to fully participate in the project and to achieve to high standards. Consistent with program requirements and its approved application, an applicant may use the Federal funds awarded to it to eliminate barriers it identifies.

What are Examples of How an Applicant Might Satisfy the Requirement of This Provision?

The following examples may help illustrate how an applicant may comply with Section 427.

(1) An applicant that proposes to carry out an adult literacy project serving, among others, adults with limited English proficiency, might describe in its application how it intends to distribute a brochure about the proposed project to such potential participants in their native language.

(2) An applicant that proposes to develop instructional materials for classroom use might describe how it will make the materials available on audio tape or in braille for students who are blind.

(3) An applicant that proposes to carry out a model science program for secondary students and is concerned that girls may be less likely than boys to enroll in the course, might indicate how it intends to conduct "outreach" efforts to girls, to encourage their enrollment.

We recognize that many applicants may already be implementing effective steps to ensure equity of access and participation in their grant programs, and we appreciate your cooperation in responding to the requirements of this provision.

Estimated Burden Statement for GEPA Requirements

The time required to complete this information collection is estimated to vary from 1 to 3 hours per response, with an average of 1.5 hours, including the time to review instructions, search existing data resources, gather and maintain the data needed, and complete and review the information collection. **If you have any comments concerning the accuracy of the time estimate(s) or suggestions for improving this form, please write to**: U.S. Department of Education, Washington, DC 20202-4651.

[FR Doc. 99–778 Filed 1–12–99; 8:45 am]
BILLING CODE 4000–01–C

DEPARTMENT OF EDUCATION

[CFDA No.: 84.293C]

Foreign Language Assistance Grants (State educational agencies) Notice Inviting Applications for New Awards for Fiscal Year (FY) 1999

Note to Applicants: This notice is a complete application package. Together with the statute authorizing the program and applicable regulations governing the program, including the Education Department General Administrative Regulations (EDGAR), this notice contains all of the information, application forms, and instructions needed to apply for an award under this competition.

Purpose of Program: This program provides grants to pay for the Federal share of the cost of innovative model programs providing for the establishment, improvement, or expansion of foreign language study for elementary and secondary school students.

In awarding grants under this program, the Secretary supports projects that promote systemic approaches to improving foreign language learning in the State.

Eligible Applicants: State educational agencies.

Deadline for Transmittal of Applications: February 26, 1999.

Deadline for Intergovernmental Review: April 26, 1999.

Available Funds: $660,000.

Estimated Range of Awards: $30,000–$70,000.

Estimated Average Size of Awards: $50,000.

Estimated Number of Awards: 14.

Note: The Department is not bound by any estimates in this notice.

Project Period: 36 months.

Applicable Regulations

(a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 75, 77, 79, 80, 81, 82, 85 and 86.

(b) 34 CFR part 299.

Description of Program

Part B of Title VII of the Elementary and Secondary Education Act of 1965, as amended (the Act), authorizes the Foreign Language Assistance Grants program. Appropriations for this program are authorized by section 7206 of the Act. Applicants should note that section 7203(c)(1) provides that the Federal share of the cost of activities assisted under this part for each fiscal year is 50 percent. Section 7203(c)(3) of the Act provides that at least 75 percent of the funds appropriated under section 7206 must be used for the expansion of foreign language learning in elementary grades. The Secretary does not fund projects that propose Native American languages.

Priority

Under 34 CFR 75.105(b)(2)(iv) and (c)(2)(i) and section 7204(b) of the Act (20 U.S.C. 7514(b)), the Secretary gives preference to applications that meet the following competitive priority. The Secretary awards three points depending on how well an application meets this competitive priority. These points would be in addition to any points the application earns under the selection criteria for the program.

Competitive Preference Priority—Special Considerations (3 Points)

Projects that propose to carry out one or more of the following activities: (1) intensive summer foreign language programs for professional development; (2) linking non-native English speakers in the community with the schools in order to promote two-way language learning; or (3) promoting the sequential study of a foreign language, beginning in elementary schools.

Selection Criteria

(a)(1) The Secretary uses the following selection criteria under 34 CFR 75.209 and 75.210 and section 7203 of the Act to evaluate applications for the new grants under this competition.

(2) The maximum score for all of these criteria is 100 points.

(3) The maximum score for each criterion is indicated in parentheses.

(b)(1) *Need for the project.* (10 points).

The Secretary considers the need for the project. In determining the need for the proposed project, the Secretary considers the following factors:

(i) The magnitude of the need for services to be provided or the activities to be carried out by the proposed project.

(ii) The extent to which specific gaps or weaknesses in services, infrastructure, or opportunities have been identified and will be addressed by the proposed project, including the nature and magnitude of those gaps or weaknesses.

(2) *Significance.* (20 points).

The Secretary reviews each application to determine how well the proposed project will implement foreign language instructional programs that promote systemic approaches to improving foreign language learning in the State.

(3) *Quality of project design.* (25 points).

The Secretary considers the quality of the design of the proposed project. In determining the quality of the design of the proposed project, the Secretary considers the following factors:

(i) The extent to which the goals, objectives, and outcomes to be achieved by the proposed project are clearly specified and measurable.

(ii) The extent to which the design of the proposed project reflects up-to-date knowledge from research and effective practice.

(iii) The extent to which the proposed project is part of a comprehensive effort to improve teaching and learning and support rigorous academic standards for students.

(4) *Quality of project services.* (20 points).

(i) The Secretary considers the quality of services to be provided by the proposed project.

(ii) In determining the quality of the services to be provided by the proposed project, the Secretary considers the quality and sufficiency of strategies for ensuring equal access and treatment for eligible project participants who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability.

(iii) In addition, the Secretary considers the following factors:

(A) The extent to which the services to be provided by the proposed project are appropriate to the needs of the intended recipients or the beneficiaries of those services.

(B) The extent to which the services to be provided by the proposed project reflect up-to-date knowledge from research and effective practice.

(C) The likelihood that the services to be provided by the proposed project will lead to improvements in the achievement of students as measured against rigorous academic standards.

(5) *Quality of project personnel.* (10 points).

(i) The Secretary considers the quality of the key personnel who will carry out the proposed project.

(ii) In determining the quality of project personnel, the Secretary considers the extent to which the applicant encourages applications for employment from persons who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age or disability.

(iii) In addition, the Secretary considers the following factors:

(A) The qualifications, including relevant training and experience, of the project director or principal investigator.

(B) The qualifications, including relevant training and experience, of key project personnel.

(6) *Adequacy of resources.* (4 points).

The Secretary considers the adequacy of resources for the project. In determining the adequacy of resources for the proposed project, the Secretary considers the following factors:

(i) The extent to which the budget is adequate to support the proposed project.

(ii) The extent to which the costs are reasonable in relation to the objectives, design, and potential significance of the proposed project.

(7) *Quality of the management plan.* (5 points).

The Secretary considers the quality of the management plan for the proposed project. In determining the quality of the management plan for the proposed project, the Secretary considers the following factors:

(i) The adequacy of the management plan to achieve the objectives of the proposed project on time and within budget, including clearly defined responsibilities, timelines, and milestones for accomplishing project tasks.

(ii) The extent to which the time commitments of the project director and principal investigator and other key project personnel are appropriate and adequate to meet the objectives of the proposed project.

(8) *Quality of project evaluation plan.* (6 points).

The Secretary considers the quality of the evaluation to be conducted of the proposed project. In determining the quality of the evaluation, the Secretary considers the following factors:

(i) The extent to which the methods of evaluation are thorough, feasible, and appropriate to the goals, objectives, and outcomes of the proposed project.

(ii) The extent to which the methods of evaluation will provide performance feedback and permit periodic assessment of progress toward achieving intended outcomes.

(iii) The extent to which the evaluation will provide guidance about effective strategies suitable for replication or testing in other settings.

Intergovernmental Review of Federal Programs

This program is subject to the requirements of Executive Order 12372 (Intergovernmental Review of Federal Programs) and the regulations in 34 CFR part 79.

The objective of the Executive order is to foster an intergovernmental partnership and to strengthen federalism by relying on State and local processes for State and local government coordination and review of proposed Federal financial assistance.

Applicants must contact the appropriate State Single Point of Contact to find out about, and to comply with, the State's process under Executive order 12372. Applicants proposing to perform activities in more than one State should immediately contact the Single Point of Contact for each of those States and follow the procedure established in each State under the Executive order. If you want to know the name and address of any State Single Point of Contact, see the list published in the **Federal Register** on November 3, 1998 (63 FR 59452 through 59455).

In States that have not established a process or chosen a program for review, State, areawide, regional, and local entities may submit comments directly to the Department.

Any State Process Recommendation and other comments submitted by a State Single Point of Contact and any comments from State, areawide, regional, and local entities must be mailed or hand-delivered by the date indicated in this notice to the following address: The Secretary, E.O. 12372—CFDA# 84.293C, U.S. Department of Education, Room 6213, 600 Independence Avenue, SW, Washington, D.C. 20202–0124.

Proof of mailing will be determined on the same basis as applications (see 34 CFR 75.102). Recommendations or comments may be hand-delivered until 4:30 p.m. (Eastern time) on the date indicated in this notice.

Please note that the above address is not the same address as the one to which the applicants submits its completed application. *Do not send applications to the above address.*

Instructions for Transmittal of Applications

(a) If an applicant wants to apply for a grant, the applicant must—

(1) Mail the original and two copies of the application on or before the deadline date to: U.S. Department of Education, Application Control Center, Attention: (CFDA# 84.293C), Washington, D.C. 20202–4725.

or

(2) Hand deliver the original and two copies of the application by 4:30 p.m. (Eastern time) on or before the deadline date to: U.S. Department of Education, Application Control Center, Attention: (CFDA# 84.293C), Room #3633, Regional Office Building #3, 7th and D Streets, SW, Washington, D.C.

(b) An applicant must show one of the following as proof of mailing:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary.

(c) If an application is mailed through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

Notes: (1) The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

(2) The Application Control Center will mail a Grant Application Receipt Acknowledgment to each applicant. If an applicant fails to receive the notification of application receipt within 15 days from the date of mailing the application, the applicant should call the U.S. Department of Education Application Control Center at (202) 708–9494.

(3) The applicant *must* indicate on the envelope and—if not provided by the Department—in Item 10 of the Application for Federal Assistance (Standard Form 424) the CFDA number—and suffix letter, if any—of the competition under which the application is being submitted.

Application Instructions and Forms

The appendix to this application is divided into three parts plus a statement regarding estimated public reporting burden, guidance on addressing the EDGAR selection criteria, and various assurances, certifications, and required documentation. These parts and additional materials are organized in the same manner that the submitted application should be organized. The parts and additional materials are as follows:

Part I: Application for Federal Assistance (Standard Form 424) and instructions.

Part II: Budget Information—Non-Construction Programs (ED Form No. 524) and instructions.

Part III: Application Narrative.

Additional Materials

a. Estimated Public Reporting Burden.

b. Part B of Title VII of the Elementary and Secondary Education Act of 1965, as amended (the Act).

c. Program Questions and Answers.

d. Group Application Certification.

e. State Educational Agency Data Form.

f. Assurances—Non-Construction Programs (Standard Form 424B) and instructions.

g. Certifications Regarding Lobbying; Debarment, Suspension, and Other Responsibility Matters; and Drug-Free Workplace Requirements (ED 80–0013) and instructions.

h. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion: Lower Tier Covered Transactions (ED 80–0014, 9/90) and instructions. (NOTE: ED 80–0014 is intended for the use of grantees and should not be transmitted to the Department.)

i. Disclosure of Lobbying Activities (Standard Form LLL) (if applicable) and instructions. This document has been marked to reflect statutory changes. See the notice published by the **Federal Register** at 61 FR 1413 by the Office of Management and Budget on (January 19, 1996).

j. Notice to All Applicants concerning a new provision in the Department of Education's General Education Provisions Act (GEPA).

An applicant may submit information on a photostatic copy of the application and budget forms, the assurances, and the certifications. However, the application form, the assurances, and the certifications must each have an original signature. All applicants must submit ONE original signed application, including ink signatures on all forms and assurances, and TWO copies of the application. Please mark each application as ''original'' or ''copy''. No grant may be awarded unless a completed application form has been received.

For Further Information Contact: Harpreet Sandhu or Franklin Reid, U.S. Department of Education, 400 Maryland Avenue, SW, Room 5090, Switzer Building, Washington, D.C. 20202–6510. Harpreet Sandhu, Telephone: (202) 205–9808, Franklin Reid, Telephone (202) 205–9803. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

Individuals with disabilities may obtain this notice in an alternate format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph. Please note, however, that the Department is not able to reproduce in an alternate format the standard forms included in the notice.

Electronic Access to This Document

Anyone may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or portable document format (pdf) on the World Wide Web at either of the following sites:

http://ocfo.ed.gov/fedreg.htm
http://www.ed.gov/news.html

To use the pdf you must have the Adobe Acrobat Reader Program with search, which is available free at either of the preceding sites. If you have questions about using the pdf, call the U.S. Government Printing Office toll free at 1–800–293–6498.

Anyone may also view these documents in text copy only on an electronic bulletin board of the Department. Telephone: (202) 219–1511 or, toll free, 1–800–222–4922. The documents are located under Option G—Files/Announcements, Bulletins and Press Releases.

Note: The official version of this document is the document published in the **Federal Register**.

Program Authority: 20 U.S.C. 7511–7514.

Dated: January 8, 1999.

Delia Pompa,

Director, Office of Bilingual Education and Minority Languages Affairs.

Editor's Note: An excerpt of Public Law 103–382 is published for the convenience of the reader. The official text is published at 108 Stat. 3737.

BILLING CODE 4000–01–P

APPENDIX

Part I

Application for Federal Education Assistance

U.S. Department of Education

Form Approved
OMB No. 1875-0106
Exp. 06/30/2001

Applicant Information

1. Name and Address — Organizational Unit

Legal Name: _____

Address: _____

_____

City _____ State _____ County _____ ZIP Code + 4 _____

2. Applicant's D-U-N-S Number

3. Catalog of Federal Domestic Assistance #: 8 4 → Title: _____

4. Project Director: _____

Address: _____

City _____ State _____ ZIP Code + 4 _____

Tel. #: ( ) _____-_____ Fax #: ( ) _____-_____

E-Mail Address: _____

5. Is the applicant delinquent on any Federal debt? Yes No
(If "Yes," attach an explanation.)

6. Type of Applicant *(Enter appropriate letter in the box.)*

A State	H Independent School District
B County	I Public College or University
C Municipal	J Private, Non-Profit College or University
D Township	K Indian Tribe
E Interstate	L Individual
F Intermunicipal	M Private, Profit-Making Organization
G Special District	N Other *(Specify)*: _____

7. Novice Applicant Yes No

Application Information

8. Type of Submission:

—PreApplication	*—Application*
Construction	Construction
Non-Construction	Non-Construction

9. Is application subject to review by Executive Order 12372 process?

Yes *(Date made available to the Executive Order 12372 process for review):* ___/___/_____

No *(If "No," check appropriate box below.)*

Program is not covered by E.O. 12372.

Program has not been selected by State for review.

10. Proposed Project Dates: **Start Date:** ___/___/_____ **End Date:** ___/___/_____

11. Are any research activities involving human subjects planned at any time during the proposed project period? Yes No

a. If "Yes," Exemption(s) #: b. Assurance of Compliance #:

OR

c. IRB approval date: _____ Full IRB or Expedited Review

12. Descriptive Title of Applicant's Project:

Estimated Funding

13a. Federal	$	.00
b. Applicant	$	.00
c. State	$	.00
d. Local	$	.00
e. Other	$	.00
f. Program Income	$	.00
g. **TOTAL**	$	.00

Authorized Representative Information

14. To the best of my knowledge and belief, all data in this preapplication/application are true and correct. The document has been duly authorized by the governing body of the applicant and the applicant will comply with the attached assurances if the assistance is awarded.

a. Typed Name of Authorized Representative

b. Title

c. Tel. #: ( ) _____-_____ Fax #: ( ) _____-_____

d. E-Mail Address: _____

e. **Signature of Authorized Representative** Date:

Instructions for ED 424

1. **Legal Name and Address.** Enter the legal name of applicant and the name of the primary organizational unit which will undertake the assistance activity.

2. **D-U-N-S Number.** Enter the applicant's D-U-N-S Number. If your organization does not have a D-U-N-S Number, you can obtain the number by calling 1-800-333-0505 or by completing a D-U-N-S Number Request Form. The form can be obtained via the Internet at the following URL: **http://www.dnb.com/dbis/aboutdb/intlduns.htm.**

3. **Catalog of Federal Domestic Assistance (CFDA) Number.** Enter the CFDA number and title of the program under which assistance is requested.

4. **Project Director.** Name, address, telephone and fax numbers, and e-mail address of the person to be contacted on matters involving this application.

5. **Federal Debt Delinquency.** Check **"Yes"** if the applicant's organization is delinquent on any Federal debt. (This question refers to the applicant's organization and not to the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.) Otherwise, check **"No."**

6. **Type of Applicant.** Enter the appropriate letter in the box provided.

7. **Novice Applicant.** Check **"Yes"** only if assistance is being requested under a program that gives special consideration to novice applicants and you meet the program requirements for novice applicants. By checking "Yes" the applicant certifies that it meets the novice applicant requirements specified by ED. Otherwise, check **"No."**

8. **Type of Submission.** Self-explanatory.

9. **Executive Order 12372.** Check **"Yes"** if the application is subject to review by Executive Order 12372. Also, please enter the month, date, and four (4) digit year (e.g., 12/12/2000). Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process. Otherwise, check **"No."**

10. **Proposed Project Dates.** Please enter the month, date, and four (4) digit year (e.g., 12/12/2000).

11. **Human Subjects.** If research activities involving human subjects are <u>not</u> planned <u>at any time</u> during the proposed project period, check **"No."** The remaining parts of item 11 are then not applicable.

    If research activities involving human subjects, whether or not exempt from Federal regulations for the protection of human subjects, <u>are</u> planned <u>at any time</u> during the proposed project period, either at the applicant organization or at any other performance site or collaborating institution, check **"Yes."** If the research activities are designated to be exempt under the regulations, enter, in item 11a, the exemption number(s) corresponding to one or more of the six exemption categories listed in **"PROTECTION OF HUMAN SUBJECTS IN RESEARCH"** attached to this form. Provide sufficient information in the application to allow a determination that the designated exemptions are appropriate.

    If the planned research activities involving human subjects are covered (not exempt), complete the remaining parts of item 11 and follow the instructions in **"PROTECTION OF HUMAN SUBJECTS IN RESEARCH"** attached to this form. If the applicant organization has an approved Multiple Project Assurance of Compliance on file with the Grants Policy and Oversight Staff (GPOS), U.S. Department of Education, or with the Office for Protection from Research Risks (OPRR), National Institutes of Health, U.S. Department of Health and Human Services, that covers the specific activity, enter the Assurance number in item 11b and the date of approval by the Institutional Review Board (IRB) of the proposed activities in item 11c. This date must be no earlier than one year before the receipt date for which the application is submitted and must include the four (4) digit year (e.g., 2000). Check the type of IRB review in the appropriate box. An IRB may review an application through an expedited review procedure only if it complies with Section 97.110 of the human subjects regulations 34 CFR 97. If the IRB review is unavoidably delayed beyond the submission of the application, enter **"Pending"** in item 11c. A follow-up certification of IRB approval from an official signing for the applicant organization must then be sent to and received by the designated ED official. The certification must be received within 30 days of a specific formal request from the designated ED official. The certification must include: the PR Award number, title of the project from item #12, name of the principal investigator, project director, fellow, or other, institution, Multiple Assurance number, date of IRB approval, and appropriate signatures.

    If the applicant organization does not have on file with GPOS or OPRR an approved Assurance of Compliance that covers the proposed research activity, enter **"None"** in item 11b. In this case, the applicant organization, by the signature on the application, is declaring that it will comply with 34 CFR 97 within 30 days of a specific formal request from the designated ED official.

    For additional instructions regarding proposals that involve human subjects research see, **"PROTECTION OF HUMAN SUBJECTS IN RESEARCH"** attached to this form.

12. **Project Title.** Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.

13. **Estimated Funding.** Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate <u>only</u> the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 13.

14. **Certification.** To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office.

    Be sure to enter the telephone and fax number and e-mail address of the authorized representative. Also, in item 14e, please enter the month, date, and four (4) digit year (e.g., 12/12/2000) in the date signed field.

Paperwork Burden Statement

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless such collection displays a valid OMB control number. The valid OMB control number for this information collection is **1875-0106**. The time required to complete this information collection is estimated to average between 15 and 45 minutes per response, including the time to review instructions, search existing data resources, gather the data needed, and complete and review the information collection. **If you have any comments concerning the accuracy of the estimate(s) or suggestions for improving this form, please write to:** U.S. Department of Education, Washington, D.C. 20202-4651. **If you have comments or concerns regarding the status of your individual submission of this form write directly to:** Joyce I. Mays, Application Control Center, U.S. Department of Education, 7th and D Streets, S.W. ROB-3, Room 3633, Washington, D.C. 20202-4725.

PROTECTION OF HUMAN SUBJECTS IN RESEARCH (Attachment to ED 424)

I. Instructions to Applicants if Research Activities Involving Human Subjects are Planned

If you marked item 11 on the application "Yes" and designated exemptions from the human subjects regulations, provide sufficient information in the application to allow a determination that the designated exemptions are appropriate. Research involving human subjects that is exempt from the regulations is discussed under **II.B. "Exemptions,"** below.

If you marked "Yes" to item 11 on the Face Page, and designated no exemptions from the regulations, address the following six points. In addition, if research involving human subjects will take place at collaborating site(s) or other performance site(s), provide this information before discussing the six points. Although no specific page limitation applies to this section of the application, be succinct. Be sure to provide this information on a separate page(s) entitled "Protection of Human Subjects Attachment."

(1) Provide a detailed description of the proposed involvement of human subjects. Describe the characteristics of the subject population, including their anticipated number, age range, and health status. Identify the criteria for inclusion or exclusion of any subpopulation. Explain the rationale for the involvement of special classes of subjects, such as children, children with disabilities, adults with disabilities, persons with mental disabilities, pregnant women, prisoners, institutionalized individuals, or others who are likely to be vulnerable.

(2) Identify the sources of research material obtained from individually identifiable living human subjects in the form of specimens, records, or data. Indicate whether the material or data will be obtained specifically for research purposes or whether use will be made of existing specimens, records, or data.

(3) Describe plans for the recruitment of subjects and the consent procedures to be followed. Include the circumstances under which consent will be sought and obtained, who will seek it, the nature of the information to be provided to prospective subjects, and the method of documenting consent. State if the Institutional Review Board (IRB) has authorized a modification or waiver of the elements of consent or the requirement for documentation of consent.

(4) Describe potential risks (physical, psychological, social, legal, or other) and assess their likelihood and seriousness. Where appropriate, describe alternative treatments and procedures that might be advantageous to the subjects.

(5) Describe the procedures for protecting against or minimizing potential risks, including risks to confidentiality, and assess their likely effectiveness. Where appropriate, discuss provisions for ensuring necessary medical or professional intervention in the event of adverse effects to the subjects. Also, where appropriate, describe the provisions for monitoring the data collected to ensure the safety of the subjects.

(6) Discuss why the risks to subjects are reasonable in relation to the anticipated benefits to subjects and in relation to the importance of the knowledge that may reasonably be expected to result.

II. Information on Research Activities Involving Human Subjects

A. Definitions.

A research activity involves human subjects if the activity is research, as defined in the Department's regulations, and the research activity will involve use of human subjects, as defined in the regulations.

—Is it a research activity?

The ED Regulations for the Protection of Human Subjects, Title 34, Code of Federal Regulations, Part 97, define research as "a systematic investigation, including research development, testing and evaluation, designed to develop or contribute to generalizable knowledge." *If an activity follows a deliberate plan whose purpose is to develop or contribute to generalizable knowledge, such as an exploratory study or the collection of data to test a hypothesis, it is research.* Activities which meet this definition constitute research whether or not they are conducted or supported under a program which is considered research for other purposes. For example, some demonstration and service programs may include research activities.

—Is it a human subject?

The regulations define human subject as "a living individual about whom an investigator (whether professional or student) conducting research obtains (1) data through intervention or interaction with the individual, or (2) identifiable private information." *(1) If an activity involves obtaining information about a living person by manipulating that person or that person's environment, as might occur when a new instructional technique is tested, or by communicating or interacting with the individual, as occurs with surveys and interviews, the definition of human subject is met. (2) If an activity involves obtaining private information about a living person in such a way that the information can be linked to that individual (the identity of the subject is or may be readily determined by the investigator or associated with the information), the definition of human subject is met.* [Private information includes information about behavior that occurs in a context in which an individual can reasonably expect that no observation or recording is taking place, and information which has been provided for specific purposes by an individual and which the individual can reasonably expect will not be made public (for example, a school health record).]

B. Exemptions.

Research activities in which the only involvement of human subjects will be in one or more of the following six categories of ***exemptions*** are not covered by the regulations:

(1) Research conducted in established or commonly accepted educational settings, involving normal educational practices, such as (a) research on regular and special education instructional strategies, or (b) research on the effectiveness of or the comparison among instructional techniques, curricula, or classroom management methods.

(2) Research involving the use of educational tests (cognitive, diagnostic, aptitude, achievement), survey procedures, interview procedures or observation of public behavior, unless: (a) information obtained is recorded in such a manner that human subjects can be identified, directly or through identifiers linked to the subjects; and (b) any disclosure of the human subjects' responses outside the research could reasonably place the subjects at risk of criminal or civil liability or be damaging to the subjects' financial standing, employability, or reputation. ***If the subjects are children, this exemption applies only to research involving educational tests or observations of public behavior when the investigator(s) do not participate in the activities being observed.*** [Children are defined as persons who have not attained the legal age for consent to treatments or procedures involved in the research, under the applicable law or jurisdiction in which the research will be conducted.]

(3) Research involving the use of educational tests (cognitive, diagnostic, aptitude, achievement), survey procedures, interview procedures or observation of public behavior that is not exempt under section (2) above, if the human subjects are elected or appointed public officials or candidates for public office; or federal statute(s) require(s) without exception that the confidentiality of the personally identifiable information will be maintained throughout the research and thereafter.

(4) Research involving the collection or study of existing data, documents, records, pathological specimens, or diagnostic specimens, if these sources are publicly available or if the information is recorded by the investigator in a manner that subjects cannot be identified, directly or through identifiers linked to the subjects.

(5) Research and demonstration projects which are conducted by or subject to the approval of department or agency heads, and which are designed to study, evaluate, or otherwise examine: (a) public benefit or service programs; (b) procedures for obtaining benefits or services under those programs; (c) possible changes in or alternatives to those programs or procedures; or (d) possible changes in methods or levels of payment for benefits or services under those programs.

(6) Taste and food quality evaluation and consumer acceptance studies, (a) if wholesome foods without additives are consumed or (b) if a food is consumed that contains a food ingredient at or below the level and for a use found to be safe, or agricultural chemical or environmental contaminant at or below the level found to be safe, by the Food and Drug Administration or approved by the Environmental Protection Agency or the Food Safety and Inspection Service of the U.S Department of Agriculture.

Copies of the Department of Education's Regulations for the Protection of Human Subjects, 34 CFR Part 97 and other pertinent materials on the protection of human subjects in research are available from the Grants Policy and Oversight Staff (GPOS) Office of the Chief Financial and Chief Information Officer, U.S. Department of Education, Washington, D.C., telephone: (202) 708-8263, and on the U.S. Department of Education's Protection of Human Subjects in Research Web Site at http://ocfo.ed.gov/humansub.htm.

Part II

U.S. DEPARTMENT OF EDUCATION

BUDGET INFORMATION

NON-CONSTRUCTION PROGRAMS

OMB Control No. 1875-0102

Expiration Date: 9/30/98

Name of Institution/Organization

Applicants requesting funding for only one year should complete the column under "Project Year 1." Applicants requesting funding for multi-year grants should complete all applicable columns. Please read all instructions before completing form.

SECTION A - BUDGET SUMMARY
U.S. DEPARTMENT OF EDUCATION FUNDS

Budget Categories	Project Year 1 (a)	Project Year 2 (b)	Project Year 3 (c)	Project Year 4 (d)	Project Year 5 (e)	**Total (f)**
1. Personnel						
2. Fringe Benefits						
3. Travel						
4. Equipment						
5. Supplies						
6. Contractual						
7. Construction						
8. Other						
9. Total Direct Costs (lines 1-8)						
10. Indirect Costs						
11. Training Stipends						
12. Total Costs (lines 9-11)						

ED FORM NO. 524

Name of Institution/Organization	Applicants requesting funding for only one year should complete the column under "Project Year 1." Applicants requesting funding for multi-year grants should complete all applicable columns. Please read all instructions before completing form.

SECTION B - BUDGET SUMMARY
NON-FEDERAL FUNDS

Budget Categories	Project Year 1 (a)	Project Year 2 (b)	Project Year 3 (c)	Project Year 4 (d)	Project Year 5 (e)	**Total (f)**
1. Personnel						
2. Fringe Benefits						
3. Travel						
4. Equipment						
5. Supplies						
6. Contractual						
7. Construction						
8. Other						
9. Total Direct Costs (lines 1-8)						
10. Indirect Costs						
11. Training Stipends						
12. Total Costs (lines 9-11)						

SECTION C - OTHER BUDGET INFORMATION (see instructions)

ED FORM NO. 524

Public reporting burden for this collection of information is estimated to vary from 13 to 22 hours per response, with an average of 17.5 hours, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the U.S. Department of Education, Information Management and Compliance Division, Washington, D.C. 20202-4651; and the Office of Management and Budget, Paperwork Reduction Project 1875-0102, Washington, D.C. 20503.

INSTRUCTIONS FOR ED FORM NO. 524

General Instructions

This form is used to apply to individual U.S. Department of Education discretionary grant programs. Unless directed otherwise, provide the same budget information for each year of the multi-year funding request. Pay attention to applicable program specific instructions, if attached.

Section A - Budget Summary U.S. Department of Education Funds

All applicants must complete Section A and provide a breakdown by the applicable budget categories shown in lines 1-11.

Lines 1-11, columns (a)-(e): For each project year for which funding is requested, show the total amount requested for each applicable budget category.

Lines 1-11, column (f): Show the multi-year total for each budget category. If funding is requested for only one project year, leave this column blank.

Line 12, columns (a)-(e): Show the total budget request for each project year for which funding is requested.

Line 12, column (f): Show the total amount requested for all project years. If funding is requested for only one year, leave this space blank.

Section B - Budget Summary Non-Federal Funds

If you are required to provide or volunteer to provide matching funds or other non-Federal resources to the project, these should be shown for each applicable budget category on lines 1-11 of Section B.

Lines 1-11, columns (a)-(e): For each project year for which matching funds or other contributions are provided, show the total contribution for each applicable budget category.

Lines 1-11, column (f): Show the multi-year total for each budget category. If non-Federal contributions are provided for only one year, leave this column blank.

Line 12, columns (a)-(e): Show the total matching or other contribution for each project year.

Line 12, column (f): Show the total amount to be contributed for all years of the multi-year project. If non-Federal contributions are provided for only one year, leave this space blank.

Section C - Other Budget Information Pay attention to applicable program specific instructions, if attached.

1. Provide an itemized budget breakdown, by project year, for each budget category listed in Sections A and B.

2. If applicable to this program, enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period. In addition, enter the estimated amount of the base to which the rate is applied, and the total indirect expense.

3. If applicable to this program, provide the rate and base on which fringe benefits are calculated.

4. Provide other explanations or comments you deem necessary.

BILLING CODE 4000–01–C

Part III—Application Narrative

Application Narrative Instructions

Mandatory Page Limit for the Application Narrative

The narrative is the section of the application where you address the selection criteria used by reviewers in evaluating the application. You must limit the narrative to the equivalent of no more than 35 pages, using the following standards:

(1) A page is 8.5″ × 11″, on one side only with 1″ margins at the top, bottom and both sides.

(2) You must double space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.

If you use a proportional computer font, you may not use a font small than a 12-point font. If you use a non-proportional font or a typewriter, you may not use more than 12 characters per inch.

The page limit does not apply to the Application for Federal Education Assistance Form (ED 424); the Budget Information Form (ED 524) and attached itemization of costs; the other application forms and attachments to those forms; the assurances and certifications; or the one-page abstract and table of contents described below.

IF, IN ORDER TO MEET THE PAGE LIMIT, YOU USE PRINT SIZE, SPACING, OR MARGINS SMALLER THAN STANDARDS SPECIFIED IN THIS NOTICE, YOUR APPLICATION WILL NOT BE CONSIDERED FOR FUNDING.

Additional Guidance

Abstract

The narrative section should be preceded by a one-page abstract that includes a short description of the population to be served by the project, project objectives, and planned project activities.

Table of Contents

The application should include a table of contents listing the parts of the narrative in the order of the selection criteria. Be sure that the table includes the page numbers where the parts of the narrative are found.

Budget

Budget line items must support the goals and objectives of the proposed project and must be directly related to the instructional design and all the project components.

Selection Criteria

The narrative should address fully all aspects of the selection criteria in the order listed and should give detailed information regarding each criterion. Do not simply paraphrase the criteria. Do not include resumes or curriculum vitae for project personnel; provide position descriptions instead. Do not include bibliographies, letters of support, or appendices in your application.

Final Application Preparation

Submit three copies of the application, including an original copy containing an original signature for each form requiring the signature of the authorized representative. Do not use elaborate bindings or covers. The application package must be mailed or hand-delivered to the Application Control Center (ACC) and postmarked by the deadline date.

Additional Materials

Estimated Burden Statement

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless such collection displays a valid OMB control number. The valid OMB control number for this information collection is 1885–0544 (Exp. 12/31/2001). The time required to complete this information collection is estimated to average 80 hours per response, including the time to review instructions, search existing data resources, gather the data needed, and complete and review the information collection. *If you have any comments concerning the accuracy of the time estimate(s) or suggestions for improving this form, please write to:* U.S. Department of Education, Washington, DC 20202–4651.

If you have comments or concerns regarding the status of your individual submission of this form, write directly to: Office of Bilingual Education and Minority Languages Affairs, U.S. Department of Education, 400 Maryland Avenue, SW., Room 5603, Switzer Building, Washington, DC 20202–6510.

BILLING CODE 4000–01–P

"PART B—FOREIGN LANGUAGE ASSISTANCE PROGRAM

Foreign Language Assistance Act of 1994.
20 USC 7511.

"SEC. 7201. SHORT TITLE.

"This part may be cited as the 'Foreign Language Assistance Act of 1994'.

"SEC. 7202. FINDINGS.

20 USC 7512.

"The Congress finds as follows:

"(1) Foreign language proficiency is crucial to our Nation's economic competitiveness and national security. Significant improvement in the quantity and quality of foreign language instruction offered in our Nation's elementary and secondary schools is necessary.

"(2) All Americans need a global perspective. To understand the world around us, we must acquaint ourselves with the languages, cultures, and history of other nations.

"(3) Proficiency in two or more languages should be promoted for all American students. Multilingualism enhances cognitive and social growth, competitiveness in the global marketplace, national security, and understanding of diverse people and cultures.

"(4) The United States lags behind other developed countries in offering foreign language study to elementary and secondary school students.

"(5) Four out of five new jobs in the United States are created from foreign trade.

"(6) The optimum time to begin learning a second language is in elementary school, when children have the ability to learn and excel in several foreign language acquisition skills, including pronunciation, and when children are most open to appreciating and valuing a culture other than their own.

"(7) Foreign language study can increase childrens' capacity for critical and creative thinking skills and children who study a second language show greater cognitive development in areas such as mental flexibility, creativity, tolerance, and higher order thinking skills.

"(8) Children who have studied a foreign language in elementary school achieve expected gains and score higher on standardized tests of reading, language arts, and mathematics than children who have not studied a foreign language.

"SEC. 7203. PROGRAM AUTHORIZED.

20 USC 7513.

"(a) PROGRAM AUTHORITY.—

"(1) IN GENERAL.—The Secretary shall make grants, on a competitive basis, to State educational agencies or local educational agencies to pay the Federal share of the cost of innovative model programs providing for the establishment, improvement or expansion of foreign language study for elementary and secondary school students.

"(2) DURATION.—Each grant under paragraph (1) shall be awarded for a period of three years.

"(b) REQUIREMENTS.—

"(1) GRANTS TO STATE EDUCATIONAL AGENCIES.—In awarding a grant under subsection (a) to a State educational agency, the Secretary shall support programs that promote systemic approaches to improving foreign language learning in the State.

"(2) GRANTS TO LOCAL EDUCATIONAL AGENCIES.—In awarding a grant under subsection (a) to a local educational agency, the Secretary shall support programs that—

"(A) show the promise of being continued beyond the grant period;

"(B) demonstrate approaches that can be disseminated and duplicated in other local educational agencies; and

"(C) may include a professional development component.

"(c) FEDERAL SHARE.—

"(1) IN GENERAL.—The Federal share for each fiscal year shall be 50 percent.

"(2) WAIVER.—The Secretary may waive the requirement of paragraph (1) for any local educational agency which the Secretary determines does not have adequate resources to pay the non-Federal share of the cost of the activities assisted under this part.

"(3) SPECIAL RULE.—Not less than three-fourths of the funds appropriated under section 7206 shall be used for the expansion of foreign language learning in the elementary grades.

"(4) RESERVATION.—The Secretary may reserve not more than 5 percent of funds appropriated under section 7206 to evaluate the efficacy of programs under this part.

20 USC 7514.

"SEC. 7204. APPLICATIONS.

"(a) IN GENERAL.—Any State educational agency or local educational agency desiring a grant under this part shall submit an application to the Secretary at such time, in such form, and containing such information and assurances as the Secretary may require.

"(b) SPECIAL CONSIDERATION.—The Secretary shall give special consideration to applications describing programs that—

"(1) include intensive summer foreign language programs for professional development;

"(2) link non-native English speakers in the community with the schools in order to promote two-way language learning; or

"(3) promote the sequential study of a foreign language for students, beginning in elementary schools.

FOREIGN LANGUAGE ASSISTANCE PROGRAM GRANTS TO STATE EDUCATIONAL AGENCIES

(Program Questions and Answers)

Q. How can State educational agencies support programs that promote systemic approaches to improving foreign language learning in the States?

A. Activities may include staff development, curriculum development, development of State standards and appropriate assessment strategies, and use of instructional technology to improve foreign language learning in the State.

Q. How will the Secretary comply with the statutory requirement, set out in Section 7204 (b) of the Elementary and Secondary Education Act, to give special consideration to applications that describe programs that (1) include intensive summer foreign language programs for professional development; (2) link non-native English speakers in the community; or (3) promote the sequential study of a foreign language for students, beginning in elementary schools.

A. The Secretary has established a competitive priority to comply with this statutory requirement. Under that priority, the Secretary awards three additional points to applications that propose to carry out one or more of the activities specified in Section 7204 (b) of the Act in a particularly effective way. These points would be in addition to any points the application earns under the Selection Criteria. This priority is set out in full in the Application Notice.

Q. How can an applicant promote two-way language learning?

A. Two-way language learning is promoted through encouraging interaction between non-native English speakers and foreign language learners in an instructional setting for purposes of facilitating foreign language acquisition. Although improvement of the English language skills of non-native English speakers is a desirable ancillary benefit of a project that utilizes two-way language learning, the primary focus of projects funded under the Foreign Language Assistance program must be on foreign language learning. As a consequence, funds received under the Foreign Language Assistance program should not be used to fund English language instruction.

Q. What is the definition of "elementary school" or "secondary school"?

A. The definitions of these two terms are set out in 34 CFR 77.1(c). The term "elementary school" means: "a day or residential school that provides elementary education, as determined under State law." The term "secondary school" means: "a day or residential school that provides secondary education as determined under State law. In the absence of State law, the Secretary may determine, with respect to that State, whether the term

includes education beyond the twelfth grade."

Q. What is the State or LEA's share of costs for the Foreign Language Assistance program for each fiscal year?

A. The State or LEA's share is 50 percent. However, a waiver may be granted for an LEA if the Secretary determines that the LEA does not have adequate resources to pay the non-Federal share of the cost of the activities. (Section 7203 (c), 20 U.S.C. 7513(c)). The Education Department General Administrative Regulations, at 34 CFR 80.24, also addresses Federal Cost sharing requirements.

Q. What is the ultimate goal of effective foreign language education programs?

A. The ultimate goal of effective foreign language education programs is to develop communicative competency in a foreign language. The Secretary interprets "communicative competency" to mean the ability to communicate in meaningful and effective ways in a foreign language.

GROUP APPLICATION CERTIFICATION

NOTE: This form must be completed by eligible parties applying as a group for a grant. This form must be accompanied by a group agreement that details the activities that each member of the group plans to perform under the grant.

(34 CFR 75.128(b)-(c)).

To the best of my knowledge and belief, all data in this application are true and correct. I agree to be bound to every statement and assurance made in this application.

Authorized Representative					Name of Institution/ Organization
Typed Name	Title	Signature	Date Signed	Telephone Number (including Area Code)	

FOREIGN LANGUAGE DATA

Name of State Educational Agency

NOTE: This section must be completed by State educational agencies applying under the following program:

- Foreign Language Assistance Grants

1. Total number of local educational agencies (LEAs) in the State	
2. Total number of LEAs in the State providing foreign language programs	

3. Foreign languages taught

Elementary	Secondary

Assurances

The Applicant hereby assures and certifies that it will comply with the regulations, policies, guidelines and requirements, as they relate to the application, acceptance and use of Federal funds for this Federally assisted project. Also the Applicant assures and certifies that:

1. It possesses legal authority to apply for the grant; that a resolution, motion or similar action has been dully adopted or passed as an official act of the applicant's governing body, authorizing the filing of the application, including all understandings and assurances contained therein, and directing and authorizing the person identified as the official representative of the applicant to act in connection with the application and to provide such additional information as may be required.

2. It will comply with Title VI of the Civil Rights Act of 1964 (P.L. 88-352) and in accordance with Title VI of the Act, no person in the United States shall, on the grounds of race, color or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity for which the applicant receives Federal financial assistance and will immediately take any measures necessary to effect this agreement.

3. It will comply with Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d) prohibiting employment discrimination where (1) the primary purpose of a grant is to provide employment or (2) discriminatory employment practices will result in unequal treatment of persons who are or should be benefiting from the grant-aided activity.

4. It will comply with Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 794, which prohibits discrimination on the basis of handicap in programs and activities receiving Federal financial assistance.

5. It will comply with Title IX of the Education Amendments of 1972, as amended, 20 U.S.C. 1681 et seq., which prohibits discrimination on the basis of sex in education programs and activities receiving Federal financial assistance.

6. It will comply with the Age Discrimination Act of 1975, as amended, 42 U.S.C. 6101 et seq., which prohibits discrimination on the basis of age in programs or activities receiving Federal financial assistance.

7. It will comply with requirements of the provisions of the Uniform Relocation Assistance and Real Property Acquisitions Act of 1970 (P.L. 91-646) which provides for fair and equitable treatment of persons displaced as a result of Federal and Federally-assisted programs.

8. It will comply with provisions of the Hatch Act which limit the political activity of employees.

9. It will comply with the minimum wage and maximum hours provisions of the Federal Fair Labor Standards Act, as they apply to hospital and educational institution employees of State and local governments.

10. It will establish safeguards to prohibit employees from using their positions for a purpose that is or gives the appearance of being motivated by a desire for private gain for themselves or others, particularly those with whom they have family, business, or other ties.

11. It will give the sponsoring agency or the Comptroller General through any authorized representative the access to and the right to examine all records, books, papers, or documents related to the grant.

12. It will comply with all requirements imposed by the Federal sponsoring agency concerning special requirements of law, program requirements, and other administrative requirements.

13. It will insure that the facilities under its ownership, lease or supervision which shall be utilized in the accomplishment of the project are not listed on the Environmental Protection Agency's (EPA) list of Violating Facilities and that it will notify the Federal grantor agency of the receipt of any communication from the Director of the EPA Office of Federal Activities indicating that a facility to be used in the project is under consideration for listing by the EPA.

14. It will comply with the flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973, P.L. 93-234, 87 Stat. 975, approved December 31, 1976. Section 102(a) requires, on or after March 2, 1975, the purchase of flood insurance in communities where such insurance is available as a condition for the receipt of any Federal financial assistance for construction or acquisition purposes for use in any area that has been identified by the Secretary of the Department of Housing and Urban Development as an area having special flood hazards. The phrase "Federal financial assistance" includes any form of loan, grant, guaranty, insurance payment, rebate subsidy, disaster assistance loan or grant, or any other form of direct or indirect Federal assistance.

15. It will assist the Federal grantor agency in its compliance with Section 106 of the National Historic Preservation Act of 1966 as amended (16 U.S.C. 470), Executive Order 11593, and the Archeological and Historic Preservation Act of 1966 (16 U.S.C. 469a-1 et seq.) by (a) consulting with the State Historic Preservation Officer on the conduct of investigations, as necessary, to identify properties listed in or eligible for inclusion in the National Register of Historic Places that are subject to adverse effects (see 36 CFR Part 800.8) by the activity, and notifying the Federal grantor agency of the existence of any such properties, and by (b) complying with all requirements established by the Federal grantor agency to avoid or mitigate adverse effects upon such property.

OMB Approval No. 0348-0040

ASSURANCES — NON-CONSTRUCTION PROGRAMS

Note: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant I certify that the applicant:

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management and completion of the project described in this application.

2. Will give the awarding agency, the Comptroller General of the United States, and if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.

3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.

4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.

5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§ 4728-4763) relating to prescribed standards for merit systems for programs funded under one of the nineteen statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).

6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C.§§ 6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. § 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.

7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.

8. Will comply with the provisions of the Hatch Act (5 U.S.C. §§ 1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§ 276a to 276a-7), the Copeland Act (40 U.S.C. § 276c and 18 U.S.C. §§ 874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327-333), regarding labor standards for federally assisted construction subagreements.

Standard Form 424B (1-88)
Prescribed by OMB Circular A-102

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10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program andto purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.

11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§ 1451 et seq.); (f) conformity of Federal actions to State (Clear Air) Implementation Plans under Section 176(c) of the Clear Air Act of 1955, as amended (42 U.S.C. § 7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (P.L. 93-523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended, (P.L. 93-205).

12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§ 1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a-1 et seq.).

14. Will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.

15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. 2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.

16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4801 et seq.) which prohibits the use of lead based paint in construction or rehabilitation of residence structures.

17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act of 1984.

18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations and policies governing this program.

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL	TITLE	
APPLICANT ORGANIZATION		DATE SUBMITTED

SF 424B (4-88) Back

Certifications Regarding Lobbying; Debarment, Suspension and Other Responsibility Matters; and Drug-Free Workplace Requirements

Applicants should refer to the regulations cited below to determine the certification to which they are required to attest. Applicants should also review the instructions for certification included in the regulations before completing this form. Signature of this form provides for compliance with the certification requirements under 34 CFR Part 82, "New Restrictions on Lobbying," and 34 CFR Part 85, "Government-wide Debarment and Suspension (Nonprocurement) and Government-wide Requirements for Drug-Free Workplace (Grants)." The certifications shall be treated as a material representation of fact upon which reliance will be placed when the Department of Education determines to award the covered transaction, grant, or cooperative agreement.

1. Lobbying: As required by Section 1352, Title 31, of the U.S. Code, and implemented at 34 CFR Part 82, for persons entering into a grant or cooperative agreement over $100,000 as defined at 34 CFR Part 82.105 and 82.110, the applicant certifies that:

(a) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making of any Federal grant, the entering into of any cooperative, and theextension, continuation, renewal, amendment, or modification of any Federal grant or cooperative agreement;

(b) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, or an employee of a Member of Congress in connection with this Federal grant or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions;

(c) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subgrants, contracts under grants and cooperative agreements, and subcontracts) and that all subrecipients shall certify and disclose accordingly.

2. Debarment, Suspension, and Other Responsibility Matters: As required by Executive Order 12549, Debarment and Suspension, and implemented at 34 CFR Part 85, for prospective participants in primary covered transactions, as defined at 34 CFR Part 85, Sections 85.105 and 85-110-

A. The applicant certifies that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded form covered transactions by any Federal department or agency;

(b) Have not within a three-year period preceding this application been convicted of or had a civil judgement rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a government entity (Federal, State, or local) with commission of any offenses enumerated in paragraph (1)(b) of this certification; and

(d) Have not within a three-year period preceding this application had one or more public transactions (Federal, State, or local) terminated for cause or default; and

B. Where the applicant is unable to certify to any of the statements in this certification, he or she shall attach an explanation to this application.

3. Drug-Free Workplace: (Grantees Other Than Individuals) As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Section 85.605 and 85.610-

A. The applicant certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an on-going drug-free awareness program to inform employees about-

(1) The dangers of drug abuse in the workplace;
(2) The grantee's policy of maintaining a drug-free workplace;

(3) Any available drug counseling, rehabilitation, and employee assistance programs; and

(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will-

(1) Abide by the terms of the statement; and
(2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later that five calendar days after such conviction;

(e) Notifying the agency, in writing, within 10 calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to: Director, Grants and Contracts Service, U.S. Department of Education, 400 Maryland Avenue, SW (Room 3124, GSA Regional Office building No. 3), Washington, DC 20202-4571. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted-

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with he requirements of the Rehabilitation Act of 1973, as amended; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e), and (f).

B. The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant:

Place of Performance (Street address, city, county, state, zip code)

_____

_____

_____

Check ☐ if there are workplaces on file that are not identified here.

Drug-Free Workplace (Grantees Who Are Individuals)
As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610-

A. As a condition of the grant, I certify that I will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conduction any activity with the grant; and

B. If convicted of a criminal drug offense resulting from a violation occurring during the conduct of any grant activity, I will report the conviction, in writing, within 10 calendar days of the conviction, to: Director, Grants and Contracts Service, U.S. Department of Education, 400 Maryland Avenue, S.W. (Room 3124, GSA Regional Office building No. 3), Washington, DC 20202-4571. Notice shall include the identification number(s) of each affected grant.

As the duly authorized representative of the applicant, I hereby certify that the applicant will comply with the above certifications.

NAME OF APPLICANT	PR/AWARD NUMBER AND/OR PROJECT NAME
PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE	
SIGNATURE	DATE

ED 80-0013

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion -- Lower Tier Covered Transactions

This certification is required by the Department of Education regulations implementing Executive Order 12549, Debarment and Suspension, 34 CFR Part 85, for all lower tier transactions meeting the threshold and tier requirements stated at Section 85.110.

Instructions for Certification

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.

2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.

5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transactions be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

6. The prospective lower tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion -- Lower Tier Covered Transactions," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of it principals. Each participant may, but is not required to, check the Nonprocurement List.

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

Certification

(1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

NAME OF APPLICANT	PR/AWARD NUMBER AND OR PROJECT NAME
PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE	
SIGNATURE	DATE

ED 80-0014, 9/90 (Replaces GCS-009 (REV. 12/88), which is obsolete)

Approved by OMB
0348-0046

DISCLOSURE OF LOBBYING ACTIVITIES

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352
(See reverse for public burden disclosure.)

1. Type of Federal Action: ☐ a. contract b. grant c. cooperative agreement d. loan e. loan guarantee f. loan insurance	2. Status of Federal Action: ☐ a. bid/offer/application b. initial award c. post-award	3. Report Type: ☐ a. initial filing b. material change For Material Change Only: year _____ quarter _____ date of last report _____
4. Name and Address of Reporting Entity: ☐ Prime ☐ Subawardee Tier _____, if known 0. Congressional District, if known:	5. If Reporting Entity in No. 4 is Subawardee, Enter Nam and Address of Prime: Congressional District, if known:	
6. Federal Department/Agency:	7. Federal Program Name/Description: CFDA Number, if applicable: _____	
8. Federal Action Number, if known:	9. Award Amount, if known: $	
10. a. Name and Address of Lobby Entity (if individual, last name, first name, MI):	b. Individuals Performing Services (including address if different from No. 10a) (last name, first name, MI):	
~~(attach Continuation Sheet(s) SF-LLL-A if necessary)~~		
~~11. Amount of Payment (check all that apply):~~ ~~☐ actual~~ ~~$ _____ ☐ planned~~	~~13. Type of Payment (check all that apply):~~ ~~☐ a. retainer~~ ~~☐ b. one-time fee~~ ~~☐ c. commission~~ ~~☐ d. contingent fee~~ ~~☐ e. deferred~~ ~~☐ f. other; specify: _____~~	
~~12. Form of Payment (check all that apply):~~ ~~☐ a. cash~~ ~~☐ b. in-kind; specify: nature _____~~ ~~value _____~~		
~~14. Brief Description of Services Performed or to be Performed and Date(s) of Service, including officer(s), employee(s), or Member(s) contacted, for Payment indicated in Item 11:~~ ~~(attach Continuation Sheet(s) SF-LLL-A, if necessary)~~		
~~15. Continuation Sheet(s) SF-LLL-A attached: ☐ Yes ☐ No~~		
16. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required	Signature: _____ Print Name: _____ Title: _____ Telephone No.: _____ Date: _____	
Federal Use Only:	Authorized for Local Reproduction Standard Form LLL	

INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. ~~Use the SF-LLL-A Continuation Sheet for additional information if the space on the form is inadequate.~~ Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.
2. Identify the status of the covered Federal action.
3. Identify the appropriate classification of this report. If this is a followup report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.
4. Enter the full name, address, city, state and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.
5. If the organization filing the report in item 4 checks "Subawardee", then enter the full name, address, city, state and zip code of the prime Federal recipient. Include Congressional District, if known.
6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.
7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.
8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitation for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP-DE-90-001."
9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.
10. (a) Enter the full name, address, city, state and zip code of the lobbying entity engaged by the reporting entity identified in item 4 to influence the covered Federal action.

    (b) Enter the full names of the individual(s) performing services, and include full address if different from 10 (a). Enter Last Name, First Name, and Middle Initial (MI).

~~11. Enter the amount of compensation paid or reasonably expected to be paid by the reporting entity (item 4) to the lobbying entity (item 10). Indicate whether the payment has been made (actual) or will be made (planned). Check all boxes that apply. If this is a material change report, enter the cumulative amount of payment made or planned to be made.~~

~~12. Check the appropriate box(es). Check all boxes that apply. If payment is made through an in-kind contribution, specify the nature and value of the in-kind payment.~~

~~13. Check the appropriate box(es). Check all boxes that apply. If other, specify nature.~~

~~14. Provide a specific and detailed description of the services that the lobbyist has performed, or will be expected to perform, and the date(s) of any services rendered. Include all preparatory and related activity, not just time spent in actual contact with Federal officials. Identify the Federal official(s) or employee(s) contacted or the officer(s), employee(s), or Member(s) of Congress that were contacted.~~

~~15. Check whether or not a SF-LLL-A Continuation Sheet(s) is attached.~~

16. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

OMB Control No. 1801-0004 (Exp. 8/31/2001)

NOTICE TO ALL APPLICANTS

The purpose of this enclosure is to inform you about a new provision in the Department of Education's General Education Provisions Act (GEPA) that applies to applicants for new grant awards under Department programs. This provision is Section 427 of GEPA, enacted as part of the Improving America's Schools Act of 1994 (Pub. L. 103-382).

To Whom Does This Provision Apply?

Section 427 of GEPA affects applicants for new grant awards under this program. **ALL APPLICANTS FOR NEW AWARDS MUST INCLUDE INFORMATION IN THEIR APPLICATIONS TO ADDRESS THIS NEW PROVISION IN ORDER TO RECEIVE FUNDING UNDER THIS PROGRAM.**

(If this program is a State-formula grant program, a State needs to provide this description only for projects or activities that it carries out with funds reserved for State-level uses. In addition, local school districts or other eligible applicants that apply to the State for funding need to provide this description in their applications to the State for funding. The State would be responsible for ensuring that the school district or other local entity has submitted a sufficient section 427 statement as described below.)

What Does This Provision Require?

Section 427 requires each applicant for funds (other than an individual person) to include in its application a description of the steps the applicant proposes to take to ensure equitable access to, and participation in, its Federally-assisted program for students, teachers, and other program beneficiaries with special needs.

This provision allows applicants discretion in developing the required description. The statute highlights six types of barriers that can impede equitable access or participation: gender, race, national origin, color, disability, or age. Based on local circumstances, you should determine whether these or other barriers may prevent your students, teachers, etc. from such access or participation in, the Federally-funded project or activity. The description in your application of steps to be taken to overcome these barriers need not be lengthy; you may provide a clear and succinct description of how you plan to address those barriers that are applicable to your circumstances. In addition, the information may be provided in a single

narrative, or, if appropriate, may be discussed in connection with related topics in the application.

Section 427 is not intended to duplicate the requirements of civil rights statutes, but rather to ensure that, in designing their projects, applicants for Federal funds address equity concerns that may affect the ability of certain potential beneficiaries to fully participate in the project and to achieve to high standards. Consistent with program requirements and its approved application, an applicant may use the Federal funds awarded to it to eliminate barriers it identifies.

What are Examples of How an Applicant Might Satisfy the Requirement of This Provision?

The following examples may help illustrate how an applicant may comply with Section 427.

(1) An applicant that proposes to carry out an adult literacy project serving, among others, adults with limited English proficiency, might describe in its application how it intends to distribute a brochure about the proposed project to such potential participants in their native language.

(2) An applicant that proposes to develop instructional materials for classroom use might describe how it will make the materials available on audio tape or in braille for students who are blind.

(3) An applicant that proposes to carry out a model science program for secondary students and is concerned that girls may be less likely than boys to enroll in the course, might indicate how it intends to conduct "outreach" efforts to girls, to encourage their enrollment.

We recognize that many applicants may already be implementing effective steps to ensure equity of access and participation in their grant programs, and we appreciate your cooperation in responding to the requirements of this provision.

Estimated Burden Statement for GEPA Requirements

The time required to complete this information collection is estimated to vary from 1 to 3 hours per response, with an average of 1.5 hours, including the time to review instructions, search existing data resources, gather and maintain the data needed, and complete and review the information collection. **If you have any comments concerning the accuracy of the time estimate(s) or suggestions for improving this form, please write to**: U.S. Department of Education, Washington, DC 20202-4651.

[FR Doc. 99–777 Filed 1–12–99; 8:45 am]
BILLING CODE 4000–01–C

federal register

Wednesday
January 13, 1999

Part IV

Environmental Protection Agency

40 CFR Parts 52, 97, and 98

Reopening of Emissions Inventory Comment Periods for the Findings of Significant Contribution and Rulemakings on Section 126 Petitions and Federal Implementation Plans for Purposes of Reducing Interstate Transport of Ozone; Proposed Rules

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52, 97, and 98

[FRL–6219–5]

Reopening of Emissions Inventory Comment Periods for the Findings of Significant Contribution and Rulemakings on Section 126 Petitions and Federal Implementation Plans for Purposes of Reducing Interstate Transport of Ozone

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of reopening of comment periods for emission inventory inputs.

SUMMARY: Notice is hereby given that EPA is reopening the comment periods for emissions inventory revisions to the 2007 baseline sub-inventory information for the proposed rulemakings concerning the Clean Air Act section 126 petitions (the section 126 proposal) and the Federal implementation plans (FIPs) for the purpose of reducing interstate ozone transport. For both proposals, this includes opportunity to comment on source-specific emission inventory data; for the FIP proposal, it also includes the opportunity to comment on vehicle miles traveled (VMT) and nonroad mobile growth rates, VMT distribution by vehicle class, average speed by roadway type, inspection and maintenance program parameters, and other input parameters used in the calculation of highway vehicle emissions. The comment periods remain closed for all other issues.

DATES: The EPA is reopening the comment periods for emissions inventory revisions, ending on February 22, 1999. Comments must be postmarked by the last day of the comment periods and sent directly to the Docket Office listed in **ADDRESSES** (in duplicate form if possible). The EPA strongly urges commenters to submit proposed changes to the inventories of electric generating units (EGUs) greater than 25 megawatts (MWe) and non-EGU boilers and turbines greater than 250 mmBtu/hr by January 25, 1999 to facilitate incorporation of any necessary changes into the section 126 final rulemaking.

ADDRESSES: Comments may be submitted to the Air and Radiation Docket and Information Center (6102), Attention: Docket No. A–97–43 for the section 126 proposal and Docket No. A–98–12 for the FIP proposal, U.S. Environmental Protection Agency, 401 M Street SW, room M–1500, Washington, DC 20460, telephone (202) 260–7548. Comments and data may also be submitted electronically by following the instructions under **SUPPLEMENTARY INFORMATION** of this document. The e-mail address is A-and-R-Docket@epamail.epa.gov. No confidential business information (CBI) should be submitted through e-mail.

Documents relevant to this action are available for inspection at the Docket Office, at the above address, between 8:00 a.m. and 4:00 p.m., Monday though Friday, excluding legal holidays. A reasonable copying fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: General questions on emissions inventory updates should be directed to Greg Stella, Office of Air Quality Planning and Standards, Emissions Monitoring and Analysis Division, MD–14, Research Triangle Park, NC 27711, telephone (919) 541–3649, e-mail stella.greg@epa.gov.

Specific questions on modifications to the EGU sector of the inventory should be directed to Kevin Culligan, Office of Atmospheric Programs, Acid Rain Division, MC–6204J, 401 M Street, Washington, DC 20460, telephone (202) 564–9172, e-mail culligan.kevin@epa.gov.

General questions concerning the section 126 proposal should be addressed to Carla Oldham, Office of Air Quality Planning and Standards, Air Quality Strategies and Standards Division, MD–15, Research Triangle Park, NC, 27711, telephone (919) 541–3347, e-mail oldham.carla@epa.gov.

General questions concerning the FIP proposal should be addressed to Doug Grano, Office of Air Quality Planning and Standards, Air Quality Strategies and Standards Division, MD–15, Research Triangle Park, NC, 27711, telephone (919) 541–3292, e-mail grano.doug@epa.gov.

SUPPLEMENTARY INFORMATION: By notice dated September 30, 1998, EPA proposed ''Findings of Significant Contribution and Rulemakings on Section 126 Petitions and Federal Implementation Plans for Purposes of Reducing Interstate Ozone Transport,'' (63 FR 52213). On October 21, 1998, EPA published longer, more detailed versions of these proposals entitled ''Findings of Significant Contribution and Rulemaking on Section 126 Petitions for Purposes of Reducing Interstate Ozone Transport,'' (63 FR 56292), which may be referred to as the section 126 proposal; and ''Federal Implementation Plans to Reduce the Regional Transport of Ozone,'' (63 FR 56394), which may be referred to as the FIP proposal. These two proposals each had a comment period of 60 days, which closed on November 30, 1998.

By notice dated October 27, 1998, EPA published the final rulemaking, ''Finding of Significant Contribution and Rulemaking for Certain States in the Ozone Transport Assessment Group Region for Purposes of Reducing Regional Transport of Ozone,'' (63 FR 57356), which may be referred to as the NO_X SIP call.

Comment Period for Emission Inventory Revisions

In the final NO_X SIP call, as described at 63 FR 57427, EPA provided that the opportunity for source-specific inventory data revisions would be available for the first 60 days of the 12-month period between signature of the NO_X SIP call and the deadline for submission of the required SIP revisions (i.e., November 23, 1998). The EPA received numerous requests to allow more time to accept revisions to source-specific inventory data used to establish each State's base inventory and budget in the NO_X SIP call and to also allow revisions to VMT projections. The Agency is aware of difficulties some States have had accessing the emission inventory data bases. Therefore, in a separate notice (63 FR 71220; December 24, 1998), EPA extended this time period for source specific emissions inventory revisions and also agreed to accept revisions to VMT projections until February 22, 1999. Because the section 126 and FIP proposals rely on the same emissions inventory information as the NO_X SIP call, EPA is today reopening the comment periods for these actions specifically for emissions inventory revisions.

As specified in section III.F.5 of the final NO_X SIP call, no changes to an emissions inventory will be made unless information is provided to corroborate and justify the need for the requested modification. Commenters need to submit any suggested inventory changes to the EPA Air and Radiation docket (A–97–43 for the section 126 proposal, and A–98–12 for the FIP proposal) by February 22, 1999. Sources and other non-State commenters should also send a copy of their comments concerning the inventory changes to their State air pollution control agency. A courtesy copy of comments mailed to Greg Stella at the address listed above would be appreciated in addition to the formal submittal to the docket(s).

For a comment to be considered, the data submitted in the request for modification must be submitted in electronic format (i.e., spreadsheet, data base, text file) and must be accompanied

by information to support the requested change. The EPA has identified the specific data elements for each source sector that must be included in the electronic file submitted with any data modification request. For budget calculation purposes, emphasis should be on NO_X emissions, noting that other precursor emissions and modeling data are necessary for final development of the modeling inventory.

However, in many cases, not all of the inventory information needs to be corrected and resubmitted. For example, it may be the case that source-specific NO_X emission rates are incorrect, but all stack and other emissions data are acceptable. In these cases, it is not necessary to resubmit the entire inventory record data. Only source identification information and additional data that require correction need to be resubmitted. In those cases where the majority of the data are incorrect or the submission is for a new, unaccounted for source, complete files with all data fields outlined in section III.F.5 of the final NO_X SIP call must be submitted.

For those sources so indicated above, a simplified inventory revision submittal is acceptable and must include the following information:

► Source sector needing revision,

► Identification of the specific changes requested to the inventory,

► Reason for requested change,

► All of the following sector-specific information in electronic file format:

Electric Generating Units

Data on a source-specific basis including:

- Federal Information Placement System State Code,
- Federal Information Placement System County Code,
- Plant name,
- Plant ID numbers (ORIS code preferred (ORIS is a coding mechanism used by the Department of Energy to track plants with EGUs), State agency tracking number also or otherwise),
- Unit ID numbers (a unit is a boiler or other combustion device),
- Unit type (also known as prime mover; e.g., wall-fired boiler, stoker boiler, combined cycle, combustion turbine, etc.),
- Primary fuel on a heat input basis,
- Maximum rated heat input capacity of unit,
- Nameplate capacity of the largest generator the unit serves,
- 1995 and 1996 ozone season heat inputs,
- 1996 (or most recent) average NO_X rate for the ozone season.

Non-EGU Point Sources

Data on a source-specific basis including:

- Federal Information Placement System State Code,
- Federal Information Placement System County Code,
- Plant name,
- Plant ID numbers (National Emission Data System (NEDS), Aerometric Information Retrieval System/AIRS Facility Subsystem (AIRS/AFS), and State agency tracking number also or otherwise),
- Unit ID numbers,
- Primary source classification code (SCC),
- Maximum rated heat input capacity of unit,
- 1995 ozone season or typical ozone season daily NO_X emissions,
- 1995 existing NO_X control efficiency.

Stationary Area Sources

Data on a sub-category specific basis including:

- Federal Information Placement System State Code,
- Federal Information Placement System County Code,
- Source classification code (SCC),
- 1995 ozone season or typical ozone season daily NO_X emissions,
- 1995 existing NO_X control efficiency.

Nonroad Mobile Sources

Data on a sub-category specific basis including:

- Federal Information Placement System State Code,
- Federal Information Placement System County Code,
- Source classification code (SCC),
- 1995 ozone season or typical ozone season daily NO_X emissions,
- 1995 existing NO_X control efficiency.

Highway Mobile Sources

Data on a SCC or vehicle type basis including:

- Federal Information Placement System State Code,
- Federal Information Placement System County Code,
- Primary source classification code (SCC) or vehicle type,
- 1995 ozone season or typical ozone season daily vehicle miles traveled (VMT).

For the FIP action, EPA is also accepting comments on VMT and nonroad mobile growth rates, VMT distribution by vehicle class, average speed by roadway type, inspection and maintenance program parameters, and other input parameters used in the calculation of highway vehicle emissions. These comments must be on a county-level basis and must include adequate evidence and explanation for any differences between the input parameters used in the proposed FIP budgets and the input parameters being proposed in the comments. Comments also must be consistent with other State submittals, including SIPs, transportation plans and conformity demonstrations, and other documents, or must contain an explanation for the differences between the comments and these other recent submittals and a plan to correct these other submittals to make them consistent with the comments submitted in response to this notice.

In the notice which extended the period for emissions inventory revisions for the NO_X SIP call (63 FR 71220; December 24, 1998), EPA also corrected Table III–1 and clarified how large EGUs and large non-EGUs are defined. Those corrections and clarifications are applicable and included by reference in the section 126 and FIP rulemakings. That notice has been placed in the section 126 and FIP rulemaking dockets.

Availability of Related Information

The official records for the section 126 and FIP rulemakings, as well as the public versions (including comments and data submitted electronically as described below), have been established under Docket No. A–97–43 for the section 126 action and Docket No. A–98–12 for the FIP action. The official record for the NO_X SIP call has been established under Docket No. A–96–56. The public versions of these records, including printed, paper versions of electronic comments, which do not include any information claimed as CBI, are available for inspection from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The official rulemaking records are located at the address in **ADDRESSES** at the beginning of this document.

Electronic Comments

Electronic comments can be sent directly to EPA at: A-and-R-Docket@epamail.epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect in 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the appropriate docket number. Electronic comments on the proposals may be filed online at many Federal Depository Libraries.

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40 CFR Part 52

Environmental protection, Air pollution control, Emissions trading, Nitrogen oxides, Ozone transport, Reporting and recordkeeping requirements.

40 CFR Part 97

Environmental protection, Air pollution control, Emissions trading, Nitrogen oxides, Ozone transport, Reporting and recordkeeping requirements.

40 CFR Part 98

Environmental protection, Air pollution control, Emissions trading, Nitrogen oxides, Ozone transport, Reporting and recordkeeping requirements.

Dated: January 7, 1999.

Robert Perciasepe,

Assistant Administrator for Air and Radiation.

[FR Doc. 99–849 Filed 1–12–99; 8:45 am]

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